cision by the Third Petty Bench of the Supreme Court on July 28, 1962.) The Supreme Court, presupposing the posture of those two Supreme Court decisions, decided the current case under review in light of the Commercial Code, Article 14, stating that when there are special circumstances such as a resigned director expressly consenting to allow the false registration to remain in the registry, the resigned director is liable for damages under Article 266.3 by analogical application of Article 14. The Court expressed an opinion that there may be a limited interpretation as to the requirements for the resigned director's liability to the third party.

Furthermore, regarding the director whose registration of resignation is not completed, the view that protests against the analogical application of Articles 12 or 14 so long as the resigned director does not perform any acts as director after his resignation, and that, consequently, denies liability under Article 266.3 (1) or construes liability to be very limited, has gotten stronger in the latest scholarly opinions and judgments of lower courts.

Prof. TAKAYASU OKUSHIMA
KAZUKO YAMAGUCHI

7. Labor Law

1. Employer's order to change the date of annual vacation with pay.

Decision by the Second Petty Bench of the Supreme Court on July 10, 1987. Case No. (*o*) 618 of 1984. 41 *Minshū* 1229.

[Facts]

X (*jokoku* appellant) was an employee, shift worker, of Y (*jokoku* respondents). On September 4, 1978, X required Sunday September 17, as one of his annual vacation days. X had been scheduled to work the day shift on that day. It had been established through labor-

management consultation that there should be at least two employees present at X's workplace on Sundays and holidays. Y thought that X might participate in the rally against Narita Airport and engage in unlawful actions there. Y persuaded A (an employee of Y), who had agreed to substitute for X on September 17, to reconsider working for X. Then, Y changed X's vacation day, i.e. refused to allow X to take September 17 as an annual vacation day. On September 17, X did not go to work. Instead he participated in the rally but did not engage in unlawful actions. Y subjected X to disciplinary reprimand, and did not pay X his salary for September 17.

X filed an action demanding his salary for September 17 and a judicial declaration that the reprimand was null and void. The court of first instance decided for X. Y filed a *koso* appeal. The *koso* appellate court reversed the decision of the court of first instance. X filed a *jokoku* appeal.

[Opinions of the Court]

Jokoku appeal allowed.

When a worker specifies the date of an annual vacation day with pay, the worker may take the vacation on the date he/she specifies unless the employer legally changes the date. The employer should not prevent the worker from enjoying his vacation, and the Labor Standards Act demands that the employer should take all appropriate measures, depending on the circumstances, to grant the vacation day on the date the worker specifies.

In an establishment where workers are subject to a scheduled shift work system, unless the employer takes normal measures to find a substitute worker, the employer is not entitled to invoke Article 39 (3) of the Labor Standards Act which authorizes the employer to change the date of the vacation day when granting the day would prevent normal operation of the enterprise. The employer shall not change the date of the vacation day without first taking measures to find a substitute worker, no matter what the worker's purpose in taking the vacation day.

[Comment]

A worker who has a right to an annual vacation cannot enjoy the vacation if the court simply authorizes the employer's judgment that the vacation of the date the worker specifies would prevent the normal operation of the enterprise. This requirement for changing the date of the vacation should therefore be interpreted strictly so that workers may enjoy annual vacations on the date(s) they specify.

This decision makes clear that the law demands that the employer should take measures (e.g. placement of a substitute worker) to enable the worker to enjoy his/her vacation on the date(s) the worker specifies. It is illegal for the employer, as in this case, to create a situation where there are no workers available to substitute for the worker who requires annual vacation time. Moreover, it is also illegal to change the date of vacation without taking measures to find a substitute worker. This decision is very important in assuring that workers will have the freedom to take their vacations.

2. Wage and rest-day allowance on rest-days caused by a partial strike.

Decision by the Second Petty Bench of the Supreme Court on July 17, 1987. Cases Nos. (*o*) 1189 and 1190 of 1982. 41 *Minshū* 1283.

