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LAW AMENDING THE CODE OF CIVIL PROCEDURE

(Law No. 149, July 1, 1948)

Book I

General Provisions

Chapter I

Courts

Section I. Jurisdiction

Article 1. An action is subject to the jurisdiction of the Court situated at the place where the defendant has his general forum.

Article 2. The general forum of a person is determined by his domicile.

If there is no domicile in Japan or the domicile is unknown, the general forum is determined by the place of residence, or if there is no place of residence, or the place of residence is unknown, then by the last domicile.

Article 3. When an Ambassador or Minister, or any other Japanese who enjoys extraterritorial rights abroad, has no general forum under the provisions of the foregoing Article, his general forum shall be deemed to be situated in the place designated by the Supreme Court.

Article 4. The general forum of a juridical person (Hojin) or any other association (Shadan) or foundation (Zaidan) is determined by its principal office or principal place of business, or if there is no office or place of business, by the domicile of the principal person in charge of its affairs.

The general forum of the State (Kuni) is determined by the place (Location) of the Government Office that represents the State in regard to

the (Particular) action.

In regard to the general forum of foreign associations (Shadan) and foundations (Zaidan), the provisions of paragraph 1 shall apply to the offices, places of business or persons in charge of the affairs of such concerns in Japan.

Article 5. An action upon a property right (Zaisan-ken) may be brought in the Court of the place where the liability is performable.

Article 6. An action upon a property right against a temporary sojourner (Kiryūsha) may be brought in the Court of the place of his temporary sojourn.

Article 7. An action upon a property right against a member of a ship's crew may be brought in the Court of the place of the registry of ship.

Article 8. An action upon a property right against a person not domiciled in Japan, or whose domicile is unknown, may be brought in the Court of the place where the subject matter of the claim, or the security therefor, or any property of the defendant that admits of being attached, is located.

Article 9. An action against a person possessed of an office or place of business may, in so far only as it concerns the affairs of such office or place of business, be brought in the Court at the place where the office or place of business is situated.

Article 10. An action concerning a ship or voyage against the shipowner, or against any other person utilizing the ship, may be brought in the Court of the place of her home port.

Article 11. An action based on a claim (an obligation) against a ship or any other claim (obligation) secured on a ship may be brought in the Court

of the place where the ship is situated.

Article 12. An action of a company or any other association against a member (shareholder or partner), or of a member (shareholder or partner) against another (of the same), may, in so far only as it is based on his status as a member, be brought in the Court at the place where the general forum of the company or the other association is situated.

The provisions of the foregoing paragraph apply mutatis mutandis to actions of associations or foundations against their officers, or of companies against their promoters or examiners.

Article 13. An action of a creditor of a company or any other association against a member (shareholder or partner) may, in so far only as it is based on his status as a member, be brought in the Court specified in the foregoing Article.

Article 14. The provisions of Article 12 and of the foregoing Article apply mutatis mutandis to actions of associations, foundations, members (shareholders or partners) of associations or creditors of associations against persons who were members, officers, promoters or examiners, or of former members against members.

Article 15. An action relating to an "unlawful act" may be brought in the Court of the place where the act was committed.

An action for damages due to a collision of ships or any other casualty at sea may be brought in the Court of the place where the damaged ship first touched (after the casualty).

Article 16. An action relating to salvage may be brought in the Court of the place where the salvage was effected or the place where the salvaged

ship first touched (after the salvage).

Article 17. An action relating to an immovable may be brought in the Court of the place where the immovable is situated.

Article 18. An action relating to a registration in a Court or some other public office ("toki" mata wa "tōroku") may be brought in the Court of the place where such registration is to be made.

Article 19. An action relating to a title to succession, or a legal portion or legacy, or any other act that is to take effect by death, may be brought in the Court of the place where the general forum of the ancestor (deceased) was situated at the time of the commencement of succession.

Article 20. In so far as it does not come within the purview of the foregoing Article, an action relating to a claim (obligation) against the estate of a deceased, or an incumbrance upon the estate, may be brought in the Court specified in the foregoing Article, provided that the whole or a part of the estate is in the district of that Court.

Article 21. In case several claims are made by means of one action, such action may be brought in any Court having jurisdiction over one of such claims under the provisions of Article 1 to the foregoing Article (inclusive).

Article 22. Where the jurisdiction over an action is determined by the value of the subject matter of such action in accordance with the provisions of the Court Organization Law, such value is calculated on the basis of the interest asserted by the action.

Where the value referred to in the foregoing paragraph cannot be calculated, it shall be deemed to exceed five thousand (5,000) yen.

Article 23. Where several claims are made by means of one action, their values are added together.

In case a claim for fruits, compensation for damages, penalty for breach of contract, or expenses, is an incidental object of an action, the value thereof is not included in the calculation of the value of the subject matter of the action.

Article 24. In the following cases the Court immediately superior alike to all the Courts concerned shall, on application, decide by a rule which Court is competent:

1. If the competent Court is legally or actually unable to exercise jurisdiction;

2. If the competent Court is not determined because the jurisdictional districts of the Courts are not clear.

No complaint may be made against a rule under the foregoing paragraph.

Article 25. In so far only as first instance is concerned, the parties may fix the competent Court by agreement.

The agreement referred to in the foregoing paragraph shall not be valid unless it is made in writing relative to an action based on a specific legal relation.

Article 26. When the defendant has not set up a plea of error of jurisdiction and has proceeded orally in the suit or made statements in preliminary proceedings in the Court of first instance, the latter Court shall have jurisdiction (over the action).

Article 27. The provisions of Article 1, Articles 5 to 21, Article 25 and the foregoing Article do not apply to actions for which exclusive juris-

diction is provided.

Article 28. In regard to matters relating to jurisdiction, the Court may take evidence ex-officio.

Article 29. The jurisdiction of a Court is determined on the basis (standard) of (the conditions at) the time of the institution of the action.

Article 30. When a Court finds that the whole or a part of an action does not come under its jurisdiction, it shall transfer such action to the competent Court by means of a rule.

A District Court may, if it deems proper, even in case an action falls uder the jurisdiction of a Summary Court within the district over which the said District Court has jurisdiction, try and adjudicate the whole or a part of such action for itself on application or ex officio, irrespectively of the provisions of the preceding paragraph; provided that this shall not apply in cases where, for such action, exclusive jurisdiction is prescribed.

Art Article 31. Should it be found necessary to do so in order to avoid considerable damage or delay in regard to an action over which it has jurisdiction, a Court may, either on application or ex officio, transfer, by a rule, the whole or a part of the action to another competent Court, unless such action comes under its exclusive jurisdiction.

Article 31-2. A Summary Court may, if it deems proper, even in case an action falls under the jurisdiction thereof, except when the jurisdiction is exclusive, transfer the whole or a part of such action, on application or ex officio, to the District Court having jurisdiction over the district where the said summary court is situated.

Article 32. Decision of transfer shall be binding on the Court in

receipt of the transfer.

The Court to which a case has been transferred may not re-transfer the case to another Court.

Article 33. Immediate complaint may be made against a decision of transfer and a decision by which an application for transfer has been dismissed.

Article 34. When the decision of transfer has become irrevocable, the action shall be deemed to have been pending ab initio in the Court to which it has been transferred.

In the case of the foregoing paragraph, the Clerk of the Court which has given the decision of transfer must attach an exemplification of the said decision to the record of the case, and forward same to the Clerk of the Court to which the transfer has been made.

Section II. Exclusion, Refusal and Refrainment of Officers of the Court

Article 35. A Judge is excluded from the exercise of his functions by operation of law:

1. If the Judge or his spouse or former spouse is a party to the case or is related to a party in the case as a co-creditor, co-debtor or a person bound to pay on recourse;
2. If the Judge is or was a blood relation within the fourth degree of relationship, a relation by affinity within the third degree of relationship of a party or a relative with whom a party resides;

5. If the Judge is the guardian, supervisor of guardianship, or the curator of a party;

4. If the Judge has acted as a witness or an expert witness in the case;

5. If the Judge is, or was, attorney for, or an assistant (hosanin) to, a party in the case;

6. If the Judge has participated in an arbitration award in the case or participated in the decision a previous instance attached; but this shall be without prejudice to the exercise of his functions as a Requisitioned Judge on the requisition of another Court.

Article 36. Where there is a cause for exclusion, the Court shall give a decision of exclusion either on application or ex officio.

Article 37. If there are circumstances concerning a Judge such as are calculated to prejudice the impartiality of decision, the parties may refuse him.

If a party has entered upon debates or made a statement in preliminary proceedings in the presence of a Judge, such Judge cannot be refused, except for a cause of refusal that has arisen subsequent thereto, or the existence of which was unknown to the party at the time.

Article 38. Applications under the provisions of Article 36 or of the foregoing Article must disclose the cause, and must be made to the Court to which the Judge belongs. The cause of exclusion or refusal must be made credible within three (3) days from the day of the application. The same shall apply to the fact referred to in the proviso of paragraph 2 of the

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foregoing Article.

Article 39. Exclusion or refusal of a Judge who is a member of a collegiate court and that of a Judge sitting alone of a District Court shall be decided by the Court to which he belongs, and that of a Judge of a Summary Court by the District Court having jurisdiction over the district where the said Summary Court is situated, always by means of a rule.

The decisions mentioned in the preceding paragraph shall be made in the collegiate court, in cases where they are made by a District Court.

Article 40. No Judge may participate in a decision relating to his own exclusion or refusal, but he may express an opinion.

Article 41. No objection may be raised to a rule in favour of exclusion or refusal. Immediate complaint may, however, be made against a rule against exclusion or refusal.

Article 42. When an application for (a decision of) exclusion or refusal is made, the proceedings must be stayed until the decision on such application has become irrevocable; but this does not apply to such acts as may need urgent attention.

Article 43. In the case specified in Article 35 or Article 37, paragraph 1, a Judge may, with the permission of the Court which has the right of supervision, refrain from acting.

Article 44. The provisions of this Section shall apply mutatis mutandis to Court Clerks. In this case the decision shall be made by the Court to which the Clerk is attached, and the permission which may be granted for the refrainment of a Clerk of a Summary Court shall be given by the Judge of the said Court who is mentioned in Article 37 of the Court Organization Law.

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Chapter II

Parties

Section I. Capacity of Parties and Litigation Capacity

Article 45. Unless otherwise specially provided in this Code, the capacity for being parties, capacity for acts of procedure and the legal representation of persons without capacity for acts of procedure are governed by the provisions of the Civil Code and other laws and ordinances. The same applies to the investment of powers necessary for doing acts of procedure.

Article 46. An association or foundation which is not a juridical person, but which is provided with a representative or administrator, may sue or be sued in its name.

Article 47. A plurality of parties having a joint interest other than coming under the provisions of the preceding Article, may appoint one or more persons who is or are to be plaintiff (s) or defendant (s) for the entire body, or alter such appointment.

In case a person (persons) to be plaintiff (s) or defendant (s) has (have) been appointed under the provisions of the foregoing paragraph subsequent to the pendency of the action, the other person (persons) withdrews (withdraw) from the action by operation of law.

Article 48. If any of the persons appointed under the provisions of the foregoing Article have lost their capacity as such by death or from any other cause, the remaining person (persons) may do acts of procedure for the entire body.

Article 49. Minors or incompetent persons may do acts of procedure only

through their legal representatives, except minors who are empowered to do juristic acts by themselves (independently).

Article 50. A quasi-incompetent person or legal representative may, without the consent of the curator or of the supervisor of a guardian or any other authorization, do acts of procedure in regard to an action or recourse instituted by the other party.

Without special authorization to that effect, a quasi-incompetent person or legal representative may not withdraw an action or appeal or re-appeal, effect a compromise, abandon or acknowledge a claim or effect a withdrawal under Article 72 hereof.

Article 51. An alien even though he has no capacity for acts of procedure under the law of his own country, is deemed to have such capacity if he is possessed of that capacity under Japanese law.

Article 52. The right of legal representation or authorization necessary for doing acts of procedure must be attested by documents. The same shall apply to the appointment of persons under the provisions of Article 47 and alterations therein.

The documents mentioned in the foregoing paragraph shall be attached to the record of the case.

Article 53. Should there be any defect in the capacity for acts of procedure, right of legal representation or authorization necessary for doing acts of procedure, the Court may order it to be made good within a period of time to be fixed by itself, and if there is danger of damage being caused by a delay, permit acts of procedure to be done pro tempore.

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Article 54. Acts of procedure done by a person who is defective in his capacity for acts of procedure, in his right as legal representative or in authority necessary for doing acts of procedure, take effect retroactively as from the time of the act on their being ratified by such person or legal representative after such defect has ceased to exist.

Article 55. The provisions of Article 53 and of the foregoing Article apply mutatis mutandis when acts of procedure are done by parties under the provisions of Article 47.

Article 56. Any person who desires to do acts of procedure against a minor or an incompetent person when there is no legal representative, or when the legal representative is unable to exercise his right of representation, may apply to the Presiding Judge of the Court of the suit for the appointment of a special representative on rendering credible the fact that there is danger of damage being caused by delay.

The Court may at any time replace (change) the special representative.

In order to do acts of procedure, the special representative must have the same authorization as a guardian.

Orders by which a special representative is appointed or replaced (changed) must also be served on the special representative.

Article 57. The termination of the right of legal representation does not take effect (is not valid) unless notice of the fact is given by the principal or representative to the other party.

The provision of the foregoing paragraph applies mutatis mutandis to any change in parties under the provisions of Article 47.

Article 58. The provisions of this Code relating to legal representation

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and legal representatives apply mutatis mutandis to the representatives of juridical persons and to the representatives or administrators of associations or foundations which without being juridical persons can sue or be sued in their names.

Section II. Co-Litigants

Article 59. If the rights or liabilities which are the subject of an action are common to two or more persons, or are based on the same ground in fact and in law, such several persons may sue or be sued as co-litigants. The same applies when the rights or liabilities which are the subject of an action are of the same kind and based on the same kind of ground in fact and in law.

