country, unless absolutely prevented. Since this belongs to the field "unless absolutely prevented," it is held in some circles that the existing laws should be applied unless otherwise provided. Moreover, the decision in its P. S. explained that since the islanders of Japanese origin had no means available to intervene in the prescription being prohibitied from entering the Islands, the prescription period did not run, either. In short, although the decision did not state specifically, it seems to have interpreted the extraordinary situation caused by the occupation of the U. S. forces as the cause for natural interruption of acquisitive prescription (Civil Code § 164).

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b. Private International Law

1. Parents and Child (Choice of law to voluntary acknowledgment of a child in private international law).

Yamaguchi District Court, Case No. (*wa*) 129 of 1974. Claims for damages. Decision by the Civil Division, Jan. 31, 1979. Approved in part. 388 *Hanrei Taimuzu* 114.

[Issues]

The effect of the notification by a father who is a South Korean national of the birth of legitimate children who were not legitimate children and Koreans and the effect of his acknowledgment of the children.

[Reference: Act concerning the Application of Laws in General (*Horei*), §§ 8, 18; Civil Code § 781, Family Registration Act, § 52]

[Facts]

A Korean national "A" and his common-law wife "X1" who is also a Korean national gave birth to children "X2," "X3" and "X4," and the father A gave notification of birth of a legitimate child each time in Japan. A was killed in a landslide while engaged in prefectural road construction work.

Following the death of A, X1 registered her marriage with A according to the "Act for Interim Exceptions regarding Establishment of Such Family Register of a Foreign National Residing in Japan and Rectification as well as Completion of the Statement." As successors to A, X1 together with X2, X3 and X4 filed an action for damages against the person who ordered the construction work Y1 (the Prefecture) and the contractor Y2 according to Civil Code § 71, etc.

[Opinions of the Court]

"The plaintiffs contend that the said notifications of birth are valid as 'acknowledgment of a child.' It is generally understood that Article 18 (1) of the Act concerning the Application of Laws in General, as substantial requirements for acknowledgment, and article 8 of the same law, as requirements of formalities, should be applied respectively.

"First of all, according to Article 8 (1), the notification of acknowledgment should be made on the basis of the law of the home country of the father, Tosho, that is, Korean law, which governs the validity of the acknowledgment. However, as a supplementary rule the notification based on Japanese law, which is *lex loci actus* in this case, can be considered valid according to paragraph 2 of the same article.

"Then, a question arises in interpreting the Japanese law whether notification of birth of a legitimate child by the father has the validity of acknowledgment. However, 'in the event that a notification of birth of a child as a legitimate one, although it was not a legitimate child, was filed by the father and that such was accepted by family registrar, the notification of birth in question contains a demonstration of the intention to report

to the registrar that the father acknowledged the child born as his own in addition to reporting the birth of the child. In this connection, it stands to reason to interpret that the notification is valid as a notification of acknowledgment' (Decision by the Supreme Court, February 24, 1978. 883 *Hanrei Jihō* 25)."

[Comment]

As for the law applicable to voluntary acknowledgment in private international law, the law of the country to which the father or the mother belonged at the time of acknowledgment governs substantial requirements according to Article 18 of the Act concerning the Application of Laws in General, but the same article makes no mention of formality requirements. In this connection, Article 8 of the Act concerning the Application of Laws in General providing for the formalities of juristic acts has been applied as the formalities of acknowledgment made in this country, and it is not only a judicial precedent but a generally accepted view that according to paragraph 2 of the said article, Japanese law shall govern in such cases as *lex loci actus*. It is also a judicial precedent and a generally accepted view that when the father filed notification of birth of a legitimate child, although the child was not legitimate, and when it was accepted by the registrar, the notification in question shall have validity as notification of acknowledgment. The current decision followed the judicial precedent and the generally accepted view in this regard, quoting the decision made by the Supreme Court.

2. Jurisdiction

Tokyo District Court, Case No. (*wa*) 9963 of 1975. Claim for damages. Interlocutory decision by the 27th Civil Division, March 20, 1979. 925 *Hanrei Taimuzu* 78.

[Issues]

Whether the Japanese court has jurisdiction over action against Japanese seeking to recover damages for a traffic accident that occurred abroad.

