time clarified its stand, ruling that "the right to receive a retirement allowance by reason of death does not belong to the estate of inheritance, and that it cannot become the subject of succession by other successors as the estate of inheritance if there is no bereaved family. The significance of the current decision can be found in the ruling mentioned above.

Whether or not a retirement allowance by death should be succeeded should not be decided uniformly but judged separately in the light of the regulations, payment practices and payment purposes concerning death allowances. (Decision by the Tokyo District Court, Feb. 11, 1963, 14 *Kaminshū* No. 12, p. 249).

The primary function of the death retirement allowance in the current case is designed to maintain the stability of the livelihood of the bereaved family of the employee, and the death retirement allowance payment system of the special corporation was established from a standpoint different from the principles of the law of succession. In this connection, if the allowance is shared by other successors as the estate of inheritance in the absence of the recipients prescribed in the retirement allowance regulation, it is likely to deviate from the true purpose of the retirement allowance by death. Accordingly, the conclusion in the current decision was very just.

By MASAYUKI TANAMURA

4. Law of Civil Procedure and Bankruptcy

There were more than 200 decisions handed down in the field of civil procedure law in the year under review. Some of the outstanding features of those decisions are included in the following.

In the first place, there were many decisions concerning orders for the filing of documents, testifying to one of the marked trends in recent years. Paralleling the diversification of disputes, the

nature of the documents in question also has become diversified.

There was an increasing trend in the year under review toward making an issue out of the information and material in the hands of state and public entities. This trend is expected to continue for some time in the light of the rising calls in Japan today that information be made available to the public.

Secondly, attention was specifically called to the decisions on disputes involving religious issues. In this field, the scope of exercising civil jurisdiction in such lawsuits will become a problem in the future.

Thirdly, although the number of decisions relating to international civil procedure was small, there appeared to be a gradual increase. Since interest in this field has been rising in recent years, further study will be necessary.

Lastly, there were several decisions in the field of execution centering on validity of adjudication on public auction. As the Civil Execution Act was put into force on Oct. 1, 1980, high expectations are placed on future decisions concerning the new act.

There were no decisions worthy of mention in the field of insolvency laws centering on the Bankruptcy Act and the Corporate Reorganization Act.

Such were the outstanding features of the decisions in the year under review. Two of the more interesting decisions are introduced here, one concerning the Supreme Court decision on a dispute involving a religious issue and the other on the High Court decision on the effect of a notice of suit.

1. The propriety of an action for a declaratory judgment on the status of the head priest of a temple.

Decision by the Third Petty Bench, the Supreme Court, on Jan. 11, 1980. (Case No. [*o*] 958 of 1976. Case involving claims for declaration of nullity of discharge, for damages and for delivery of real estate. 34 *Minshū* 1.) [Reference: Court Organization Act §3, Civil Procedure Act §225]

[Opinions of the Court]

An action for a declaratory judgment on the existence of a religious status is not an action for a declaratory judgement on the existence of concrete rights or legal matters, so the action does not have accord with law for lack of competency as the subject of the action for a declaratory judgment.

In this regard, as the status of the head priest is, in itself, a religious status, it cannot be permitted to seek a declaration by judgment on such existence itself. However, if there is a dispute over concrete rights or legal matters and if there is a need to make judgment on the existence of the status of a specific person as head of priest as a prerequisite to making judgment on the propriety of the matters above, it should be interpreted that the court has jurisdiction on the existence of the status in question, that is, the propriety of selection or discharge, so long as the contents of such judgment do not involve the interpretation of religious dogmas. The interpretation as such does not contradict the stand of not permitting an action for a declaratory judgment on the existence itself of the status of a head priest.

[Comment]

Actions for a declaratory judgment on the status within an organization due to an internal dispute of a religious organization have been on the increase of late.

Since an action of this type involves religious issues, the question arises as to what extent and in what manner the jurisdiction of the court should be exercised. The current decision is very significant as a precedence in that the Supreme Court indicated for the first time the basis of making judgments on such issues as those above.

An action for declaratory judgment makes an issue out of the legal interest in a declaratory judgment, especially the legitimate interest to take legal action, and its subject must be a concrete right or legal matter, not a mere fact or abstract legal matter.

Past decisions on actions for a declaratory judgment on the existence of the status of the head priest have regarded them as an application problem of a legal interest in a declaratory judgment or

qualification for the judicial relief, as in the case of an action for a declaratory judgment on the existence of a certain fact, and have dismissed such actions for lack of propriety as the subject of the action for declaratory judgment.