Article 60. A person who claims for himself the whole or a part of the subject of an action between others may, during the pendency of such action, bring an action in the Court of the suit of first instance against both parties as co-defendants.

Article 61. Acts done by one of the co-litigants, acts done by the other party against him, and facts arising in regard to one of them (the co-litigants) do not affect the other co-litigants.

Article 62. Where the subject of an action is to be confirmed conjointly only in respect of the entire body of the co-litigants, the acts of one of them shall take effect in favour of the entire body only.

The acts of the other party to one of the co-litigants take effect for or against all of them.

Should there be any cause for interruption or stay of proceedings in

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regard to one of the co-litigants, such interruption or stay takes effect in regard to all the co-litigants.

Article 63. The provisions of Article 60, paragraph 1, apply mutatis mutandis to the acts of procedure to be done by the other co-litigants in respect of a recourse instituted by one of the co-litigants in the case of paragraph 1 of the foregoing Article.

Section III. Intervention

Article 64. A third person interested in the result of an action may, during the pendency of such action, intervene in the action in order to assist either party.

Article 65. An intimation of intervention must be made to the Court where acts of procedure are to be done by reason of such intervention, stating the gist and grounds of the intervention.

In case an intimation of intervention has been made by a writing, such writing must be served on both parties.

An intimation of intervention may be made together with acts of procedure that can be done as an intervener.

Article 66. Should the parties object intervention, the ground of intervention must be made credible. In this case the Court decides by means of a rule whether the intervention is, or is not, admissible.

Immediate complaint may be made against the decision under the foregoing paragraph.

Article 67. If a party proceeds orally (pleads orally) or makes a statement in preliminary proceedings without expressing any objection, he

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loses his right to object.

Article 68. Even when the intervention has been objected to, the intervener may do acts of procedure so long as decision against the intervention has not become irrevocable.

Even when decision against the intervention has become irrevocable, the acts of procedure (previously) done by the intervener are valid if they have been cited by the parties.

Article 69. An intervener may produce means of attack and of defence, raise objections, institute recourses and do all other acts of procedure in regard to the action except such acts as cannot be done at the stage of the action at the time of intervention.

Acts of an intervener are void if they are inconsistent with the acts of the person in whose favour he has intervened.

Article 70. Decision is binding on the intervener also except where, by virtue of the provisions of the foregoing Article, the intervener was not empowered to do acts of procedure or his acts of procedure were void, or the person in whose favour the intervention has been made has impeded the acts of procedure of the intervener, or omitted, by bad faith or by negligence, to do such acts of procedure as the intervener was debarred from doing.

Article 71. Any third person who claims that his rights are liable to be injured as a result of an action, or that the whole or a part of the subject of an action is a right belonging to him, may intervene in the action as a party. In this case the provisions of Articles 62 and 65 apply mutatis mutandis.

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Article 72. In case a person intervenes in an action in order to assert his right under the provisions of the foregoing Article, the plaintiff or defendant may, prior to the intervention, withdraw from the action with the consent of the other party, but the judgment is also binding upon the party who has so withdrawn.

Article 73. When a person intervenes in an action in accordance with the provisions of Article 71, claiming that he has had the whole or a part of the right constituting the subject of the action assigned to him during the pendency of the action, such intervention has the effect of interrupting prescription or fulfilling a legal term retroactively from the beginning of the pendency of the action.

Article 74. In case a third person has, during the pendency of an action, succeeded to the obligation (liability) which is the subject of the action, the Court may, on the application of either party, require such third person to take over the action.

Prior to rendering a rule under the provisions of the foregoing paragraph, the Court shall examine the parties and third person.

The provisions of Article 72 relating to withdrawal and the effect of judgment apply mutatis mutandis where the action has been taken over under the provisions of paragraph 1.

Article 75. Where the subject of an action is to be confirmed only conjointly in respect of either of the parties and a third person, such third person may intervene in the action as a co-litigant. In this case the provisions of Article 65 apply mutatis mutandis.

Article 76. The parties to an action may give notice of the action to

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the third person who is authorized to intervene during its pendency. The person who has received notice of the action may in his turn give notice of the same action (to others).

Article 77. Notice of the action must be given by filing in the Court a paper containing the reason and the stage of the action.

The paper mentioned in the foregoing paragraph must also be served on the other party.

Article 78. In regard to the application of Article 70 the person who has received notice of the action is deemed to have intervened at the time when he could have done so, even though, as a matter of fact, he did not intervene.

Section IV. Process-Attorneys and Assistants

Article 79. With the exception of representatives who according to the provisions of laws and ordinances may do acts in Court, no person other than an advocate (bengoshi) may act as a process-attorney. In the case of a Summary Court, however, even a person other than an advocate may be appointed process-attorney with the permission of the Court.

The permission granted under the foregoing paragraph may at any time be cancelled.

Article 80. The powers of a process-attorney must be evidenced by a writing.

If the writing mentioned in the foregoing paragraph is a document signed by a private person, the Court may order the process-attorney to get it authenticated by a competent official.

The provisions of the foregoing two paragraphs do not apply where a

party has appointed his process-attorney orally, and the Court Clerk has entered such oral appointment in the protocol.

Article 81. A process-attorney may, in regard to the matter delegated to him, do acts of procedure relating to cross-action, intervention, compulsory execution, provisional attachment and provisional disposition, and receive payment.

Special authorization is required for doing the following acts:

1. Institution of a cross-action;
2. Withdrawal of the action, compromise, waiver or admission of the claim or withdrawal under the provisions of Article 72;
3. Appeal, re-appeal or the withdrawal thereof;
4. Appointment of an attorney.

No limitation may be imposed on the authority of a process-attorney except where the later a person other than an advocate (bengoshi).

Article 82. The provisions of the foregoing Article shall be without prejudice to the powers of representatives authorized by the provisions of laws and ordinances to do acts in Court.

Article 83. Where there are several process-attorneys, each of them represents the principal severally.

Even though the parties may make an arrangement inconsistent with the provisions of the foregoing paragraph such arrangement shall be void and of no effect.

Article 84. No statement of a process-attorney relating to facts takes effect when it is immediately cancelled or rectified by the principal.

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Article 85. The authority of a process-attorney is not terminated by the death or loss of capacity for acts of procedure of the principal, the termination by consolidation of the juridical person which is his principal, the conclusion of the duties under trust of the trustee who is his principal, the death or loss of capacity for acts of procedure of the legal representative who is his principal, or the termination of or alteration in the latter's right of representation.

Article 86. The authority of a process-attorney for a person who holds a certain capacity (quality), in virtue of which he is a party to an action in his name but on account of another person, is not terminated by reason of the loss of such capacity on the part of his principal.

The provisions of the foregoing paragraph apply mutatis mutandis where a person who has been appointed to be plaintiff or defendant on behalf of the whole body of persons in accordance with the provisions of Article 47 has lost his capacity as such.

Article 87. The provisions of Article 52, paragraph 2, Articles 53, 54 and 57 apply mutatis mutandis to representation in the conduct of actions.

Article 88. A party or process-attorney may, with the permission of the Court, appear together with an assistant (hosa-nin). Such permission may at any time be cancelled.

The statement of the assistant shall be deemed to have been made by the party or process-attorney himself, if the latter does not immediately cancel or rectify it.

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Chapter III

Costs

Section I. Incidence of Costs

Article 89. The cost of the suit shall be borne by the party defeated.

Article 90. According to circumstances the Court may charge to the winning party the whole or a part of the costs arising from acts not essential to the assertion or defense of his rights or of the costs arising from such acts as were essential to the assertion or defense of the adversary's rights at the particular stage of the action.

Article 91. If proceedings were delayed through the failure of either party to produce means of attack or defense in good time or to observe an appointed time or term or otherwise through a cause imputable to him, the Court may charge to him, even when he has won the suit, the whole or a part of the costs entailed by reason of such delay.

Article 92. In case of a partial defeat, the costs of the suit to be borne by each party shall be fixed at the discretion of the Court. According to circumstances, however, the Court may charge the whole of the costs to either of the parties.

Article 93. Co-litigants shall bear the costs of the suit in equal proportions, but, according to circumstances, the Court may require the co-litigants to bear the costs jointly and severally, or to bear them in some other way.

Despite the provisions of the foregoing paragraph, the Court may charge to the party who has done acts not essential to the assertion or defense of a right the costs occasioned by such acts.

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Article 94. In case a party has objected to intervention, the provisions of the foregoing five articles apply mutatis mutandis in regard to the incidence of the costs occasioned by such objection as between the intervener and the party objecting. The same applies to the incidence of the costs occasioned by the intervention as between the intervener and the adversary.

Article 95. In a decision by which a case is terminated the Court must ex officio decide on the whole of the costs of the suit in the particular instance. According to circumstances, however, a decision relating to a part of the case or an interlocutory dispute may decide on the costs of such part or dispute.

Article 96. When a higher Court alters the decision on the suit, decision shall be given in regard to all the costs of the suit.

The same applies where the Court to which a case has been referred back or transferred gives a decision by which the case is terminated.

Article 97. In case a compromise has been effected by the parties in Court without making special arrangement concerning the incidence of the costs of the compromise and the costs of the suit, each party shall bear such part of those costs as has been actually disbursed by him.

Article 98. Should a legal representative, a process-attorney, a Court Clerk or a bailiff have in bad faith or by gross negligence, caused unnecessary costs, the Court of the suit may, on application or ex officio, order him by means of a rule to reimburse such costs.

In case a person who has done acts of procedure as a legal representative or process-attorney can neither prove his right of representation, nor

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prove that he is authorized to do such acts of procedure, nor is able to get them ratified, the provisions of the foregoing paragraph apply mutatis mutandis to the costs of the suit occasioned by those acts of procedure. Immediate complaint may be made against rulings under the foregoing two paragraphs.

Article 99. If the Court dismisses the action in the case mentioned in paragraph 2 of the foregoing Article, the costs of the suit shall be charged to the person who has done acts of procedure as representative or attorney.

Article 100. If the Court does not fix the amount in a decision by which the incidence of the costs of the suit is fixed, the Court of the suit in first instance shall, on application, after the decision has become executable, fix the same by means of a rule.

To an application for the fixing of the amount of costs of the suit must be annexed a statement of costs and a copy thereof as well as papers required for rendering credible the amount of costs.

Immediate complaint may be made against the rule under paragraph 1.

Article 101. Prior to giving a rule by which the amount of the costs of the suit is fixed, the Court must deliver the copy of the statement of account to the other party and call upon him to express an opinion thereon as well as to file a statement of costs and papers required for making credible the amount of costs within a fixed period.

Should the other party fail to file in time the papers specified in the foregoing paragraph, the Court may render a decision in regard to the costs incurred by the applicant only, without prejudice, however, to the

other party's right to apply for the determination of the amount of costs incurred by him.

Article 102. Apart from the case mentioned in paragraph 2 of the preceding Article, when the Court renders a decision by which the amount of the costs of the suit is fixed, the expenses charged to the several parties are deemed to cancel each other by set-off in so far as the corresponding amount is concerned.

Article 103. If in the case of Article 97 the parties have fixed the incidence of the costs of the suit but not the amount, the Court must, on application, fix the amount by means of a rule. In this case the provisions of Article 100, paragraphs 2 and 3, Article 101 and foregoing Article apply mutatis mutandis.

Article 104. Excepting the case of the foregoing Article, if an action has been terminated otherwise than by decision, the Court must, on application, fix the amount of costs of the suit and order same to be paid. The same applies when an intervention or an objection thereto has been withdrawn.

The provisions of Articles 89 to 94, Article 100, paragraphs 2 and 3, Articles 101 and 102 apply mutatis mutandis in the case of the foregoing paragraph.

Article 105. The Court may require a Court Clerk to calculate the amount of costs of the suit.

Article 106. In regard to acts involving costs, the Court may require the party concerned to pay such costs in advance.

If the party does not pay the costs in advance in compliance with the order of the Court, then the Court may refuse to do the acts mentioned in

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the foregoing paragraph.

Section II. Security for Costs

Article 107. If the plaintiff has no domicile, office or place of business in Japan, the Court must, on the application of the defendant, order the plaintiff to furnish security for the costs of the suit. The same applies when the security has become deficient.

The provisions of the foregoing paragraph do not apply where a part of the claim is undisputed and it is of such value as to constitute sufficient security.

Article 108. If the defendant, knowing that there is a cause for which security should be furnished, has proceeded orally in the suit, or made a statement in preliminary proceedings, he may no longer apply for security.

Article 109. A defendant who has applied for security may refuse to respond to the action until the plaintiff has furnished such security.

Article 110. In a rule ordering security to be furnished, the Court must fix the amount of such security and the period within which it is to be furnished.

The amount of security is fixed on the basis of the total amount of costs likely to be disbursed by the defendant in each particular instance.

Article 111. Immediate complaint may be made against a decision relating to an application for security.

Article 112. Security must be furnished by depositing (with the competent Deposit Office) money or such negotiable securities as may be deemed

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appropriate by the Court; but if the parties have made a different contract, such contract governs.

Article 113. As regards the costs of the suit, the defendant has the same right as a pledgee on the money or negotiable securities deposited in accordance with the provisions of the foregoing Article.

Article 114. Should the plaintiff fail to furnish security within the period within which it should be furnished, the Court may, by means of a judgment, dismiss the action without prior oral proceedings, unless security be furnished prior to such judgment.

In case the Court dismisses an action by a judgment without oral proceedings according to the provisions of the preceding paragraph, it must examine the plaintiff before giving such judgment.

Article 115. Should the person who has furnished security show that there is no longer any cause for retaining it, the Court must, on application, render a rule for the cancellation of such security.

The foregoing paragraph applies also when the person who has furnished security shows that he has obtained the consent of the person entitled to security to the cancellation of same.

