



G-0084

0164

通商

機密第〇四號

昭和八年十月十六日

在ダヴァオ

領事代理 金子 豊



外務大臣 廣田 弘毅 殿

邦人入植耕地ノ租借申請拒否ニ對スル請願ニ關スル件

當地邦人經營「ミンタル」病院醫師比島人「ダクダオ」ノ租借申請ニ係ル公有地ハ事實上多數ノ日本人ニ轉貸サレ居ルノ廉ヲ以テ（邦人小作約三十件入植中）本年六月頃土地局ヨリ其ノ租借申請ヲ取消ス可キ旨指令ニ接シ「マニラ」在住辯護士「ラウレル」（在「マニラ」總領事館顧問辯護士）ヲ介シ土地局長ヘ右再審方請願スルコト

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要五部

073.10.9

トシタルカ右ニ對シ最近「ラウレル」ハ別紙寫ノ如キ覺書ヲ同局長ヘ提出シタル旨内報ニ接シタリ
該覺書ニ於テ「ラウレル」ハ邦人ハ耕形式ハ恰モ米國方面ニ見ラルルカ如キ收獲契約若シクハ一家ニ於ケル主人ト僕婢ト關係ノ如キ勞働僱傭契約ナリトシ又邦人ノ收得スル收獲高ノ八割五分ハ該邦人カ他ノ勞働手傳ニ對スル勞銀、麻挽機ノ燃料及維持費竝耕地手入其他一般雜費ニ充當セラレ差引殘額約五歩ノミ實際上該邦人ノ所得トナルニ過キスト述ヘタリ
然ルニ當地主ナル邦人栽培業關係者等ノ意向ハ現下邦人ノ一般的入耕形式タル「バキヤオ、システム」ノ慣行の合法性ヲ究極土地局長乃至政界ノ要路ニ認メシムルコトニ最善ノ努力ヲ試ミ萬止ムヲ得サ

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ル場合ハ労働形式ヲ以テ辻褄ヲ合セムトスルニ在リ客年十月小官「マニラ」出張ノ序ヲ以テ「ラウレル」ト會談ノ際モ右趣旨ノ貫徹方ヲ依頼シ唯之カ當局ヘ提案ノ時季及方法ニ付テハ比島政界ノ事情ニ精通スル同辯護士ニ一任シ置キタル次第（本年一月四日附機密第五號拙信参照）ナルカ今次同辯護士カ本件耕地ニ關シ労働形式一點ニテ邦人ノ入耕態様ヲ説明シツツアルハ聊カ行キ過キタル觀ナシトセス

尤モ右ハ「ラウレル」ノ心證ニ依リ「マニラ」方面ノ情勢ハ未タ右「バキヤオ、システム」ノ入耕形式ヲ認メシムル時機ニ達シ居ラサルカ若クハ本件耕地ノ關スル限り應急ノ措置トシテ斯ク労働形式ヲ持出ス方再審上有利ト認メタルニアルカトモ察セララルル次第ナルカ

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何レ本件覺書ノ経緯ニ付テハ後日書面ニ依テ若クハ小官「マニラ」出張ノ機會モアラハ委曲照會致度ト存ス

茲ニ不取敢前顯覺書寫竝同要譯添付御參考迄報告ス

追テ「ダクダオ」醫師ハ前記自分名儀ノ耕地以外「ラクソン」「スワレス」及「ヴェンツラ」ノ隣接三耕地ヲ管理シ何レモ邦人小作三十件乃至五十件ヲ入耕セシメ居ル處其ノ各開墾當初多數ノ土着蕃族ヲ立退カシメタル爲痛ク彼等ノ怨恨ヲ買ヒ其ノ餘燭ハ今尙此種土地法上ノ繋争及邦人ノ被害事件等トナリテ現ハレツツアルモノノ如シ

