The creditor can avail himself of the assistance of the Clerk of the District Court in the giving of instructions for execution.

A bailiff instructed by the Court Clerk shall be regarded as instructed by the creditor.

Article 532. The bailiff is primarily responsible to the creditor, as well as to those otherwise concerned, for the damage caused by acts done under instructions from the creditor or by violation of his official duties.

Article 533. Where the instructions for execution have been given by the creditor accompanied by delivery of the executory exemplification, the bailiff is entitled, even without special authorization, to receive payment and other performance, to validly make out and grant effectual receipts for every thing received, and, as soon as the debtor has completely acquitted himself of his obligation, to deliver up to him the executory exemplification.

Article 534. As against the debtor and third persons, the bailiff is empowered by virtue of the possession of the executory exemplification to proceed with the execution and with the acts specified in the preceding article. Want or limitation of authority cannot be asserted by the creditor as against such parties.

The bailiff shall carry the executory exemplification with him and shall exhibit it as evidence of his qualification upon the demand of any person concerned.

Article 535. The bailiff, as soon as the debtor has completely discharged his obligation, shall deliver up to him the executory exemplification together with a receipt: in the case of part performance he shall note the same upon the executory exemplification and shall deliver a receipt to the debtor.

The right of the debtor to subsequently demand a receipt from the creditor himself is not affected by the provisions of the preceding paragraph.

Article 536. Insofar as the purposes of the execution require, the bailiff is empowered to search the dwelling-house, warehouses, and chests and cases of the debtor, and to have all doors and chests and cases opened if they are closed.

If he encounters resistance, the bailiff is entitled to use force and may demand the assistance of the police.

Article 537. Where resistance is offered to an act of execution or where at an act of execution ensuing in the dwelling of the debtor neither the debtor nor any of the adult relatives or servants with whom the debtor resides is present, the bailiff shall call in as witnesses two (2) adults or an official of the city, town or village, or a member of the police force.

Article 538. Inspection of the papers of the bailiff, and delivery of a copy of any part thereof, must be granted to any and every person interested in the execution who demands the same.

Article 539. At night time and on Sundays and general holidays no act of execution may be effected except with the permission of the Court of execution.

The order granting such permission shall be exhibited at the time of execution.

Article 540. The bailiff shall record every act of execution by protocol.

The protocol must contain:

1. Mention of the place where, and of the year, month, and day when, the protocol is made;

2. The subject matter of the act of execution, with a succinct mention of the material facts;

3. Designation of the persons participating in the execution;

4. The signatures and seals of such persons;

5. A statement to the effect that the protocol has been read to those

concerned or has been presented to them for perusal, and that it has been signed and sealed after having been first approved by them;

6. The signature and seal of the bailiff.

Where it has not been possible to satisfy any of the requisites in Nos. 4 or 5 specified, the reason shall be stated.

Article 541. Summonses and other communications appertaining to the acts of execution are to be made orally by the bailiff and inserted by him in the protocol.

Where such summonses or communications cannot be effected orally, a copy of the protocol shall be served by applying correspondingly the provisions of Arts. 167, 168, 171 and 172 and, if a special document of service is not drawn up, the fact of service having been effected shall be mentioned on the protocol.

Where the service cannot be effected either at the place of execution or within the district of the Court of execution, a copy of the protocol shall be served through the post on the persons who are to receive the summonses or communications, and the fact of its having been posted shall be mentioned on the protocol.

Article 542. The services and communications which are to be effected on, or made to, the debtor in the carrying out of the acts of execution are not required if his whereabouts is unknown or if he is abroad.

Article 543. The direction of acts of execution, and the judicial co-operation in the same assigned to the Courts by this Code, come within the jurisdiction of the District Courts as Courts of execution.

That District Court shall be deemed the Court of execution in the district of which the execution proceedings are to ensue or have ensued, unless some other Court is specially designated by law.

Decisions of the Court of execution may be rendered without prior oral proceedings.

Article 544. Applications and objections relating to the way of execution and to the procedure to be observed threat by the bailiff are decided by the Court of execution. The same is empowered to issue the directions specified in Art. 522 pars. 2.

Where a bailiff refuses to accept execution instructions, or to carry out an act of execution in accordance with his instructions, or where objections are raised with respect to the fees brought into account by the bailiff, the decision rests with the Court of execution.

Article 545. Objections relating to the claim itself established by the judgment are to be asserted by the debtor by way of action in the Court of thesuit in first instance.

They are admissible only insofar as the grounds upon which they rest have arisen subsequently to the close of the oral proceedings at which objection should, in conformity with the provisions of this Code, have at the latest been asserted.

The debtor must assert all his objections (if any) at one and the same time.

Article 546. The provisions of the preceding article apply mutatis mutandis where, in the cases of Art. 518 par. 2 and Art. 519, the debtor contests the accomplishment of the fact which was deemed proved at the time of issue of the execution clause and on which the execution of the judgment is dependent, or contest the succession which was deemed as having ensued, but without prejudice to the right of the debtor in such cases to raise objections against the issue of the execution clause in conformity with Art. 522.

Article 547. In the cases of the two preceding articles the continuance of the execution is not prevented by the institution of an action in objection. Where, however, the circumstances asserted in objection are held to the

be well founded in law and are rendered credible in fact, the Court of the Court of the suit may, upon application, direct a stay of execution until the judgment shall have been rendered with or without security being given, or continuance of the execution on security being given, or annulment of the measures already taken in execution on security being given.

Such decision may be rendered without oral proceedings and, in cases of urgency, by the Presiding Judge.

In cases of urgency the Court of execution may also exercise this power. In such cases it shall fix a suitable term within which the decision of the Court of the suit is to be produced. Where such term has expired without result, the execution is, upon the application of the creditor, to be continued.

Article 548. In the judgment deciding the action in objection, the Court of the suit may issue the directions specified in the preceding article, or may annul, vary, or confirm such directions as have already been issued.

The judgement, insofar as it relates to the matters in the preceding paragraph mentioned, shall ex officio be declared provisionally executory.

No dissatisfaction may be expressed withsuch decision.

Article 549. Where a third person claims ownership in the subject matter of execution, as well as where he asserts that he has a right to debar the assignment or the delivery of the same, he is to assert his objection to the execution by way of an action against the creditor or, where the debtor does not consider the objection to be well founded, against both the creditor and the debtor.

If the action is instituted against both the creditor and the debtor, they are to be made co-defendants.

The Court of execution is the Court competent for the action.

The provisions of Arts. 547 and 548 apply mutatis mutandis to the staying of execution and to the annulment of the measures of execution already taken. Annulment of a measure of execution is admissible without security being given.

Article 550. Execution shall be stayed or restricted in case any of the following documents is produced:

1. The exemplification of an executory decision which annuls the judgment to be executed or its provisional execution has been annulled, or which declares execution inadmissible, or directs a stay thereof;

2. The exemplification of a decision which directs a temporary stay of execution or of a measure of execution;

3. A document showing that security has been furnished in order to avert execution;

4. A document showing that subsequently to the rendering of the judgment to be executed the creditor has been satisfied or has granted further time for performance of the obligation.

Article 551. In the cases of Nos. 1 and 3 of the preceding article, the measures of execution already taken are at the same time to be annulled. In the case of No. 4, these measures are to be temporarily maintained. In the case of No. 2, the measures of execution already taken are to be temporarily maintained, provided that the decision does not direct annulment of the previous acts of execution.

Article 552. An execution already commenced against a debtor at the time of his death is continued against his estate.

Where an act of execution is to be carried out, of which notice has to be given to the debtor, and there is no heir or the heir's whereabouts is unknown, the Court of execution shall, on the application of the creditor, appoint a

a special representative for the estate or for the heir.

Article 553. (Deleted)

Article 554. The debtor shall bear the costs of execution insofar as they were necessary; which are to be recovered with the claim upon which the execution proceeded.

The costs of execution are to be repaid to the debtor where the judgment upon which the execution proceeded is annulled or revoked.

Article 555. Where the assistance of the authorities is required for the purposes of execution, the Court shall address a request to the authorities for their assistance.

Article 556. (Deleted)

Article 557. Where execution is to be effected in a foreign state, the authorities of which are bound to render legal cooperation to the Japanese Courts, the Court of the suit in first instance shall, upon the application of the creditor, request the competent authorities of such foreign state to enforce execution. Where execution can be enforced through a Japanese Consul residing abroad, the Court of the suit in first instance shall address the request to him.

Article 558. Immediate complaint may be raised against decisions which can be rendered in the course of execution procedure without oral proceedings.

Article 559. Execution may also take place:

1. Upon decisions which cannot be attached excepting by complaint;

2. Upon orders for payment declared provisionally executory;

3. Upon documents drawn up by a notary within the limits of his authority and in the prescribed form;provided that the document is prepared with reference to a claim having for its object the payment of a fixed sum of money, or the rendering of a fixed quantity of other fungibles or documentary

securities, and contains mention that it is immediately executory.

Article 560. The provisions of Arts. 516 to 529, Arts. 531 to 552, Arts. 554, 555, 557 and 558 apply mutatis mutandis to execution taking place in virtue of the titles of debt and compromise in Court and also the waiver or acknowledgment of claims mentioned in the preceding article, subject to the modifications contained in the provisions of Arts. 561 and 562.

Article 561. On an order for payment declared provisionally executory, the execution clause is to be noted only where, subsequently to the issue of the order, there has been a succession on the side of the creditor or on that of the debtor.

Objections relating to the claim itself are admissible insofar only as the grounds upon which they rest have arisen subsequently to service of the order for payment declared provisionally executory.

In actions relating to the issue of an execution clause as well as in actions by which objections relating to the claim itself are asserted, or actions by which a succession deemed to have taken place at the time of issue of the execution clause is disputed, the Court having jurisdiction is the Summary Court which issued the executory order. Where the claim does not appertain to the jurisdiction of a Summary Court, the actions shall be instituted in the competent District Court.

Article 561 (2). A decision imposing a correctional fine and a decision as mentioned in the first paragraph of Article 38h-2 are executed by order of the Procurator. Such order has the same validity as an executory title of debt.

Article 562. Executory exemplifications of notarial documents are issued by the notary who has the documents in his keeping.

Objections relating to the issue of the execution clause, and questions relating to the issuing of the execution clause, anew, are decided by the District Court having jurisdiction over the district where the notary has his official domicile.

The restrictive provision of Art. 545 par. 2 does not apply to the assertion of objections relating to the claim itself.

In actions relating to the issue of an execution clause, as well as in actions by which objections relating to the claim itself are asserted or the accomplishment of the fact, which was deemed proved at the time of issue of the execution clause and on which the execution of the document is dependent, is disputed, the Court having jurisdiction is the Court where the debtor has his general forum in Japan and, in default of any such forum, the Court in which, according to Art. 8, action may be instituted against the debtor.

