public the right to control its use. *Producers' Transportation Co. v. The Railroad Commission* (1917), 176 Cal. 499, 169 P. 59, 61. The doctrine upon which the principal case probably proceeds is laid down in another Ohio case, *Southern Ohio Power Co. v. Public Utilities Commission* (1924), 110 Ohio St. 246, 143 N. E. 700. To constitute a "public utility" the devotion to public use must be of such character that the product and service are available to the public generally and indiscriminately, or there must be the acceptance by the utility of public franchises or a calling to its aid of the police power of the state. It is still easier to concur with the result reached in the principal case when the logic of *Pinney and Boyle Co. v. Los Angeles Gas & Elec. Corp.* (1914), 168 Cal. 12, 141 P. 620, is applied. "Of course it is true that if A has erected a power plant and has agreed to sell a portion of his electricity to his neighbor B, he is not devoting his property to a public service. But if A shall have erected his power plant and shall have offered to sell his power to the whole or a defined portion of the community, he is, to that extent, devoting his property to public use." Each case must depend for determination on its own particular facts. It is hard to lay down any steadfast rules. *Brock v. Miller* (1927), 240 Mich. 667, 216 N. W. 385, is a border line case. There it was held that the proprietor of a summer resort who sells cottage lots and undertakes to supply lot owners with water and light, engages in a public service, which makes it his duty to serve all patrons alike. But in *Story v. Richardson* (1921), 186 Cal. 162, 198 P. 1057, the owner of an office building maintaining within it a plant to furnish electricity to its occupants, and selling a small surplus to occupants of neighboring property, was held not to be operating a public utility. That decision accords with the principal case. The most important Missouri case dealing with the subject is *State ex rel. Danciger & Co. v. Public Service Com.* (1918), 275 Mo. 483, 205 S. W. 36. A corporation which undertook to furnish surplus electric current generated by it for use in its plant, to the owners of neighboring property, who strung their own wires, and to the city for a few lights, was held not to be a public utility. It is doubtful whether such a case as the principal one would arise in Missouri, since the Public Service Commission Act defines an electrical corporation, and expressly excepts a situation "where electricity is generated or distributed by the producer solely on or through private property for railroad or street railroad purposes or for its own use or for the use of its tenants and not for sale to others." But in view of the cases cited it will be observed that even this exception could not always help to a determination of such a problem.

J. J. C., '30.

TREATIES—CONSTRUCTION AND OPERATION OF PARTICULAR PROVISIONS—TRADE AND COMMERCE WITHIN THE SCOPE OF THE TREATY WITH JAPAN OF FEB. 21, 1911.—Citizens of Japan instituted mandamus proceedings to compel the Secretary of the State of California to file articles of incorporation for a hospital, based on respondent's rights under the treaty between the United States and Japan (1911), 37 Stat. 1504, which authorizes citizens of Japan to carry on trade within the United States and "to lease land for residential and commercial purposes, and generally to do anything incident

to or necessary for trade, upon the same terms as natural citizens or subjects. . . ." *Held,* that the terms "trade," "commerce" and "commercial purposes" as used in the treaty are sufficient to include the leasing of land for a general hospital and its construction and operation as a business undertaking. *Jordon v. Tashiro* (1928), 49 S. Ct. 47.

The Supreme Court is not troubled by a possibility of conflict between the exercise of the treaty making power of the Federal Government and the reserved power of the state such as appeared in *Geofroy v. Riggs* (1880), 133 U. S. 258, for the California Alien Land Law as amended in 1923, carries into effect the treaty under review. Stats. 1923, p. 78.

The question in the principal case is one which arises frequently along the western coast and is indicative of the continual conflict between the local effort to exclude orientals and the Federal Government's attitude toward one of the "friendly nations." The words "trade" and "commerce" in the treaty are the source of contention and in fixing the range of activities included by these general terms there seem to be some discrepancies and no logical basis for the result of the holdings thereon.

California v. Tagami (1925), 195 Cal. 522, 234 P. 102, in line with the principal case, held that the operation of a sanitarium by a Japanese alien was within the meaning of the words "trade" and "commerce" as used in the treaty, since these terms in juxtaposition would "include practically every business occupation carried on for the purpose of procuring sustenance or profit and into which, or any material part of which, the elements of bargain and sale, barter, exchange or traffic enter." The Court based its opinion on the fact that sanitariums are conducted for profit and involve daily business transactions in their maintenance. In *Asaurka v. Seattle* (1923), 265 U. S. 332, engaging in the business of pawnbroker was held to be a "trade" within the purview of the treaty. On the other hand, it has been decided that an ordinance decreeing that swill should be removed by citizens of the United States, having a contract therefor with the city, does not violate the treaty even though the individuals collecting the same used it in their business as hog ranchers. *Cornelius v. City of Seattle* (1923), 123 Wash. 550, 213 P. 17. The courts have consistently refused to extend the treaty to include agricultural occupations within the scope of its provisions. *Terrace v. Thompson* (1925), 263 U. S. 197; *Frick v. Webb* (1923), 263 U. S. 326; *Potterfield v. Webb* (1923) 263 U. S. 225; *Ex parte Nose* (1924), 195 Cal. 91, 231 P. 561; *Webb v. O'Brien* (1923), 263 U. S. 313. In the foregoing cases the injunctions sought to prevent the attorney-general from enforcing the Alien Land Act were denied. In *Webb v. O'Brien, supra,* a Japanese alien was prohibited from making a cropping contract with a citizen even though the clauses of the contract specifically reserved the general possession of the land to the owner and stipulated that the cropper should have no interest or estate whatever in the land.

The question of whether or not the court will look beyond the corporate entity when the alien land laws are invoked has been specifically covered

in Washington by a section of that article of the Constitution dealing with the holding of land by aliens. Constitution of Washington, Article 2, Sec. 333. The section referred to prohibits alien ownership of land and declares that every corporation a majority of whose stock is owned by aliens shall be deemed an alien for the purposes of such prohibition. California has gone so far as to look beyond the corporate entity in holding that ownership of stock in a corporation holding land for agricultural purposes by a Japanese alien was an ownership of an interest in the land and such interest was subject to escheat within the Alien Land Law. This view was sustained by the Supreme Court. *Frick v. Webb, supra.*

The process of correlating the treaty with alien land laws of California and Washington has just begun. Neither the laws nor the treaty can be applied without reference to each other. The holdings upon the scope of the terms of the treaty under review cannot be arranged under a logical system, for they are in most instances largely the result of contemporary public opinion and prejudice. Only one thing can be stated definitely and that is that the courts refuse to recognize agriculture as coming within the scope of the treaty and hence have not permitted the acquisition of any interest, directly or indirectly, in land for agricultural purposes.

F. H., '30.