The lower courts, distinguishing between the religious status of the head priest and the status as the representative executive member of a religious association, have handed down a series of decisions declaring that the legal interest in a declaratory judgment should be admitted of the latter for he engages in various legal performances such as the management of the religious association. It can be said that the current Supreme Court decision has followed and supports the theory underlining those decisions. According to this way of thinking, it is natural that such a conclusion was drawn, that the court can make judgment on the status only when the judgment on the existence of the status of the head priest becomes necessary to make judgment on the propriety of the action involving concrete rights or legal matters as its subject.

However, under the circumstances, it is likely that the scope of exercising jurisdiction in disputes involving religious issues is likely to expand. Thus, the current judgment imposed a certain restriction on the exercise of jurisdiction, i.e. that the court has no jurisdiction when the contents of the judgment on the existence of the status of the head priest involve the interpretation of religious dogmas. It seems that behind the restriction lies a strong consideration that the court should not interfere indiscriminately in disputes of this kind.

On the other hand, it cannot be denied that there is ample room for further studies of the concept embodied in the current decision, such as whether or not the manner of establishing such standards was proper, or in what situations the issue involves the interpretation of religious dogmas.

Incidentally, there was a Supreme Court decision handed down which employed the standard mentioned above in detail and on the basis of the current decision. This was made by the First Petty Bench, the Supreme Court, on Apr. 10, 1980. (Case No. [*o*] 177 of 1977. Case calling for declaration by judgment of the status as

representative executive member.) In this case, judgment was made on the existence of the status of the head priest as a prerequisite to the judgment on the existence of the status as representative executive member of a religious association.

2. **A dispute involving a clash of interests between the notifier of a suit and the person notified, and the effect of the notice to the third party of a pending suit.**

Decision by the Second Civil Department of the Sendai High Court on Jan. 28, 1980. (Case No. [*ne*] 162 of 1975. Case involving a claim for demages. 33 *Kōsai Minshū* 1.)

[Reference: Civil Procedure Act §§70, 76, and 78]

[Issues]

Since the effect of the notice to the third party was made an issue in the current case, it is necessary to outline the former suit. X et al., contending that they jointly inherited the disputed land in the current case which originally belonged to A who was outside of this current case, brought an action to the court against C, who was the current holder of the title deed and not in the current case, demanding the declaration by judgment of joint ownership and registration of transfer of the property they jointly owned. This is an outline of the former suit.

In this suit, C in his defense contended that Y held the authority of legal representative in the transaction of the land involved in the current case while at the same time filing a contingent plea of apparent representation. As a result, the existence of Y's authority as representative became the bone of contention and X et al. in an attempt to preserve their rights to claim for damages against Y, give the third party notice to Y. Thereupon, Y intervened for the assistance of C with whom he had the same interest in order to insist upon his authority as legal representative.

The court handling the former suit recognized that there were some grounds concerning the contention as to the apparent representative although recognition concerning the transfer of the authority of a legal representative is difficult and thus dismissed the claim of X et al. Then the judgment became final and absolute.

Dissatisfied, X et al. brought an another action against Y demanding compensation for damage due to an unlawful act based on unauthorized (*ultra vires*) representation. This comprises the current suit.

In this suit, Y contended that there was a transfer of the authority of the legal representative in connection with the land in dispute. X et al., on the other hand, contended that in the light of the effect of the notice to the third party Y could not be allowed to make an insistence in conflict with the judgment made in the former suit. As a result, whether or not the judgment of the former suit is binding on the finding of Y's authority as legal representative, that is, whether or not the effect of intervention by the notice to the third party can be applied, has become the major bone of contention.

On this point, the first instance court denied the effect of the notice to the third party in the current case on the ground that the notifier and the notified must share the same interest so that the notified has the opportunity to intervene in the notice to the third party and dismissed the demand of Y et al. by recognizing anew the existence of Y's authority as legal representative. Dissatisfied, X et al. appealed.

[Opinions of the court]

The system involving the notice to the third party is aimed at helping the notifier to have the effect of notice between himself and the notified by giving the notified a chance to intervene. (Civil Procedure Act §78). This is to guarantee the person who has given the notice to the third party that in case he loses the pending case a different finding will not be made on the same issue in a case brought later between himself and the notified.

Accordingly, whether or not the notified is the "third party entitled to intervene" (Civil Procedure Act §76) should be judged on the basis of the subjective interest of the party who gives the notice to the third party, and that the said notice to the third party is effective if there is an objective reason in the said subjective view. Therefore, it does not have to be a case in which the notified should intervene for the notifier subjectively.

