

he had studied the details of the special statement which the President was then engaged in preparing, but that he would give those details his most earnest and friendly attention as soon as they were presented to the Conference. This was exactly what he now desired to do. The statement just made to the Conference by the President and the Annexe appended to it contained a large body of weighty proposals which demanded serious thought and study, and he only wished to be allowed time to give the most important subject which had been brought before the Conference the careful consideration to which it was entitled.

He begged to express his high appreciation of the labours of the President, and of the liberal sentiments by which he was animated, and he thought it would be much to be regretted if the success of a great scheme of this nature which had for its object the elevation of the judicial system of the land and the improvement of the existing relations between foreigners and Japanese, should be impeded by any want of practicability, or of such evidence of soundness as was necessary to inspire confidence in its equity and stability.

Mr. Inouye thanked Sir Harry Parkes for his expressions of friendly feeling. During his long residence in Japan he had given many proofs of his friendly feeling towards this country, and he felt confident that the opinions he would eventually form on this question of jurisdiction would be dictated by the same friendly sentiments which had always animated his relations with the Japanese Government. He could only repeat that the proposals made by himself would, he believed, tend to the promotion of friendship between the Japanese people and foreign nations.

On the motion of the President it was agreed that the order of the day for the following meeting should be the "Most Favoured Nation Clause" and the "Coasting Trade."

The Conference adjourned at five o'clock.

## ANNEXE TO THE PROPOSALS OF THE JAPANESE GOVERNMENT.

The Minister for Foreign Affairs offers herein some explanations;

1° With regard to the Organization and Jurisdiction of the Courts.

2° With regard to the laws to be administered by these Courts.

Under these two headings a distinction will be made between the existing conditions and the alterations which will follow from the new proposals.

### I. ORGANIZATION AND JURISDICTION OF THE COURTS.

#### A. EXISTING CONDITIONS.

The principle generally accepted in Europe of the union of civil and criminal jurisdiction in the several grades of courts forming the judicial system has been already adopted in Japan.

The general principle of Appeal in ordinary (*Appel*) and Appeal in Final Review (*Pourvoi en Cassation*) has also been accepted.

a) Appeal in ordinary (*Appel*).—Here a party who is dissatisfied with the decision of a judge either on account of the view taken by him of the fact or of the application of the law, applies to a superior court for a new trial either as to the question of fact or the question of law.

b) Appeal in Final Review (*Pourvoi en Cassation*).—Here the object of the appeal is solely the rectification of a judgment upon points of law, or upon the application of the law to the facts of a case as found by the courts.

The following statement exhibits the gradation in which the courts follow each other in the judicial system, beginning at the lowest. It closely resembles that of France, Italy and Belgium, &c.

As a matter of course, the lower the class of courts, the greater their number and accessibility to the parties.

1° Justices of the peace or police magistrates (*Chi-an* or *I-kei-zai Sai-ban-sho*). There are now 180 in the whole Empire.

a) On the civil side, they endeavour to reconcile the parties and try actions, *in rem* or *in personam* under 100 yen, with appeal in all cases.

b) On the criminal side, they try petty offences (*I-kei-zai*) or police cases, the penalty for which is 1-10 days confinement in a lock-up and 5 *sen* to 1 *yen* 95 *sen* fine, with appeal in all cases of condemnation to such confinement.

2° Courts of First Instance (*Shi-shin* or *Kei-zai sai-ban-sho*) corresponding to what in Europe are often termed district or county courts.

There are at this moment 77 in the whole Empire, for 44 prefectures (3 *Fu* and 41 *Ken*).

In each of these courts one judge sits alone.

a) On the civil side they hear

a') Appeals from the decisions of justices of the peace, or police magistrates.

a'') Civil causes and commercial causes where the amount involved exceeds 100 *yen*, and causes concerning personal status.

Their decisions are always subject to appeal.

b) On the criminal side, they try delicts (*Kei-zai*) punishable by from 11 days to 5 years imprisonment and to a fine of 2 *yen* and upwards.<sup>(1)</sup>

Their decisions are always subject to appeal.

The Courts of first instance, or Correctional courts, are also charged with the preliminary examination of crimes previous to their being brought before the criminal courts.

3° Courts of Appeal (*Kōso Sai-ban-sho*).

There are at this moment seven in the whole Empire.

They hear, in divisions consisting of three judges,

a) In civil and commercial causes, appeals from the courts of first instance.

b) In administrative causes, claims of a contentious nature between private persons and the central or departmental administrations.

c) On the criminal side,

c') They hear appeals from the correctional courts.

c'') They affirm or reverse the judgments and orders of the examining magistrates.

c'') They supply the President of the criminal courts within the limits of their respective jurisdictions and also the three judges of the criminal court in the prefecture where the court of appeal is established.