In case the Court has, after the completion of the action and on the application of the person who has furnished security, called upon the person entitled to security to exercise his right (on the security) within a fixed period of time without his exercising the right accordingly, the person entitled to security is deemed to have consented to the cancellation of security.

Immediate complaint may be made against the rules under the provisions

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of paragraphs 1 and 2.

Article 116. The Court may, on the application of the person who has furnished security, order, by means of a rule, the substitution of another security for the security deposited.

The provisions of the foregoing paragraph are without prejudice to the substitution by contract of another security for the security deposited.

Article 117. The provisions of Article 109, Article 110, paragraph 1, and Article 111 to the preceding Article, apply mutatis mutandis where security is to be furnished by other laws or ordinances in regard to the institution of an action.

Section III. Succour in Litigation

Article 118. The Court may, on the application of a party who has no means to defray the costs of the suit, grant succour in litigation, but this only when there is some prospect of his winning the case.

Article 119. Succour in litigation is granted in respect of each instance.

The cause for succour must be made credible.

Article 120. In regard to the action and compulsory execution, succour in litigation has the following effects:

1. Temporary release from the payment of the costs of the suit;
2. Temporary release from the payment of the fees and disbursements of the bailiff and of the advocate whom the Court has ordered to attend the party;
3. Release from the liability to furnish security for the costs of the suit.

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Article 121. Succour in litigation is effective only in favour of the person who has obtained it.

The Court orders the successor to the action to pay the costs of the suit regarding which temporary release has been granted.

Article 122. When a person who has received succour in litigation turns out to possess, or has come to possess, means to pay the costs, the Court where the record of the case exists may, either on the application of any person interested or ex officio, at any time cancel the succour and order the payment of the costs of the suit respecting which temporary release has been granted.

Article 123. The costs respecting the payment of which temporary release has been granted in favour of the person who has received succour in litigation may be collected direct from the other party when they have been charged to him. In this case the advocate or bailiff may, in respect of his fees and disbursement, make an application for the determination of the amount of costs and levy compulsory execution by virtue of the title of debt possessed by the person who has received succour in litigation.

The advocate or bailiff may in regard to his fees, and disbursements, apply in place of the party concerned for the decision under Articles 103 or 104.

Article 124. Immediate complaint may be made against the decision specified in this section.

Chapter IV

Procedure

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Section I. Oral Proceedings

Article 125. Parties to actions must orally debate the actions in Court; but with regard to cases which are to be concluded by a rule, the Court determines whether or not oral proceedings are to be held.

Where, in accordance with the proviso of the foregoing paragraph, no oral proceedings are held, the Court may examine the parties.

The provisions of the foregoing two paragraphs do not apply where there is a special provision of the contrary.

Article 126. Oral proceedings are directed by the Presiding Judge.

The Presiding Judge may permit speech, or prohibit persons who do not comply with his orders from speaking.

Article 127. In order to make clear (elucidate) the relations involved in the action, the Presiding Judge may question the parties on matters of facts and points of law, or may require them to furnish evidence.

The Associate Judges may adopt the measures specified in the foregoing paragraph after informing the Presiding Judge (of their intention to do so).

The parties may request the Presiding Judge to put any necessary questions.

Article 128. The Presiding Judge may indicate the matters (points) which the parties are to be required to elucidate in accordance with the provisions of the foregoing Article, and may order them to make preparations prior to the date for hearing.

Article 129. Should the parties object to any order of the Presiding Judge relating to the direction of the oral proceedings, or to any measure taken by the Presiding Judge or the Associate Judge under the provisions

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of Article 127 or of the foregoing Article, the Court shall decide such objection by means of a rule.

Article 130. When a Commissioned Judge is to be required to perform his functions, the Presiding Judge shall nominate such Judge.

Requisitions to be made by the Court shall, unless otherwise provided, be made by the Presiding Judge.

Article 131. In order to make clear (elucidate) the relations involved in the action, the Court may adopt the following measures:

1. Order the appearance of the parties themselves or their legal representatives;
2. Order the production of the papers (documents) involved in the action, or of writings (documents) or other things (objects) referred to in the action and which are in the hands of the parties;
3. Detain in the Court writings (documents) and other things (objects) produced by the parties or third persons;
4. Inspect evidence on the spot or order expert opinions to be submitted;
5. Requisition necessary investigations.

The provisions relating to the examination of evidence apply mutatis mutandis to the inspection of evidence on the spot, expert opinion, and requisition of investigations under the provisions of the foregoing paragraph.

Article 132. The Court may order a limitation, separation or combination of oral proceedings, or may cancel such order.

Article 133. The Court may order the re-opening of oral proceedings which have been closed.

Article 134. If any party participating in oral proceedings is not acquainted with the Japanese language or is deaf or dumb, an interpreter must be caused to be present; but deaf or dumb persons may be questioned, or be allowed to testify, in writing.

The provisions relating to experts apply mutatis mutandis to interpreters.

Article 135. The Court may prohibit the speech of parties, attorneys or assistants who are unable to deliver such speech as may be necessary for the elucidation of the relations involved in the action and adjourn the proceedings to a newly fixed date.

Should it be necessary to do so where speech has been forbidden under the provisions of the foregoing paragraph, the Court may order the attendance of an advocate.

In case the speech of a process-attorney has been forbidden or the attendance of an advocate ordered, the principal must be notified of the fact.

Article 136. At whatever stage the action may be, the Court may endeavour to effect a compromise, or require a Commissioned Judge or Requisitioned Judge to do so.

The Court or a Commissioned Judge or Requisitioned Judge may order the parties themselves, or their legal representatives, to appear with a view to arranging a compromise.

Article 137. Unless otherwise provided, means of attack or defense may be produced up to the conclusion of oral proceedings.

Article 138. If the plaintiff or defendant does not appear, or appears but does not enter upon the debates (plead) on the suit on the date for the first hearing, the particulars written in the petition or answer and other preliminary documents produced by such party may be deemed to have been orally stated, and the other party who has appeared directed to debate (plead).

Article 139. Any means of attack or defense tardily produced (produced behind time) by either party in bad faith or by gross negligence may be rejected by the Court by means of a rule either on application or ex officio, provided that it is deemed calculated to delay the conclusion of the action.

The foregoing paragraph applies also where a party fails to give necessary explanations regarding means of attack or defense the meaning of which is not clear, or does not appear on the date on which such explanation is due.

Article 140. If a party does not distinctly dispute a fact asserted by the other party in the course of oral proceedings, he is deemed to have confessed to the fact, unless in view of the general trend of the debates the fact is to be deemed to have been disputed.

A party who has professed ignorance in regard to a fact asserted by the other party is presumed to have disputed such fact.

The provisions of the first paragraph shall apply mutatis mutandis in cases where a party has failed to appear on the day assigned for oral

proceedings. This shall not apply, however, in case the party has been summoned by means of service by publication.

Article 141. If a party does not object without delay where he knows, or ought to have known, that there has been a breach of the provisions relating to procedure, he forfeits his right to object, unless it be a right such as cannot be waived.

Article 142. With regard to oral proceedings, the Court Clerk must draw up a protocol in respect of each date for hearing.

Article 143. The protocol must contain the following particulars and be signed and sealed by the Presiding Judge and the Court Clerk. If the Presiding Judge is prevented from so doing, it must be signed and sealed by one of the Associate Judges, and an entry of the fact and the reasons must be made; and if all the Judges are prevented from acting, it shall suffice for the Clerk to make an entry to that effect.

1. Designation of the case;
2. Names of the Judges and the Court Clerk;
3. Name of the Procurator present;
4. Names of the parties, attorneys, assistants and interpreter present, and of the parties absent;
5. The place where, and the date on which, oral proceedings were held;
6. A statement that the oral proceedings were held in public, or, if they were held in camera, the reason thereof.

Article 144. The protocol must describe the gist of the oral proceedings.

In particular, it must make clear the following details:

1. Compromise, acknowledgment, waiver, withdrawal and confession;
2. The oaths and testimony of witnesses and expert witnesses;
3. Result of inspection of evidence on the spot;
4. Particulars which the Presiding Judge has ordered to be entered or the entry of which has been permitted on the application of the parties;
5. Decisions rendered otherwise than in writing;
6. Pronouncement of the decision.

Article 145. Documents and photographs, or any other things that may be deemed suitable by the Court, may be cited in the protocol, annexed to the record of the case, and made part of the protocol.

Article 146. The entries in the protocol must, on application, be read aloud to, or submitted to the perusal of, the parties interested in the Court-room. In such case an entry to that effect must be made in the protocol.

Should any person interested object to the entries in a protocol, the gist of his objections must be entered in the protocol.

Article 147. Compliance with the provisions relating to the formalities of oral proceedings can only be proved by means of the protocol except where the latter has been lost or destroyed.

Article 148. Should the Court deem it necessary so to do, it may, either on application or ex officio, require a stenographer to take down

the whole or a part of the statements in oral proceedings.

Article 149. The provisions of Article 142 to the preceding Article (both inclusive) apply mutatis mutandis to the examination and questioning by the Court or the examination of persons and the taking of evidence by Commissioned Judges or Requisitioned Judges.

Article 150. Except as otherwise provided, applications and other statements under the provisions of this Code may be made either in writing or orally.

Oral statements must be made in the presence of the Court Clerk.

In the case of the foregoing paragraph the Clerk must draw up a protocol under his signature and seal.

Article 151. Any person may apply to a Court Clerk for the perusal of the record of a case, provided that it does not prevent the Court from preserving the record or from discharging duties.

With reference to the record of the case involving oral proceedings whose hearing was closed to public, only the parties and third persons who have shown the relation of interests may make the application referred to in the preceding paragraph.

The parties may apply to the Court for permission to copy the record of the case, or for the grant of an exemplification, a copy or an extract of or from it, or of a certificate concerning matters relating to the action. The same also applies to third parties who have rendered their interest therein credible.

In an exemplification, a copy or an extract of or from the record of

the case, the fact of it being an exemplification, copy, or extract must be stated, and it must bear the signature and seal of the Clerk and the seal of the Court.

Section II. Dates and Terms

Article 152. Dates (for proceedings) are fixed by the Presiding Judge.

The date on which an examination is to be made by a Commissioned Judge or a Requisitioned Judge is fixed by such Judge.

The designation of a date is made either on application or ex officio.

A change in the date of the first hearing in oral proceedings is permissible subject to the agreement of the parties even though no patent cause exists. The same applies also to a change in the date of the first hearing in preliminary proceedings.

Article 153. Only under unavoidable circumstances may a date be put down for a Sunday or any other general holiday.

Article 154. Summons for a date is made by serving a writ of summons, but in the case of persons who have appeared respecting the particular case it is sufficient to notify them of the date.

Article 155. A date commences on the case being called up.

Article 156. The calculation of a term is governed by the provisions of the Civil Code.

Should the last day of a term fall on a Sunday or any other general holiday, the term matures on the following day.

Article 157. If the time of commencement is not fixed by a decision

by which a term is designated, the term begins to run when the decision takes effect.

Article 158. The Court may extend or reduce a legal term or a term fixed by itself, but not a peremptory term.

In regard to a peremptory term, the Court may fix a supplementary term in favour of persons domiciled or resident in a distant place.

The Presiding Judge, a Commissioned Judge, or a Requisitioned Judge, may extend or reduce any term fixed by himself.

Article 159. In case a party has been unable to observe a peremptory term for a cause not imputable to himself, he may subsequently complete the act of procedure in respect to which default was made, but this only within one (1) week after the cessation of such cause.

The provisions of the foregoing Article do not apply to this term.

Section III. Service

Article 160. In the absence of special provisions to the contrary, service is effected ex officio.

Article 161. Business relating to service is transacted by the Court Clerk.

With regard to the transaction of business under the foregoing paragraph, the Clerk of the District Court having jurisdiction over the place of service may be requisitioned.

Article 162. Service is effected by means of a bailiff or through the post.

In regard to service through the post, a postman constitutes an official

effecting service.

Article 163. On persons who have appeared in respect of the particular case the Court Clerk may effect service in person.

Article 164. Except as otherwise provided, service is effected by delivering a copy of the document to be served to the person on whom it is to be served.

In case a protocol has been drawn up in lieu of the production of a document to be served, service is effected by delivering a copy of, or an extract from, the said protocol.

Article 165. Service on a person who has no capacity to do acts of procedure is effected upon his legal representative.

Article 166. Where several persons are to exercise the right of representation conjointly, it suffices to effect service upon any one of them.

Article 167. (Deleted).

Article 168. Service upon a person in prison is effected on the governor of the prison.

Article 169. Service is effected at the domicile, place of residence, place of business or office of the person on whom it is to be made; but service on a legal representative may also be made at the place of business or office of the principal (the party whose legal representative he is).

On a person respecting whom it is uncertain whether or not he has a domicile, residence, place of business or office in Japan, service may be effected at any place where he may be met with. The same applies even to a person who has a domicile, residence, place of business or office if he

does not refuse to receive such service.

Article 170. If a party or his legal representative, or process-attorney has no domicile, residence, place of business or office at the place of the Court of the suit, he must designate and notify a place and person, at the place of that Court, where and by whom service is to be received.

If a person on whom service is to be made does not give notice under the foregoing paragraph, the papers to be served on such person may be dispatched by registered post to the place where service is to be made in accordance with the provisions of paragraph 1 of the foregoing Article.

Notice under paragraph 1 may be given even when the person on whom service is to be made has a domicile, residence, place of business or office at the place of the Court of the suit.

Article 171. If the person on whom service is to be made is not found at such place, the papers may be delivered to a clerk, an employee, or an inmate of the same house who has sufficient intellect to discriminate (comprehend) things.

When the persons mentioned in the preceding paragraph, and others who should receive delivery of documents, have, without just cause (good reason), refused acceptance, such documents may be left at the place where service is to be effected.