Article 563. The forums determined in this Book are exclusive forums.

CHAPTER II.

EXECUTION IN RESPECT OF MONEY CLAIMS

SECTION I.

EXECUTION AGAINST MOVABLE PROPERTY

SUB-SECTION I.

GENERAL PROVISIONS

Article 564. Execution against movables is effected by way of seizure.

The seizure may not be extended further than is necessary for satisfying the creditor in respect of the claim specified in the executory exemplification and for covering the costs of execution.

Execution may not take place unless a surplus over the costs of execution is to be expected from the realization of the objects to be seized.

Article 565. Seizure is not impeded by a real security right which a third person may have over the object to be seized; without prejudice, however, to the right of such person to claim satisfaction in preference out of the proceeds by way of action in conformity with the provisions of Art. 549.

In such case, and provided that the circumstances asserted in support of the claim are held to be well founded in law and are rendered credible in fact, the Court shall direct deposit of the proceeds. With respect hereto the provisions of Arts. 547 and 548 apply mutatis mutandis.

SUB-SECTION II.

EXECUTION AGAINST CORPOREAL MOVABLES.

Article 566. The seizure of corporeal movables in the possession of the debtor is effected by the bailiff taking possession thereof.

Such things are to be left in the custody of the debtor where the creditor consents thereto, or where their removal would be attended with grave difficulty. In such case the validity of the seizure is dependent on the seizure being rendered manifest by the affixing of seals or in some other manner.

The bailiff shall notify the debtor of the seizure having been effected.

Article 567. The provisions of the preceding article apply mutatis mutandis to the seizure of things which are in the possession of the creditor or of a third person who does not refuse to surrender them.

Article 568. Fruits may be seized even before they are separated from the soil. Seizure may, however, take place only within one (1) month before the usual period of maturity.

Silk worms may not be seized until the majority are ready for spinning.

Article 569. The effects of a seizure extend ipso facto to the natural products of the thing seized.

Article 570. The following things cannot be seized:

1. Wearing apparel, bedding, and household and kitchen utensils, inso-far as such objects are indispensable to the debtor and any of the relatives with whom the debtor resides;

2. The victuals and fuel necessary for the space of one (1) month for the debtor and any of the relatives with whom the debtor resides;

3. In the case of artists, artisans, and workman (technicians, work-men, and labourers), as well as in that of midwives, the objects indispensable for the exercise of their calling;

4. In the case agriculturists, the implements, beasts (live stock) and manure indispensable for carrying on their husbandry, as well as the agricultural produce indispensable for carrying on their husbandry until the next harvest;

5. In the case of officials, officials of shrines, priests, teachers in public or private educational institutions, advocates, notaries, and doctors, the objects indispensable for the exercise of their calling and also wearing apparel suitable to their station;

6. In the case of officials, officials of shrines, priests, teachers in public or private educational institutions, the portion in money of the income derived from their employment or of their pension, which in accordance with the provision of Art. 618 is not liable to seizure, and which is calculated according to the number of days between the seizure and the next day of payment of the salary of pension;

7. The utensils, vessels, and chemicals indispensable to an apothecary in the preparation of medicines;

8. Orders and badges of honor;

9. Seals and other stamps necessary for carrying on a business;

10. Images and other objects used for the purpose of (household) worships;

11. Genealogical papers;

12. Objects relating to inventions of the debtor or of any of the relatives with whom the debtor resides which have not been made public and manuscripts of unpublished works of the debtor or of a member of his family;

13. Books for the use of the debtor or of any of the relations with whom the debtor resides at college or school.

With the consent of the debtor, however, the above objects, with the exception of those mentioned in Nos. 3 to 8, may be seized.

Article 571. Where special measures are necessary for the preservation of things seized, the bailiff shall take such measures in the manner expedient for the purpose. Where expenses will be incurred the money for such expenses is to be advanced by the creditor, and, where two or more creditors are concerned, by all of them in proportion to the amount of their claims.

Article 572. After the seizure has been carried out the things seized are to be sold by the bailiff by way of public auction in conformity with the provisions of the following articles, and without any special instructions from the creditor or the Court being required.

Article 573. Where there are objects of high value amongst the things to be sold by auction, the bailiff shall have them appraised by a competent expert.

Article 574. Money which is seized is to be delivered to the creditor. Money collected by the bailiff is to be deemed to have been paid by the debtor, unless the debtor has been permitted to avert execution by furnishing security (bail) or by making a deposit.

Article 575. Between the day of the seizure and the day of the auction a period of at least seven (7) days must intervene, unless the execution

creditor, creditors demanding distribution in virtue of an executory exemplification, and the debtor agree to an earlier auction, or unless the same is necessary to avoid disproportionate expenses of a longer custody or to avert the risk of a considerable depreciation inthe value of the thing which is to be sold.

Article 576. The auction takes place in the city, town or village, in which the seizure was effected, unless the execution creditor and the debtor agree upon some other place.

The day and hour and place of auction are to be publicly notified with designation of the things to be sold.

Article 577. Objects knocked down are delivered only against payment of the purchase money.

If the highest bidder has failed to demand delivery of the things in return for the purchase money at the time fixed for payment by the conditions of sale or, where no such time is thus fixed, before the conclusion of the auction proceeding, the thing is to be again put up to auction. In this case the former highest bidder cannot take part in the second auction and he is liable to pay any deficiency between the price realised in the second auction and that of the first one; he has no claim to any excess when the former is higher than the latter.

Article 578. The sale by auction is discontinued as soon as it has produced an amount sufficient to satisfy the creditor and to cover the costs of execution.

Article 579. Receipt by the bailiff of the proceeds is regarded as payment on the part of the debtor, unless the debtor is permitted to avert execution by furnishing security (bail) or by making a deposit.

Article 580. Objects in gold or silver may not be knocked down below their intrinsic gold or silver value. Where no bid is made up to their intrinsic value, the bailiff may effect the sale as he thinks fit at a price equal to their intrinsic gold or silver value.

Article 581. Documentary securities seized are, if they are quoted, to be sold by the process server as he thinks fit at the quotation of the day, and, where they are not quoted, they are to be sold at auction in conformity with the general provisions.

Article 582. Where a documentary security runs to name, the bailiff may be empowered by the Court of execution to procure its transfer to the name of the purchaser and to make the declarations requisite therefor in place of the debtor.

Article 583. Where a document to bearer has been withdrawn from circulation by being altered to run to name or otherwise, the bailiff may be empowered by the Court of execution to take measures to again bring it into circulation and to make the declarations requisite therefor in place of the debtor.

Article 584. The sale by auction of seized fruits which have not yet been separated from the soil may not take place until after they have arrived at maturity, the bailiff is empowered for the purpose of auction to have them harvested.

The sale by auction of seized silk worms may not take place until after they have all finished their cocoons.

Article 585. Upon the application of the execution creditor, of any creditor demanding distribution in virtue of an executory exemplification, or of the debtor, the Court of execution may direct that the sale of a thing seized shall take place in a manner or at a place other than is in the preceding articles prescribed, or that the sale by auction shall be effected by a person other than a bailiff.

Article 586.

A bailiff may not again seize on behalf of another creditor things which have already been seized.

The bailiff shall demand of the (other) bailiff who has already effected seizure inspection of the protocol of seizure and by comparing things with the protocol, shall seize those things (if any) which have not yet been seized, shall deliver the protocol of seizure to the bailiff who effected the former seizure, and shall at the same time demand that the whole of the objects seized be put up to auction. Where there are no things liable to seizure, the bailiff shall draw up a protocol of comparison and shall deliver it to the (other) bailiff who has already effected seizure.

In consequence of the demand prescribed in the preceding paragraph the creditor's mandate of execution passes by virtue of law to the bailiff who has already effected seizure.

The provisions of this article do not apply to objects under provisional seizure.

Article 587. The procedure for the comparison of objects, conducted in conformity with the preceding article, operates to produce the effect of a demand for distribution and, if the former seizure is annulled, to produce the effect of seizure.

Article 588. Where after the expiration of a reasonable term the bailiff fails to bring about an auction, the execution creditor and every creditor demanding distribution in virtue of an executory exemplification may call upon the bailiff to effect a sale by auction within a fixed term; if this demand remains without result, they may apply to the Court of execution for an appropriate order.

Article 589. Creditors, who are entitled in accordance with the Civil Code to demand distribution, may demand distribution of the proceeds without

having any executory exemplification.

Article 590. The demand for distribution to be asserted in conformity with the preceding article shall be directed to the bailiff with a statement of the grounds thereof, and in the case of a person who has neither residence nor business premises at the place where the Court has its seat, also of a provisional domicile elected at such place.

Article 591. In the cases of Art. 586 par. 2, and of Art. 590, the bailiff shall notify every creditor taking part in the distribution, and also the debtor, of the demand for distribution.

Where a creditor has demanded distribution without having an executory exemplification, the debtor shall, within a term of three (3) days counting from the day of notification, inform the bailiff as to whether he admits the claim or not.

Where the creditor is notified by the bailiff that the debtor does not admit his claim, he shall, within a term of three (3) days counting from the day of notification, institute an action against the debtor and establish his claim.

Article 592. The demand for distribution may be made up to the conclusion of the auction proceedings.

Article 593. Where the proceeds are not sufficient to satisfy all the creditors taking part in the distribution and no agreement with respect to the distribution is arrived at amongst the creditors, the proceeds are to be deposited.

The same applies where money is seized simultaneously on behalf of two (2) or more creditors and it is not sufficient to satisfy all of them.

In such cases the process server shall report the position of affairs to the Court of execution. The documents relating to the execution procedure are to be annexed to such report.

Subsection III

Execution Against Rights Of Claim And Other Rights Of Property

Article 594. Execution against a right of claim of the debtor against a third person (garnishee) for the payment of a sum ofmoney, or the delibery or rendering of other corporeal things or of documentary Securities, is effected by means of an order of attachment issued by the Court.

Article 595. The competent Court of execution is the District Court of the place where the debtor has his general forum, and in default of any such District Court, then the District Court having jurisdiction over the place where the claim to be attached is located.

The claim to be attached is deemed to be located at the place where the garnishee has his general forum, but a claim the subject of which is the delivery of things, or a claim secured by things, is located at the place where such things are.

Article 596. In the montion for the issue of an order of attachment the creditor shall specify the nature and amount of the debt to be attached.

The motion may be brought in writing or orally.

Article 597. The order of attachment is issued without a precious hearing of the garnishee or of the debtor.

