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通商局

條約局

亞細亞局

公信第四一號

昭和五年一月十一日

在上海

總領事 重光

外務大臣 幣原 喜重郎 殿

國民政府ノ土地「トラスト」防止方訓令ニ

關スル件

6/2.52

本件ニ關シ本月十一日ノ民國日報ニ依レハ上海市土地局ハ市政府ヨリ從來外國人カ支那通商港ニ於テ土地ヲ永租シ居住營業ノ用ニ供シ又内地ニ於テ布教ノ爲土地永租ヲナスハ現行條約ノ規定ニ基クモノニシテ

第一課

昭和五年一月廿一日

別紙添付



土地問題

(交保)

禁止ノ途無キトコロ事實上支那人ハ外國銀行或ハ外國人ニ借款ノ形式ニテ其ノ所有土地ヲ外人名義ノ永租土地トナスモノ甚多キニ鑑ミ之カ取締方ニ關シ當該地方官憲ヲシテ一般人民ニ對シ切實之カ禁止ヲ諭告セシムルト同時ニ一面登記其他ノ一切手續ヲ一層確實ニシ以テ地券證書等ノ信用ヲ高メ人民ヲシテ自發的ニ土地ヲ外人ニ「トラスト」スルノ弊ナカラシムヘシ云々ノ訓令ニ接シタル趣ナルカ右訓令ハ行政院カ中央執行委員會ノ命ニヨリ内務外交兩部ニ命令シ内務部ヨリ更ニ全國的ニ發令シタルモノト被認尙當館ニ於テハ「トラスト」ノ地券登記少キモ英米總領事館ニ於テハ相當多數アル趣ナリ

別紙切拔添付此段報告申進ス
本信寫送付先 北平 南京

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全國人民地產
不得向外人
抵借或出賣

令云、為令行市、奉准內
政部函開、奉准行政院
書處函開、奉准行政院
國民政府、奉准行政院
呈請、轉令全國人民、
以地產向外國銀行、或
入抵借款項、或出賣、
辦、附抄原件、送部、
與外交部、商辦、本部
租地、及外國、商辦、
均係現行條約所規定、
上開範圍內、發生之、
實行、自無從禁止、惟
實、租地、華人、假託
以、關於、此類、事項、
機關、一、面、劃、管、地
面、將、登、記、等、項、增、
求、精、妥、契、據、用、項、
外、人、自、不、再、有、此、
部、會、銜、函、復、行、政、
、即、由、該、部、轉、行、
、除、分、切、切、切、切、
、相、應、所、屬、切、切、切、
、並、因、奉、此、令、仰、該
局、等、遵、照、辦、理、此、令、

條約局

亞細亞局
機密第一〇三號

昭和六年一月二十九日

在上海

總領事 村井 倉

外務大臣男爵 幣原 喜重郎 殿

英米領事館ニ於ケル「トラスト」土地

登記禁止ニ關スル件

從來上海ニ於ケル外人ノ永租土地ハ單ニ租界内ノミナラス「エキステンション」道路上ハ勿論吳淞浦東等ニ於ケルモノ又頗ル多カリシ處客年二月上海市土地局カ外人ノ永租手續ヲ一方的ニ改正セムトス



別紙添付

昭和六年一月二十九日接受

上海土地永租

ルニ當リ永租地域ヲ租界内ニ局限セムコトヲ主張シ各國領事殊ニ我方ハ條約上 Treaty Port 卜明定シアルヲ以テ土地永租地域ヲ租界内ニ限定セムトスル中國側提議ニハ到底同意シ難キコトヲ力説シ中國側ニ於テモ結局最終ノ決定ヲ見ル迄ハ租界外土地ニ付從來通りノ取扱ヲナスヘキ旨言明シタル次第ナルカ(客年十一月二十一日附機密第一五八二號參照)前述ノ如ク中國側カ地券發給地域ヲ飽ク迄租界内ニ局限セムトセルハ主義上ノ問題モ勿論コレアリタラムモ從來中國人地主カ租界外ニ於テ其ノ所有土地ヲ外人名義ニ變更シ (hold in trust) 外國領事館ニ登録シ置キ依リテ以テ中國官憲ノ苛斂誅求ヲ免レ財産ノ安全ヲ期セムトスル傾向顯著ナリシニ依リ之ヲ防止セムトセルコト亦重要ナル原因ナリシカ如シ中國側ハ曩ニ客年一月命令ヲ

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以テ中國人カ外人ニ土地ヲ「トラスト」スルコトヲ禁止セルコトアリ（客年一月十一日附普通第四〇號往信參照）一方各國領事ニ對シテモ之カ取締方ニ關シ口頭或ハ文書ヲ以テ申入レヲナセルコト亦一再ナラス實際問題トシテ外國人カ租界外ニ土地ヲ永租セムトスル際中國側ハ右カ果シテ事實外人ニ永租セラルルモノナリヤ否ヤ及永租後ハ如何ナル用途ニ使用セラルルヤ等ヲ取調タル後ニ非サレハ容易ニ地券ノ發給ヲ肯セス殊ニ英、米、佛各國領事館ニ於テハ從來前記土地「トラスト」制度ヲ公然認メ此ノ旨土地臺帳ニ明記シ來リシ關係上「トラストデイド」甚タ多ク中國側トノ間ニ屢々問題ヲ惹起セルヲ以テ英米側ニ於テハ之ニ鑑ミル處アリ爾今「トラストデイド」ノ登録ヲ禁シ自國人ノ租界外ニ於ケル永租ニ對シテハ實際其ノ