[Reference: Code of Civil Procedure § § 4, 5, 15; Act concerning the Application of Laws in General § 11]

[Facts]

When X was riding a car driven by Y1's employee Y2 in Bangkok, Thailand, the front of the car was thrust into the opposite lane and collided with two cars running in the opposite direction and X suffered an injury. X sought damages to Y1 for the latter's tort and Y2 for an out of court settlement primarily and for tort secondly. Y1 et al. in the defense prior to the trial of merits insisted that Japan had no jurisdiction over the case. Thereupon, the current interlocutory decision was made.

[Opinions of the Court]

"There is neither an established principle in international law of civil procedure nor a written provision in Japanese law as to which country has jurisdiction over the settlement of such civil disputes containing external elements as in the current case.

"In this regard, it should be considered reasonable to decide on the basis of the basic concept of international law of civil procedure, namely, in which country the hearings will be conducted more properly, justly and efficiently.

"Considering all the circumstances involved, in case this country has jurisdiction the defendants, especially defendant Kimoto, will receive considerable disadvantages but such disadvantages will be comparatively smaller than those the plaintiff may receive if the hearings are conducted in Thailand. Moreover, more just and efficient handling can be expected if the action is pursued in this country. As such, it is reasonable to give Japan jurisdiction to try the case."

[Comment]

With regard to international jurisdiction in external civil suits, most recent judicial decisions concluded that a decision should be made reasonably on the basic concept of international law of civil procedure and, if necessary, by analogical application

of provisions of Japanese Code of Civil Procedure providing for domestic jurisdiction. The current decision comes within the category of the above.

3. **Renvoi and Others**

An action for the registration of transfer of ownership of land and building.

Tokyo High Court, Case Nos. (*ne*) 2,899, 2,909 of 1975. Decision by the Eighth Civil Division on July 3, 1979. Appeal dismissed in part and rejected in part. Final. 32 *Kominshū* 126. 398 *Hanrei Taimuzu* 100. 939 *Hanrei Jihō* 37.

[Issues]

1. Basis to determine the nationality of an association.
2. Requirements for identifying an association of Turkish nationality with an unincorporated association in Japanese law.
3. Whether or not the jurisdiction exists in Japan concerning property to be succeeded which is located in Japan.
4. The establishment of so-called "double renvoi."
5. Applicable law to so-called "sine qua non."
6. A case in which the verification of status relations was permitted by means other than that of identification papers.
7. Can land located in Japan be considered property to be succeeded in terms of the Civil Code of the Russian Soviet Federative Socialist Republic (RSFSR)?
8. In connection with succession in the RSFSR Civil Code, judgment was made, in accordance with the "principle of possible substitution of procedural forms," on the authority of a Japanese court appointed administrator of the estates and on the effect of notification to the Japanese court by the successor to intervene in the litigation as a party.

[References]

Issue No. 1. Civil Code § 36; Act concerning the Application of Laws in General § 27 (2); Aliens Landholding Act § 2.

2. Code of Civil Procedure § 46; The Hague Convention on the

Recognition of the Legal Personality of Foreign Corporations, Associations and Foundations.

3. Code of Civil Procedure § § 8 and 19.

4. Act concerning the Application of Laws in General § § 25 and 29.

5. Act concerning the Application of Laws in General § 1 (1), first half.

6. Act concerning the Application of Laws in General § § 13 and 17.

7. Act concerning the Application of Laws in General § 25.

8. Act concerning the Application of Laws in General § 25; Civil Code § 952; Code of Civil Procedure § 71.

[Facts]

Turkish-affiliated Moslems residing in Japan (stateless at the time) organized the Tokyo Moslem Association. The ownership of the land and building bought by the association with the donations it had collected was at issue involving three parties X, Y and Z. X, the present representative of the Tokyo Turkish Association, claimed it had succeeded to the Tokyo Moslem Association. Y was the juristic person of the property succeeded to A who was erstwhile representative of the Moslem Association (he was a national of the Russian Soviet Federative Socialist Republic at the time of his death), and Z who claimed herself the genuine successor to A became a party to the issue.