Article 598. Where a right of claim for money is to be attached, the Court shall prohibit the garnishee from making payment to the debtor. The Court shall at the same time enjoin the debtor to refrain from disposing

of the right of claim and particularly from collecting such claim.

The order of attachment is ex officio to be served by the Court on the garnishee and on the debtor. The crediter is to be notified of the service.

The attachment shall be deemed to be effected on the service (of the order of attachment) on the garnishee.

Article 599. In the case of the attachment of a right of claim secured by mortgage the creditor is entitled, without the consent of the debtor being required, to have the fact of attachment of the right of claim entered in the register.

The motion for registration is to be made to the Court; it may be combined with the motion for the issue of an order of attachment.

The Court shall proceed with the registration after service of the order of attachment has been made on the owner of the mortgaged immovables (the garnishee).

Article 600. In respect of an attached right of claim for money the attachingcreditor may make a motion, at his option, for the issue of an order either for the collection of such claim without going through the procedure for subrogation or for the assignment to himself of the right at its nominal value in place of payment.

The provisions of Art. 598, Par. 2 apply mutatis mutandis to the service of the order.

Article 601. Where the attached right of claim has by an order been assigned in place of payment at its nominal value, the debtor on the procedure in Art. 598, par. 2 provided for being accomplished, shall be

deemed to have satisfied his debt to the extent that such right of claim exists.

Article 602. The order for collection extends to the whole amount of the claim to be collected. The Court of execution may, however, on the application of the debtor, and after hearing the attaching creditor, direct that the attachment be limited to the amount of the creditor's claim and permit the debtor to dispose of the surplus, in particular, to collect same. In such case no other creditor may demand distribution of the limited portion subjected to attachment.

Such permission is to be notified to the garnishee and to the creditor.

Article 603. The attachment of right of claim arising on bills of exchange, promissory notes, and other documents transferable by endorsement, is effected by the bailiff taking possession of such documents.

Article 604. The attachment of a right of claim for salary or for other like periodical income extends also, up to the amount of the creditor's claim, to sums of money accruing due after the attachment.

Article 605. The attachment of an income derived from employment extends to the income to be drawn by the debtor in consequence of his transfer to another office, or by reason of an additional office being conferred on him, or in consequence of his salary being raised.

Article 606. The debtor is bound to deliver to the attaching creditor the documents in his possession which refer to the right of claim. The creditor may, in virtue of the order of attachment, have them delivered up by the debtor by way of execution.

Article 607. Where the debtor is to be permitted to avert execution on furnishing security in pursuance of Art. 196, par. 2, the order for collection only can be made in respect of an attached right of claim for money: such order, however, has merely the effect of obliging the garnishee to deposit the amount of his debt.

Article 608. The crediter shall report the fact to the Court of execution when he has collected the claim.

Article 609. The attaching crediter may apply to the Court to direct the garnishee to state to the Court in writing, and within the term of seven (7) days counting from service of the order of attachment: --

1. Whether and to what extent he admits the right of claim and is prepared to make payment;
2. Whether other persons have or have not raised claims to the right of claim and of what nature these claims are;
3. Whether the right of claim has already been attached on behalf of other crediters, and of what nature these claims are.

The demand for these statements shall be inserted in the document of service. The garnishee is responsible for damage resulting from neglect to make such statements.

Article 610. Where the crediter proceeds, by reason of the contents of the order, to an action against a garnishee, he shall institute such action in the Court competent under the general provisions and shall notify the suit to the debtor, provided that the debtor is in Japan and that his domicile is known.

Article 611. A crediter who neglects to exercise his right of claim regarding a claim to be collected is responsible to the debtor for any

damage resulting therefrom.

Article 612. The creditor may, without prejudice to his claim, renounce (waive) the rights acquired by the order for collection.

Such renunciation (waiver) is effected by means of a written notice to the Court: copy of the same is to be served on the garnishee and on the debtor.

Article 613. Where the attached right of claim is conditional or is subject to a term, or where collection of such claim is attended with difficulties by reason of it being dependent on counter-performance or from other causes, the Court may, upon application, direct some other mode of realization in lieu of collection.

Where a debtor is in Japan and his domicile is known, he shall be heard before the rule granting the application is rendered.

Article 614. Execution against claims for the delivery or rendering of corporeal things is effected in accordance with the provisions of Arts. 598 to 612, regard being had to the provisions of the following several articles.

Article 615. Where a claim for a corporeal movable is attached, direction shall be given for the thing to be delivered up to a bailiff instructed by the creditor.

In respect of the realisation of such movables, the provisions relating to the realization of things attached apply.

Article 616. Where a claim for an immovable is attached, direction shall be given for the immovable to be delivered over to a sequestrator to be appointed, on the application of the creditor, by the District Court of the place where the immovable is situated.

Execution against the immovable so delivered over is effected according to the provisions relating to execution against immovables.

Article 617. No order of assignment in place of payment can be made in respect of claims for the delivery or rendering of corporeal things.

Article 618. The following rights of claim cannot be attached:

1. Legal aliment;
2. Periodical income derived by the debtor from charitable foundations or by virtue of the liberality of a third person, insofar as the same is necessary for the maintenance of himself and any of the relatives with whom the debtor resides;
3. Deleted.
4. Deleted.
5. The official incomes and the pensions of officials, of officials of shrines, of priests, and of teachers in public or private educational institutions, and allowances in aid of their surviving families;
6. The remuneration for the work and services of artisans workmen, and servants.

With regard to income as mentioned in items 1, 5 and 6, only the portion which exceeds three fourths of the total amount to be received in a year may be attached. In case, however, there is no fear that the debtor will be in distress owing to the attachment, half amount of the income may be attached with the permission of the Court.

Article 618-2. The provisions of Article 570-2 shall apply mutatis mutandis to the cases of attachment in accordance with the provisions of the second paragraph of the preceding Article.

Article 619. Where attachment of a right of claim takes place on behalf of two or more attaching creditors simultaneously, the provisions

of the preceding several articles apply mutatis mutandis thereto.

Article 620. A creditor with an executory exemplification, and a creditor who is entitled in pursuance of the Civil Code to demand distribution, can demand distribution up to the time when the attaching creditor collects the claim and reports the fact to the Court of execution or when the bailiff receives the proceeds. To a creditor demanding distribution without having an executory exemplification, the provisions of Art. 590 and of Art. 591, pars. 2 and 3 apply.

Where an order of assignment of the right inplace of payment has been made, distribution can no longer be demanded.

The demand for distribution shall be served by the Court ex officio on the garnished, on the debtor, and on the attaching creditor. Where the attachment already effected is annulled, the effects of attachment are produced for those creditors who have demanded distribution in virtue of executory exemplifications in the order of assertion of their demands.

Article 621. On service being effected of a demand for the distribution of the proceeds of a money claim, the garnishee is entitled to deposit the amount of the debt.

Upon the demand of a creditor who is a party to the distribution, the garnishee is bound to deposit the amount of the debt.

Where the amount of the debt is deposited, the garnishee shall report to the Court the position of affairs.

Article 622. Where the claim relates to an immovable, the garnishee is entitled, and on the demand of the attaching creditor, is bound, to deliver over the immovable to the sequestrator, who has upon the application of the attaching creditor or the garnishee been appointed by the

District Court of the place where the immovable is situated, at the same time stating the position of affairs to the sequestrator and handing over the order served on him.

Article 623. Where the garnishee fails to fulfill his obligations in respect of the collection procedure, the attaching creditor may by an action enforce the fulfilment thereof.

Every creditor with an executory exemplification is entitled to join the plaintiff as co-litigant.

The garnishee against whom the action has been brought may, up to the first day for oral proceedings, enter an application that those creditors who have not joined the plaintiff shall be summoned as colitigants.

In such case the decision rendered takes effect for and against the creditors summoned.

Article 624. When the attaching creditor has neglected collection, he may be called upon, by any creditor demanding distribution in virtue of an executory exemplification, to collect the claim within a fixed term. Where such demand produces no effect, the creditor who has made the same may, with the permission of the Court of execution, himself collect the claim.

Article 625. The provisions of this Subsection apply mutatis mutandis to executions of which immovable do not form the subject, and which relate to property rights other than those specified in the preceding several articles.

Where there is no garnishee, the attachment is deemed effected at the day and hour when service is effected on the debtor of the injunction refrain from any disposition of his right.

In such case the Court may order special measures to be taken, in particular, it may direct the administration or the transfer of the right.

Subsection IV

Distribution Procedure

Article 626. Distribution procedure takes place where, in the case of execution against movable property, a sum of money has been deposited by reason of the creditors having failed, within a term of fourteen (14) days counting from the time of suction or the day of the attachment of money, to arrive at any agreement.

Article 627. On receipt of the report of the position of affairs, the Court shall call upon each creditor to file, within a term of seven (7) days, an account of his claim in principal, interest, costs, and other accessory items.

Article 628. After expiration of the term in the preceding article specified, the Court shall prepare a scheme of distribution.

In preparing the scheme of distribution, the claim of a crediter, who has failed to observe the term, is calculated on the basis of the contents of the demand for distribution and of the report and the documentary evidence attached thereto.
Subsequent supplementing of the amount of such claim is not allowed.

Article 629. The Court shall appoint a time for the making of statements with regard to the scheme of distribution and for carrying out the distribution. All the creditors and the debtor shall be summoned to such hearing time. The debtor need not be summoned if his whereabouts is unknown or if he is abroad.

The scheme of distribution shall be deposited at the Court, at the latest three (3) days prior to the hearing time, for the inspection of the creditors and of the debtor.

Article 630. Where no objection is offered at the hearing time, the distribution shall be carried out in accordance with the scheme.

Amounts falling to claims with a condition precedent are, however, to be deposited, and they are to be paid out or redistributed, as the case may be, according to the Civil Code, as the condition is fulfilled or found impossible to the fulfilled.

Every amount falling to claims, which come under Art. 591, par. 3 or respecting which provisional attachment has not yet been effected, or falling to claims, against which objection is raised, is likewise to be deposited.

A protocol is to be drawn up respecting the carrying out of the distribution.

Article 631. If objection is raised all the other creditors shall forthwith declare themselves. If the objection is recognised by those concerned to be well founded, or if an agreement is otherwise come to, the scheme shall be amended and distribution carried out accordingly.

Where the objection is not adjusted, the distribution scheme is to be carried out to the extent not affected by the objection.

Article 632. Where a creditor does not appear at the hearing time, he is to be deemed to have assented to the carrying out of the scheme.

Where a creditor who has not appeared at the hearing time is concerned in the objection raised by another creditor, he is to be deemed to have disallowed such objection.

Article 633. Where the objection is not adjusted at the hearing

time, the objecting creditor shall, within a term of seven (7) days counting from the hearing time, prove to the Court that he has instituted an action against the other creditors. Where such term expires without result, the carrying out of the distribution scheme shall be directed by the Court regardless of the objection.