Article 172. Where service cannot be effected in accordance with the provisions of the foregoing Article, the Court Clerk may dispatch the papers through the post under registered cover.

Article 173. When papers have been dispatched through the post in

accordance with the provisions of Article 170, paragraph 2, or of the foregoing Article, they are deemed to have been served at the time when they were dispatched.

Article 174. In order to effect service by means of a bailiff on a Sunday or any other general holiday, or before sunrise or after sunset, the permission of the Presiding Judge must be obtained.

When permission under the foregoing paragraph has been obtained, the Court Clerk must make an additional note to that effect on the paper to be served.

Service effected contrary to the provisions of the foregoing two paragraphs are valid only when the person to whom the papers are to be delivered has received them.

Article 175. Service to be effected in a foreign country is effected by the Presiding Judge entrusting the matter to the competent authorization of that country, or to the Japanese Ambassador, Minister or Consul resident there.

Article 176. (Deleted).

Article 177. The official who has effected service must draw up a document containing the particulars of the service and produce it to the Court.

Article 178. Where the domicile, residence, or other place of a party where service is to be effected, is unknown, or where in regard to service to be effected the abroad provisions of Article 175 cannot be complied with, or it is to be deemed that it will be useless to comply with them, service by publication may, on application, be made with the permission

of the Presiding Judge.

Subsequent services by publication on the same party are made ex officio.

Article 179. Service by publication is made by posting up, on the notice board of the Court, a notice to the effect that the paper(s) to be served is (are) in the custody of the Court Clerk and ready to be delivered at any time to the person on whom service is to be effected, but the service of a writ of summons is effected by posting it on the notice board.

The Court may order that (a notice of) the fact that service by publication has been made be inserted in the Official Gazette or newspapers; but in regard to service to be made abroad, the fact of service by publication having been made may be notified through the post.

Article 180. Service by publication takes effect upon the lapse of two (2) weeks from the day on which the posting up has been stated or posting up effected in accordance with the provisions of paragraph 1 of the foregoing Article; but service by publication under Article 178, paragraph 2 takes effect on the day next following the day on which the posting up has been started or posting up effected.

In case service to be effected abroad has been made by publication, the term mentioned in the preceding paragraph shall be six weeks.

The period specified in the foregoing two paragraphs may not be shortened.

Article 181. The powers of the Presiding Judge relating to service are also vested in Commissioned Judges, Requisitioned Judges and the Judges of the District Court having jurisdiction over the place of service.

Section IV. Judgment

Article 182. When an action is ripe for decision, the Court shall render a final judgment.

Article 183. When a part of the action is ripe for decision, the Court may render a final judgment in regard to such part.

The provision of the foregoing paragraph applies mutatis mutandis when one of several actions respecting which a combination of proceedings has been ordered is ripe for decision and also where the suit or cross action is ripe for decision.

Article 184. When an independent means of attack or defense or any other intermediate issue is ripe for decision, the Court may render an interlocutory judgment. The same applies also in regard to the cause (grounds) where there is a dispute concerning both the cause (grounds) and the amount of a claim.

Article 185. In giving a judgment the Court decides whether or not allegations of fact are to be deemed well-founded according to its free conviction as derived from the entire tenor of the oral proceedings and the result of the taking of evidence.

Article 186. The Court may render no judgment in regard to matters not brought forward by the parties.

Article 187. A judgment shall be given by the Judge who participated in the oral proceedings on which it is based.

When there has been a change in the Judges, the parties must orally state the result of the previous oral proceedings.

In the event of substitution of a single Judge, the Court must upon application of the party, examine the witnesses who were examined before. This shall apply to the cases where, in the event of substitution of the majority of Judges of a collegiate court, the party has applied to the Court for the examination of witnesses who were examined before.

Article 188. A decision takes effect by pronouncement.

Article 189. Pronouncement of a judgment is effected by the Presiding Judge by reading aloud the formal adjudication according to the original of the judgment.

Should the Presiding Judge deem it fit to do so, he may read aloud the reasons of the judgment or orally intimate the gist thereof.

Article 190. Judgment is pronounced within two (2) weeks calculated from the day when oral proceedings have been terminated, unless the case is complicated or otherwise attended with special circumstances.

Pronouncement of a judgment may be effected even when the parties are not in Court.

Article 191. A judgment must contain the following particulars and bear the signatures and seals of the Judges who have participated in the deliberation thereon:

1. Formal adjudication;
2. Facts and points at issue;
3. Reasons;
4. Parties and their legal representatives;
5. The Court.

The facts and points at issue must be described by summing them up on

the basis of the statements of the parties in oral proceedings.

Should any Judge be prevented from signing and sealing the judgment, another Judge must note down the reason on the judgment and sign and seal the entry.

Article 192. The judgment must be delivered to the Court Clerk without delay after pronouncement and the Clerk must make an additional entry thereon, under his seal, of the dates of pronouncement and delivery.

Article 193. The judgment must be served on the parties within two (2) weeks from the day on which it has been taken delivery of.

Service of the judgment is effected by means of an exemplification.

Article 193-2. When the Court has found any judgment made against any law and ordinance, it may give a judgment to alter it within a week after its pronouncement, provided that it has not become binding or the Court sees no necessity of further oral proceedings for the case to alter the judgment.

Such judgment of alteration shall be given without oral proceedings.

Summons on the day assigned for the pronouncement of a judgment as mentioned in the preceding paragraph, except by publication, shall be deemed to have been served at the time of posting a writ of summons to the domicile, residence or other place where service is to be effected, of a party whom to make service.

Article 194. If there is a miscalculation, clerical error or any other similar obvious error, the Court may at any time, either on application or ex officio, make a rule of rectification.

A rule of rectification must be additionally entered in the original and exemplification of the judgment; but if such an additional entry cannot be made in the exemplification, an exemplification of the rule must be made out and served on the parties.

Immediate complaint may be made against a rule of rectification, except a lawful appeal has been lodged against the judgment itself.

Article 195. If the Court has omitted to decide part of the claim, the action remains pending in Court in regard to such part of the claim.

If decision has been omitted in regard to the costs of the suit, the Court decides these costs either on application or ex officio. In this case the provisions of Article 104 apply mutatis mutandis.

Decision concerning the costs of the suit under the provisions of the foregoing paragraph loses its effect if a lawful appeal is lodged against the judgment in the suit. In such case the Court of Appeal decides all the costs of the suit.

Article 196. Should the Court deem it necessary to do so in regard to a judgment concerning a claim on a property right, it may on application or ex officio, declare it provisionally executable on or without security being furnished.

The Court may on application or ex officio declare that provisional execution may be avoided on furnishing security.

The declarations under the foregoing two paragraphs must be mentioned in the formal adjudication of the decision.

Article 197. The provisions of Articles 112, 113, 115 and 116 apply mutatis mutandis to the security referred to in the foregoing Article.

Article 198. A declaration for provisional execution loses its effect to the extent of such alteration upon the pronouncement of a judgment altering such declaration or the judgment in the suit.

In case the judgment in the suit is altered, the Court must, on the application of the defendant, order the plaintiff by the judgment (of alteration) to return what the defendant has prestated by virtue of the declaration for provisional execution and to pay compensation for the damage sustained by the defendant through the provisional execution or in order to avoid it.

When the declaration for provisional execution only has been altered, the provision of the foregoing paragraph applies to a judgment by which the judgment in the suit is subsequently altered.

Article 199. A judgment that has become irrevocable possesses the effect of excluding further litigation so far as the matters contained in the formal adjudication are concerned.

An adjudication upon the validity or invalidity of a claim asserted in set-off possesses the effect of excluding further litigation in respect of the amount to which the plea of set-off has been made.

Article 200. An irrevocable judgment of a foreign Court is valid only upon the fulfilment of the following conditions, namely:

1. That the jurisdiction of the foreign Court is not disallowed by laws or ordinances or by treaty;
2. That the defendant defeated, being a Japanese, has received service otherwise than by publication of the summons or order necessary for the commencement of the action or responded to

the action without receiving it;

3. That the judgment of the foreign Court is not incompatible with public order or good morals in Japan;

4. That there is mutual guarantee.

Article 201. An irrevocable judgment is binding on the parties, those who have succeeded to them after the conclusion of oral proceedings or the person who holds in possession the subject matter of the claim for either of them.

The irrevocable judgment respecting the person who has become plaintiff or defendant on account of another person is binding on the other person also.

The provisions of the foregoing two paragraphs apply mutatis mutandis to declarations for provisional execution.

Article 202. An illegal action, if its defect is such as cannot be made good, may be dismissed by a judgment without previous oral proceedings.

The provisions of paragraph 2 of Article 114 shall apply mutatis mutandis to the cases as mentioned in the preceding paragraph.

Article 203. When a compromise or the waiver or admission of the claim is entered in the protocol, such entry has the same effect as an irrevocable judgment.

Article 204. A rule or order takes effect on being intimated in such a manner as may be deemed suitable.

The Court Clerk must additionally enter the manner, place and date of intimation in the original of the decision and affix his seal thereto.

Article 205. Rules and orders relating to the direction of an action

may be cancelled at any time.

Article 206. Objections to a disposition made by a Court Clerk are decided by means of a rule by the Court to which the particular Clerk belongs.

Article 207. The provisions relating to judgments apply mutatis mutandis to rules and orders in so far as they are not inconsistent with the nature of the latter decisions.

Article 207-2. Decisions other than judgments (hanketsu) may be made by an Assistant Judge (hanji-ho) alone.

Section V. Interruption and Stay of Procedure

Article 208. Proceedings are interrupted on the death of a party. In such case proceedings must be taken over by his heir, the administrator of the estate, or any other person who is bound by laws and ordinances to continue the action.

So long as he is entitled to waive the succession, the heir is not allowed to take over the proceedings.

Article 209. Proceedings are interrupted if the juridical person who is a party is terminated by consolidation. In such case the juridical person formed by consolidation or the juridical person continuing in existence after consolidation must take over the proceedings.

The provision of the foregoing paragraph does not apply where the consolidation cannot be set up against the other party (to the action).

Article 210. Proceedings are interrupted when a party loses capacity for doing acts of procedure or his legal representative dies or loses the

right of representation. In such case the (succeeding) legal representative or the party who has recovered capacity for doing acts of procedure must take over the proceedings.

Article 211. Proceedings are interrupted on the termination of the duties of the trustee under trust. In such case the new trustee must take over the proceedings.

Article 212. Proceedings are interrupted if a person who, by reason of a certain capacity he possesses, is a party to the action in his name, but on another person's account, loses such capacity. In such case another person possessing the same capacity must take over the proceedings. The same applies where proceedings have been interrupted by the death of a party.

In action in which persons to be plaintiffs or defendants for the entire body of persons have been appointed in accordance with the provisions of Article 47, the proceedings are interrupted if all the parties thus appointed lose their capacity so to act. In such case the whole of the parties who have made the appointment or the parties newly appointed to act as plaintiffs or defendants must take over the proceedings.

Article 213. The provisions of Article 208, paragraph 1, Article 209, paragraph 1, and Article 210 to the preceding Article do not apply so long as there is a process-attorney.

Article 214. When a party has been adjudged bankrupt, the proceedings relating to the bankrupt estate are interrupted. If in such case the bankruptcy proceedings are abandoned before the proceedings in the action are taken

over in accordance with the Bankruptcy Law, the proceedings stand taken over by the bankrupt by operation of law.

Article 215. In case the bankruptcy proceedings have been abandoned after the proceedings relating to the bankrupt estate were taken over in accordance with the Bankruptcy Law, the latter proceedings are interrupted. In such case the bankrupt must take over the proceedings.

Article 216. (Application concerning) thetaking over of proceedings may also be made by the other party.

Article 217. On receipt of an application concerning the taking over of proceedings the Court must notify the other party of the fact.

Article 218. The Court must ex officio inquire into the application concerning the taking over of proceedings and, if it finds that there is no cause for it, dismiss the application by means of a rule.

In regard to the taking over of such proceedings as have been interrupted after the service of a decision, decision must be rendered by the Court which rendered the former decision.

Article 219. Even where the parties do not take over proceedings, the Court may ex officio order that the proceedings be prosecuted (continued).

Article 220. Should the Court be unable to perform its functions by reason of natural calamity or any other impediment, the proceedings are stayed until such impediment has ceased.

Article 221. Should the parties be unable to continue the proceedings through an impediment of indefinite duration, the Court may order them to be stayed by means of a rule.

The Court may cancel any rule made under the foregoing paragraph.

Article 222. Judgment may be pronounced even while the proceedings are interrupted.

An interruption or stay of proceedings suspends the progress of terms, the whole of which again begins to run at the time when notice has been given of the taking over of the proceedings or when these are resumed.

BOOK II.

PROCEDURE IN FIRST INSTANCE.

CHAPTER I.

Action

Article 223. An action must be instituted by filing a petition in the Court.

Article 224. In the petition the parties and their legal representatives must be named and the gist and grounds of the claim stated.

The provisions relating to preliminary pleadings apply mutatis mutandis to petitions.

Article 225. An action for confirmation may be instituted even for the purpose of having it determined whether a document purporting to prove a legal relation is authentic or not.

Article 226. An action demanding presentation in the future may be instituted only where it is necessary to make such demand in advance.

Article 227. Several claims may be made by one action but this only where they are asserted by procedure of the same kind.

Article 228. Where the petition is contrary to the provisions of Article 224 paragraph 1, the Presiding Judge must order the defect to be made good within a suitable period to be fixed by himself. The same applies where stamps are not affixed to the petition as required by the provisions of the law.

Should the plaintiff fail to make the defect good, the Presiding Judge must dismiss the action by means of an order.

Immediate complaint may be made against the order under the foregoing paragraph.

To the document embodying such complaint the petition dismissed must be attached.

Article 229. The petition must be served on the defendant.

The provisions of the foregoing article apply mutatis mutandis where the petition cannot be served.

