legal reasons." Hence it is reasonable to interpret that the series of declarations of non-prosection are "good enough to quash the rights of witnesses to refuse to make a statement for fear of incriminating themselves."

As such, the document of the examination under requisitions cannot be considered as having been obtained as a result of an infringement of the right to avoid self-incrimination.

[Comment]

The main point at issue in the Lockheed case is the evidential permissibility of the document of the examination under requisition in the U.S. court. In other cases, decisions to the affirmative have been made. (Decision by the Tokyo District Court, Sept. 21, 1978. 904 *Hanrei Jihō* 14: Decision by the Tokyo District Court, Dec. 20, 1978. 912 *Hanrei Jiho* 24.)

The outstanding feature of the current decision lies in the fact that the court, in order to provide reasons to quash the right of witnesses to refuse to make statements for fear of self-incrimination, pointed out the situation has become such that prosecution against witnesses is impossible "in the light of international good faith."

The argument may rise in the future, however, on the legality of the step that the declaration not to institute public prosecution is tantamount to criminal immunity and whether or not such a legal construction is possible.

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6. Commercial Law

Four cases are listed here as representative of the trend of

judicial decisions during the year under review. Cases (1) and (3) reflected the social situation in Japan today while cases (2) and (4) exhibited the trend in the interpretation of Japan's business law.

Case (1):

An action filed by shareholders who participated in a "one share" holding campaign calling for the cancellation of resolutions at the shareholders' meeting.

Decision by the Osaka High Court, the 10th Civil Division, on Sept. 27, 1979. (Case No. (*ne*) 669 of 1974.) The appeal for cancellation of resolutions at the shareholders' meeting. 945 *Hanrei Jihō* 23.

[Fact]

At the shareholders' meeting of the defendant company Y held on Nov. 28, 1970, the entry of members of the "Association of Prosecuting the Minamata Disease" which staged a "one share" campaign was restricted and their motion for amendment was ignored at the shareholders' meeting. (Company Y had been charged with discharging plant waste water into the sea, which resulted in the outbreak of Minamata Disease).

The shareholders X et al. who were members of the one-share campaign and the plaintiffs filed an action of cancellation of resolutions at the said shareholders' meeting, on the ground of procedural defect. The plaintiffs won the case. Thereupon, the defendant company Y appealed to the high court contending that the action does not involve any interest, that there is no reason why the resolutions at the shareholders' meeting should be cancelled, and that the plaintiffs' claim should be dismissed discretionarily.

[Opinions of the Court]

On the premise that X et al. have an interest in their action, it must be held that there was a serious procedural defect in the resolutions at the shareholders' meeting in that the motion for

amendment was ignored, and that it concurs with the causes for cancellation of the resolutions as provided for in Article 247 of the Commercial Code. However, the procedural defect concerning the restriction on the attendance at the shareholders' meeting should not be regarded as important as the former. Judging from the extent of the defect in the current case, the case does not warrant discretionary dismissal.

[Comment]

"One share" campaigns have been launched one after the other in this country since 1969, but such moves have somewhat cooled off recently. However, the case in which a company attempted to stifle the exercise of the rights of shareholders of a "one share" movement, the decision, as in the current case, has given rise to an important question as to what a shareholders' meeting should be. At this time when the social responsibility of business corporations is under heavy fire, an institutional reform has become necessary to reflect the demands of citizens, as demonstrated in the "one share" campaign and other moves, on resolutions at shareholders' meetings.

Shareholders' meetings have been greatly skeletonized losing their original purpose as a place for forming the will of the corporation. In this regard, the work of revising the existing business corporation law got under way to make shareholders' meetings a place for the company to provide shareholders with necessary information, and introduce the shareholders' right to make proposals aimed at obligating the executives and auditors to brief the shareholders' meeting and have the views of minority shareholders, such as "one-share" campaign shareholders, reflected in the course of forming the will of the company.

In the current case, the management of the shareholders' meeting by the Company Y has seriously infringed upon the execution of the rights and obligations of the shareholders. The decision which supported a cancellation of the resolutions should be regarded as being right and proper.

Case (2):

Is the delegation of the authority to draw notes under joint representation approved?

Decision at the First Petty Bench, the Supreme Court, on March 8, 1979. Dismissed. (Case No. (*o*) 1292 of 1978. 33 *Minshū* 245)

[Fact]

The defendant company X registered that it had a stipulation concerning joint representation. The company had received a loan from the plaintiff Credit Bank Y and both had concluded a contract for the current account with the loan in question. Then and there, the representative executives A and Z as well as other directors agreed to delegate A's authority to Z to draw checks for the payment from the current account, and Credit Bank Y consented to it. As a result, Z had drawn a total of 13 checks but the enterprise failed. Z then resigned as a representative executive and paid all the debts X owed Y. Contending that the delegation of authority concerning the drawing of checks was invalid comprehensive delegation of authority, Company X demanded payment of the balance in the current account.

[Opinions of the Court]

"Appeal dismissed. Under the said circumstances relating to the fact, the delegation of authority from A to Z, as well as the representative act of Z concerning the drawing of checks made individually by Z on the basis of the delegation of authority, cannot be considered invalid or as violating the provisions on joint representation in Article 261, the Commercial Code."

[Comment]

The current case is related to the effect of an individual act of a representative director to draw checks under the joint representation system. The system is designed for representative directors who have powerful authority to check with each other to prevent an abuse or mistaken use of their right of representa-

tion.