Article 634. Even when a creditor objecting has not observed the term specified in the preceding article, his right to assert by an action a right of preference against the creditors who have received payment in pursuance of the scheme, is not affected by the carrying out of such scheme.

Article 635. An action brought by a creditor who has lodged the objection shall fall under the jurisdiction of the Court of distribution.

Article 636. The judgment deciding the objection shall also determine the creditors to whom and the amounts in which the disputed portion of the distribution funds is to be paid out. Should this course not be deemed expedient, the judgment shall direct the preparation of a fresh schemeof distribution and fresh distribution procedure.

Article 637. Where the objecting creditor has failed to appear at the time appointed for oral proceedings, the objectin is deemed to have been withdrawn.

Article 638. Where it is proved that the judgment mentioned in Art. 636 has become final and conclusive, or that the objection is deemed to have been withdrawn in accordance with the provisions of the preceeding article, the Court of distribution shall, by virtue of the judgment, order payment to be made or some other steps of distribution taken.

Article 639. The Court shall carry out the distribution according to the provisions of the following formalities and in conformity with the

scheme of distribution.

Where a creditor is to receive the total amount of his claim, the Court shall deliver to him an order for the payment of the same on surrender of the executory exemplification or the document establishing the claim which is in his possession, which shall then be delivered to the debtor.

Where a creditor is to receive a part only of the amount of his claim, the Court shall cause the executory exemplification or the document establishing the claim to be produced by the creditor and, after noting thereon the amount of the distribution, shall return it. The creditor receives an order for the payment of the amount of the distribution on producing a receipt for the amount, and such receipt shall be delivered to the debtor.

The amount to be distributed to a creditor failing to appear at the hearing time is to be deposited.

The course of the above procedure is to be recorded by protocol.

Section II

Execution Against Immovables

Subsection I

General Provisions

Article 640. Execution against immovables is effected by way of:

1. Compulsory sale by auction;

2. Compulsory administration.

It is at the option of the creditor to have one of these measures taken, or to have them both carried out concurrently.

Compulsory administration takes place also for the purpose of giving effect to an order or provisional attachment.

Article 641. The Court competent as Court of execution in execution against immovables is the District Court within the district of which the immovables are situated. If such immovables are situated in the districts of several different Local Courts, each District Court has jurisdiction. In this case if the Court deems it necessary so to do, it may transfer the matter to another competent District Court.

The execution is effected by the Court upon application.

Subsection II

Compulsory Sale By Auction

Article 642. The application for a compulsory sale by auction must contain:

1. Designation of the creditor, of the debtor, and of the Court;
2. Designation of the immovable;
3. A definite statement of the claim, on account of which the sale by auction is to be effected, and of the definite executory title of debt.

Article 643. The following documents are to be annexed to the application in addition to the executor exemplification:

1. A certificate of the Registrar to that effect, if the immovable is registered as owned by the debtor;
2. If the immovable is not registered in the Register, documents which prove that the debtor is the owner;
3. In the case of land, documents showing the province and county, the city, town or village, the aza, the number and nature of the land, its extent in tan or in tsubo, and its value as entered in the Land Register, as well as the taxes and other public imposts

annually payable in respect thereof;

4. In the case of buildings, documents showing the province and county, the city, town or village, the aza and the number, the kind of construction, the area in tsubo, and the public imposts annually payable in respect of the buildings;

5. If there is a lease on the land or buildings, documents showing the duration thereof and the amount of the rent.

With regard to the requirements of Nos. 2, 3 and 4, the creditor may demand certificates from the authorities keeping the public record.

Where the creditor is not able to comply with the requirements of Nos. 4 and 5, he may, on making his application for sale by auction, move the Court of execution to investigate the matter. In such case the Court of execution shall direct a bailiff to make enquiries.

Where the immovable has previously been seized for the purpose of compulsory administration and the requisites of Nos. 1 to 5 are contained in the execution record, the documents (thereby required) need not be annexed.

Article 644. The rule initiating auction procedure shall also declare that the immovable is seized for the benefit of the creditor.

The seizure does not hinder the debtor from using and administering the immovable.

The seizure is effected by service of the rule on the debtor. Service is made by the Court ex officio.

Article 645. The Court cannot, even upon application, rule the initiation of a fresh compulsory procedure in respect of an immovable with regard to which the initiation of auction procedure has already been ruled.

Such application, if annexed to the execution record, produces the effect of a demand for distribution, or if the auction procedure already initiated is annulled, the effect of obtaining a rule for the initiation (of a fresh auction procedure), but this only in so far as may be compatible with the provisions of Art. 649, par. 1.

The provisions of this article do not apply to immovables of which provisional attachment has been ordered.

Article 646. A demand for distribution shall be directed to the Court of execution, in which demand a statement is to be made of the grounds and in the case of a person who has neither residence nor business premises at the place where the Court has its seat, also of a provisional domicile elected at such place.

The demand may be made up to the termination of the time fixed for adjudication.

Article 647. The Court of execution shall notify the persons interested of the application and demand in the preceding two articles specified.

Where a creditor demands distribution otherwise than by virtue of an executory exemplification, the debtor shall, within a term of three (3) days reckoned from the time of notification, declare to the Court whether he admits the claim or not.

On receipt of notification from the Court that the debtor does not admit the claim, the creditor shall, within a term of three (3) days reckoned from the time of notification, institute an action against the debtor and establish his claim.

Article 648. The following are deemed persons interested in the execution procedure:

1. The execution creditor and creditors demanding distribution by virtue of executory exemplifications;

2. The debtor;

3. The registered persons entitled to rights over the immobable;

4. Those persons who have sent in notifications for insertion in the execution record, proving therein their claims as persons entitled to rights over the immovable.

Article 649. No sale of the immovable may take place unless those charges over the immovable, which appertain to claims having the preference over the claims of the execution creditor, are taken over by the successful bidder, or unless there is a prospect those charges being cleared out of the proceeds.

By the sale are terminated all the preferential rights and mortgages over the immovable.

In case a lien exists over the immovable, the successful bidder is answerable for satisfying the claim secured by such lien.

In case apledge exists over the immovable, the successful bidder is answerable for satisfying the claim secured by such right and also those of persons having rights of priority against the pledgee.

Article 650. The third acquirer of a right cannot plead good faith against the effects of a seizure, if at the time of acquisition he knew of the seizure or the application for sale by auction.

Where the immovable is already bound for the claim in respect of which the seizure took place, the auction procedure shall be continued against the new owner, provided that the ownership passed to him after the seizure, even though at the time of acquisition he did not know either of the seizure or of the application for sale by auction.

The seizure is terminated by the withdrawal of the application for sale by auction.

Article 651. On rendering the rule initiating the auction procedure, the Court shall ex officio request the Registrar to enter in the register the application for sale by auction.

The Registration Judge shall make entries in compliance with the request in the preceding paragraph mentioned.

Article 652. After making the entry in the preceding article mentioned, the Registrar shall furnish the Court with a copy of the registration with extracts of any documents which may have been produced by persons having rights over the immovable.

Article 653. Where the communications made by the Registrar disclose facts which, if they had been previously known, would have prevented the initiation of the procedure, the Court shall, according to the circumstances, either annul the procedure forthwith or direct the creditor to show, within a term which it is to fix according to its discretion, that the impediment has been removed. After the expiration of the term, the procedure shall be annulled by the Court of itsown motion if, in the meantime, the required evidence is not forthcoming.

Article 654. When the rule initiating the procedure is rendered, the Court shall communicate the same to the authorities in charge of taxes or other public imposts, and shall, at the same time, call upon such authorities to declare within a fixed term whether, and to what amount, they have claims in respect of the immovable.

Article 655. After communications of the Registrar and of the authorities in charge of taxes or other public imposts have been received, the Court shall have the immovable valued by an expert. The value as estimated shall be fixed as the reserve price.

Article 656. If after deducting the amounts which would satisfy all those charges over the immovable which have the preference over the claim of the execution creditor as well as the costs of the procedure, the reserve price would in the opinion of the Court yield no surplus, the Court shall notify the execution creditor thereof.

If, within a term of seven (7) days reckoned from the time of notification, the execution creditor fails to give sufficient security fixing a sum which will yield a surplus after satisfying the charges in the preceding paragraph mentioned and the costs of the procedure and offering to purchase the immovable himself at such sum in the event of no bidder appearing, the auction procedure shall be annulled.

Article 657. Where in the opinion of the Court a surplus will be obtainable after satisfying the claims specified in the first paragraph of the proceding article and the costs of the procedure, or where the execution creditor, on making his offer in accordance with the second paragraph of the preceding article, has given sufficient security, the Court shall of its own motion appoint and publicly notify a time for the auction and a time for the adjudication.

Article 658. The public notification of the time for auction must contain:

1. Designation of the immovable;
2. The taxes and other public imposts;
3. If a lease exists, the duration thereof and the amount of rent;
4. A statement that the auction takes place bywy of execution;
5. The place, day, and hour of auction, and the name and domicile of the bailiff who is to undertake the auction;

6. The reserve price;

7. The place and day and hour of the adjudication;

8. A statement of the place where inspection may be had of the execution record;

9. A summons to those having rights over the immovable, which do not require to be entered in the register, to declare their claims;

10. A summons to those interested to appear at the time of auction.

Article 659. The time of auction is to be fixed for a date fourteen (14) days at least after the day of public notification.

The auction is held by the bailiff either at the Court or at some other place according to the Court's discretion.

Article 660. The time for adjudication cannot be fixed for a date more than seven (7) days after the time of auction.

The adjudication is held at the Court.

Article 661. Public notification of the time of auction is effected by means of a placard:

1. On the notice-board of the Court;

2. On the notice-board of the city, town or village, wherein the immovable is situated.

It is in the discretion of the Court to effect the notification also by insertion in one or more newspapers.

Article 662. Modification of the conditions of sale in this Subsection specified, with the exception of the reserve price, is admissible, provided that such modification is agreed to by all the persons interested. Such agreement maybe effected up to the time of auction.

Article 663. After opening the proceedings at the auction the process-servershall produce the execution record for general inspection, make known the special conditions of sale, if any, and invite all to make bids.

Article 664. Where a person interested applies that a bidder shall furnish security, and the bidder fails to forthwith hand in to the bailiff security, in cash or in documentary securities, equivalent to one tenth of the amount of his bid, the bid is to be disregarded.

The application must be made immediately after the bid and holds good also with regard to further bids on the part of the same bidder.

Article 665. Every bidder whose bid has been received remains bound by it until a higher bid is received.

The auction may not be closed until the expiration of a full hour after the invitation is given to bid.