4° Criminal Courts (*Jū-zai Sai-ban-sho*).

There is one for each *Fu* and *Ken*. They are composed of three judges of the court of appeal in the *Fu* or *Ken* where a court of appeal is established, and in the other *Ken* of a judge of the said court as president, assisted by two judges of the court of first instance.

They try crimes (*Jū-zai*) with the exception of those of which the cognizance is reserved to the High Court.

The jury system is not yet accepted in Japan, but the question is under consideration and is occupying the earnest consideration of the Government.

5° High Court (*Kō-tō Hō-in*).

It is composed of seven members of the Senate and of the Supreme Court appointed annually (all danger of partiality being thus excluded.)

It possesses no functions except in criminal causes. It tries crimes against His Majesty the Emperor and against the public safety, no matter who may be the

<sup>(1)</sup> A maximum and a minimum of fine exists for each delict, but there is no general maximum, any more in Europe, we believe, than in Japan.

Certain fines depend upon the amount involved, which differs in different cases.

offenders. It also tries crimes and delicts punishable by imprisonment, when charged against certain public dignitaries.

Its decision is not subject to appeal.

6° Supreme Court (*Cour de Cassation* or *Dai-shin-in*).

There is necessarily only one such court, its object being to ensure the exact and uniform interpretation of the law throughout the Empire.

It consists of two divisions, one for civil the other for criminal causes.

Five judges sit together in each division.

If a judgment is excepted to on the ground of non-observance of rules relating to procedure, evidence, the time within which steps are to be taken, or to forms, and the appeal is recognized as well founded, the court quashes the judgment and remits the case to a court of the same class and grade as that to the judgment of which exception has been taken, with right to a fresh appeal.

If the proceedings have been regular, but the law wrongly applied, the Supreme Court taking the facts to be true and properly found quashes the judgment solely on the point of law, and itself applies the law to the case.

Procurator General's Office (*Ken-satsu-kan*).

The exercise of the functions of the Procurator General in civil causes has not yet been introduced into Japan, and it is unlikely that this will take place except where the public interest is concerned. Thus it is intended that he should be represented in cases relating to personal status and in all civil and commercial causes before the Supreme Court, where the final interpretation of the law is pronounced.

But the Procurator General already exercises his functions before the criminal courts of all grades.

His functions are the same as in France and all other European countries where this institution exists.

The Procurator General watches the interests of society before the courts, taking nevertheless a certain part in the defence of the accused. At the present moment there are a great number of appeals to the Supreme Court which have been presented by the Procurator General (*Ken-ji chō*) in the interest of persons convicted by the courts.

## B. PROPOSED FUTURE STATE.

Let us now examine the changes to be made in the organization and jurisdiction of the courts when the civil, commercial, administrative or criminal matters to be adjudicated concern foreigners.

We will first consider the epoch which is to succeed to the period of transition, reserving the consideration of the latter until afterwards.

The arrangements as to the number of foreign judges to be appointed and the localities at which they are to be stationed will be applicable from the beginning of the period of transition, and their number will naturally be increased according as the necessity for doing so becomes felt.

## 1. EPOCH SUCCEEDING THE TRANSITORY PERIOD.

## 1. POLICE MAGISTRATES.

A foreign magistrate will be appointed to Yokohama and one to Kôbe, on account of the large number of minor civil causes and police cases.

He will sit with a Japanese magistrate.

His vote will be decisive in a case where the defendant is a foreigner, and vice versa that of the Japanese magistrate will be decisive when the defendant is a Japanese.

The jurisdiction will be the same as already stated under the existing conditions. An appeal will lie to a Court of First Instance.

## 2. JUDGE FOR THE TRIAL OF CIVIL CAUSES OF FIRST INSTANCE AND DELICTS.

There will likewise be one foreigner at Yokohama and one at Kôbe.

He will sit together with the Japanese judge of the court. In case of a division of opinion the Japanese or foreign judge will likewise have a decisive vote according to the nationality of the defendant.

The Japanese judge in this and in the preceding case will always be the President.

Appeals will be subject to the same rules as already stated. There is no need of modifying the general rules.

At the same time, in all questions not of a criminal nature, the parties will be at liberty to agree, either at the time of contracting the obligation, or at the moment of bringing the action, to bring it at once before the judges of appeal, just as on the other hand they may always renounce the right of appeal.

The plaintiff (Japanese or foreign) may always and without obtaining the consent of the defendant, summon him before the court of appeal in a matter which is capable of being appealed. No doubt on the subject will be entertained by lawyers, that relieving the defendant from the necessity of appearing before the inferior court does not deprive him of any guarantee.