Article 230. On the filing of an action, the Presiding Judge must fix a date for hearing and summon the parties to appear.

Article 231. In regard to a matter pending in Court, neither party may bring a fresh action.

Article 232. So long as no change is made in the basis of the claim, the plaintiff may alter the claim or the grounds of the claim, unless it is likely to cause a considerable delay in proceedings.

A change in the claim must be effected in writing.

The document referred to in the preceding paragraph must be served on the other party.

Article 233, If the Court finds a change in the claim or the grounds of the claim inadmissable, it must, either on application or ex officio, make a rule against such change.

Article 234. Where the decision depends on the formation (existence) or nonformation (non-existence) of a legal relation respecting which a dispute has arisen in the course of an action, the party may extend his claim and apply for a judgment confirming such legal relation, but this only

when the demand for such confirmation does not come under the exclusive jurisdiction of another Court.

The extension of a claim under the provision of the foregoing paragraph must be made in writing.

The document referred to in the foregoing paragraph must be served on the other party.

Article 235. Judicial demand necessary for interrupting prescription or for observing a legal term takes effect at the time when the action has been brought or when the paper required by the provision of Article 232 paragraph 2 or paragraph 2 of the foregoing article has been filed in the Court.

Article 236. Up to the time when judgment becomes irrevocable the action may be withdrawn either in whole or in part; but if in regard to the suit the defendant has filed a preliminary pleading, made a statement in preliminary proceedings or joined in oral proceedings, his consent must be obtained to the withdrawal of the action.

Withdrawal of an action must be effected in writing, without prejudice to it, however; this being done orally in the course of oral proceedings or in the presence of the Commissioned Judge in course of preliminary proceedings.

Subsequent to the service of the petition, the paper by which the action is withdrawn must be served on the defendant.

Article 237.
An action, if withdrawn, is deemed never to have been lodged, so far as the part withdrawn is concerned.

The person who has withdrawn the action subsequent to final decision having been given in the suit may not bring the same action again.

Article 238. If both parties do not appear on the date for hearing, or if they retire without pleading and do not apply for the appointment of a-

nother date for hearing within three (3) months, the action is deemed to have been withdrawn.

Article 239. Up to the time when oral proceedings are concluded the defendant may bring a cross-action in the Court where the main action is pending, unless the claim forming its subject comes under the exclusive jurisdiction of another Court and provided that it is related to the claim which is the subject of the main action or to a means of defence against it.

Article 240. The provisions relating to main actions apply mutatis mutandis to cross-actions.

Article 241. On the withdrawal of the main action, the defendant may withdraw the cross-action without the consent of the plaintiff.

CHAPTER II.

Oral Proceedings and Preparations therefore.

Article 242. Oral proceedings must be prepared for in writing.

Article 243. A preliminary pleading must be filed in the Court with an allowance for a period of time necessary to enable the other party to make preparations in regard to the matters specified therein, and the Court must serve it on the other party.

The Presiding Judge may fix a period of time within which preliminary pleadings shall be filed.

Article 244. A preliminary pleading must contain the following particulars, and be signed and sealed by the party or his attorney:—

1. The names, denominations or trade names, occupations and domiciles of the parties;

2. The names, occupations and domiciles of the attorneys;

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3. A designation of the case;

4. Means of attack and defence;

5. Statement against the claim of the other party and his means of attack and defence;

6. A designation of the annexed documents;

7. The date;

8. A designation of the Court.

Article 245. When a document held by a party is quoted in a preliminary pleading, a copy thereof must be attached to each copy of the said pleading.

If only a part of a document is necessary, it suffices to attach an extract, or to designate the document if voluminous.

Article 246. The other party must be allowed, on demand to peruse the document referred to in the foregoing article.

Article 247. Facts other than those entered in preliminary pleadings may not be asserted in oral proceedings unless the other party is present in Court.

Article 248. A translation must be annexed to each document written in a foreign language.

Article 249. In cases where the Court tries an action in a collegiate body, it may, if deems proper, order that preparatory procedure for oral proceedings shall be conducted by a Commissioned Judge for the whole or a part of the action or for particular issues thereof.

Article 250. A protocol must be drawn up of preliminary proceedings, in which the particulars specified in Article 244, Numbers 4 and 5 must be entered on the basis of the statements of the parties. In regard to evi-

dence, more especially, the tenders thereof must be made clear.

If he deems fit so to do, the Commissioned Judge may make use of the preliminary pleadings in lieu of the statements and protocol referred to in the preceding paragraph.

Article 251. If one of the parties does not appear on the date appointed, a copy of the protocol referred to in the foregoing article may be served on such party, and both parties may be summoned to appear on a date fixed anew.

Article 252. The Commissioned Judge may require the parties to file preliminary pleadings. In such case the provisions of Article 243 apply mutatis mutandis.

Article 253. If the parties do not appear on the appointed date, or if they do not file preliminary pleadings within the period fixed by the Commissioned Judge in accordance with the provisions of the foregoing article, the Commissioned Judge may conclude the preliminary proceedings.

Article 254. In oral proceedings the parties must orally state the results of the preliminary proceedings.

Article 255. Particulars not mentioned in the protocol, or in the preliminary pleadings which may take its place, cannot be asserted in oral proceedings; but this does not apply when they are particulars into which inquiries should be made by the Court ex officio, or when it is not calculated considerably to delay the procedure, or when it has been rendered credible that without any serious negligence it was not possible to produce them in preliminary proceedings.

The proviso of the foregoing paragraph is without prejudice to the provisions of Article 247.

Particulars mentioned in the petition, or in the preliminary pleadings filed prior to the preliminary proceedings, may be asserted in oral proceedings even though they are not mentioned in the protocol or in the preliminary pleadings which take its place.

Article 256. The provisions of Articles 126 to 129, 131, 133 to 141 and 238 apply mutatis mutandis to preliminary proceedings.

CHAPTER III.

Evidence.

Section 1.

General Provisions.

Article 257. The facts confessed (voluntarily admitted) by the parties in Court, and those which are patent (notorious), need not be proved.

Article 258. A tender of evidence must be made by designating the fact which it is intended to prove by its means.

Tender of evidence may be made even before the date appointed for hearing.

Article 259. Evidence tendered by a party need not be taken if the Court finds it [un-]necessary to do so.

Article 260. If there is an obstacle of an indefinite duration in the way of taking of evidence, the Court may dispense with taking it.

Article 261. (Deleted)

Article 262. The Court may requisition a Government Office or Public Office, a foreign Government Office or Public Office or a school, Chamber of Commerce, Exchange or any other organization to make such investigations as may be necessary.

Article 263. Evidence may be taken even when the parties do not appear

on the day appointed for it.

Article 264. Taking of evidence to be effected in a foreign country must be requisitioned to the competent official authorities in that country or to the Japanese Ambassador, Minister or Consul resident in the same country.

Taking of evidence effected in a foreign country, even if it contravenes the law of that country, is valid if it does not contravene this law.

Article 265. Should it be deemed necessary to do so, the Court may take evidence out of Court. In this case it may commission a constituent member of the collegiate court or requisition a District Court or Summary Court to undertake the work.

Should the Commissioned Judge find proper to have another District Court or Summary Court take evidence, he may in his turn make a requisition necessary for the purpose. In this case he must notify the Court of the suit and the parties of the fact.

Article 266. The Commissioned Judge must forward the record relating to the taking of evidence to the Court of the suit.

Article 267. Evidence for making a fact credible must be of such a nature as admits of immediate examination.

The Court may, in lieu of such evidence, require a party or his legal representative to deposit security money or to swear to the truth of his assertion.

The provisions of Articles 286 to 289 apply mutatis mutandis to the oath under the foregoing paragraph.

Article 268. Should a party or his legal representative who has deposited security money in accordance with the provision of paragraph 2 of

the foregoing article make a false statement, the security money is confiscated by the Court by means of a rule.

Article 269. Should a party or his legal representative who has been sworn in accordance with the provisions of Article 267 paragraph 2 make a false statement, he is liable to a correctional fine not exceeding five thousand (5000) Yen, to be imposed by means of a ruling of the Court by which he has been sworn.

Artile 270. Immediate complaint may be made against the rules under the foregoing two articles.

SECTION II.

Examination of Witnesses.

Article 271. Except as otherwise provided, the Court may examine any person as a witness.

Article 272. In case a Government official or ex-Government official is to be examined as a witness regarding an official secret, the Court must secure the approval of the competent supervising Government Office.

The provision of the foregoing paragraph applies mutatis mutandis to other public functionaries.

Article 273. In cases where the Prime Minister or any of other Ministers of State or a person who has occupied any such office is to be examined as a witness with respect to an offidal secret, the Court must acquire the assent of the Cabinet.

Article 274. In order to examine as a witness in regard to an official secret, a person who is or was a Member of the House of Representatives or

the House of Councillors, the Court must secure the assent of the relative House.

Article 275. Tender of a witness must be made by designating such witness.

Article 276. Summons upon a witness must contain the following particulars:

1. A designation of the parties;

2. The gist of the queries to be put to him;

3. The penalty to be imposed in the event of non-appearance.

Article 277. In case a witness fails to appear without good reason, the Court may order him to bear the costs thereby occasioned, and impose a non-penal fine on him not exceeding five thousand yen, by means of a rule. Immediate complaint may be made against such rule.

Article 277-2. In case a witness fails to appear without good reason, he shall be punished with fine not exceeding five thousand yen or detention.

Any person who has violated the provisions of the preceding paragraph may be punished, according to the circumstances, both with fine and detention.

Article 278. The Court may order the production of a witness who, without good reason, fails to appear.

The provisions of the Code of Criminal Procedure relating to production apply mutatis mutandis to production under the foregoing paragraph.

Article 279. A Commissioned Judge or Requisitioned Judge may be required to examine a witness:

1. If the witness is not bound to appear, or is for good reason unable to appear, in the Court of the suit;

2. If undue expense or time would be required for the witness to appear in the Court of the suit;

Article 280. A witnessmy refuse to testify if the required testimony relates to matters which fears may expose him, or the persons mentioned be-

low, to criminal prosecution or punishment; and also if it relates to matters calculated to bring disgrace upon them:___

1. The spouse, blood-relations within the fourth degree of relationship or relations by affinity within the third degree of relationship of the witness or a person who was in any of the aforesaid relationship with the witness;

2. The guardian or ward of the witness;

3. A person who is the employer of the witness.

Article 281. A witness may refuse to testify:

1. In cases mentioned in Articles 272 to 274;

2. When he is questioned as to facts which he, being, or having been, a doctor, dentist, apothecary, druggist, mid-wife, advocate, patent attorney, counsel, notary public or an occupant of a post connected with religion or worship, has obtained knowledge of in the exercise of his professional duties and which he should keep secret;

3. When he is questioned in matters relating to a technical or professional secret.

The provisions of the foregoing paragraph do not apply where the witness has been released from his duty of secrecy.

Article 282. The ground on which testimony is refused must be rendered credible.

Article 283. With the exception of the case of Article 281 paragraph 1, Number 1, the Court of the suit decides on the propriety of the refusal to testify, after examining the parties.

Immediate complaint may be made by the parties and or witnesses against

decisions rendered in connection with their refusal to testify.

Article 284. The provisions of Articles 277 and 277-2 shall apply mutatis mutandis in case where a witness refuses, without reason, to testify after a decision ruling his refusal to testify to be unfounded has became irrevocable.

Article 285. The Presiding Judge must cause each witness to be sworn before examination; but when a special reason exists, the oath may be administered subsequent to examination.

Article 286. The oath must be administered with due solemnity and while standing.

Article 287. Prior to the oath being administered, the Presiding Judge must instruct the witness as to the nature of an oath, and warn him of the penalties attaching to false testimony (perjury).

Article 288. The witness must be sworn by causing him to read the form of oath aloud and sign and seal the same; but if the witness is unable to read it aloud the Presiding Judge may do so instead.

The written oath must contain a statement to the effect that the witness will conscientiously speak the truth, the whole truth and nothing but the truth. (i.e. "concealing nothing and adding nothing").

Article 289. When the following persons are to be examined as witnesses, they may not be sworn:

1. Persons under sixteen years of age;
2. Persons who are unable to comprehend the nature of an oath.

Article 290. When persons who come within the purview of Article 280, but who do not exercise their right to refuse testimony, are examined as witnesses, the formality of placing them under oath may be dispensed with.

Article 291. A witness may refuse to be sworn when he is to be examined relative to matters in which he himself is, or any of the persons specified in Article 280 are, vitally interested.

Article 292. When a witness has been examined without being sworn, the fact and reason must be entered in the protocol.

Article 293. The provisions of Articles 277, 277-2, 282 and 283 shall apply mutatis mutandis where a witness refuses to be sworn.

Article 294. A witness shall first be examined by the party who has applied for the summon of him, and after the examination has concluded, the other party may examine him.

The presiding judge may examine a witness after the examination by parties has concluded.

The presiding judge may, if he deems necessary, examine a witness for himself or permit any of the parties to examine him at any time.

The presiding judge may restrict any examination by either party, in cases where it is the repetition of an examination already made or relates to a matter which has no relevancy to the issues, or otherwise he thinks it especially necessary to make such restriction.

The associate judge may examine a witness upon intimating the presiding judge.

Article 295. The parties may object to the permission, disallowance or restriction of an examination mentioned in the provisions of the preceding Article. In this case, the objection shall be decided by the Court.

Article 296. Should he deem it necessary so to do, the presiding judge may order witnesses to be confronted with each other.

Article 297. Should he deem it necessary so to do, the presiding judge may require a witness to write words or do any such other act as may be found necessary.

Article 298. Should he deem it necessary so to do the Presiding Judge may permit the witnesses to be subsequently examined to remain in the Court-room.

Article 299. Witnesses may not testify from documents except with the permission of the Presiding Judge.