Even if it concerns the dispute at issue in the pending suit, to extend the effect of the finding in the *ratio decidendi* concerning legal matters and facts, about which the notified cannot verify or contend by intervening in the said suit, should be considered as running counter to equity. However, the notified is not necessarily obligated legally to intervene for the sake of the notifier.

If the subjective interest of the notified conflicts with the subjective interest of the notifier, the notified can intervene for the assistance of the other party to the suit or can intervene in the litigation as a party (Civil Procedure Act §71, 73, and 75) so as to claim or verify in his favor. Accordingly, in case the notified fails to intervene upon receiving the notice of a suit, even though he could have done so, it cannot be called unequitable even if he is at a disadvantage by not exercising his right although given a chance to intervene through the notice to the third party.

(Original decision altered. Claim of X et al. partly allowed.)

[Comment]

The current decision was the first case which involved the scope of the effect of the notice to the third party. The point at issue has not been taken up very much, so the current decision is significant as a precedent.

With regard to the scope of the effect of the notice to the third party, academic theories have so far referred the matter to the explanation of section 70 of the Civil Procedure Act on the effect of intervention. In other words, it is a generally accepted view that when the notified has some interests which qualify him to intervene for assistance, he is to be given the effect by intervention of a judgment whether or not he has actually intervened, and that as a matter of principle he is not permitted to contend against the finding contained in the judgment which was rendered against the notifier. This is a view, however, based on the tacit understanding that the notified has common interests with the notifier in charging the other party and defending themselves together through intervention in favor of the notifier. As such, it is not too much to say that no thought has ever been taken of a case in which there is a

clash of interests between the notified and the notifier, and furthermore where the notified has intervened in favor of the other party instead of the notifier.

According to the generally accepted view, in case the interests of the notifier clash with those of the notifier and the necessary effect cannot be produced due to a conflict of both parties, it may be concluded that the effect of intervention will not be extended to the notified even if the notified has intervened on behalf of the notifier. This stems from the consideration that the notified should not be at a greater disadvantage than if he had actually intervened in the suit.

Therefore, it is natural in the current case to reason that the effect of intervention will not be extended to the notified in case the notified intervened for the other party to the suit. The judgment in the first instance in the current case seems to have been based on such a view.

The current decision, however, did not accept such a veiw as mentioned above. It maintained that even if the interests of the notified and the notifier are opposed to each other, the notified could have contended and verified his position on the point at issue by intervening either for the notifier or the other party, or the notified might have actually done so, and that in such cases the extension of the effect of intervention to the notified is of no consequence whatsoever. In this connection, the court decision said that the finding taken in the *ratio decidendi* of the former suit is binding on the notified.

This way of thinking, as evidenced in the current decision, should be considered as having deviated a step further from the existing framework of views on the system of the notice to the third party. In other words, the current decision has tossed a new problem into the arguments on the notice to the third party system, by admitting that there is a possibility of extending the effect of the third party notice to the notified, not only when the notified and the notifier share common interests, but also when their interests clash. It is likely that a move, encouraged by the current decision, may be touched off to restructure the system of the

notice to the third party especially in connection with its purpose and function. On this score, future trends concerning academic theories and decisions call for special attention.

In connection with the current decision, X made a *Jokoku* appeal being dissatisfied with the basic time of calculating compensation for loss, but a decision was made on Dec. 5, 1980 dismissing the case. As Y did not make a *Jokoku* appeal, the Supreme Court made no judgment on the controversial problem surrounding the effect of the notice to the third party.

By Assoc. Prof. TETSUO KATO
NORIYUKI HONMA

5. Criminal Law and Procedure

a. Criminal Law

1. A case in which the negligence of a cook in causing death from *Fugu* poisoning was inferred.

Decision by the Second Petty Bench, the Supreme Court, on Apr. 18, 1980. Case No. (*a*) 886 of 1979. Charges of causing death by negligence in the performance of work and violating the ordinance concerning the handling of *Fugu*. 34 *Keishū* 149.

[Opinions of the Court]

The defendant made a *Jokoku* appeal on the ground that he could not have foreseen the consequences. The Supreme Court, however, made the following decision:

"In the light of the circumstances that the poisonous nature of *Fugu* has been considerably made clear in recent years and that there are Kyoto Prefectural regulations concerning the handling of *Fugu*, as well as lecture meetings sponsored by the *Fugu* Cuisine