## 3. COURTS OF APPEAL.

For the present, foreign judges will only be appointed to the four most important courts of appeal, where foreigners will probably be found in greater numbers (Tôkiô, Ôzaka, Nagasaki and Hakodate).

The number of these foreign judges will be :

at Tôkiô,	3 full judges & 1 supernumerary judge
at Ôzaka,	2 do do & 1 do do
at Nagasaki,	2 do do & 1 do do
at Hakodate,	2 do do & 1 do do.

When the defendant is a foreigner, the court will be formed of two foreign judges and one Japanese.

When it is the other way, a Japanese being defendant, there will be two Japanese and one foreign judge.

A Japanese judge will always be the President.

In case of necessity the judges of one court of appeal can be employed in another.

The jurisdiction of the courts of first instance and of appeal will be general in civil causes (action *in rem* and *in personam* whether concerning movable or immovable property), in commercial and administrative causes, with exceptions stipulated for by Treaty.

The following may be excepted :

1° Causes arising between members of the same nationality having a consul in the town where the defendant resides.

But in this case also the parties will always be able by agreement to submit their differences to the Japanese judges.

On the other hand, if there is no consular judge in the town in question, the parties may declare their submission to the jurisdiction of the nearest consul of their own nationality.

2° Matters concerning status and legal capacity of a foreigner (personal status) when the interests of no Japanese subjects are concerned.

## 4. CRIMINAL COURTS.

These will try crimes of which foreigners are accused, with the exception of capital crimes which may be reserved by the Treaties to a special jurisdiction for a specified time.

They will be composed of two foreign judges and of one Japanese judge, all three taken from the court of appeal.

The principle must be admitted that when the jury comes to be introduced into the trial of crimes, the foreign element will be represented also upon the jury in cases where the accused is a foreigner.

The decisions of the criminal courts will be final as regards questions of fact, and will only be subject to appeal on points of law.

5. SUPREME COURT (*Cour de Cassation*).

Five judges will sit in each division, three of whom will be foreign in cases where a foreigner is concerned, whether civil or criminal.

The government will appoint 3 full judges and 1 assistant-judge to the *Dai-shin-in*. A foreigner will also be appointed as Deputy Procurator General to discharge the functions of the Procurator General both on the civil and criminal side of this court.

The Deputy Procurator General having concluded his arguments, will withdraw and take no part in the decision.

## EXECUTION OF JUDGMENTS.

Judgments are executed by the registrars acting under the direction of the court, performing the same functions as the sheriff's officer in other countries.

It is a matter of course that the Japanese court will be empowered to decide on all disputes arising out of the execution of judgments.

It is evident that these courts must moreover be seised of the execution of decisions emanating from consuls, in the cases which by Treaty may be left to their jurisdiction.

The jurisdiction of the consuls would during this epoch have no more than a special or exceptional character, and it is a general legal principle that "special jurisdictions cannot be seised of the execution of their judgments." Thus, in certain European countries, tribunals of commerce, administrative tribunals and tribunals of arbitration in trade disputes pronounce judgments giving the right to execution, but if any difficulties arise with regard to seizure of property or term of payment, it is the ordinary courts which have to decide.

## II. JURISDICTION OF THE COURTS DURING THE PERIOD OF TRANSITION.

The principle will be the same during this period as during that which is to follow, only that the exceptions to the jurisdiction of the new courts will be more numerous.

Thus, these courts will take no cognizance,

- 1° Of any prosecution for a crime, properly so called.
- 2° Of any prosecution for a delict committed in an open town or port.
- 3° Of any legal proceeding relating to personal status.
- 4° Of any legal proceedings relative to the violation of the Treaties other than those which may have been specially entrusted to them.
- 5° Of any right *in personam* relating to movable property (being of obligation) between foreigners.

## II. LAWS TO BE ADMINISTERED AT PRESENT, AND THE ULTIMATE FORM THEY WILL TAKE.

### A. EXISTING CONDITION.

Since the political and administrative reform of 1868 great changes have taken place in the criminal, administrative, civil and commercial law.

#### 1° CRIMINAL LAW.

We have now before us the Criminal Code and the Code of Criminal Procedure put in force from the beginning of this year.

Independently of the Criminal Code certain special enactments, chiefly of the administrative class, impose fines. The orders of the local police may in certain cases be enforced by the punishment of confinement in a lock-up (1 to 10 days), but this power is rather reserved for the sake of the principle than actually exercised.

Punishment of a higher degree than 10 days of such confinement can only be ordained by the central Power, according to the ordinary system of legislation.