Article 666. The bailiff, after proclaiming the name of the highest bidder and the amount of the highest bid, shall announce the close of the auction.

As a result of such announcement every other bidder is discharged from being bound by his bid, and is entitled to demand the immediate return of any security which he may have furnished.

Article 667. The protocol to be drawn up respecting the auction must contain:

1. Designation of the immovable;

2. Designation of the execution creditor;

3. A statement that the execution record has been produced for general inspection and that special conditions of sale, if any, have been made known;

4. A statement of the day and hour when bids were invited;

5. A statement of all the bids specifying the bidders by name, and their dociciles or, where no admissible bid has been made, a note to such effect;

6. A statement of the day and hour when the close of the auction was announced;

7. A statement that security was furnished on application in respect of a bid or that, notwithstanding an application being made, no security was furnished and the bid was consequently disregarded;

8. A statement that the name of the highest bidder and the amount of the highest bid have been proclaimed.

The highest bidder and those persons interested who have appeared shall sign and seal the protocol. If they have left prior to the drawing up of the protocol, such fact shall be additionally noted in the protocol.

Where a return is made of sums of money or documentary securities which have been handed in as security for a bid, the bailiff shall take a receipt therefor and annex it to the protocol.

Article 668. The protocol and all sums of money and documentary securities handed in as security and not returned shall, within three (3) days, be delivered to the Court Clerk by the bailiff.

Article 669. Where the highest bidder has neither residence nor business premises at the place where the Court of execution has its seat, he shall elect a provisional domicile at such place and shall notify the Court thereof. In the event of his failure to do so, the provisions of the Art. 170, par. 2 and Art. 173 apply mutatis mutandis.

The election of a domicile can be made orally before the bailiff for record by protocol.

Article 670. If no admissible bid has been made at the time of auction, the Court, in the exercise of its discretion and subject to the provisions of Art. 649, par. 1, shall reduce the reserve price to a reasonable extent and appoint a fresh time for auction. The same applies where at the fresh time of auction no admissible bid is still received. The same applies where at the fresh time of auction no admissible bid is still received.

The fresh time of auction is to be fixed for a date at least fourteen (14) days after (the time of the previous auction).

Article 671. The Court shall require persons interested, present at the time for adjudication, to declare themselves with regard to the admissibility of adjudication.

Any objection to the admissibility of adjudication is to be raised before the termination of the time for adjudication. The same applies to declarations against objections already raised.

Article 672. An objection raised to the admissibility of adjudicati on must be based on the ground:

1. That execution is inadmissible or should not be continued;

2. That the highest bidder is without capacity to conclude the contract of sale or to acquire the immovable in question;

3. That the auction took place in contravention of the legal conditions of sale, or that the legal conditions of sale were modified without the concurrence of all the persons interested;

4. That the public notification of the time of auction did not comply with the requirements prescribed by Art. 658;

5. That the public notification of the time of auction was not made in the manner prescribed by law;

6. That the term specified in Art. 659 was not observed;

7. That the provisions of Art. 665, par. 2 and/or Art. 666, par. 1 were not satisfied;

8. That a bidder was proclaimed to be the highest bidder contrary to the provisions of Art. 664.

Article 673. An objection cannot be based on grounds which concern the rights of persons interested other than the person raising the objection.

Article 674. In the event of the Court holding that the objection is well founded, adjudication is to be refused.

Adjudication is to be refused also by the Court ex officio if any of the circumstances specified in Art. 672, Nos. 1 to 8, is present; in the case of No. 1, however, only if the immovable put up to auction is unassignable or if the auction procedure has been stayed; in the case of No. 2 only if the want of capacity or qualification is not made good; in the case of No. 3, only if the persons interested have failed to acquiesce in the continuation of the procedure.

Article 675. Where the proceeds of one or more of several immovables to be sold by auction will suffice to satisfy all the creditors and to cover the costs of execution, adjudication in respect of the other immovables is to be refused.

In such case the debtor may specify the immovable or immovables to be sold.

Article 676. Where according to the provisions of Arts. 672 and 674 adjudication is to be refused absolutely, but a fresh auction is admissible,

a fresh time for auction is to be fixed by the Court ex officio.

The fresh time for auction is to be fixed for a date at least fourteen (14) days after (the time of the previous auction).

Article 677. Unless a fresh time for auction is fixed as in the preceding article prescribed, the rule granting the adjudication or refusing the same is to be pronounced.

The provisions of Arts. 142 to 147 apply mutatis mutandis to the protocol of the adjudication proceedings.

Article 678. Where in the period between the time of auction and the time of adjudication, the immovable has suffered a substantial diminution in value by reason of some act of heaven (God) or other accidental event, the person proclaimed the highest bidder is entitled to revoke his bid. It is for the Court, after taking into consideration the circumstances of the case, to decide as to whether the diminution in value is a substantial one.

Article 679. The immovable put up to auction, the successful bidder, and the bid upon which adjudication ensued, as well as the special conditions of sale (if any), are to be specified in the rule by which the adjudication is made.

The rule, in addition to being pronounced, shall be notified publicly by being affixed to the notice-board of the Court.

Article 680. Any person interested, who would be prejudiced by the rule refusing or granting adjudication may raise immediate complaint against it.

The successful bidder asserting that there is no ground for making adjudication to him, or that it should have been made to him under conditions other than those in the rule, and a bidder, who has demanded adjudication

to himself and who asserts that it should have been made to him, are also entitled to raise immediate complaint.

The complaint works a stay of proceedings.

In the case of paragraph two, the bidder who has demanded adjudicati on to himself remains bound by his bid.

Article 681. The complaint against a rule refusing adjudication can be based only on the fact of the non-existence of all of the grounds for refusal specified in this Code.

The complaint against a rule granting adjudication can be based only on one of the grounds of objection to adjudication specified in this Code, or on the ground that the adjudication rule conflicts with the contents of the protocol of adjudication.

The provisions of the preceding two paragraphs do not preclude the founding of the complaint on the fact of the presence of the requisites for an action for renewal of procedure.

Article 682. If the Court of the complaint deems it necessary, it shall appoint an opponent of the complainant for the purpose of counter-declaration.

Two or more complaints against one and the same rule are to be joined.

The provisions of Arts. 673 and 674 apply mutatis mutandis in the complaint instance.

Article 683. A decision of the Court of the complaint modifying or annulling the rule of the Court of execution is to be notified publicly by the Court of execution by being affixed to the notice-board of the Court.

Article 684. Where the rule refusing the adjudication becomes final and conclusive, the successful bidder and the bidder who has demanded adjudication cease to be bound by their bids.

Article 685. Where in the case of Art. 678 adjudication is refused on account of revocation of the bid, the provisions of Arts. 655 to 657 apply mutatis mutandis.

Article 686. The successful bidder acquires the ownership of the immovable by the rule granting the adjudication.

Article 687. The successful bidder cannot demand delivery of the immovable until payment has been made in full of the amount of the purchase-money.

If the successful bidder or the creditor applies for the administration of the immovable by an administrator from the day of rendering of the rule which grants the adjudication until delivery, the Court shall direct the same.

In the event of the debtor refusing delivery, the Court, upon the application of the successful bidder or of the creditor, shall through a bailiff, dispossess the debtor and cause the immovable to be delivered over to the administrator.

Article 688. Should the successful bidder fail at the time for the payment of the purchase-money to fulfill completely his obligation, the Court shall ex officio direct the immovable to be again put up to auction.

The reserve price fixed for the first auction and the other conditi ons of sale laid down for the same also hold good for the fresh auction procedure.

The fresh auction shall be fixed for a date at least fourteen (14) days after (the time of the previous auction).

If the successful bidder pays in the purchase-money and the costs of the procedure within three (3) days before the time appointed for the fresh auction, the fresh procedure shall be annulled.

The former successful bidder shall not be admitted to bid at the fresh auction; he is liable for the deficit if the price realized in the fresh auction falls short of that of the first, as well as for the costs of the procedure, and he has no claim to the excess if the former is higher than the latter.

Article 689. In the case of a share in a property held in common being put up to compulsory auction, an entry in the register shall be made to the effect that by reason of the claim of the creditor application has been made for the sale by auction of the share of the debtor: the co-owner (s) shall be notified of the application for auction.

The reserve price shall be fixed in regard to the share of the debtor proportionately to the estimated value of the whole common property.

Article 690. Where all the auction applications have been disposed of without any adjudication ensuing, the Court shall request the Registrar to cancel the entry made in accordance with the provisions of Art. 651.

Article 691. If the rule granting the adjudication becomes final and conclusive and the purchase-money does not suffice to satisfy all the creditors participating in the distribution, distribution shall be made according to the Civil Code, the Commercial Code, and special laws.

Article 692. Prior to the time fixed for adjudication, every creditor shall produce an account of his claims in principal, interest, costs, and other accessory items.

If a creditor fails to comply with the provisions of the preceding paragraph, the provisions of Art. 628, par. 2 apply mutatis mutandis.

Article 693. The payment and distribution of the purchase-money take place at a time to be fixed by the Court ex officio after the rule granting the adjudication has become final and conclusive.

The persons interested, the creditors demanding distribution otherwise than in virtue of executory exemplifications, and the successful bidder shall be summoned to appear at the time fixed.

Article 694. The first business to be transacted at the appointed time is to fix the amount of the proceeds of the immovable available for distribution.

The following constitute the proceeds:

1. The purchase-money;

2. Where the immovable brings in fruits or other profits which can be calculated in money, the interest falling to theperiod between the day of pronouncing the rule of adjudication and the day of the payment of the purchase-money.

Payment of the purchase-money shall be made to the Court.

Any sum of money deposited as security for the highest bid is to be placed to account of the purchase-money.

Article 695. After hearing those persons interested and those creditors demanding distribution otherwise than in virtue of executory exemplifications, who have appeared, the Court shall confirm the scheme of distribution.

Article 696. In the scheme of distribution shall be entered the proceeds, the claim of each creditor in principal, interest, and costs, the order in rank of distribution, and the rate of distribution.

If all the persons interested and the creditors demanding distribution otherwise than in virtue of executory exemplifications, who have

appeared, are agreed, the scheme of distribution shall be prepared in accordance with such agreement.

Article 697. Subject to any special provisions contained in the following several articles, the provisions of Article 630 and the articles following such article apply mutatis mutandis to the disposing of any objection to the scheme of distribution and to the carrying out of the same.

Article 698. The debtor who appears at the time appointed is entitled to raise objections to the claim of any creditor or against the order in rank asserted for such claim.

In his own interests, every creditor appearing has the same right as provided in the preceding paragraph as against any other creditor.

Objections on the part of the debtor to an executory claim are disposed of in accordance with the provisions of Articles 545, 547 and 548.