In the long run, the claim of Z as successor was recognized while juristic person Y was regarded as nonexistent. (See Civil Code § 955.) The appeal relating to Y was rejected and the claim of X for registration of transfer in connection with Z was affirmed.

[Opinions of the Court]

On Issue (1): "The first basis to determine the nationality of an association is the place of its basic activities and the second basis is its component members."

On Issue (2): "In order that an association of religious followers, which is regarded as an unincorporated association in

Japanese law, and the association of Turkish nationality may be considered identical, the identity in nature must "be recognized by both Japanese and Turkish law (Hauge Convention on the Recognition of the Legal Personality of Foreign Corporations, Associations and Foundations § 3 (1)).

On Issue (3): "A suit relating to a succession right may be brought before the court of the country where the ancestor last resided (Reference: Code of Civil Procedure § 19). Even if the ancestor had not had his last domicile in Japan, a suit concerning property located in Japan can be brought exceptionally before a Japanese court (Reference: Code of Civil Procedure § 8)."

On Issue (4): "In respect to the succession of the land and building in question, Japanese law is to govern as renvoi (according to the Act concerning the Application of Laws in General § 2). However, since the Soviet private international law recognizes renvoi, double renvoi can be completed and, after all, the Civil Code of the RSFSR becomes a law applicable to succession."

On Issue (5): "With regard to Z who is the spouse of A, her 'completion of marriage' with A becomes a "sine qua non" of the 'succession'. The law applicable to "sine qua non" shall be decided by the private international law of the country to which the law applicable to this issue belongs."

On Issue (6): "According to the generally accepted principles of existing private international law, the question of whether or not to permit the verification of status relations by means other than identification papers shall be governed by the law applicable to the legal situation concerned, whether it concerns the effectiveness of a marriage or that of the relation between parents and their legitimate child."

On Issue (7): "The RSFSR Civil Code, Article 95, Paragraph 2, does not recognize that land becomes the object of private ownership. If this provision is interpreted as one concerning the capacity of succession, the one who becomes a successor in terms of RSFSR Civil Code cannot inherit land located in a foreign country. This is a question of the so-called qualification of the legal relations. As is evident in the preamble of the RSFSR

Civil Code, state ownership of the means of production is the basis of Soviet order and the state is the absolute owner of land according to the RSFSR Civil Code, Article 95, Paragraph 2. In this light, the provisions above stipulate the nature of real estate located in the RSFSR, and it is reasonable to interpret that the provisions in question have only decided that land located in the RSFR cannot be inherited. In this connection, the land in question located in Japan can be considered as property which can be succeeded to, even in the RSFSR law."

On Issue (8): "In case the law applicable to succession is the law of the foreign country, the administrator of the estates, appointed as part of the step designed for protection following the start of the succession, should be termed as an administrator of the estates, specified by the law applicable to succession according to the principle concerning the possible substitution of procedural patterns, and his authority should be also determined by the law applicable to succession.

"According to the RSFSR Civil Code, Article 555, Paragraph 2, the step for protection of property to be succeeded to shall be in effect until such time when all the successors acknowledge their succession. So, the authority of the administrator shall cease when all the participants who are successors acknolwedge their succession. On the other hand, according to the RSFSR Civil Code, Article 546, Paragraph 2, when the successor files notification of succession acknowledgment with the notary office, it is taken to mean that the succession was acknowledged. Hence, it should be interpreted that on November 27, 1973 when the participants filed notification of being parties concerned with the Tokyo District Court which had jurisdiction over the location of the land and building, which comprised the estates, they had notified the court of their succession acknowledgment and that the authority of the said administrator ceased on that day and after."

[Comment]

The current judgment is worthy of note in that the appeal court made new judgment which affects many important problems

in private international law.

On (1) and (2): There are conflicting theories with regard to the personal law of the corporations, namely, the theory in favor of the law of the country of its incorporation and the theory in favor of the law of the country where its head office is located. The current judgment is the first of its kind in that it has discussed the law based on the nationality of the persons concerned in connection with an unincorporated association. It is a matter of course that the law of its incorporation does not exist for an association that is unincorporated, but the current judgment is not based on the simple theory of the law of basic location but pays considerable attention to the nationality of the component members. It is a new judicial decision worthy of note in that it has made judgment on the identical nature of two associations of different nationalities.