本信送付先

在マニラ總領事

在ダヴァオ日本帝國領事館

「ダクダオ」耕地ニ關スル土地局長宛覺書（要譯）

一、申請地カ日本人ニ轉貸サレツツアリトノ土地局宛通報ハ全ク根據ナキ虚言ニシテ該日本人ハ「ダクダオ」ノ單ナル勞働者トシテ雇ハレ土地ヲ開墾シ其ノ勞役ニ對シ生産物ノ收益ニ依ル支拂ヲ受ケ居ルモノナリ

右ノ勞働契約ハ合衆國ニ見ラルル收益契約ト類似シ「クロツパ」即チ勞働者ハ收穫物ニ對スル代償請求權ヲ除キ土地ニ對シテハ何等ノ「インテレスト」ヲ有セス反之借地人（此ノ場合ハ租借申請人）ハ事實上土地ノ占有者タルノミナラス收穫物ノ所有者ナリ

一、本件日本人勞働者ハ僕婢カ其ノ職責遂行上會々主人ニ屬スル家屋ニ無料ニテ居住スルト正ニ同様ニシテ雇傭期間滿了又ハ解雇ノ

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場合僕婢ハ其ノ家屋ニ居住スル權利ヲ失フモノトス成ル程「ダクダオ」ノ申請地ニハ勞働者タル日本人居住スル當事者相方間ニハ勞働契約以外何等小作若クハ借地ニ關スル取極ヲ爲シ居ラス

一、現行公有地ノ如何ナル條項ニ於テモ公有地申請者ニ對シ外國人勞働者ノ雇傭ヲ禁止シ居ラス若シ何等カ政策上之カ禁止ヲ適當ナリトセハ右様比島法規ヲ改正スクニ如カス

一、「ダクダオ」申請地ニ日本人ヲ使役スルコト好シカラストセハ同人ハ凡ニ一九二七年ニ於テ之ヲ使役セサル方針ヲ樹テ從テ其ノ後ノ投資モ見合セタルヘシ即チ同人ノ證明ニ依レハ當時土地局長「ダックス」ハ「ダヴァオ」ニ於ケル日本人ノ所謂土地法違反事件ニ關シ數週間現地ニ於テ嚴査ノ際同人モ取調ヲ受ケタルカ多

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年來米比人等ニ依リ慣行サレタル日本人勞働使役ノ方法ヲ同人ノ申請地ニモ採用シ居ルコトハ何等土地法ニ違反セスト斷定サレタルニ依リ其後使用人員ヲ増加シ投資モ増額シタリト云フニ在リ一、更ニ土地局側カ「ダクダオ」耕地ニ關シ疑念ヲ深クスル點ハ同人カ日本人ニ對シ收穫高八割五分ノ歩合ヲ與フル契約ヲ結ヒ居ル點ナルモノノ如クナルモ此點ハ同人ノ左記説明ニ依リ明白ナルヘシ即チ

い、當事者雙方ノ間ニハ文書ニ依ル契約取極ナシ
ろ、日本人ニ八割五分ノ歩合ヲ與フルコトハ日本人ノミ收穫ノ大部分ヲ收得シ地主ハ單ニ賣上收入ニ名目上ノ參加ヲ有スルノミナリトスル土地局側ノ見解ハ麻産業ノ真相ヲ究メサルモ甚

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シト云ハサルヘカラス

は、日本人勞働者ハ單獨ニテ生産スルモノニ非ス他ノ勞働手傳（主トシテ比島人）ヲ使用シ機械ヲ据付ケ之ヲ運轉シ又開墾補付資金ノ利子ヲ支拂ヒ且自己ノ生計ヲモ立テサルヘカラス而モ現下ノ麻市價ニテハ日本人勞働者ノ正味所得ハ程ト零ニ近シ