Article 699. At the time of carrying out the scheme of distribution, the successful bidder, in addition to taking over the charges on the immovable in pursuance of the conditions of sale, may, with the consent of the creditors concerned, take over the debts up to the amount of the purchase money in lieu of the payment of the same. If a creditor is himself the successful bidder, the amount distributed on his claim is counted as purchase money and becomes extinguished up to the amount of such purchase money. Insofar, however, as any admissible objection affects any debt which is to be taken over or the claim of the successful bidder which is to be brought into account, the corresponding portion

of the purchase money shall be deposited or security shall be furnished therefor.

Article 700. When the scheme of distribution has been carried out, the Court shall forward to the Registrar the protocol of the distribution and the exemplification of the rule of adjudication and request him:

1. To register the (acquisition of the) ownership by the successful bidder;

2. To cancel the entries of charges over the immovable not taken over by the successful bidder;

3. To cancel the entry made in pursuance of the provisions of Article 651.

The costs of registration and cancellation are to be borne by the successful bidder.

Article 701. Where an immovable is put up to auction on behalf of two or more execution creditors simultaneously, the provisions of the several preceding articles apply mutatis mutandis to the procedure.

Article 702. Upon the application of the persons interested or ex officio, the Court may direct, prior to the public notification of the time of auction, selling by tender instead of an auction. The provisions of the several preceding articles apply mutatis mutandis to selling by tender, subject to any special provisions laid down in the following several articles.

Article 703. At the time appointed the tenders shall be delivered into the hands of the bailiff.

The tenders must contain:

1. The name and domicile of the bidder;
2. Designation of the immovable;
3. The amount of the bid.

Article 704. The bailiff shall openly read out the bids in the presence of the bidders.

If there are two or more bids of the same amount, the bailiff shall cause the bidders to make a supplementary bid, and shall determine the highest bidder accordingly.

No bid in writing is admissible in which the purchase money is not expressed by a fixed sum of money but only relatively to other bids.

Article 705. If the person proclaimed the highest bidder fails to furnish security demanded from him in accordance with the provisions of Article 644, the next highest bidder shall be held to be the highest bidder. In this case the bidder first proclaimed is bound to bear the difference between the amount of his bid and that of the next highest bid.

Sub-Section III

Compulsory Administration

Article 706. The provisions of Articles 642 and 643, or Article 644, paragraphs 1 and 3, and of Articles 651 to 654 apply mutatis mutandis to compulsory administration.

Where the immovable is itself bound for the claim of the creditor, a document rendering credible the fact that the immovable is in the possession of the debtor suffices instead of the documents to be produced in pursuance of Article 643, Numbers 1 and 2.

Article 707. In the rule initiating the compulsory administration, the Court shall forbid the debtor from interfering in the management of the administrator and from disposing of the income of the immovable, and shall direct third persons from whom the income thereof is derivable to render it in future to the administrator.

To the income belong the fruits which are gathered as well as those which have yet to be gathered, and the fruits which are due as well as those which have yet to become due.

The initiatory rule becomes operative against third persons on service thereof being effected. Service is effected by the Court ex-officio.

Article 708. Not even upon application can the Court rule in the initiation of a fresh compulsory administration with respect to an immovable regarding which the initiation of a compulsory administration has already been ruled.

Such application produces the effect of a demand for distribution on the annexing thereof to the execution record, or if the compulsory administration already initiated is annulled, the effect of a rule for the initiation of compulsory administration.

The provisions of this article do not apply to immovables of which provisional seizure has been ordered.

Article 709. A demand for distribution shall be based on an executory exemplification and shall be made to the Court of execution: a person having neither residence nor business premises at the place where the court has its seat shall elect a provisional domicile at such place.

Article 710. The Court of execution shall notify the creditor, the debtor, and the administrator of the application and demand specified in the preceding two articles.

Article 711. The Court shall appoint the administrator. The creditor may recommend a suitable person for the post.

For the purposes of administration and of collection of the income, the administrator is empowered to place himself in possession of the immovable. If in so doing he encounters resistance, he may cause a bailiff to be present (as a witness). A person appointed administrator is authorized to collect in the place of the debtor the income to be rendered by third parties.

Article 712. After hearing the creditor and the debtor and, if expedient, calling in an expert, the Court shall furnish the administrator with the requisite instructions regarding the administration, fix the remuneration to be given to the administrator, and supervise his management of affairs.

The Court may require the administrator to furnish security, can punish him with a fine up to twenty (20) Yen, or may dismiss him.

Article 713. Where a third person asserts in respect of the immovable a right which would render the compulsory administration inadmissible, the provisions of Article 549 apply mutatis mutandis.

Article 714. The costs of the administration are forthwith paid by the ad-

ministrator without further procedure out of the income obtained from the immovable after deducting the taxes and other public imposts. If the creditors fail to agree with respect to the distribution of the surplus, the administrator shall inform the Court of the fact.

Upon receipt of such information, the Court, by applying mutatis mutandis the provisions of Article 691 and Articles 696 to 698, shall prepare a scheme of distribution and cause the administrator to make payment to the creditors on the basis of such scheme.

Article 715. The administrator shall render an account to each creditor, the debtor, and the Court annually, as well as upon the conclusion of his administration.

Each creditor and the debtor may raise objection to such account in the Court of execution within a term of seven (7) days reckoned from the date of service thereof.

If no objection is raised within the above term, the creditors and debtor shall be deemed to have no objection to make to the account and to concur in the discharge of the administrator.

If objection is raised, the Court shall decide with respect thereto after hearing the administrator. If no objection is raised, or if an objection which has been raised has been disposed of, the Court shall discharge the administrator.

Article 716. Annulment of a compulsory administration is effected by a rule of the Court.

The annulment is effected by the Court ex officio, when all the creditors have been satisfied out of the income of the immovable.

The Court may direct annulment of the compulsory administration, if the continuation of the administration requires special expenditures and the creditor fails to advance the requisite money.

The Court, on ruling the annulment, shall request the Registrar to cancel the entry relating to the compulsory administration.

Section III

Execution Against Ships

Article 717. Execution against merchant ships or other seagoing vessels is effected in accordance with the provisions relating to the compulsory auction of immovables, subject to such modifications as may be required in the nature of things or as are specially provided for in the following articles.

The provisions of this Section do not apply to boats and other vessels exclusively or mainly propelled by oars.

Article 718. In regard to the compulsory auction of a ship, the competent Court of execution is the District Court of the port in which the ship is lying at the time of seizure.

Article 719. During the course of the execution procedure the ship shall remain at the port where she lay at the time of seizure. Where, however, it appears advisable with a view to commercial advantages, she may, upon the application of all the persons interested, be allowed by the Court to proceed to sea.

Article 720. There shall be annexed to the application for compulsory auction:

1. A document rendering it credible that the debtor, if owner of the ship, is in possession of her as owner; if master of the ship, is commander her as such;

2. If the ship is entered in the shipping register, an extract from the same containing all the entries which have been made with regard to the ship and which still hold good.

Where the authority with whom the shipping register is kept is at some distant place, the creditor may apply to the Court of execution for a request to be

addressed by the Court to such authority to forward the extract mentioned in No. 2.

Article 721. Upon the application of the creditor the Court shall cause to be taken the measures necessary for watching and maintaining the ship.

The taking of these measures produces the effect of seizure even before service of the initiatory rule has been effected.

The Court may annul these measures, if the money requisite for their continuance is not advanced by the creditor.

Article 722. Where a ship has been seized on behalf of a ship's creditor in virtue of a judgment rendered against the master, such seizure operates also against the owner. In such case the owner becomes a person interested in the procedure.

A change of owner or master occuring subsequently to the seizure does not hinder the continuation of the procedure.

If a new master comes in after the seizure, he becomes a person interested. In such case the former master is discharged from his liability as a person interested.

Article 723. If it appears that at the moment of seizure the ship was not within the district of the particular Court, the procedure shall be annulled.

Article 724. The public notification of the time appointed for auction shall contain, in place of the particulars specified, in Article 658, No. 1, a designation of the ship and of the place where she is lying.

Article 725. If the seizure has taken place out of the district of the District Court in which the home port of the ship is situated, the Court of execution shall forward to the District Court of the ship's home port the public notification of the time fixed for auction and request such Court to affix such notification on its notice-board.

Article 726. Execution against a share in a ship is effected according to the provisions of Article 625. The Court competent for the execution is the District Court of the home port.

Article 727. To the motion for an order of seizure the creditor shall annex an extract from the shipping register showing the share of the debtor in the ship or a credible certificate concerning the same.

The order of seizure is to be served on the ship's husband as well as on the debtor.

The seizure is equally effected by its order being served on the ship's husband as by the service thereof on the debtor.

Article 728. The provisions of Article 626 and the articles following the said article apply mutatis mutandis to distribution of the proceeds of a ship's share put up to auction.

Article 729. Where a foreign ship or a ship not entered in the shipping register is seised, the provisions relating to entries of the procedure in the shipping register do not apply.

CHAPTER III

EXECUTION IN RESPECT OF CLAIMS OTHER THAN FOR THE PAYMENT OF MONEY

Article 730. Where the debtor has to deliver up a specific movable or a definite quantity of tangibles, the same is to be taken away from the debtor by the bailiff and handed over by him to the creditor.

Article 731. If the debtor has to hand over or vacate an immovable or an inhabited ship, the bailiff shall dispossess him and place the creditor in possession.

Execution may not take place, unless the creditor or his agent has appeared for the purpose of taking over the thing.

Movables, which are not subject matters of the execution, are to be set apart by the bailiff and handed over to the debtor, or, if he is not present, to his agent or to any of the adult relatives with whom the debtor resides or to any of the persons serving in his family.

If neither the debtor nor any of the above mentioned persons is present, the things are to be placed in safe-keeping by the bailiff at the cost of the debtor.

If the debtor neglects to take delivery of the things, the bailiff shall, with the permission of the Court of execution, sell the same in accordance with the provisions respecting the sale by auction of things seized, and shall, after costs, deposit the purchase money.

Article 732. Where a thing, which is to be handed over, is in the hands of a third person, the claim of the debtor for the delivery thereof shall, on the application of the creditor, be transferred to the latter in conformity with the provisions relating to the attachment of monetary claims.

Article 733. In cases provided for by Article 414, paragraphs 2 and 3 of the Civil Code, the Court of the suit in first instance shall, upon application, render a rule in conformity with the provisions of the Civil Code.

The creditor may at the same time apply for the pronouncing by rule that the costs to which the performance of the act gives rise shall be paid by the debtor in advance, without prejudice to the right to make a supplementary demand of the performance of the act occasions a larger expenditure.