On (3): The only conclusion believed natural.

On (4): The personal law of ancestor A is the law of the RSFSR and renvoi is applied to Japanese law in accordance with the principle of the division of succession. But, since the Soviet private international law recognizes renovi in general, the completion of double renovi is admitted and the RSFSR Civil Code was named the law applicable to succession. Existing theories deny double renvoi as "suicide of renvoi" and courts have not recognized it as such. But, in recent years a minority view recognizing it as such has appeared. The current decision has adopted the latter view for the first time and should be termed epochal notwithstanding its brief explanation.

On (5): The decision held that the applicable law to completion of a marriage in connection with the "sine qua non" of the succession shall be governed by the private international law of the country to which the law applicable to the succession in question belongs. There are conflicting theories such as favoring the *lex fori* or the balancing of interests involved, but pending established theories the current decision is worthy of note.

On (6) and (7): Since similar cases can well be anticipated, the current decision is of great interest, and its significance as a precedent should be recognized.

On (8): There is a judicial precedence that when the successor is not known in the light of the law of the home country of the ancestor, the Japanese court can appoint an administrator of the property to be succeeded to when the property in question is located in Japan. (Decision by the Mito Family Court, 1961, June 23. 3 *Katei Saiban Geppō* No. 11). Clarifying the so-called of "Theory of Possible Substitution of Procedural Patterns," the current decision applied the above thinking to the notification of the successors to the Japanese court of their participation as parties concerned, and judged that this constitutes notification of acknowledgment of succession as prescribed in the RSFSR Civil Code. This is an entirely new judgment.

4. Recognition of a Foreign Judgment

An action claiming the enforcement of foreign judgment. Tokyo District Court, No. (*wa*) 1195 of 1975. Decision by the Fourth Civil Division, Sept. 19, 1979. Claim affirmed. 410 *Hanrei Taimuzu* 91. 949 *Hanrei Jihō* 92.

[Issue]

Whether or not to grant force to execute the decision made by the U.S. District Court in Washington D.C., the U.S.A.

[Reference: Code of Civil Procedure § § 514, 515, 200]

[Facts]

X filed a suit against Y claiming the payment of an account receivable and won the case at the Washington D. C. District Court and, in order to carry out the compulsory execution against Y residing in Japan, sought execution of the decision established above. The point at issue was whether or not the mutual guarantees described in Paragraph 4, Article 200, of the Code of Civil Procedure existed between Washington D. C. and Japan.

[Opinions of the Court]

The mutual guarantees described in Paragraph 4, Article 200, of the Code of Civil Procedure are designed to maintain equi-

table international order. However, legal systems are varied from country to country. Since the requirements for the recognition of judgments made by foreign courts, that foreign standards should be either the same as ours or more lenient in every aspect, more often than not tend to narrow the conditions for recognizing the decisions of a foreign court and cannot be considered fit and proper, judging from the reality of the present-day international community in an age of internationalization marked by remarkable progress and expansion in the scope of foreign-related life.

Even in the interpretation of Paragraph 4, Article 200 of the Code of Civil Procedure which has been greatly eased compared with the old law, there is no need to interpret strictly the requirements for mutual guarantees. So long as there exists no marked imbalance in the requirements for recognition of the decisions at home and abroad, and there can be an analogy in important points in both cases, it should be interpreted as satisfying the requirements for the mutual guarantees described in Paragraph 4, Article 200 of the Code of Civil Procedure."

[Comment]

Article 200, Paragraph 4 provides that a foreign judgment which has become final and conclusive shall be valid only upon fulfillment of the following conditions . . . that there are mutual guarantees. It is a generally accepted theory that the conditions that effect the final foreign judgment and those of the final judgment of a Japanese court should be equal as a matter of comparison or the foreign conditions should be more lenient or at least comparable to those of Japan. In this age of internationalization when foreign-related life has greatly advanced and expanded, it is not proper to adhere to the aforementioned accepted theory. In this regard, in interpretation more relaxed than the accepted view was adopted in this instance on the ground that the requirements for mutual guarantees can be satisfied provided that the requirements for recognition of the judgments between Japan and foreign countries do not become counterbalanced

and that an analogy can be recognized in the important aspects of both requirements.

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