However, if all the individual acts of representation are found invalid to the company in the light of the restraint on the exercise of the right of representation toward the outside, it would not only be inconvenient but troublesome for the management of the enterprise. Herein arises the propriety of whether or not to delegate the authority of representation.

There is little doubt that a comprehensive delegation of authority is invalid running counter to the spirit of the legislation. Most academic theories and recent judicial decisions acknowledge the individual delegation of authority on specific matters, if agreed upon by all those concerned, while some academic theories deny a total delegation of authority interpreting the spirit of the legislation very strictly.

In the current decision, the delegation of total authority concerning the drawing of checks was acknowledged. It is worthy of note that the decision was a positive one as it demonstrated a course of expanded interpretation of the scope of delegation.

Case (3):

The liability to third persons of a director who draws a note highly likely to be dishonored.

Decision at the Third Petty Bench, the Supreme Court, on July 10, 1979. Reversed and remanded. (Case No. (*o*) 1365 of 1978, 943 *Hanrei Jihō*)

[Fact]

In April, 1971, a contract for drawing up blueprints for the construction of a golf course was concluded between X (defendant and appellee) and the company A. In July, the same year, Company A issued a promissory note to X for payment of the contract. The company went into bankruptcy in October and the said promissory note was dishonored. In accordance with paragraph 1 of Article 266.3 of the Commercial Code, X demanded that Y et al. (the plaintiffs and appellants), who were directors of the company at the time of the issuing of the promissory note, should

pay the damages.

[Opinions of the Court]

Company A upon concluding a contract owed X an obligation and the failure of the company to pay the reward on the basis of the contract should be considered as damaging to X. "Hence, it cannot be said that the damage was caused by the drawing of the note itself for which there was little likelihood of it being honored on the day of maturity."

[Comment]

There have been many judicial precedents involving the Commercial Code Article 266.3 which provides for the liability of a director or directors to third persons.

Following the end of World War II, financially weak companies have greatly increased. The obligees of such companies on the basis of this provision demanded individual directors to pay damages in case they failed to obtain satisfactory results due to the lack of capital on the part of the companies concerned. In other words, this provision fulfilled the theory of "Piercing the Corporate Veil."

However, there arose a question that the first part of the first paragraph of Article 266.3 has allowed varied interpretations because of its brevity. The grand bench of the Supreme Court in its decision on Nov. 26, 1969, made it a point on this score that not only losses directly incurred on third persons but also losses incurred on third persons due to the loss of the company caused by the conduct of the directors should be subject to this provision. As a result, it seems that the scope of the application of this provision has expanded too much.

Under such circumstances, the current decision is worthy of note in that it has applied a brake to the unlimited expansion of this provision's application, paying special attention to whether or not damage to third persons has occurred.

Case (4):

Mistake in the act of drawing a note.

Decision by the Supreme Court, on Sept. 6, 1979. Partially reversed and remanded. (Case No. (*o*) 1281 of 1978)

[Fact]

Y received from A a promissory note for the payment of sales credit amounting to ¥1,500,000. The sum entered on the note was ¥15,000,000 by mistake. Y who had no knowledge of the mistake and believed it to be ¥1,500,000 endorsed the note for B. B noticed the mistake but endorsed the note as it was for X. X presented the note to A but was turned down. Tracing the matter back to Y, X filed a suit. Y, however, contended that X had "knowingly acquired" the note in question. The claim of X was dismissed both in the first and second instances.

[Opinions of the Court]

It is believed reasonable to interpret that an endorser can refuse the execution of redemption obligation for his own personal defense in cases involving a person who had knowingly acquired a promissory note, while being fully aware that there was no intention on the other party to share the obligation of the promissory note. On the ground of an error, Y can refuse to obligate himself for redemption of a sum exceeding ¥1,500,000 but not to the total sum entered in the said note.

[Comment]

Roughly speaking, there are two views relating to defects of the declaration of intention in promissory note transactions. In the first view, various provisions concerning the declaration of intention in the civil code are applicable as they are between the parties directly concerned with the transaction of the promissory note. However, when it concerns a third party in good faith, the provisions providing for error and dures based on the concept of intention shall be revised on the basis of the concept of declaration and applied to ensure the safety of promissory note transactions.

The second view, while completely denying the application

of Commercial Code provisions, holds that if a transactor signs a promissory note knowing that it is a note, the fact of handling it becomes fully valid. In the case involving a third party in bad faith, the proviso to Article 17 of the Bills Act is applied and the third party in question is not protected. The current decision was the first case in which the Supreme Court adopted the second view.

The decision also indicated a sort of concept on partial invalidity even in the case of mistake that the transaction of the bill is effective within the bounds of the genuinely, effective, real intention held by the transactor. This is worthy of note in that the decision maintained that such does not interfere with the second paragraph, Article 12, of the Bills Act stipulating that a partial endorsement is null and void.

By Prof. TAKAYASU OKUSHIMA

7. Labor Law

[Overall Trends of Judicial Decisions]

There were a number of trends featuring judicial decisions in 1979. To begin with, there were few decisions by the lower courts in favor of labor on the ground of "unconstitutionality" or "qualified application" during the year under review in the fields of government and public workers, largely due to the series of decisions made at the Grand Bench of the Supreme Court.

Secondly, important judgments including those of the Supreme Court were rendered with regard to union activities such as the display and distribution of leaflets and bills.

Thirdly, the number of court decisions on cases involving confrontation among labor unions over the choice of policies and