Article 734. Where the obligation of the debtor admits by its nature of compulsory performance, the Court of the suit in first instance must, by rule upon application, either appoint a reasonable term for performance and direct the payment of a fixed amount of damages in proportion to the delay if he fails

to perform within such term, or direct the immediate payment of damages.

Article 735. The rules to be rendered in conformity with the preceding two articles can ensue without oral proceedings. The debtor is to be heard prior to the ruling.

Article 736. If the debtor is ordered by judgment to admit the existence of a relation of right or to make some other expression of intention, such admission or expression of intention is deemed to have been made upon the judgment becoming final and conclusive. If the admission or the expression of intention is to be made dependent on some counter performance, such effect is produced when in accordance with the provisions of Articles 518 and 520 an executory exemplification has been issued.

CHAPTER IV

PROVISIONAL ATTACHMENT AND PROVISIONAL DISPOSITION

Article 737. Provisional attachment may take place for the purpose of securing execution against a movable or an immovable in respect of a money claim or in respect of a claim which can be converted into a money claim.

Provisional attachment may take place even in respect of a claim not yet due.

Article 738. Provisional attachment may take place where it is to be apprehended that, failing such measure, execution of the judgment would be impossible or that material difficulty in the execution thereof would be caused; in particular, if the judgment would have to be executed abroad.

Article 739. The Court competent to order provisional attachment is the District Court in the district of which is situated the object against which provisional attachment is to be made, or the Court having jurisdiction over the suit.

Article 740. The motion for the provisional attachment shall contain:

1. Designation of the claim, and in cases where the claim does not consist of a sum certain of money a statement of the money value;

2. A statement of the facts which form the grounds for the provisional attachment.

Both claim and grounds for provisional attachment are to be rendered credible.

The motion may be made orally.

Article 741. The decision respecting the motion for provisional attachment may be given without prior oral proceedings.

The Court may direct provisional attachment, even though the claim or the grounds for provisional attachment are not rendered credible, provided that the creditor furnishes such security as the Court may fix in the exercise of its free discretion for the damage menacing the debtor by such attachment.

The Court may make the order of provisional attachment dependent on security being thus furnished, even though the claim and the grounds for provisional attachment are rendered credible.

If security is furnished, such fact and the manner in which it has been done, shall be mentioned in the order of provisional attachment.

Article 742. If oral proceedings take place, the decision on the motion for a provisional attachment ensues by means of a final judgment; in the contrary case, by means of a rule.

A decision dismissing the motion for provisional attachment or directing the furnishing of security need not be notified to the debtor.

Article 743. In the order of provisional attachment the sum of money shall be specified which the debtor will have to deposit in order to stay the carrying out of the provisional attachment, or to effect the annulment of the provisional attachment if already carried out.

Article 744. The debtor may raise objection against a rule for provisional attachment.

The objection shall be justified by a statement of the grounds on which annulment or a modification of the provisional attachment is applied for.

The raising of objection does not operate to stay the carrying out of the provisional attachment.

Article 745. If objection is raised the Court shall summon the parties to oral proceedings.

The Court may, by means of a final judgment, entirely or partially confirm, modify, or annul the provisional attachment; it may also, when pronouncing such judgment, make the confirmation, modification or annulment thereof conditional upon the furnishing of security to be fixed by it according to its free discretion.

Article 746. If the suit is not yet pending, the Court of provisional attachment shall, upon the application of the debtor and without oral proceedings, direct that the creditor is to institute his action within such a term as it may suitably fix.

When this term has without result, the provisional attachment shall upon the application of the debtor, be annulled by a final judgment.

Article 747. Even after confirmation of the provisional attachment, the debtor may apply for its annulment by reason of the grounds for provisional attachment ceasing to exist, or of other alterations in circumstances, or by tendering such security as the Court may fix in the exercise of its free discretion.

The decision respecting the application shall be rendered by a final judgment; it is given by the Court which has directed the provisional attachment or, if the suit is pending, by the Court of the suit.

Article 748. The provisions relating to execution apply mutatis mutandis to the carrying out of the provisional attachment, subject to any modifications contained in the provisions of the following several articles.

Article 749. Orders of provisional attachment require the execution clause only where, after the orders are issued, a succession has intervened on the side of the creditor or on that of the debtor.

The carrying out of an order of provisional attachment is admissible if, since the day on which the order was pronounced or was served on the applicant, a term of fourteen (14) days has elapsed without result.

The order may be carried out even prior to service of the same on the debtor.

Article 750. Provisional attachment of movable property is carried out on the same principles as any other attachment.

The Court by which the order of provisional attachment was issued is competent as the Court of execution in the case of provisional attachment of a right of claim.

For the purpose of the provisional attachment of a claim, an order is merely required prohibiting garnishee from making payment to the debtor.

Money under provisional attachment is to be deposited.

The auction sale of other property under provisional attachment, or the realization of documentary securities under provisional attachment, may be temporarily postponed. The Court of execution may, however, on application, direct the bailiff to sell any such thing by auction and deposit the proceeds, if it is exposed to the danger of a material diminution in value or the custody thereof would occasion disproportionate expense.

Article 751. The provisional attachment of immovables is carried out by entering the order of provisional attachment in the register.

Article 752. If compulsory administration ensues for the purpose of carrying out provisional attachment, amounts up to the amounts of the claim secured shall be collected and deposited.

Article 753. The carrying out of the provisional attachment of a ship is effected by the detention of the ship in the port in which she is lying at the time of the attachment. Upon the application of a creditor, the Court causes such measures to be taken as are necessary for watching and maintaining the ship.

Article 754. Where the sum of money named in the order of provisional attachment is deposited, the Court of execution shall annul the provisional attachment already carried out.

The Court of execution may also direct the annulment of the provisional attachment, if the continuance thereof demands special expenditure and the creditor fails to advance the necessary amount of money.

The decision may ensue without oral proceedings.

Immediate complaint may be raised against a rule by which the provisional attachment is annulled.

Article 755. Provisional dispositions are admissible in respect of the subject matter in dispute, if it is to be apprehended that by reason of a change in the existing situation the realization of the right appertaining to a party would be impossible or that material difficulty in the realization thereof would be produced.

Article 756. The provisions relating to orders and procedure for provisional attachment apply mutatis mutandis to orders and procedure for provisional disposition, subject to such modifications as are contained in the provisions of the following several articles.

Article 756 (2). A judgment by which a provisional disposition is cancelled may be declared provisionally executory even when it does not concern a claim based on a property right.

Article 757. The Court competent to issue an order of provisional disposition is the Court having jurisdiction over the suit.

In urgent cases the decision may be rendered without prior oral proceedings.

Article 758. The Court in the exercise of its discretion determines what dispositions are requisite for attaining the object of the application.

Provisional disposition may consist in the appointing of a sequestrator, or directing an adversary to do, or to refrain from doing, an act, or to make a prestation.

If by a provisional disposition the assignment (alienation) or mortgaging of an immovable is prohibited, the Court shall cause the prohibition to be entered in the register, applying mutatis mutandis the provisions of Art. 751.

Article 759. Only under special circumstances, and on security being given, can the annulment of a provisional disposition be granted.

Article 760. Provisional dispositions are also admissible for the purpose of provisionally settling the state of affairs with regard to disputed relations of right; they can, however, only be made where they are necessary, in particular for averting material prejudice, or for preventing imminent violence (coercion) or for other reasons in cases of lasting (consecutive) relations of right.

Article 761. In cases of urgency the District Court within the district of which the subject matter in dispute is situated may direct a provisional disposition, at the same time fixing a term within which the applicant is to apply for the summoning of the adversary to oral proceedings before the Court having jurisdiction over the suit with respect to the legality of the provisional disposition.

If this term expires without result, the District Court shall, upon application, annul the provisional disposition directed.

The decision may be rendered without prior oral proceedings.

Article 762. The Court having jurisdiction over the suit in the meaning of the provisions of this Chapter is the Court of first instance or, if the suit is pending in appeal instance, the Court of Appeal.

Article 763. In cases of urgency the Presiding Judge may decide the applications referred to in this Chapter, provided that no oral proceedings are necessary.

Book VII

Public Summons Procedure

Article 764. A judicial public summons to declare claims or rights under pain of forfeiture of such claims or rights as a consequence of such declaration being neglected can be given only in the cases determined by law.

The Summary Court is the Court competent for public summons procedure.

Article 765. The application for a public summons may be brought orally or in writing.

The decision with respect to the application may be rendered without prior oral proceedings.

If the application is admissible the Court shall issue the public summons. The public summons shall contain in particular:-

1. Designation of the applicant;

2. A summons to declare claims and rights up to the time fixed for proceedings under the public summons;

3. Warning of forfeiture of the right consequent on neglect to declare;

4. The appointment of a hearing time for proceedings under the public summons.

Article 766. The public notification of the public summons is effected by affixing it to the notice-board of the Court, by insertion in the Official Gazette (ZwampS) or Public Advertiser (KGhS).

Should the Court deem it proper so to do, it may order the public

notice to be given by newspapers.

Article 767. Unless the law otherwise prescribes, a period of at least two (2) months must lie between the day on which insertion is effected in the Official Gazette or the Public Advertiser and the time fixed for proceedings under the public summons.

Article 768. A declaration made subsequently to the time fixed for proceedings under the public summons, but prior to the judgment of exclusion, is to be regarded as effected in proper time.

Article 769. The judgment of exclusion shall be rendered on application.

Prior to the rendering of such judgment, a detailed inquiry may be directed.

Immediate complaint may be raised against a rule dismissing an application for the rendering of a judgment of exclusion, as also against limitations and reservations attached to the judgment of exclusion.

Article 770. Where a declaration is made disputing the right alleged by the applicant in support of his application, either the public summons procedure shall be stayed until the decision with regard to the declared right becomes final and conclusive, or the declared right shall be reserved in the judgment of exclusion according to circumstances.

Article 771. If the applicant has not appeared at the time fixed for proceedings under the public summons, a fresh hearing time shall on his application be appointed. The application is not admissible unless made within a term of six (6) months from the time first fixed for proceedings under the public summons.

Article 772. Where a fresh hearing time is appointed for completing

the public summons procedure, no public notification of such hearing time is necessary.

Article 773. The Court may publicly notify the material contents of the judgment of exclusion by means of insertion in the Official Gazette or the Public Advertiser.

Article 774. No recourse is admissible against the judgment of exclusion.