全收入ノ四割：：麻挽人手間

同 一割：：麻挽機油代及修繕費

同 二割：：麻山手入人手間

同 一割：：傷害治療費其他雜費

同 一割五分：比島人地主へ納付

合計九割五分

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即チ事實ニ於テハ全收復高ノ僅ニ五分ノミ日本人ノ所得トナリ
現下麻相場一擔五「ベソ」ニテ日本人ハ二十五仙ヲ受クル割合
ナルカ而モ彼等ハ此ノ零細ノ收入ヲ以テ其ノ家族ヲ養ヒ且利子
其他教育費、醫療費ヲモ支辨セサルヘカラス
に、「ダヴァオ」ノ日本人ハ一人平均約十町歩ヲ開墾シ之ニ麻約
一萬株ヲ植付ク之カ開墾及植付ニハ約三四名ノ比島人労働者ヲ
使役ス而シテ植付後約二年ニシテ麻ヲ生産スルニ至ルモノナル
カ一萬株ノ麻挽ニハ約五名ノ比島人労働者ヲ備ヒ一日平均二擔
ヲ生産シ之ニ對シ賣上高ノ四割ヲ支給ス又一町步當リ一年平均
二十四擔乃至三十二擔ノ收獲アルモ五年目以降遞減シ十年目ニ
ハ何等ノ收獲ナキニ至ル

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一、以上ノ事實ニ鑑ミ本件「ダクダオ」ノ申請ハ適當再審ノ上認可
相成様致度云々

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Filipino landowner. At present the prevailing rate of payment or expenses incident to the production of abaca fiber is as follows:

40% of the proceeds of sale go to strippers
10% to gasoline, petroleum, grease and repairs
20% to laborers who clean of weeds from land
10% to other expenses such as hospital bills, etc.
15% to Filipino land owner

Total 95

"Thus we see that of the 100% of the proceeds of sales of abaca fiber produced by the Japanese he can net only 5%. At the prevailing market price per picul of abaca of five pesos (P.5.00) he (the Japanese) can make only twenty-five centavos (P.O.25) for every picul of abaca the Japanese can produce. And of this 25 centavos he can make from every picul of abaca he produces, he feeds and clothes his family, he pays his hospital bills and pays his indebtedness.

"The average Japanese engaged in agriculture here in Davao works on ten hectares of land planted in 10,000 hills of abaca. In the planting of abaca he takes or employs three or four laborers usually Filipino to help him clear the forest and plant the land with abaca. After planting he must keep the ground always free from all kind of weeds in order to obtain the greatest agricultural value from the abaca planted. He alone cannot do this job and he must take another laborer to help him. If he is married to a Japanese woman, his wife helps him in this work and he can save the wages of the laborer. After planting, 2 years must elapse before the Japanese can gather the produce of abaca planted by him. In the production of abaca fiber from the 10,000 hills of abaca planted by him, he must employ four or five laborers, usually Filipino laborers, to strip for him the abaca into fiber. To these Filipino strippers he pays 40% of the proceeds of the sale of abaca stripped by the Filipino laborers. This team of five Filipino strippers working together can strip into clean fiber an average of two piculs daily. It takes from 30 to 40 working days for these five strippers to strip all the matured abaca trunks of the 10,000 hills of abaca. After stripping all the matured abaca trunks, three months must elapse before other trunks of abaca become mature and ready for stripping. In one year therefore, the Japanese working on 10,000 hills of abaca can strip four times at three months interval, and the 10,000 hills of abaca yield ~~xxx~~ him from 240 to 320 piculs of abaca fiber in one year.

"The average yearly yield per hectare of land planted to abaca is from 24 to 32 piculs of abaca fiber. This holds good only on virgin land and during the first five years of production. After this, production declines and on the tenth year it goes down to the level that it is no longer profitable to work on this particular land.

"It is evident that the Director of Lands is misinformed when he thinks that the Japanese gets all the profits in his ~~xxxxxxxx~~ relation with the Filipino land owner.

He does not take into consideration the other factors that enter into the production of one picul of abaca fiber. I am writing this note to acquaint you of the existing conditions here in Davao and to request you to correct any misinformation the Director of Lands may have on the relationship between the Japanese and Filipino land owner here in Davao."