[Facts]

X et al. (*jokoku* respondents in Case No. (*o*) 1189, *jokoku* appellants in Case No. (*o*) 1190) were employees of Y (an airline company, *jokoku* appellants in Case No. (*o*) 1189, *jokoku* respondents in Case No. (*o*) 1190), and they worked at Y's establishments in Okinawa or Osaka. X et al. were members of A (a trade union composed of employees of Y). Y had been using both its own employees and the employees of B (another enterprise). A thought this to be violation of the Employment Security Act, which prohibited labor supply from outside sources. A demanded that Y itself should employ the employees of B. Y suggested another reform measure, but it did not satisfy A. A's members working at the establishment in Tokyo went on strike. This strike forced Y to decrease its flights and

change routes, and consequently the work of X et al. became unnecessary for Y. Then, Y ordered X et al. to accept a layoff. Y paid nothing to X et al. for these days off.

X et al. filed an action in which they demanded payment of their full wages (Article 536(2) of the Civil Code) or, in the alternative, rest-day allowances (60% of the wages, Article 26 of the Labor Standards Act). The court of first instance dismissed the claims of X et al. X filed a *koso* appeal. The *koso* appellate court ordered Y to pay the rest-day allowances but dismissed the claim for wages. Y filed a *jokoku* appeal claiming that Y was not under obligation to pay rest-day allowances (Case No. (*o*) 1189). X filed a *jokoku* appeal demanding payment of wages (Case No. (*o*) 1190).

[Opinions of the Court]

In Case No. (*o*) 1189, *jokoku* appeal allowed. In Case No. (*o*) 1190, *jokoku* appeal dismissed.

Article 26 of the Labor Standards Act provides that the employer shall pay an allowance equivalent to 60% or more of the worker's average wage for a rest-day caused by a reason for which the employer is responsible. This provision does not exclude application of Article 536(2) of the Civil Code, which provides that the debtor shall not lose the right to demand counter-performance when implementation becomes impossible due to a reason for which the creditor is responsible. The scope of "a reason for which the employer is responsible" (Article 26 of the Labor Standards Act) is larger than that of "a reason for which the creditor is responsible" (Article 536(2) of the Civil Code).

Considering the reform measure suggested by Y, it cannot be said that the strike of A was caused by Y. Of its own accord, A went on strike and, thus, must accept responsibility for striking. The reason for X et al. being required to take a layoff falls within neither "a reason for which the employer is responsible" nor "a reason for which the creditor is responsible."

[Comment]

First, it is important that the Supreme Court reversed the *koso*

appellate court's decision to the effect that Article 26 of the Labor Standards Act excludes the application of Article 536(2) of the Civil Code. Secondly, it is also significant that the Supreme Court ruled that the scopes of the two provisions are different. On these two points, we agree with the opinions of the Supreme Court. On the latter point, however, the Supreme Court did not clarify the provisions' respective scopes. This will be left to future decisions.

Prof. KAZUHISA NAKAYAMA
MADOKA SAITO

8. International Law

1. The ownership of Chinese property abroad after the Sino-Japanese normalization.

Decision by the Tenth Civil Division of the Osaka High Court on February 26, 1987. Case No. (*ne*) 335 of 1986. 1232 *Hanrei Jihō* 119.

[Reference: Civil Code, Article 206.]

[Facts]

The land and building thereon, so-called Kokaryo, which the Republic of China (Taiwan) (plaintiff, *koso* respondent) requested the students (defendants, *koso* appellants) to evacuate had been during World War II leased by Kyoto University. (Whereas the Republic of China had been used as the name of the plaintiff or *koso* appellant in this case, Taiwan was used as the name of the *koso* respondent in the current case in the Osaka High Court under review.) After the war, the Republic of China (Taiwan) purchased the building concerned in 1947 and her ownership was formally registered in 1961. In 1966, the Republic of China (Taiwan) filed a suit with the Kyoto District Court, calling for removal of the students who were in con-