The judgment of exclusion may be attacked before the District Court having jurisdiction over the Court of the public summons by means of an action instituted against the applicant:-

1. If it was not a case in which the law authorizes public summons procedure;

2. If public notification of the public summons has not been made, or has not been made in a mode specified by law;

3. If the term of public summons has not been observed;

4. If the adjudicating Judgewas excluded by virtue of law from exercising judicial functions;

5. If, notwithstanding a claim or right has been declared, the declaration thereof has not been considered in the judgment as by law required;

6. If it is one of the cases mentioned in Article 420, Numbers 4 to 8, and the conditions exist on which an action for renewal of procedure is permissible.

Article 775. The attacking action shall be instituted within the peremptory term of one (1) month. The term commences with the day on which

the plaintiff acquired knowledge of the judgment of exclusion; in the case, however, where the action is based on one of the grounds for attacking the judgment in the preceding Article, Numbers 4 and 6 specified, and such ground had not yet come to the knowledge of the plaintiff on the said day, the term does not commence until the day on which the ground for attacking the judgment has become known to the plaintiff.

After expiration of five (5) years from the day of pronouncing the judgment of exclusion, an action attacking it is no longer admissible.

Article 776. The Court may direct that two or more public summonses shall be joined.

Article 777. In the case of public summons procedure for the purpose of declaring invalid bills of exchange or promissory notes or cheques which have been stolen, lost, or destroyed, as well as documents which may be declared invalid under the provisions of the Commercial Code, the special provisions contained in the following several Articles apply.

These provisions apply to other documents for which the (some other) law permits public summons procedure, in so far as it is not otherwise specially provided by such law.

Article 778. In the case of documents which run to bearer or which are transferable by indorsement and furnished with (bear) an indorsement in blank, it is the last holder who is entitled to apply for public summons procedure.

In the case of other documents, the person entitled to make the application is the one who may assert a right in virtue of the document.

Article 779. The Court competent for the public summons procedure is

the Court of the place of performance as designated in the document. In the event of the document containing no such designation, the competent Court is the Court of the place where the person issuing the document has his general forum, or if there is no such Court, the Court of the place where the issuer had his general forum at the time of issue.

Where the claim for which the document is issued is entered in a register, the Court of the place where the thing is situated is exclusively competent.

Article 780. By way of evidence of his application the applicant shall:-

1. Produce a copy of the document or state the material contents of the document and everything necessary for its complete identification;

2. Render credible the theft, robbery, loss, or destruction of the document, as well as those facts on the ground of which the application for public summons procedure is admissible.

Article 781. The holder of the document shall be summoned in the public summons to declare his right to the Court and to produce the document at the latest at the time fixed for proceedings under the public summons on pain of the document being declared void and the right forfeited.

Article 782. The public notification of the public summons is effected by affixing it to the notice-board of the Court, by insertion in the Official Gazette or the Public Advertiser, and by means of insertion in one or more newspapers three times.

If an Exchange exists at the place where the Court of the public summons

has its seat, the public notification shall also be posted up at such Exchange.

Article 783. Between the day on which the public summons was inserted in the Official Gazette or Public Advertiser and the time fixed for proceedings under the public summons, a period of at least six (6) months must lie.

Article 784. In the judgment of exclusion the document shall be declared invalid.

The judgment of exclusion is to be publicly notified as to its material contents by means of the Official Gazette or the Public Advertiser.

If the declaration of invalidity is annulled by the judgment rendered in the attacking action, such judgment after it has become final and conclusive shall be publicly notified by means of the Official Gazette or the Public Advertiser.

Article 785. If a judgment of exclusion is rendered, the applicant is entitled, as regards the person or persons bound under the document, to assert the right based on the document.

Book VIII

Arbitration Procedure

Article 786. An agreement for the submission of a controversy to one or more arbitrators is valid in so far only as the parties are entitled to conclude a compromise with reference to the subject matter in dispute.

Article 787. An agreement to refer future controversies to arbitration has no effect, unless it relates to determined relations of right and the controversies arising therefrom.

Article 788. If no provision as to the nomination of arbitrators is contained in the agreement of submission, each party nominates an arbitrator.

Article 789. If both parties are entitled to nominate arbitrators, the pursuing party shall signify to the adversary in writing the arbitrator nominated by him and call upon the adversary to do the same on his side also within a term of seven (7) days.

If the term expires without result, the competent Court, upon the application of the pursuing party, nominates the arbitrator.

Article 790. A party having nominated an arbitrator is bound by such nomination as regards the adversary so soon as he has given him notice of the nomination.

Article 791. Where an arbitrator nominated otherwise than by the agreement of submission dies, or his position is vacated owing to some other cause, or he refuses to accept or carry out the functions of arbitrator, the party who has nominated him shall, upon the demand of the adversary, appoint another arbitrator within a term of seven (7) days. If this term

expires without result, an arbitrator is nominated, on the application of the party from whom the demand proceeded, by the competent Court.

Article 792. The parties may refuse an arbitrator on the same grounds and under the same conditions as they could refuse a Judge.

Refusal may also take place where an arbitrator nominated otherwise than by the agreement of submission improperly delays the execution of his duties.

Incapacitated person, the deaf, the dumb, and persons who are deprived of or suspended from the enjoyment of public rights may be refused.

Article 793. The agreement of submission is no longer operative in the absence of previous provisions, arranged by the parties, for the following cases, namely:-

1. Where, specified persons being nominated arbitrators in the agreement, any one of them dies, or his position is otherwise left vacant or he refuses to act, or withdraws from the agreement entered into by him, or improperly delays the execution of his duties;

2. Where the arbitrators notify the parties that their opinions are equally divided.

Article 794. The arbitrators, before making their award, shall hear the parties and make such inquiries into the circumstances underlying the controversy as they may deem necessary.

In the absence of any agreement of the parties as to the procedure, it shall be regulated by the arbitrators according to their discretion.

Article 795. The arbitrators may examine witnesses and experts who

voluntarily appear before them.

The arbitrators are not empowered to administer the oath to a witness or an expert.

Article 796. An act bearing on an award which the arbitrators deem necessary to do, but which they cannot perform, shall, upon the application of a party and if the application is admissible, be performed by the competent Court.

The Court which has directed a witness or an expert to testify is also empowered to render the decisions which become necessary in the event of a refusal to testify or to give evidence.

Article 797. The arbitrators may continue the procedure and make the award even where a party asserts that arbitration procedure is inadmissible, and in particular where it is asserted that no valid agreement of submission exists, that the agreement of submission does not relate to the controversy to be decided, or that the arbitrators are not empowered to function as such.

Article 798. If the award is to be made by several arbitrators, a majority of opinions decides, unless otherwise provided in the agreement of submission.

Article 799. The award must bear a mention of the day, month, and year when it was drawn up, and be signed and sealed by the arbitrators.

An exemplification of the award, also signed and sealed by the arbitrators, shall be served on each of the parties. The original is to be deposited at the competent Court with the documents of service annexed.

Article 800. As between the parties the award has the effect of a final and conclusive judgment of a Court of Justice.

Article 801. Application to set aside the award may be made:-

1. Where the procedure was inadmissible;

2. Where the award condemns a party to perform an act the performance of which is prohibited by law;

3. Where in the procedure the party was not represented in conformity with the provisions of law;

4. Where the parties were not heard in the procedure;

5. Where the award is not accompanied by reasons;

6. Where the case comes under Article 420, Numbers 4 to 8 and the conditions exist on which an action for removal of procedure is permissible.

The award cannot be set aside on the grounds specified in Numbers 4 and 5 of this Article, if the parties have otherwise agreed.

Article 802. Execution in virtue of an award can be annulled only if the admissibility thereof is pronounced by a judgment of execution.

No judgment of execution can be rendered if there exists a gound upon which application can be made for the annulment of the award.

Article 803. After the judgment of execution has been rendered, application for the annulment of the award can be made only on the ground specified in Article 801, No. 6, and then only if it is rendered credible that the party without any fault on his part has not been in a position to assert the ground for its annulment in the previous procedure.

Article 804. In the case of the preceding Article, the action for the annulment of the award is to be instituted within a peremptory term of one (1) month.

The term commences to run from the day on which the party acquired knowledge of the ground for setting aside the award, but not before the judgment of execution has become final and conclusive. After the expiration of five (5) years from the day when the judgment of execution became final and conclusive, the action is no longer admissible.

When the award is set aside (annulled), the annulment of the judgment of execution shall simultaneously be pronounced.

Article 805. The Court competent in actions having for their object the nomination or refusal of an arbitrator, the termination (extinction) of an agreement of submission, the inadmissibility of arbitration procedure, the annulment of an award, or the rendering of the judgment of execution, is the Summary Court or the District Court designated in the agreement of submission and, in the absence of any such designation, the Summary Court or the District Court which would be competent if the claim were judicially asserted in a Court of Justice.

Amongst two or more Courts competent in pursuance of the provisions of the preceding paragraph, the Court which is competent is that to which the parties or the arbitrator have first addressed themselves.

Supplementary Provisions

The date for the operation of this law will be determined by Imperial Ordinance.

Article 1. The provisions of the present Law except Article 8 of the Supplementary Provisions shall come into force as from 1 January 1949, and the provisions of the said Article 8/ shall come into force as from 15 July 1949.

Article 2. Within the meaning of these supplementary provisions, the New Code shall be taken to refer to the Code of Civil Procedure as amended by the present Law, the Old Code shall be taken to refer to the Code of Civil Procedure which has hitherto been in force.

Article 3. Except as otherwise provided, the New Code shall apply also to any matter which has arisen prior to the coming into force of the New Code, without prejudice, however, to any effect which has arisen under the old Code and the Law No. 75 of 1947.

Article 4. The provisions of paragraph 1, proviso and paragraph 2 of Article 79 of the New Code shall apply mutatis mutandis in cases where the District Court should, in accordance with the provisions of the first paragraph of Article 3 of the Ordinance for the Enforcement of the Court Organization Law, handle a case which, according to the provisions hitherto in force, has been under jurisdiction of the Local Court.

Article 5. Any person, who committed an act punishable with a non-penal fine under the Old Code before the enforcement of the New Code and to whom the decision was not yet given at the time of enforcement of the New Code, shall be punished under the Old Code.

Article 6. The provisions of Article 395 of the New Code shall not apply to any final judgment rendered by the Tokyo High Court as to the cases over which it has jurisdiction in accordance with the provisions of Article 4 of the Ordinance for the Enforcement of the Court Organization Law.

The provisions of Articles 409-2 and 409-3 of the New Code shall apply mutatis mutandis to the final judgment mentioned in the preceding paragraph.

Article 7. The Law No. 46 of 1945 shall be partly amended as follows:

In the second paragraph of the Supplementary Provisions, the words "Article 5" shall be deleted.

Article 8. The Law No. 75 of 1947 shall be partly amended as follows:

Article 8 shall be deleted.

In the second paragraph of the Supplementary Provisions, "15 July 1948" shall read "1 January 1949."