In view of the foregoing, we request that the application of Dr. Dakudao be given due course and approved.

Manila, October 27, 1933.

LAUREL, DEL ROSARIO & LUALHATI
By:

JOSE P. LAUREL
Attorney for the applicant,
Dr. Santiago S. Dakudao
601-608 Cu Unjieng Bldg.,
Escolta, Manila.

from one of them they were also told that there are nothing wrong with their activities and that they are one of the most law-abiding people on earth. At that time I was just beginning to introduce improvements in my land and had at that time only ten or twenty Japanese laborers. Had the Bureau of Lands investigators told me at that very time that it was illegal to employ Japanese labor I would not have continued to use Japanese labor and I could have been saved now from worry and mental torture because of the present attitude of the Bureau to cancel our applications for wllged subletting of the land to Japanese subjects. My relatives also would not have put thousands of their money in Government lands here in Davao had they knew beforehand that it is illegal to use Japanese labor in the cultivation of those lands. And Mr. Dans, Assistant Director of Lands, knows that the method of employing Japanese labor now prevalent here in Davao, was used by the Japanese, American and Filipino landholders in 1927 when he came on special mission to see the legality or the illegality of this method. As I said above Mr. Dans returned back to Manila giving us to understand that there was nothing wrong with this method of using Japanese labor in the cultivation of the land acquired from the Government".

It seems that the idea behind the suspicion in employing Japanese laborers on the land is to discourage and create unemployment among the Japanese in the province of Davao with the ultimate result that they will have to go to Japan when their services are dispensed with by public landholders. This is impolitic and dangerous. To our mind this result cannot be obtained, and not logical to be expected in view of the presence of human activities in Davao other than farming which needs Japanese labor. There are private individuals; commercial houses; private landholders and other firms where Japanese labors are indispensable. Government manual services for instance are open inducement to them. An investigation of public funds disbursement in Davao will show that many Japanese names are included in its payrolls. If the Government desires to discourage the employment of Japanese laborers it seems logical that it should first clear up itself with the employment of Japanese laborers to avoid any possible suspicion. It must set an example. And if, upon the other hand, we want to limit the number of Japanese

laborers in these islands proper legislations seems to us is in point but certainly landholders should not be made the recipients of all these inonimate prohibitions.

Another point hinted by the officers of the Bureau of Lands in the various conferences of the undersigned in connection with ^{the present case that they stand in looking with} suspicion on the application of Dr. Dakudao' is justified by the existing contract between the applicant and the Japanese laborers where the latter are being given a share of 85% of the proceeds of the sale of the crops after deducting the amount of expenses incurred in the production. In this connection, we beg leave to quote hereunder the pertinent portion of the letter which we received from our client, Dr. Dakudao, which in our opinion is sufficient to dispel any possible doubt on this point. He said:

"With reference to the contract of agreement entered into between the applicant and the Japanese laborers please inform the Director of Lands that there is no written agreement between the parties.

"The Bureau of Lands believe that by paying the Japanese 85% of the proceeds of the sales of abaca, the Japanese is reaping the great bulk of the "profits" leaving the Filipino landowners to be content with a meager participation of the proceeds of the sales of the crop. Nothing is farther from the truth. If the whole 85% go to him in bulk, pocketing the whole of it, the assertion may be true. But it must be born in mind that the Japanese cannot produce the abaca fiber by working alone. He must employ other laborers (with but very few exceptions he employ Filipino labor) to help him produce the abaca fiber. And from the 85% of the proceeds of ~~his~~ sales that the Filipino landowner pays him he has to pay the wages of laborers who keep the abaca plantation clean of all weeds and who plows the ground in order to obtain the greatest agricultural value from the abaca planted by him, he has to pay for indebtedness contracted while planting the abaca and even during stripping and he has to pay for hospital bills of his laborers who met with accidents in the operation of the engine and stripping machine often resulting in the more or less serious mutilation of the fingers or arms of his laborers. Summing up all these expenses there is ~~practically~~ practically nothing left to the Japanese at the prevailing market price of abaca.