Article 300. When witnesses are examined by a Commissioned Judge or Requisitioned Judge, the duties of the Court and the Presiding Judge are performed by such Judge, but decision on an objection under the provisions of Article 295 is given by the Court of the suit.

Section III

Expert Evidence

Article 301. Except as otherwise provided, the provisions of the foregoing Section apply mutatis mutandis to expert evidence.

Article 302. Persons who are possessed of erudition and or experience necessary for giving expert evidence are bound to give such evidence.

No persons who are in the same position as those who may refuse to testify or be sworn in accordance with the provisions of Articles 289 or 291, or who are mentioned in Article 289, may be expert witnesses.

Article 303. No expert may be compulsorily produced.

Article 304. Experts are appointed by the Court of the suit or the Commissioned or Requisitioned Judge.

Article 305. If circumstances exist which are calculated to prevent an expert from faithfully giving an opinion, a party may refuse him before the expert has made a statement relative to the points on which his opinion is required, or even after he has done so if the ground for refusal has subsequently come into being or the party has subsequently obtained knowledge of the existence thereof.

Article 306. A motion of refusal must be made to the Court of the suit or the Commissioned Judge or Requisitioned Judge.

The ground for refusal must be rendered credible.

No objection may be raised to a rule holding the refusal reasonable. Immediate complaint may be made against a rule finding it unreasonable.

Article 307. The written oath must contain an entry to the effect that the expert swears to give his opinion conscientiously and faithfully.

Article 308. The Presiding Judge may require several experts to express their opinion conjointly or separately either in writing or orally.

Article 309. Examination of persons relating to facts of which knowledge has been obtained by means of special erudition and or experience is governed by the provisions relating to the examination of witnesses.

Article 310. Should it be deemed necessary so to do, the Court may requisition a Government Office or Public Office or a foreign Government Office or Public Office or a juridical person possessed of adequate equipment to furnish expert opinion. In this case the provisions of this Section, with the exception of those relating to oaths, apply mutatis mutandis.

Should it be deemed necessary so to do in the case of the preceding paragraph, the Court may require a person designated by such Government

Office, Public Office or juridical person to explain the written statement of expert opinion.

Section IV.

Documentary Evidence

Article 311. Documentary evidence must be tendered by producing the document, or by applying for an order for production addressed to the person in whose possession it is.

Article 312. The holder of a document may not refuse to produce it:-

1. If a party himself holds the document which he has cited in the action;

2. If the party adducing the evidence is entitled to demand that the holder deliver the document to him or to permit him to peruse it;

3. If the document has been made out for the benefit of the party adducing the evidence, or concerning a legal relation between the party adducing the evidence and the holder of the document.

Article 313. The following points must be made clear in an application for an order for the production of a document:-

1. A designation of the document;

2. The purport of the document;

3. The holder of the document;

4. The fact to be proved;

5. The ground of the liability to produce the document.

Article 314. Should it find an application for an order for the production of a document reasonable, the Court shall, by means of a rule, order

the holder to produce such document.

Where a third person is to be ordered to produce a document, such third person must be examined.

Article 315. Immediate complaint may be made against a rule on an application for an order for the production of a document.

Article 316. If a party does not comply with an order for the production of a document, the Court may deem the allegation of the other party relating to such document to be true.

Article 317. Should a party, with the object of hindering its use by the other party, destroy a document which he is bound to produce, or otherwise render it unfit for use, the Court may deem the allegation of the other party relating to such document to be true.

Article 318. Should a third party fail to comply with an order for the production of a document, the Court may, by means of a rule, impose upon him a correctional fine not exceeding five thousand (5,000) yen. Immediate complaint may be made against such rule.

Article 319. The provisions of Article 311 to the contrary notwithstanding, documentary evidence may be tendered by applying for requisitioning the holder of a document to forward it, except where a party is entitled by the provisions of laws and ordinances to the delivery to him of an exemplification or a copy of the document.

Article 320. Should the Court deem it necessary so to do, it may retain a document which has been produced or forwarded.

Article 321. When a Commissioned Judge or Requisitioned Judge is

required to take evidence in regard to a document in accordance with the provisions of Article 265, the Court may fix upon the particulars to be entered in the protocol of the Commissioned Judge or Requisitioned Judge.

A copy of, or an extract from, the document must be annexed to the protocol referred to in the foregoing paragraph.

Article 322. A document must be produced or forwarded in the form of the original, an exemplification or a certified copy.

The provisions of the foregoing paragraph to the contrary notwithstanding, the Court may order the original to be produced or forwarded.

When a party has cited a document, the Court may require him to produce a copy of, or an extract from, same.

Article 323. A document, if its form and purport are such that it purports to have been made out by a Government official or some other public functionary in the exercise of his official functions, is presumed to be an authentic public document.

If there is a doubt as to the authenticity of a public document, the Court may ex officio make inquiries of the Government Office or Public Office concerned.

Article 324. The provisions of the foregoing Article apply mutatis mutandis to documents purporting to be made out by a foreign Government Office or Public Office.

Article 325. A private document must be proved to be authentic.

Article 326. A private document is presumed to be authentic if it bears the signature or seal of the party concerned or of his representative.

Article 327. The authenticity of a document may also be proved by a

comparison of specimens of handwriting or impressions of seals.

Article 328. The previsions of Article 311, Articles 314 to 317 and Articles 319 to 321 apply mutatis mutandis to the production or forwarding of documents or other objects bearing handwriting or seal-impressions to be used for comparison.

Should a third person fail, without good reason, to comply with an order for production under the provisions of the foregoing paragraph, the Court imposes upon him, by means of a rule, a correctional fine not exceeding five thousand (5,000) yen. Against such rule immediate complaint may be made.

Article 329. If there is no appropriate handwriting for comparison, the Court may order the other party to write down words in order to be used for comparison.

If the other party, without good reason, does not comply with the order of the Court under the provisions of the foregoing paragraph, the Court may deem the allegation of the party adducing the evidence in respect to the authenticity of the document to be true. The same applies where the writing has been done in a disguised hand.

Article 330. The original, a copy of, or an extract from, a document used for comparison must be annexed to the protocol.

Article 331. If a party or his attorney in bad faith or by gross negligence disputes the authenticity of a document contrary to the truth, the Court inflicts on him by means of a rule a correctional fine not exceeding five thousand (5,000) yen.

Immediate complaint may be made against such rule.

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If in the case of the foregoing paragraph the party or his attorney admits the authenticity of the document during the pendency of the action, the Court may, according to circumstances, cancel the rule under the foregoing paragraph.

Article 332. The provisions of this Section apply mutatis mutandis to objects made for evidential purposes but which are not documents.

Section V

Evidence by Inspection

Article 333. Evidence by inspection must be tendered by designating the object to be inspected.

Article 334. Should a Commissioned Judge or Requisitioned Judge deem it necessary to do so when taking evidence by inspection, he may order expert evidence to be given.

Article 335. The provisions of Article 311, Articles 314 to 317 and Articles 319 to 321 apply mutatis mutandis to the production or forwarding of the object to be inspected.

Should a third person without good reason not comply with an order for production under the provisions of the foregoing paragraph, the Court impeses upon him by means of a rule a correctional fine not exceeding five thousand (5,000) yen. Immediate complaint may be made against such a rule.

Section VI

Examination of Parties

Article 336. The Court may, on application or ex officio, examine the

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parties themselves if it is unable to reach a conviction by taking (other) evidence. In this case the parties may be caused to take the oath.

Article 337. Should he deem it necessary so to do, the Presiding Judge may order the parties to be confronted with each other or with witnesses.

Article 338. If a party, without good reason, does not respond to a summons, or refuses to be sworn or to testify, the Court may deem the allegation of the other party relating to the matter respecting which he is to be examined to be true.

Article 339. If a party who has been sworn has given false testimony, the Court imposes on him, by means of a rule, a correctional fine not exceeding five thousand (5,000) yen. Immediate complaint may be made against such rule.

The provisions of Article 331, paragraph 2, apply mutatis mutandis to the rule under the foregoing paragraph.

Article 340. When a party has been examined, his statement and whether he has been sworn or not must be entered in the protocol.

Article 341. The provisions of Article 336 to the foregoing Article apply mutatis mutandis to the legal representatives representing parties in actions, but this is without prejudice to the parties themselves being examined.

Article 342. The provisions of Article 276, Article 279, Articles 285 to 289, Articles 294, 295, 297, 299 and 300 apply mutatis mutandis to the examination of persons under this Section.

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Section VII

Perpetuation of Evidence

Article 343. Should the Court consider that there are circumstances which would make it difficult to use evidence unless it be taken in advance, it may, on application, take the evidence in accordance with the provisions of this Chapter.

Article 344. A motion for perpetuation of evidence must be made to the Court in the particular instance in which such evidence is to be used if the action is already pending. Prior to the institution of the action, however, it is to be made in the District Court or Summary Court having jurisdiction over the place of residence of the person to be examined or the person holding the document in his possession or the place where the object to be inspected is located.

In cases of urgency the motion for perpetuation of evidence may be made to the District Court or Summary Court mentioned in the foregoing paragraph even after the institution of the action.

Article 345. The following points must be made clear in the motion for perpetuation of evidence:-

1. A designation of the other party;
2. The fact to be proved;
3. The evidence;
4. The reason for requiring perpetuation of evidence.

The reason for requiring the perpetuation of evidence must be rendered credible.

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Article 346. A motion for the perpetuation of evidence may be made even where it is impossible to designate the other party. In this case the Court may appoint a special representative for the prospective other party.

Article 347. Should it be deemed necessary so to do, the Court may, ex officio, make a rule for the perpetuation of evidence, but this only during the pendency of the Court.

Article 348. No objection may be raised to a rule for the perpetuation of evidence.

Article 349. For the date for taking evidence the applicant and the other party must be summoned except in cases of urgency.

Article 350. The record relating to the perpetuation of evidence must be forwarded to the Court where the record of the principal action exists.

Article 351. The costs involved in perpetuating evidence form a part of the costs of the suit.

Article 351-2. In case the parties have made a motion for the examination of a witness in oral proceedings who was examined in the procedure respecting the perpetuation of evidence, the Court shall make such examination.

Chapter IV

Special Provisions for the Procedure in Summary Courts

Article 352. In Summary Courts, matters in controversy shall be determined speedily by informal procedure.

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Article 353. An action may be instituted orally.

Article 354. Both parties may voluntarily appear in Court and enter upon oral proceedings in an action. In this case the action is instituted by oral statement.

Article 355. In case the defendant makes, by a cross-action, a demand coming under the jurisdiction of a District Court, the Summary Court must, on the demand of the other party, transmit the main action and cross-action to the District Court by means of a rule. In this case the provisions of Articles 52 and 34 apply mutatis mutandis.

No objection may be raised against a rule of transmission.

Article 356. A party to a civil dispute may make an application for a compromise to the Summary Court of the place where the general forum of the other party exists, stating the gist and grounds of the claim and the actual circumstances of the dispute.

On a compromise being arranged, it must be entered in the protocol.

In default of a compromise, the Court, on the application of both parties who have appeared on the date for negotiations for compromise, orders oral proceedings in the action to be entered upon forthwith. In this case, the person who has made an application with a view to arranging a compromise is deemed to have instituted the action at the time when such application was made, and the costs of the (intended) compromise constitute part of the costs of the suit.

Should either the applicant or the other party fail to appear on the date set for negotiation for compromise, the Court may deem compromise impossible.

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Article 356-2. Summons on the appointed date may be effected by any of the methods deemed appropriate other than those prescribed in Article 154. In this case, legal sanctions or any other prejudices owing to the failure to appear on the appointed date shall not be put on any of the parties, witnesses or expert witnesses who do not appear on the date.

Article 357. No preparation need be made in writing for oral procedure. Preparation in writing is necessary for any matters upon which the opposing party seems unable to make statements without preparation. In this case an information thereof can, prior to oral proceedings, be made direct to the opposing party in place of presentation of preparatory pleadings.

The provisions of Article 247 apply mutatis mutandis where no notice has been given under the provisions of the foregoing paragraph.

Article 358. The provisions of Article 138 shall apply mutatis mutandis to the cases where either the plaintiff or the defendant fails to appear on the appointed date for oral proceedings, or although he appears on that date, makes no oral statement on the merits of the case.

Article 358-2. Except in cases where any of the parties objects to, any matter to be entered in a protocol may be omitted if the judge permits it.

The provisions of the preceding paragraph shall not apply to the observance of provisions concerning the formalities of oral proceedings, nor to compromise, admission as well as waiver of a claim, withdrawal of an action and confession.

Article 358-3. The Court may, if it deems proper, have written statements presented in substitution for examinations of witnesses or expert witnesses.

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Article 358-4. The Court may, if it deems necessary, cause any of the judicial commissioners to give assistance in effecting a compromise or to attend at the trial to take his opinion as to the case.

Article 358-5. The number of judicial commissioners shall be one or more with regard to each case.

The judicial commissioners shall be designated by the Court for every case from among persons who have been appointed as such in advance every year by a District Court.

The qualifications and number of the persons to be appointed in accordance with the provisions of the preceding paragraph, and other matters necessary for making appointment referred to in the said paragraph shall be determined by the Supreme Court.

Article 358-6. Judicial commissioners are entitled to receive travelling expenses, daily allowances and charges for lodging whose sum is to be fixed by the Supreme Court.

Article 359. In stating the facts and reasons in a judgment, it is sufficient to describe the gist and grounds of the claim, the presence or absence of such grounds, and the gist of the plea on the basis of which the claim is dismissed.

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BOOK III.

RECOURSE.

CHAPTER I.

APPEAL.

Article 360. Appeal (KOSO) may be lodged against a final judgment given by a District Court in first instance or against a final judgment given by a Summary Court, unless both parties have agreed that neither of them shall appeal with the reservation of the right to lodge re-appeal (jokoku) after the final judgment.

The provisions of Art. 25 par. 2 apply mutatis mutandis to the agreement under the preceding paragraph.

