

Office of the legislative adviser,
Bangkok, 23th February 1954.

Dear Prince Varnvaidya,

I have examined the questions raised in the letter of Your...dated 7th. Inst., the application of (Mr. Mas Farinni) to exchange a certain piece of land belonging to him against another one.

1. I have been very interested to know how of ownership of land in the area specified by the of the Fourth Reign have been made in favour of American subjects before the new constitutional regime. The wording used in the letters of the Foreign office (permission granted as a matter of courtesy) is not in similar. As to the legal value of a permission to purchase land is a "matter of courtesy", it is certainly a "question d' say...", the permission being granted for each particular case for a specified land. This seems to be easily admitted by the International Private Law.

2. Another interesting question, as far as those grants before the new Constitution are concerned, is to quote the formula adopted in the letters of the Minister of Foreign Affairs when those grants have been made after the conclusion of the treaty 16th. December 1920 namely: "While under the Treaty with the United States of America citizens of the country do not possess the right to ..

H.S.H Prince Varnvaidya,

Adviser to the Ministry for Foreign Affairs.

I find in the above formula an allusion to my construction of the treaty which I have explained in my letter ...November 1933: namely that the wording of the treaty has been different in matter of building (purchase) and of land (lease only). The above formula above that the Ministry has interpreted the wording of the treaty as a the right of of land to American under the treaty.

3. I think frequently that both agree, as you may (page 9) that the silence of the treaty means (at least) that American cannot rights of land by virtue of the Treaty.

4. going further, does not the of the Treaty that the policy of the Government has been to the of land

5. the which says that does not prohibit what is not expressly being possible. Please consider that the formula of the Ministry of Foreign Affairs does not settle the point. It may be properly interpreted in favour of the prohibition. "while under the Treaty" but may mean also "while as a consequence of the Treaty". With the last construction, the formula of the Ministry should appear as an also the being taken as prohibition.

May first if the Treaties are not intended to create a status of the rights of foreign citizens living in a country (personal) status, property's status, commercial status, etc.) and if, when they clearly establish a status where a right is not included. That right may be indirectly by the subject of the Sign Contracting fewer to whom it was not granted by the statute? It may be said also that, if on account of the silence of a Treaty, foreigners have no right to acquire land, this only means that they cannot claim the intervention of their for such an acquisition, but that they can recover that right of acquisition by claiming it outside their Treaty's status and so to

may as a private matter between them and the country they live in, under the local law of that country (supposing it is admitted that law allows of land) and provided they do not elicit any intercession of their Government?

The system would come to say that the force of Treaty is only an aid to that of each Government in its intention to do or not to do in favour or for the protection of its own subjects. It seems that the strength of the Treaty is considerable, because

a) the Treaties are not only equal to law, let even as far as made the local law when contrary to them, a Signatory contracting party being unable to evade the consequence of a Treaty by referring to its local legislation (Faulstich, *International Public Law*, 1, 3 part, 1)

b) It is even admitted that Treaties being agreements in good faith, they are compulsory not only as for provisions expressly contained therein, but also as to the most convenient contract at the intention of the parties contracting, the consequence being that something understood must be observed as well when it naturally follows from the wording of the act or after equity, customs or law (Faulstich, *op. cit.* 1)

Please note that, when a right not included in a treaty would be granted by the Government of one of the Signatory contracting powers to the national of the other power, the latter could perfectly say that it disposes entirely of the granting of the said right to the national, even if the national wishes or likes it. For instance, if a Treaty refuses to a American subject the right to own land in the country A, it is not at all sure that the American Government would like the country A to grant that right to one of its subjects by : such grant may be entirely disapproved by the American state by fear of complications, etc., and it is why it has not been specified in the Treaty.

6. I am consequently inclined still to think that a strict construction of a Treaty, as creating a status of foreigner deliberately agreed between the High Contracting parties, is the best legal system of construction, and that is what I have propounded in my precedents note.