"Now let us come to figures in computing the 'profits' that the Japanese reaps from his relationship with the

A strip into fiber the abaca for him, he has to pay for gasoline, petroleum, grease and lubricating oil for the engine and stripping machine, he has to pay the wages of laborers who



oified time after acquisition without observing the formalities required by law, to person, corporations or associations not authorized to lease or buy public lands. There is no doubt in our minds that there is neither subletting nor encumbrancing or assigning in this case; hence, there is no justification to warrant any action by the Government which may be prejudicial to the interest of the applicant. Mr. Dakudao welcomes an investigation at any time, to clear up any possible doubts, should there be any in the minds of our Government Officials with regards to the real status of the Japanese laborers on the land covered by his application.

For the information of the Director of Lands, it may not be out of place to state at this juncture the reason why the services of Japanese laborers are being sought for, instead of the natives. The advantages are manifold. In the first place, we desire to state that altho native laborers should for obvious reasons, be preferred yet, there are not at present sufficient Filipino laborers in Davao who will be able to take the place of Japanese laborers, with the same efficiency, the same diligence, the same or equal in trustworthiness as those of the Japanese and who would be equally willing to feel the responsibilities on their shoulders as the Japanese laborers. The Landholders in spending their capitals desire, of course, a fair return, and in the selection of their labor great care is used to employ people who will be assets to their agricultural enterprise rather than liabilities and the consequent loss of their investment. In the second place, this is also the practice followed by the provincial and municipal governments of Davao and the Bureau of Public Works. Japanese Laborers are being utilised in view of their efficiency. There is no doubt

that the government in utilizing the services of the Japanese desires to protect its interest. Such being the case no plausible reason appears why the same Government would deny public land applicants in employing means that would ensure and protect their financial interest. Owners of land or the employer do not need to be over watchful when these Japanese work because said Japanese continue to do their business well and fully, without close supervision. This statement is not intended to cast an unwarranted criticism against native laborers in that part of the country and neither do we have in mind to belittle their capacities in any undertaking. This is the result of almost 20 years close observations and this is also born out by the facts now obtaining in that province.

We believe and the Director of Lands, we presume, also knows that nothing is contrary to law in the ~~xx~~ utilization of foreign labor. It is but natural for any people to adopt a system most beneficial to them. If the Government believes that the employment of Japanese laborers or foreign laborers by public land applicants should be discouraged because it runs counter to some public policy, we believe that proper steps should be taken toward the amendment of our statutes.

The employment of Japanese laborers on the land of Dr. Dakudao could have been cut short in the year 1927 when he was just beginning to adopt the system, common in that locality of introducing improvements on the lands through the medium of Japanese laborers. His capital should not have been invested in this manner if it were not, said Dr. Dakudao, that:

"In the year 1927, Mr. Jose Dans the present Assistant Director of Lands with several personnels of the Bureau in Manila came to Davao to investigate the alleged violations of land laws. They stayed in Davao for several weeks going minutely into the books of most of Japanese corporations having landholdings. They called me up also and examined my books and asking me pertinent questions they told me that there was nothing wrong with my employing Japanese laborers in the land I acquired from the Government. As to Japanese corporations according to informations I gathered

as "croppers". The term "cropper" is applied to a person hired by the landowner to cultivate the land, receiving for his compensation a portion of the crops raised. The Supreme Court of Arkansas has held ~~xxx~~ in the case of Burgie v. Davis, 34 Ark. 179 "that the law governing ~~landholders'~~ ^{landlords'} liens had no application to the case, but the cropper was entitled to file a laborer's lien on the crop for whatever was due to him but remains unpaid".