Article 361. No independent appeal may be lodged against a decision relating to the costs of the suit.

Article 362. Decisions preceding a final judgment are subject to the adjudication of the Court of Appeal except these to which no objection can be raised or which may be objected to by means of complaint.

Article 363. Appeal may be withdrawn so long as final judgment in appeal instance has not been given.

The provisions of Art. 236 pars. 2 and 3, Art. 237 par. 1 and Art. 238 apply mutatis mutandis to the withdrawal of appeal.

Article 364. The right to appeal may be waived.

Article 365. Waiving of the right to appeal must be effected by a statement addressed to the Court of first instance if it is before appeal has been lodged, or to the Court of Appeal if after appeal has been lodged.

Waiving of the right to appeal, after appeal has been lodged, must be effected simultaneously withdrawal of the appeal.

A paper by which the right to appeal is waived must be served on the other party.

Article 366. Appeal must be lodged within two (2) weeks from the day on which the judgment (to be attacked) has been served, without prejudice, however, to appeal being validly lodged prior to the said term.

The term specified in the foregoing paragraph is peremptory.

Article 367. Appeal must be lodged by filing a petition of appeal in the Court of first instance or the Court of Appeal.

A petition of appeal must contain the following particulars:—

1. The parties and their legal representatives;
2. A designation of the judgment in first instance and a statement that appeal is made against such judgment.

Article 368. The provisions relating to preliminary pleadings apply mutatis mutandis to petitions of appeal.

Article 369. On a petition of appeal being filed in the Court of first instance, the Court Clerk must annex it to the record of the suit and forward the same to the Clerk of the Court of Appeal without delay.

On a petition of appeal being filed in the Court of Appeal, the Court Clerk must, without delay, make a demand upon the Clerk of the Court of first instance to forward the record of the suit to him.

Article 370. The provisions of Art. 228 apply mutatis mutandis where the petition of appeal contravenes the provisions of Art. 367 par. 2, or stamps are not affixed to the petition of appeal as required by the law, or the petition of appeal cannot be served.

Article 371. The petition of appeal must be served on the appellee.

Article 372. Even after his right of appeal has terminated, the appellee may lodge an incidental appeal so long as the oral proceedings are not concluded.

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Article 373. An incidental appeal loses its effect when the appeal is withdrawn or dismissed as being illegal. But it is deemed an independent appeal if it fulfils the conditions essential to an appeal.

Article 374. The provisions relating to appeals apply to incidental appeals.

Article 375. So far as the part of the judgment in first instance with which no dissatisfaction is expressed is concerned, the Court of Appeal may, on application, grant, by means of a rule, a declaration for provisional execution.

Article 376. No objection may be raised to a decision in appeal instance relating to provisional execution.

Against a rule dismissing the application under the foregoing article immediate complaint may be made.

Article 377. Oral proceedings are held in so far only as an alteration is demanded by the parties in the judgment in first instance.

The parties shall state the results of the oral proceedings in first instance.

Article 378. Except as otherwise provided, the provisions of Chapter I to Chapter III of the foregoing Book apply mutatis mutandis to the procedure in appeal instance.

Article 379. Acts of procedure done in first instance have effect in appeal instance also.

Article 380. Preparatory proceedings taken in first instance have effect in appeal instance also.

Article 381. In appeal instance the parties may not affirm that the Court of first instance had no jurisdiction, unless it be exclusive jurisdiction.

Article 382. A cross-action may be instituted only with the consent of the other party.

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If the other party has, without reserving an objection, entered upon oral proceedings in the suit of a cross-action he is deemed to have consented to the institution of the cross-action.

Article 383. An illegal appeal, if its defects are such as cannot be made good, may be dismissed by a judgment without prior oral proceedings.

Article 383, Para 2. The provisions of paragraph 2 of Article 114 shall apply mutatis mutandis to the cases mentioned in the preceding paragraph.

Article 384. The Court of Appeal must dismiss the appeal if it finds the judgment in first instance reasonable.

The appeal must be dismissed if the judgment, though unjustifiable for the reasons given therein, is justifiable for other reasons.

Article 384-2. In cases of the Court of Appeal dismissing an appeal according to the provisions of the first paragraph of the preceding Article, it may, as it thinks the appellant lodged the appeal with the only intention of delaying the conclusion of the suit, order him to pay the amount under ten times as much as that of revenue stamps the written appeal bears.

The decision as mentioned in the preceding paragraph shall be stated in the formal adjudication.

The decision as mentioned in the first paragraph shall lose its effect by the pronouncement of a judgment altering the judgment on its principal matter.

The Court of re-appeal (jokoku) may alter the decision as mentioned in the first paragraph, even in case it dismisses the re-appeal.

Article 385. An alteration in a judgment in first instance may be effected only within the limit of the dissatisfaction expressed.

Article 386. The Court of Appeal must quash the judgment in first instance if it finds such judgment unreasonable.

Article 387. If the procedure for the judgment in first instance is in contravention of the law, the Court of Appeal must quash the same.

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Article 388. In case a judgment in first instance dismissing an action as illegal is quashed, the Court of Appeal must refer the case back to the Court of first instance.

Article 389. In case a judgment in first instance dismissing a judgment in first instance is quashed by the Court of Appeal otherwise than in the case of the preceding article, if further oral proceedings are required in regard to the matter, the Court of Appeal may refer it back to the Court of first instance.

Where the case is referred back on the ground that the proceedings in first instance were in contravention of the law, the proceedings are deemed thereby cancelled.

Article 390. If a judgment in first instance is quashed by reason of error of jurisdiction, the Court must transmit the case to the competent Court by means of a judgment.

Article 391. In stating the facts and reasons in a judgment, the judgment in first instance may be cited.

Article 392. Upon the term for recourse maturing without recourse being taken after the completion of the action, the Court Clerk must annex an exemplification of the judgment, or of the order under the provisions of Art. 370, to the record of the case and forward the same to the Clerk of the Court of first instance.

CHAPTER II.

RE-APPEAL

Article 393. Re-appeal (jokoku) may be made to the Supreme Court against the final judgment in the second instance or in the first instance rendered by a High Court, and to the High Court against the final judgment in the second instance rendered by a District Court.

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In the cases mentioned in the proviso of the first paragraph of Article 360, Re-Appeal may be made directly to the Supreme Court against the judgment of a District Court and to the High Court against the judgment of a Summary Court.

Article 394. Re-appeal may be made only on the ground that the judgment attacked is in contravention of law or ordinance.

Article 395. A judgment is always in contravention of law or ordinance:—

1. If the Court adjudicating was not constituted as prescribed by law;
2. If a judge, precluded by law from participating in the judgment, participated therein;
3. If the provisions relating to exclusive jurisdiction were contravened;
4. If there was a defect in the powers of the legal representative or process-attorney or the authority of an attorney for doing acts of procedure;
5. If the provisions for holding oral proceedings in public were contravened;
6. If the judgment is not accompanied by reasons or the reasons are inconsistent.

The provisions of No. 4 of the foregoing paragraph do not apply if there has been a ratification in accordance with the provisions of Art. 54 or Art. 57.

Article 396. Except as otherwise provided, the provisions of the foregoing Chapter apply mutatis mutandis to re-appeal and proceedings in re-appeal instance.

Article 397. On receipt of the record of the case from the Clerk of the original Court, the Clerk of the Court of re-appeal must notify the parties of the fact without delay.

Article 398. If the grounds of re-appeal are not stated in the petition of reappeal, a statement thereof must be filed within thirty (30) days from the day on which notice under the preceding article has been received.

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Article 399. If the re-appellant in contravention of the provisions of the foregoing article does not file a statement of grounds of re-appeal, the Court of re-appeal may, by means of a judgment, dismiss the re-appeal without prior oral proceedings.

Article 400. The Presiding Judge may fix a reasonable period of time and order the re-appellee to file an answer in writing within such period.

Article 401. If in the light of the petition of re-appeal, the statement of grounds of re-appeal, the answer and other documents, the Court of re-appeal finds the re-appeal unreasonable, it may, by means of a judgment, dismiss the re-appeal without prior oral proceedings.

Article 402. The Court of re-appeal carries on investigations only within the limits of dissatisfaction as expressed in the grounds of re-appeal.

Article 403. Facts lawfully found by the original judgment are binding on the Court of re-appeal.

Article 404. In the case of a re-appeal under the provisions of Art. 395 par. 2 the Court of re-appeal may not quash the original judgment on the ground that the facts mentioned in the latter were found (determined) in contravention of the law.

Article 405. The provisons of Art. 402 to the preceding article do not apply to matters which the Court is bound to inquire into ex officio.

Article 406. In so far only as the part of the original judgment with which no dissatisfaction is expressed is concerned, the Court of re-appeal may, on application, grant a declaration for provisional execution.

Article 406-2. When a High Court is the Court of re-appeal, it must, in cases specified by the Supreme Court, transfer the case to the Supreme Court by means of a rule.

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Article 407. If the re-appeal is found reasonable, the Court of re-appeal must quash the original judgment and refer the case back to the original Court, or transfer it to another Court of the same grade.

The Court to which the case has been referred back or transferred must adjudicate thereon on the basis of fresh oral proceedings, but it is bound by the findings in fact and law by reason of which the judgment has been set aside by the Court of re-appeal.

No Judge who participated in the former judgment may participate in the decision referred to in the foregoing paragraph.

Article 408. The Court of re-appeal must itself decide the case:_____

1. If the judgment is to be quashed on the ground that law or ordinance was misapplied to the facts ascertained, and the case is mature for decision on the basis of those facts;

2. If the judgment is to be quashed on the ground that the case does not come within the jurisdiction of the Court.

Article 409. When a judgment for referring back or transferring a case has been rendered, the Clerk of the Court of re-appeal must annex an exemplification of the judgment to the record of the case and forward the same to the Clerk of the Court to which the matter is referred back or transmitted.

Article 409-2. A further re-appeal may be made to the Supreme Court against the final judgment rendered by a High Court in a re-appeal instance but only on the ground that the improper adjudication is made in the said judgment to the effect that a law, ordinance, regulation or disposition is, or is not, constitutional.

Article 409-3. With respect to the re-appeal under the preceding Article and the procedure of its re-appeal instance, the provisions concerning the re-appeal against a final judgment rendered in the second instance or in the first instance shall apply mutatis mutandis, in so far as they are not inconsistent with the nature

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of the matters mentioned above provided that "the original judgment" in Article 403 shall read "the final judgment rendered by a District Court in the second instance or the final judgment of a Summary Court."

Article 409-4. Objections may be filed to the Court of re-appeal against the judgment it gave, only on the ground that the judgment is in contravention of law and ordinance.

Article 409-5. Such objections must be raised within ten days from the day when the judgment has been served. It shall not, however, prejudice the effect of objections made prior to this term.

The term as mentioned in the preceding paragraph shall be a peremptory term.

Article 409-6. The Court of re-appeal, if it considers an objection reasonable, must make a judgment of alteration.

If it considers an objection groundless, it may reject it by means of a rule.

The provisions of the second paragraph of Article 193-2 shall apply mutatis mutandis to the case mentioned in the first paragraph.

CHAPTER III

Complaint

Article 410. Complaint may be made against a rule or order by which an application relating to procedure has been dismissed without prior oral proceedings.

Article 411. In case a rule or order has been given in a matter that cannot be adjudicated on by a rule or order, complaint may be made against it by the parties.

Article 412. A party dissatisfied with a decision made by a Commissioned Judge or a Requisitioned Judge may lodge complaint with the Court of the suit, but this only when it would be possible to make complaint against it were it

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given by the Court of the suit.

Complaint may be made against a decision upon an objection.

The provision of par. 1 applies mutatis mutandis to a judgment made by a Commissioned Judge or Requisitioned Judge in a matter pending in the Supreme Court or High Court.

Article 413. Against a rule of the Court of complaint, a farther complaint may be made only on the ground that it is in contravention of law or ordinance.

Article 414. The provisions of Chapter I, in so far as these are not inconsistent with their nature, apply mutatis mutandis to complaints and the procedure in the Court of complaint.

The provisions of the preceding Chapter, however, apply mutatis mutandis to complaints under the foregoing article and the procedure relating to them.

Article 415. Immediate complaint must be made within one (1) week from the day on which notice has been given of the decision.

The term referred to in the foregoing paragraph is peremptory.

Article 416. Complaint must be made either in writing or orally to the original Court or the Court of complaint.

Should the Court of complaint think fit to do so on receipt of complaint, it may forward the matter to the original Court.

Article 417. Should the original Court find reasonable a complaint which has been made to it, or according to the provisions of par. 2 of the foregoing article, forwarded to it, it must rectify the decision attacked.

Should the complaint be found unreasonable, the matter must be forwarded to the Court of complaint with an opinion attached thereto.

Article 418. Complaint, only when it is immediate complaint, has the effect of suspending execution.

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The Court of complaint, or the Court or Judge which or who has given the original decision, may suspend the execution of the original decision until a rule shall have been given on the complaint, or order any other necessary measure.

Article 419. Where oral proceedings are not ordered in regard to the complaint, the Court of complaint may examine the complainant and other persons interested.

Article 419-2. A complaint (kokoku) may be made to the Supreme Court against a rule or order from which a protest is not possible, but only on the ground that an improper adjudication is made in the said decision to the effect that a law, ordinance, regulation or disposition is, or is not, constitutional.

The period for lodging of a complaint mentioned in the preceding paragraph shall be five days.

The term referred to in the preceding paragraph shall be a peremptory term.

Article 419-3. With respect to a complaint under the foregoing Article and the procedure concerning it, the provisions of the second paragraph of Article 418, as well as the provisions concerning the re-appeal under Article 409-2 and the procedure of its re-appeal instance in so far as they are not inconsistent with the nature of matters above-mentioned shall apply mutatis mutandis.

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BOOK IV.