However I am quite ready to admit that the intention of the High Contracting parties is an element to be given due consideration, and, in that respect, I see no objection to retain from the explanation which you give on behalf of the Ministry for Foreign Affairs two important arguments:

a) first, that a strict application of the new Treaty, taken as a new status replacing entirely the former one, would give the American citizens in this country, as to the acquisition of lands, a worse position than the position they had before, and worse also than that of the non-Treaty people such as American, Poles, etc.) on account of the friendly relations between also and the U.S.A., it is quite admissible that that the Ministry did not intend to remove the right to own land as an instrument of change for the future, as one would be inclined to believe when reading the Treaty; however I cannot help to remark that, in your system, the "instrument of" for the future remains as to the lands situated outside the Decree Area; so much the better for :

b) second, that if one then wonders why not to have said it plainly in the new Treaty, instead to leave us have so many doubts and controversies in that matter, a reasonable answer is probably that this is due to the constitutional position which is so different in Siam and in U.S.A. going to the federal organization of U.S.A., there may be different laws in the different states, and no unification. In Siam, there is one land-law only. It is misapprehension that the new Treaty has been induced to keep silent on the question of the right of land ownership. because it was impossible for the American Government to include a common rule in the Treaty. To different rules in the States. This difficulty has been of interest to the U.S.A.'s position, and not to Siam's position. However this shows that, as far as Siam is concerned, if she is agreeable to

grant a right of land- to all American Citizens, she own never have any hope to obtain a total reciprocity, since the said right is refused in certain states.

7. In may case, those points are so important that the intentions of the High contracting Powers should be made clear in the present ease , and I concur entirely with the proposal of four serene highness to enquire into the American legation far a statement of the following positions after the treaty of 16th December 1980,may a Siamese who is a been fide resident in U.S.A. have the right to land ownership under the local law of the particular state where to resides?

8. How, if the Government will adult, as a conclusion of the above enquiry:

a) that the American Treaty does not great to American Citizens the right of land-ownership is Siam:

b) that however the status of American subjects in Siam as to the ownership of immovable property is not entirely settled by the treaty:

c) that the said status may be ovulated by the application of the local in matter of ownership of immovable property:

d) that the Government is ready to recognize to all American subjects (as a matter of right, and set by ..) a right to own land which, in the most favorable construction, will not entails the right for all cttiens in U.S.A.

those solutions right be taken in feat as the construction of the treaty its application by High Contracting P arties in order to stele amiably difficulties of interpretation (I don't mean an official settlement by exchange of letters, etc.,but an officious containing and knowledge of the interpretation given or palliations made).

I don't believe that an affirmative r owner to all the points in this item 8. would that the most favorable position of the legal question has been adopted for Siam. But the policy would have the advantage to be once for all a friendly arrangement of the matter, something out by the spirit of "courtesy" expressed in the letters of the Ministry of foreign affairs in the old hegine,but having however more legal consistency and stability.

9. in that case, the question of application of the Decree of the Fourth Heign to American Citizens would raise little difficulty. I have always been in agreement with you as to its general construction. The point to know whether a Treaty (being a law) abrogate o not a former law has no more practical interest, since it would be admitted that the American Treaty is so to say incomplete and permit to settle apart of it the question of land: being incomplete, the Treaty cannot abrogate provisions which relate to sights which are not dolts with in the Treaty. In other words the Decree of the Fourth Heign keeps its fell value, become no prodigious of law at least ravine as identical subject are fond in the Treaty concerning their right to land-ownership. The theory that the Treaty has separated other former law,as I have said in my precedent letter, remains good but when our adults that aliened does not prohibition, of course the application of other former law as far as questions not dealt with in the treaty are communed is not contrary to the theory, but even confrere it.

Also there is no need to discuss any further if a Treaty is different from a law by nature (my point being that Treaty is equal to law as far as the subjects of the Sigh contracting fewer are command, those subjects having to consider only that the legislative and executive powers of their country has made it a law, whatever may be the unilateral or unilateral or biinteral origin of that law.)

10. Now, although the solution of the question by an affirmative arrear to item 8 is not favorable to siam as a strict policy of "status by treaty" (I mean by treaty only) it may be said that the dangers is minimized, or the lose of an " "

lessened by the fact that to apply the decree of the Fourth Heign would grant right of land-ownership to American subjects only within a small area and not in the whole Kingdom.

When granting the right, the competent Minister should take a great care to specify clearly, as you say, in which legal conditions the grant is made. This is necessary not only to prevent in the future requests extending to lands outside the decree area, but also to permit continuity legal explanation to the Assembly which is not unlikely to claim information and to show divergent views arising to the complexity of that contentious question.

Yours sincerely,