Croppers or laborers have no interest on the land, altho they have a laborer's lien on the crops for whatever is due them. They do not pay rents for the occupation of the land. They are there for the purpose of tilling the soil, in consideration of which they are given a share on the products produced by them. The lessee, the applicant in this case, is and continues to be not only actual possessor of the land but also the owner of the crops raised therein with the rights of supervision and discharge of laborer even without cause at any time. The legal possession of the land, as well as the title to the entire crop is in the owner of the soil. The Japanese laborers ~~xxx~~ as employees are occupying and tilling the premises for the employer and at any time during the existence of the contract of employment may be ejected from the land without hearing, if, in the opinion of the employer his interest and that of the Government so ~~strictly~~ require. There has been no occasion during their relation where an employee could decline or refuse to relinquish possession of the property after being discharged. The case of these Japanese laborers is exactly similar to that of a servant who occupies a house belonging to the master, free of rent, as incidental to and connected with the performance of his duties as such servant. In the eye of the law, the master has never parted with the possession of the premises, the servant's possession being regarded as that of the master. If he quits the

the service of the master before the expiration of the terms or is discharged by the master, his right to stay and live in the dwelling house ceases. The master may enter any time into the premises and, if necessary, may use such reasonable force as may be necessary to expel the servant. From the foregoing, it is evident that the property in the case of Dakudao has not been subleased to the laborers under their agreement for none of the elements constituting the a contract of tenency nor that of lease is present.

An examination of the provisions of our public land law, limiting the rights of public land applicants in the encumbrance of their rights and interests over the land acquired by them from the Government disclosed that ~~in~~ the employment of foreign labor is not one of those directly or indirectly prohibited by our statutes. It is, therefore, our contention that the legislature did not really have in mind to limit the rights of any public land applicant on this particular point.

Section 37 of Act 2874 as amended provides in part as follows:

"x x x It shall be an inherent and essential condition of the lease that the lessee shall have not less than one-third of the land broken and cultivated within five years after the date of approval of the lease and shall not assign, encumber, or sublet his rights without the consent of the Secretary of Agriculture and Natural Resources (now Secretary of Agriculture and Commerce) and that the violation of this condition shall avoid the contract: Provided, that assignment, encumbrance, or subletting for purpose of speculation shall not be permitted in any case; Provided, further, that nothing contained in this section shall be understood or construed to permit the assignment, encumbrance, or subletting lands leased under this Act, or under the former Public Land Act, to persons, corporations or associations which under this Act are not authorized to lease public lands, unless otherwise provided by general or special legislation by the Legislature". (As amended by Sec. 9 of Act No. 3219 and Sec. 9 of Act No. 3517).

It is apparent from the above quoted provisions of law that what is prohibited is the assignment, encumbrancing, or subletting of land acquired from the Government within a spe-

(COPY)

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

BEFORE THE DIRECTOR OF LANDS, MANILA

IN THE MATTER OF:

L. A. No. 2545 of
DR. SANTIAGO S. DAKUDAO,
x Applicant.
x -----x

DAVAO, DAVAO.

MEMORANDUM FOR THE DIRECTOR OF
LANDS

In a communication of the Director of Lands, dated June 21, 1933, Mr. Santiago Dakudao, applicant in Lease Application No. 2545 (E-217) was asked to show cause why his application should not be cancelled on the ground that, according to an information received in the Bureau of Lands, the land covered by the said lease application is being sublet by Mr. Dakudao to some Japanese residents in the province of Davao. In behalf of our client, we desire to state that the alleged information is absolutely without basis, false and malicious. The presence of Japanese on the land in question is not denied, but we beg to inform the Director of Lands that said Japanese are laborers of the ~~said~~ applicant Dakudao and not his sublessees.

Laborers are not sublessees. A contract of hire of services is certainly not a contract of lease or sublease. Neither by implication can it be construed to mean to be so. The said Japanese are mere laborers who have been hired by Mr. Dakudao to till the land and who are paid for their services from the proceeds of the products produced by them; and whether other individuals desire to call the relation between them as leasee and sublessee is a matter not within Mr. Dakudao's power to correct. Their true relation is that of employer and employees (laborers). The nature of this contract of hire of services is similar to that of what is known in American jurisprudence

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