REMEDIAL OF PROCEDURE.

Article 420. A final judgment that has become irrevocable may be attacked by an action for renewal of procedure, unless the cause therefor was asserted by recourse by the party or was not asserted although it was known to exist;___

1. If the Court adjudicating was not constituted as by law prescribed;
2. If a Judge, precluded by law from participating in the decision, participated therein;
3. If there was a defect in the powers of the legal representative or process-attorney or the authority of the attorney necessary for doing acts of procedure;
4. If a Judge who participated in the decision was guilty of an offence relating to his official duties in connection with the particular case;
5. If the party was led to make a confession or prevented from producing a means of attack or defence calculated to affect the decision, always by a criminally punishable act of another person;
6. If a document or any other object used as evidence for the judgment was forged or fradulently altered;
7. If the judgment was based on the false testimony of a witness, an expert or an interpreter or a sworn party or legal representative;
8. If a civil or criminal judgment or any other decision or an administrative disposition on which the judgment was based has been altered by a subsequent decision or administrative disposition;
9. If decision was omitted respecting a material factor calculated to affect the judgment;

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10. If the judgment attacked conflicts with an irrevocable judgment previously pronounced.

In the cases of Nos. 4 to 7 of the foregoing paragraph, an action for renewal of procedure may be instituted only when a judgment of conviction or decision imposing a correctional fine has become irrevocable in regard to the punishable act or an irrevocable judgment of conviction or decision imposing a correctional fine cannot be obtained for a cause other than defective evidence.

If judgment in the suit has been given in the case in appeal instance, no action for renewal of procedure may be brought against the judgment in first instance.

Article 421. If any of the causes specified in the foregoing article exists in regard to a decision on which the judgment is based, that cause may be made the ground for renewal of procedure against the judgment even though independent means of attacking such decision are provided.

Article 422. Renewal of procedure is under the exclusive jurisdiction of the Court which has given the judgment attacked.

Actions for renewal of procedure against judgments given in the same case by Courts of different grades come under the jurisdiction of the superior Court together.

Article 423. The provisions relating to the procedure in each particular instance, in so far as these are not inconsistent with their nature, apply mutatis mutandis to the procedure in actions for renewal of procedure.

Article 424. An action for renewal of procedure must be brought after the judgment attacked has become irrevocable and within thirty (30) days from the day on which the party has obtained knowledge of the cause for renewal of procedure.

The term specified in the foregoing paragraph is peremptory.

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No action for renewal of procedure may be brought if five (5) years have elapsed after the judgment becoming irrevocable.

If a cause for renewal of the procedure arose after the judgment had become irrevocable, the term specified in the foregoing paragraph is calculated from the day on which the cause came into existence.

Article 425. The provisions of the foregoing article do not apply to actions for renewal of procedure based on a defect in authority of representation or on the fact specified in Art. 420 par. 1, No. 10.

Article 426. In the petition there must be entered:

1. The parties and their legal representatives;
2. A designation of the judgment attacked and a statement that renewal of procedure is demanded against such judgment;
3. The grounds for dissatisfaction.

Article 427. Oral proceedings and decision in the suit may be made only within the limit of the dissatisfaction expressed.

The grounds for dissatisfaction may be altered.

Article 428. Where the judgment is found reasonable even though there is a ground for renewal of procedure, the Court must dismiss the action for renewal of procedure.

Article 429. Where a rule or order that may be attacked by immediate complaint has become irrevocable, if there exists any of the causes specified in Art. 420 par. 1, an application for renewal of procedure may be made conformably with the provisions of Art. 420 to the foregoing article concerning irrevocable judgments.

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BOOK V.

SUMMARY PROCEDURE

Article 430. In regard to a claim that has for its subject the prestation of a fixed amount or quantity of money or other fungibles or negotiable securities, the Court may, on the application of the crediter, issue an order for payment, but this only when such order can be served in Japan otherwise than by service by public notification.

Article 431. Summary procedure appertains to the exclusive jurisdiction of the Summary Court of the place where the debter has his general forum, or of the competent Summary Court under the provisions of Art. 9.

Article 432. The provisions relating to actions, in so far as these are not inconsistent with its nature, apply mutatis mutandis to the application for an order for payment.

Article 433. If an application for an order for payment contravenes the provisions of Art. 430 and those relating to jurisdiction, or if view of the purport of the application the claim is clearly unfounded, the application must be dismissed. The same applies to such part if an order for payment cannot be issued in regard to a part of the claim.

No objection may be raised to a rule by which the application is dismissed.

Article 434. An order for payment is issued without examining the debtor.

The debtor may raise an objection to an order for payment.

Article 435. In an order for payment the parties and their legal representatives must be designated, and the gist and grounds of the claim described with the additional statement that if no objection be raised by the debtor within two (2) weeks from the day on which the order for payment has been served, it will, on the application of the creditor, be declared provisionally executory.

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Article 436. An order for payment must be served on the party (debtor).

Article 437. If the debtor has raised an objection before the grant of a declaration for provisional execution, the order for payment loses its effect in so far as such objection goes.

Article 438. If the debtor does not raise an objection within two (2) weeks from the day on which the order for payment has been served, the Court must, on the application of the creditor, additionally state the costs of the procedure in the order for payment and declare it provisionally executory unless an objection is made prior to the grant of such declaration.

A declaration for provisional execution must be entered in the original and exemplifications of the order for payment, and the exemplifications served on the parties.

Immediate complaint may be made against a rule by which the application for (an order for) provisional execution is dismissed.

Article 439. If the creditor does not apply for (an order for) provisional execution within thirty (30) days from the time when it has become possible for him to make such application, the order for payment loses its effect.

Article 440. When two (2) weeks have elapsed from the day on which an order for payment declared provisionally executory was served, the debtor may no longer raise an objection to the order for payment.

The term specified in the foregoing paragraph is peremptory.

Article 441. If the Summary Court finds the objection illegal, the latter must be dismissed by means of a rule even where the claim itself appertains to the jurisdiction of the District Court. Immediate complaint may be made against such ruling.

Article 442. If a lawful objection is raised to an order for payment, an action is deemed to have been brought in regard to the claim objected to at

the time when the application for the order for payment was made either in the Summary Court which has issued the order or the District Court having jurisdiction over the place of such Court, according to the value of the subject-matter of the claim. In this case the costs of the summary procedure constitute part of the costs of the suit.

In case an action is deemed to have been brought in the District Court in accordance with the provisions of the preceding paragraph, the Clerk of the (Local) Court must, without delay, forward the record of the case to the Clerk of the District Court.

Article 443. If no objection is raised to an order for payment which has been declared provisionally executory, or if a rule by which the objection is dismissed has become irrevocable, the order for payment has the same effect as an irrevocable judgment.

Article 444 to 496 (Repealed)

BOOK VI

EXECUTION

CHAPTER I

GENERAL PROVISIONS

Article 497. Execution takes place upon final judgments which have become final and conclusive or which have been declared provisionally executory.

Article 497. (2) If a judgment is to have effect in regard to persons other than the parties designated in such judgement, it may be executed also against and for such persons, unless they are interveners under the provisions of Art. 64.

As regards the grant of an executory exemplification in the case of the preceding paragraph, the provisions of Arts. 519 to 521 apply mutatis mutandis.

Article 498. A judgement does not become final and conclusive until the expriation of the term fixed for the entering or lodging of an admissible objection or recourse (except a re-appeal under Article 409-2).

A judgment is prevented from becoming final and conclusive by the entering or lodging of a protest or recourse within the prescribed term.

Article 499. Where the plaintiff or defendant demands a certificate that a judgment has become final and conclusive, the Clerk of the Court of first instance issues the same in accordance with the record.

If the suit is still pending in a higher instance, the Clerk of the Court of such instance issues the certificate in respect of such parts only of the judgment as have become final and conclusive.

Where the issue of a certification is dependent on the fact of no recourse being lodged against the judgment, a certificate of the Clerk of the

Court competent for recourse to the effect that no recourse has been lodged within the peremptory term suffices.

Article 500. Where in case a re-appeal under Article 409-2 is made or a renewal of procedure is applied for, the Court may, upon application, direct that execution shall be provisionally stayed either upon or without security being given, or that it shall be carried out upon security being given, or that compulsory measures already taken shall be annulled upon security being furnished.

A stay of execution without security is admissible only if it is rendered credible that execution would cause irreparable detriment.

The decision may be rendered without prior oral proceedings. Such decision cannot be attacked.

Articles 501 to 511. (Repealed.)

Article 512. Where recourse is lodged against a judgment declared provisionally executory, or an objection is raised against an order for payment declared provisionally executory, the provisions of Art. 500 apply mutatis mutandis.

Article 513. Where in accordance with the provisions of this Book the furnishing of security (or guarantee), or the making of a deposit, is imposed on the plaintiff or defendant, or the furnishing of security or the making of a deposit is permitted to him, it may be effected either at the District Court where such party has his general forum or at the Court of execution.

On demand, a certificate shall be issued of the security having been furnished or the deposit having been made.

The provisions of Arts. 112, 113, 115 and 116 apply mutatis mutandis to security under the provisions of para. 1.

Article 514. Execution in virtue of the judgment of a foreign Court can only take place where the admissibility thereof has been pronounced by way of a judgment of execution rendered by a Japanese Court.

The Court competent in an action for the issue of a judgment of execution is the District Court where the debter has his general forum, and, in default of any such forum, the Court in which, in conformity with the provisions of Art. 8, action may be brought against the debtor.

Article 515. The judgment of execution must be rendered without inquiring into the correctness of the decision.

An action for the issue of a judgment of execution must be dismissed:

1. If the judgment of the foreign Court is not certified to be final and conclusive;

2. If the foreign judgment does not fulfill the conditions required by Art. 200.

Article 516. Execution takes place by virtue of an exemplifications of the judgment furnished with an execution clause.

Executory exemplifications are issued by the Clerk of the Court of first instance or, where the suit is pending in a superior Court, by the Clerk of such Court.

Application for the issue of an executory exemplification may be made orally.

Article 517. The execution clause shall be placed at the end of the exemplification of the judgment.

It shall run:

"This exemplification is issued to.....(designation of the plaintiff or defendant) for the purpose of execution against.....(designation of the defendant or plaintiff)".

The execution clause shall be signed by the Court Clerk and shall be sealed with his seal and with the seal of the Court.

Article 518. No executory exemplification is issued the judgement has become final and conclusive, or has been declared provisionally executory.

In the case of judgment the execution of which is, in accordance with their contents, dependent on some condition other than that of furnishing security, an execuroty exemplification may be issued only if the creditor proves by certificates that such condition has been fulfilled.

Article 519. An executory exemplification may be issued in favour of the successors of the creditor specified in the judgment or against the universal successors of the debtor specified in the judgment, provided that the succession is patent to the Court or is proved by certificates. If such succession is patent to the Court, this fact shall be mentioned in the execution clause.

Article 520. In the cases provided for in Art. 518 par. 2 and in Art. 519, the executory exemplification may be issued only upon the order of the Presiding Judge.

Prior to such order the Presiding Judge may hear the debtor orally or in writing.

Such order shall be mentioned in the execution clause.

Article 521. Where the proof required by Art. 518 par. 2, and by Art. 519, cannot be furnished, the creditor may institute an action in the Court of the suit in first instance for the issue, under the judgment, of an execution clause.

Article 522. Objections raised by the debtor regarding the issue of the execution clause are decided by the Court whose Clerk issued the execution clause.

Prior to the decision, the Presiding Judge may make a provisional direction: in particular, he may direct a provisional stay of execution on security being furnished or without it, or may direct that execution is to be continued on security being furnished.

Article 523. Where the creditor demands two or more executory exemplifications or where he, for a second time, demands an executory exemplification of the same judgment without returning the one previously issued, the same may not be issued excepting by order of the Presiding Judge.

Prior to such order the Presiding Judge may hear the debtor orally or in writing.

Where two or more executory exemplifications are issued, or an exemplification is a second time issued, the adversary, provided that he has not been heard, shall be notified thereof.

Exemplifications issued in duplicate or more counterparts, and exemplifications issued a second time, are to be expressly designated as such.

Article 524. Prior to an executory exemplification being issued it shall be noted on the original of the judgment for which party, the plaintiff or defendant, and on what day and at what hour the exemplification is issued.

Article 525. The effect of an executory exemplification is not restricted to the district of the Court which has issued the same, but extends to all district within the jurisdiction of the Empire.

Article 526. In virtue of two or more executory exemplifications the creditor is entitled to enforce execution at different places or in different ways at the same time; provided that by the enforcement of the execution at one place or in one way he cannot obtain complete satisfaction.

Article 527. Where the creditor has neither residence nor business premises at the place where the District Court in the district of which

execution is to be effected has its seat, he shall elect a provisional domicile at the place where such Court has its seat and shall notify it thereof.

Article 528. Execution may not be started unless the persons for and against whom it is to be effected are designated by their names in the judgment or in the execution clause attached thereto, and unless the judgement has been already served or is simultaneously served.

Where the execution of a judgment depends, according to its contents, on the accomplishment of a fact which is to be proved by the creditor, or where the execution of a judgment is to be made for the successors of the creditor therein designated or against the successors of the debtor designated therein, service must be effected, prior to execution commencing, not only of the judgment which is to be executed but also of the execution clause attached thereto.

Where the execution clause is issued on the basis of a certificate, service of a copy also of such certificate must be effected either before execution commences or simultaneously with the commencement thereof.

Article 529. Where the assertion of a claim is dependent on the arrival of a certain day and hour, execution may not commence until such day and hour has expired.

Where execution depends on security being furnished by the creditor, the execution may not commence unless the creditor produces an authenticated certificate showing that such security has been furnished, and unless servise of a copy of such certificate has already been effected or is simultaneously effected.

Article 530. (Deleted)

Article 531. Excepting where otherwise in this Code provided, execution is carried out by a bailiff.