永租土地ニ相違ナキ旨ヲ宣誓セシムヘキコトニ決定セル趣ナル處當館ニ於テハ從前ヨリ「トラスト」土地ノ登記ヲ公認セサル方針ヲ採リ來リ「トラストデイド」トシテ土地臺帳ニ記入スルカ如キ取扱ヲ爲シ居ラス尤モ實際ニ於テハ當事者間ノ内密ノ取極ニ依ル「トラスト」土地多少存在スルヤニ認メラルル筋ナキニアラサルモ英米ノ如ク宣誓ノ形式ヲ採ルコトモ多少問題ナルヤニ認メラルルニ付今後モ從來通り此種ノ疑アル土地ニ付テハ一應取調ノ上登記ヲ認メ「トラスト」土地ノ登記抑止ヲ勵行スル方針ナリ
本月二十八日ノ「ノース、チャイナ、デリー、ニユース」ハ英米領事館方面ヨリ聞込メルモノト見エ領事團ノ決定ナリトシテ善意ノ所有者ニ非レハ登記ヲ許ササル旨發表セラレ次テ各漢字新聞等ニモ譯

載セラレタルカ右ハ土地ニ依ル金融取引ノ圓滑ナル運轉ヲ阻害スル
 モノトシテ從來「トラスト」制度ニ依リ利益ヲ得ル所多カリシ外人
 側土地企業會社等ハ相當問題視シ居ル模様ナリ
 右「デイリー・ニュース」切抜添付ノ上御參考迄ニ報告ス

本信寫送付先 臨時代理公使 北平

天津 漢口 南京（以上別紙省略）

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CONSULAR BODY DECISION ON REGISTRATION

Important Ruling Regarding Property Outside the Settlements

OWNERSHIP QUESTION INVOLVED

Jan. 28th
Registration Only for Bona Fide Owners:
No Evasion by the Chinese

(SPECIAL TO THE N.-C.D.N.)

THE British and other Consular authorities have, the "North-China Daily News" understands, decided no longer to record on their property registers property which, being outside the Settlement or the French Concession, is not the *bona fide* property of the national requesting the registration. The intention of the Consuls is to refuse to give sanction to transactions implying Chinese evasion of recognition of the Chinese authorities' jurisdiction or involving what is virtually the sale of foreign rights.

This decision has caused much apprehension among certain business interests in Shanghai. It is pointed out that it puts an end to a practice of very long standing. Of this practice large numbers of Chinese have made considerable use, for they have thereby obtained protection on which they can rely against unsatisfactory conditions arising out of the insecurity of life and property in China itself.

LAND COMPANIES AND THE DECISION

Chinese landowners have been able to engage foreign experts to manage their property and to carry out important structural operations. Thereby important business interests have been established in the Settlements, and those interests, besides employing large numbers of foreigners and Chinese, have also added to the volume of trade with Europe and America. The decision that registration depends on the establishment of a *bona fide* ownership of property involves, in the view of the Land Companies, the encroachment of the Consuls in their executive capacity on judicial functions.

If the enquiry which they make is not answered they have, it is stated, the power to refuse to register. On the other hand, if the enquiry is answered, it is not possible, obviously, to ascertain, except by procedure of a judicial character, whether the absence of *bona*

fides necessarily constitutes the class of transfer which the Consuls conceive it their duty to discountenance in the light of the policy by which they are guided.

The practical effect of this decision can be seen readily from the circumstances attending a recent refusal to register on the ground of this new decision. An important sale was being negotiated in regard to property outside the Settlements. When the Consuls—there were two to whom application was made—refused to register, the Chinese buyer at once declined to proceed further. In this particular instance, however, the sale was eventually completed at a later date after considerable negotiations.

It is not fair to say that notice has not been given of this new decision, but the land companies contend that the notice has not been long enough, taking into con-

sideration the interests involved. They argue, moreover, that under the Treaties the British, and therefore other foreign residents, have a prescriptive right to buy and sell land outside the Settlements and that this action of the Consuls is in fact a restriction of that right. It may be admitted that conditions have been created which were not foreseen at the time when the practice was first instituted, or when the Treaties were made, but, taking a line from other British Dominions where similar conditions have arisen, the objection is that the scales have unavoidably been weighted in favour of the *status quo*.

Position Under Review

It is recognized that the whole position of this extra-Settlement land is under review and will be much affected by the findings of Mr. Justice Feetham. This, however, seems to the land-owners an additional reason for avoiding action which may give one party or the other less scope for effecting a compromise, apart altogether from the fact that it may be, as it is, definitely anticipating the result of the case which is in a very real sense *sub judice*.

The "North-China Daily News" learns that the land-owners do not suggest that the Consular Body have been wanting in frankness in dealing with this matter, and they fully appreciate the policy which dictates this sudden executive decision. They suggest, however, that it is premature and unnecessary to come to such a decision when in a few months' time the position may be far clearer than it is now.

The enterprises with which the land investment companies have been concerned have been legitimate, have contributed greatly to the advancement of Shanghai, to the amenities of its Settlements and to the stimulation of trade. The view is held, therefore, that the Consular Body would do well to reconsider the position in the light of these representations.