#### 2° ADMINISTRATIVE LAWS.

In all countries this species of legislation is subject to continual development and undergoes variations caused by changes in the conditions of society. No one

has ever succeeded in codifying it, or even made the attempt. Such a proceeding would be to render it incapable of progress and to throw obstacles in the way of salutary reforms which are constantly being demanded by experience.

The numerous notifications of the Government with respect to administrative questions are numbered and collected, and furnished with indexes which enable the courts and private individuals to refer to them easily.

### 3° CIVIL AND COMMERCIAL LAWS.

A considerable number of notifications (laws) have appeared since 1868 upon civil matters, especially with regard to publicity in the alienation of immovable property and in the contract of mortgage, on loans at interest, on personal *status*, etc. But as it was impossible thus to rearrange the whole by fragments, and as the ancient Japanese customs presented much uncertainty and local variations, the practice was long since adopted of applying the principles of the Code Napoléon in civil disputes involving questions of property and obligations. They are applied not as written law, but as Natural Law. The Code Napoléon, which was translated twelve years ago, is well known in Japan and our judges are familiar with it.

The same has been done in commercial matters, frequent reference being made to the Italian and German commercial codes, of which translations have been made into Japanese.

### B. FINAL EPOCH.

This condition of things is evidently one of transition. Japan is resolved to possess a civil and a commercial code made for her and by her.

For the last two years a commission composed of members of the Council of State (*Dai-jō-kwan*), of the Senate and of the Ministry of Justice has been engaged on the compilation of a draft civil code.

All the part relating to Things, comprising rights of property and their divisions (rights *in rem* relating to movables and immovables) and the law of contracts and obligations is already complete.

The text and commentary have been printed in French and translated into English (the latter is not yet printed).

At the same time the commercial Code prepared by another commission is being actively proceeded with, and is nearly completed.

As a basis for the commercial law the German legislation, which is one of the most recent, has been adopted.

These different sections of civil and commercial law could be promulgated and put in force at once, after being examined and approved by the Senate.

With regard to what still remains of the civil side of the law to be codified, particular forms of contract (partnership, loan, pledge, mortgage), this would be supplied in the case of foreigners, as it has long been done in the case of Japanese subjects, by the application of the general principles of private law to be found in the Code Napoléon.

END.

ANNEXE TO THE PROPOSALS  
OF THE  
JAPANESE GOVERNMENT.

PROTOCOL No. 11, JUNE 1ST, 1882.

ERRATA.

- Page 1, line 29 from the top, for "180" read "187."  
" 1, lines 30 and 31, strike out "*in rem* or *in personam*" and "in all cases."  
" 1, line 34, after the word "confinement" add, "(For the present these matters are to be decided by the police authorities; moreover, the right of appeal will not come into force for a certain time)."  
" 1, " 37, for "77" read "79."  
" 2, " 7, paragraph *b*) should read:  
" *b*) on the criminal side they try:  
*b*) Appeals from the decisions of the police magistrates. (This will not be put into force for a certain time).  
*b*) Delicts, (*Kei-zai*) punishable by from 11 days to 5 years imprisonment, and to a fine of 2 yen and upwards.<sup>(1)</sup>"  
" 2, " 9, after the word "appeal" add, "(This will not be put into practice for a certain time)."  
" 2, " 18, strike out "or departmental" and after "administrations," add, "or those of a *Fu* or *Ken*. (Claims against the administrations of subordinate districts are brought before judges of first instance)."  
" 2, " 20, after the word "courts" add, "(This will not be put into practice for a certain time)."  
" 2, strike out lines 21 and 22.  
" 2, line 23, for "*e*" read "*c*."  
" 2, " 39, place a period (.) after the word "safety" and strike out the words following, "no matter who may be the."  
" 3, " 1, strike out the word "offenders"; after the word "crimes" insert, "charged against members of the Imperial Family"; after the word "delicts" insert, "charged against them when" and for "when" read, "and crimes."  
" 3, " 2, for the words "certain public dignitaries" read, "personages of the first official grade, (*choku-min-kwan*) whether as principals or accessaries."  
" 3, " 8, for "in each division" read "in criminal cases, three in civil cases."  
" 3, " 15, strike out the words, "taking the facts to be true and properly found."  
" 5, " 6, after the word "property" insert "and" and strike out "and administrative."  
" 5, " 10, after the word "resides" add, "when no Japanese interest is affected."  
" 5, strike out lines 39 and 40.  
" 6, line 18, after the word "status" add, "when no Japanese interest is affected."  
" 6, " 22, after the word "foreigners" add, "when no Japanese interest is affected."  
" 6, " 33, place a period (.) after "days" and strike out remainder of the paragraph.