

Japanese Consulate Shanghai, th day

of th Month 253 after the coronation of the

Emperor Zimmre in the th year

Protest entered in the Consular Court
of Amoy, on the occasion of my arrest
by the judge of said Court on the 6th day
of August, 1874.

Selected by the Government of Japan
to come to Southern China and represent it
here on the mission of peace as its special
Commissioner, I solemnly protest against
the violence used towards me by the authorities
of the United States at Amoy in depriving
me of my liberty and forcibly and against
my will, bringing me before them in virtue
of a warrant, in which, in violation of all
principles of law, no mention of the offence
or crime of which I must necessarily be

accused is made. My quality, as united
^{States} Citizen, and my connection, as such with
the Japanese Government while the latter is
engaged in carrying out a scheme of
pacification within the boundaries of Aboriginal
Formosa, cannot be invoked, (as it may
ultimately be) by the United States authorities
in justification of their act. For the very nature
of the duties which I have come ^{here} to perform
entitles me to certain privileges and immunities,
which both China and Western powers are
~~to~~ found to respect and by depriving me
of my liberty while thus vested with this
character, this Court has committed towards
Japan an unfriendly act which that Country
can not fail to resent and which, in the
course of time, the United States in their well
known policy of justice, will certainly regret.

While as a public officer of Japan,

I turn my eyes towards the United States
and protest against the wrong which
I am now made to suffer, and for which
I claim redress, as a Citizen of these
same United States, I feel deeply grieved
for the error which I believe has been
committed here by this Court. This error
is the more apparent when we come
to consider the different circumstances
under which the American authorities
might have been placed in their relations
with me, in my double capacity of Japanese
officer and United ^{States} Citizen. I will suppose
the worse case, that is, that the late
^{aboriginal} action of Japan in Formosa constituted
an act of war against China, or, as some
have called it, a war without declaration.

It must be remembered, that I was
engaged by the Japanese Government long
before

The Formosa mission started. Now the
Treaty of 18~~58~~⁵⁵ between the United States
and Japan says that Japan shall have
the right to engage in the United States
x x x Naval and Military men x x x to
enter its service x x x Provided that
"such persons shall not be engaged to
act in a naval or Military capacity
while Japan shall be at war with
any power in amity with the United
States;" and I do not think that this
proviso prohibits Japan from employing
American citizens to act in a ^{naval} ~~military~~ or
~~naval~~ Military capacity who have been engaged
before Japan went to war. Neither does
the act of Congress passed April 20, ~~1878~~, 1898
commonly called the "Neutrality Law";
for when I accepted my present task
under the Japanese Government, I
was

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was without the jurisdiction of the
United States.

Now we come to the act of
1860. In passing this act, the
^{object}~~object~~ of Congress was to arm
the Ministers and Consuls of the
United States~~s~~ in China, Japan
and Siam with certain powers
that would enable them to carry
in to effect the ^{treaty}~~treaties~~ with those
powers, for which purpose previous
jurisdiction was insufficient. It
provides that "it shall be competent
for each of the said Ministers to
issue all manner of writs to prevent
the Citizens of the United States from
enlisting

enlisting in the Military or Naval
service of either of the said countries
to make war upon any power" with
"whom the United states are at peace,
"or in the service of one portion of
"the people against any other portion
"of the same people; and ^{he} may carry
"out this power by a resort to such
"force as may at the time be within
"his reach, belonging to the United
"states".

However stringent this Law
may appear at first sight, it can
have but very little ^{to} bearing upon the
case at issue. It is, it is true, a Law
of the United states, binding, so far as
it goes, upon all American citizens.

But the treaty of 1858 between
Japan and the United states is also
a Law

a law of the United states. Mr. Wheaton
says: "Under the Constitution of the
"United states, by which treaties made
"and ratified by the President, with
"the advice and consent of the Senate,
"are declared to be the supreme law
"of the Land it seems to be under-
"stood that the Congress is bound
"to redeem the national faith thus
"pledged, and to pass the laws
"necessary to carry the law into effect"
{ Wheaton's International Law, § 226
page 339. } Now we have seen that,
by the terms of the treaty of 1858
between Japan and the United
states, persons who retain the
character of Citizens of the United
states ^{and} are in the service of
Japan ^{and} may without blame to
themselves

themselves or Japan, serve that country
in a war begun after entering the service.
If so, how could Congress, which was
bound, under the constitution, to legislate
for the purpose of carrying into effect
the terms of the treaty, pass a law that
would ~~essentially~~ ^{virtually} set at naught ^{naught} the
provis^{ions}~~ions~~ of this same treaty? In
vain would we argue that the law
of 1860 applied^d to United States citizens,
and not to Japan. It is beyond
question that Japan can claim certain
privileges from the United States under
the terms of the treaty of 1854. If, by
depriving United States citizens of a
certain proportion of their liberty in
their relations with Japan and her people,
either, or both, are debarred from enjoying
these privileges, and if the enactment
of

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of the Law of 1860 is the means of
 doing this, I say that the law of
 1860 never could have been understood
 by the framers thereof to apply to Japan,
 and that it was never intended
 that it should. Now we must not
 forget that the law of 1860 was framed
 chiefly because some American
 adventurers, notably Wood and
 Burgwine, had taken an active
 part in the troubles between the
 Chinese Government and the Tai
 Ping ~~rebels~~ ^{rebels}, Burgwine having given
 his aid in ~~turn~~ ^{turn} to ~~both~~ ^{both} sides. Congress
 was anxious to prevent by legislation
 the recurrence of such proceedings, not
 only

only in China, but in all the countries where it was likely they might again take place, and to prevent all possible transgression of the law, this body extended the prohibition from enlisting in the ~~armies~~^{armies} of contending parties in cases of civil wars among those nations, to entering the ~~army~~^{army} or navy of either of those ~~countries~~^{countries} while at war with some power with whom the United States have treaties of peace and amity. In what relates to China or Siam, neither of which has such a ~~clause~~ clause in her treaty as the one referred to above, this law can be carried out, but it cannot be legally enforced in the case of Japan. It could be, however, were the law to be embodied in a new treaty, but it has not been so embodied, and

and until it has been, it cannot affect or modify the treaty of ~~1858~~¹⁸⁵⁸, without the express consent of Japan in every case. In the present case we must infer that this consent has not been given from the fact that, contrary to the stipulations of the law of ~~1860~~¹⁸⁶⁰, but in accordance with the terms of the treaty of 1858, an American was engaged by the Government of Japan ~~to~~ to serve in connection with the Formosa Mission, previous to a declaration of war against either ~~the~~^{the} aborigines of the island or the Chinese Empire, and the provisions of the same treaty can be invoked by both Japan and the citizens of the United states

States in justification of their acts
in all the courts where the laws
of the United States are enforced.

Army August 7th 1844.

(signed) Chas. W. Le Gendre.