

《資 料》

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2 Draft law of Constitution of the Imperial Courts of Justice (Shihosaibansho)

DRAFT LAW OF CONSTITUTION OF THE IMPERIAL COURTS OF JUSTICE
(SHIHOSAIBANSHO).¹⁹⁾

PART I.

JURISDICTION.

ARTICLE 1. All jurisdiction shall be exercised by the courts of justice in the name of the Emperor.

Art. 2. The courts of justice shall be independent, and subject to no authority other than law.

Art. 3. No person can be deprived of those rights in the administration of justice to which he is by law entitled.

Art. 4. No Exceptional Courts (Reigaisaibansho) can be established, unless by virtue of special law providing for times of war (sensō), state of siege (kaigen), or insurrection (bōdō).

Art. 5. With the exception of the jurisdiction exercised by Naval and Military Courts (Gunji Saibansho), Disciplinary Courts (Chokai-saibansho), Administrative Courts (Giosei-saibansho), the Conflict of Competency Court (Kengen-saibansho), and Exceptional Courts (Reigai-saibansho), all civil and criminal jurisdiction shall be exercised by the ordinary courts (tsujō-saibansho) established by this law, or by such special courts (Tokubetsu-saibansho) as it may be found necessary to establish by special law for dealing with matters of commerce (shōji), shipping (shōsen-jiken), or questions arising between manufacturers and

19) 本資料は、法務図書館貴重書所蔵 XB100J2-16資料の翻刻であり、法務図書館長の許可を得ている。なお、例えば、119条1項が preceding article と規定するのに、124条柱書が preceding Article と規定するような不統一や94条2項に見えるような誤植 (“shall to be receive”とあるが、正しくは、“shall be to receive”である。)があるがそのままとした。

workmen.

Art. 6. The provisions of this law applicable to District Courts shall apply to such special courts, except in so far as the same are modified or rendered inapplicable by the law establishing such courts.

Art. 7. The judicial powers exercisable by the police shall be limited to matters of contravention, and even then can only be exercised by them subject to a hearing as of right before a local court.

Art. 8. The jurisdiction of the ordinary and special courts shall be exercised in actions brought against public officials, public authorities, or even the State itself, unless they be such as are to be otherwise dealt with by virtue of special law.

Disputes as to the competency of these courts to try any such action shall be decided by the Conflict of Competency Court.

PART II.

THE COURTS OF JUSTICE (SHIHOSAIBANSHO) AND PUBLIC PROCURATORS OFFICES (KENJIKIOKU).

Chapter I.

GENERAL PROVISIONS.

Art. 9. The ordinary courts shall be the following : -

1. Local Courts (Kusaibansho).
2. District Courts (Chihosaibasho).
3. Appeal Courts (Kosoin).
4. The Supreme Court (Daishinin).

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With the exception of the Local Courts they shall be collegiate courts (gogisaibansho), that is courts in which all matters not otherwise specially provided for by the Codes of Procedure, or by special law, shall be heard and decided in divisions (Bu) consisting of several judges.

Art. 10. The courts shall be provided with a sufficient number of judges, in which shall be included the Presidents of courts, (Saibanshonocho) as well as the Presidents of divisions (Buchou).

Such number shall be annually determined by the Cabinet in the National Budget after it has received the report of the Minister of Justice.

Art. 11. To each court there shall be attached a public procurators office (Kenjikioku). Such offices shall in criminal matters take all the steps necessary for the institution and conduct of public prosecutions, shall demand the proper application of the law, and shall see that the sentences of the courts are duly enforced. They shall also exercise and perform those rights and duties of supervision over all judicial and administrative matters, which belong to or concern the courts,

and which legally come within the scope of their power as the representatives of public interests.

The public procurators (kenji) shall transact their business independently of the courts.

The territorial jurisdiction of a public procurators office shall be co-extensive with that of the court to which it is attached.

When the public procurator, if there be only one, or, if more than one, then when all the public procurators of an office are prevented from attending to any particular matter, the President of the court, or, in the case of a Local Court, the judge or superintending judge (kantokuhanji) may, if he sees fit and if the matter admits of no delay, appoint a substitute to attend to such matter.

Such substitute may in case of necessity be a judge.

Art. 12. The public procurators offices shall be provided with a sufficient number of public procurators, in which shall be included the heads of offices attached to district and appeal courts (Kenjisho, Kenjicho), and the Public Procurator-General (Kenjisochō).

Such number shall be annually determined by the Cabinet in the National Budget after it has received the report of the Minister of Justice.

Art. 13. In each court a court clerks office (shokikioku) shall be established. Such office shall manage all correspondence, keep accounts, receive and pay monies, make and keep all records, and do any other business which is by this or any other law specially provided.

A separate court clerks office for the transaction of similar business in the public procurators office attached to a court shall only be established if it should be found necessary, and even then this shall only be done in offices attached to collegiate courts.

One or more special officials may, if necessary, be intrusted solely with the keeping of the accounts of a court, including the receipt and payment of monies.

Art. 14. All documents issuing from the courts and requiring service shall, except in those cases in which the law permits service to be made by a court clerk, or through the post, be served by process servers (Shittatsuri).

Process servers shall also carry into execution the judgments (Hanketsu), orders (meirei), and decisions (Saiban) of the courts, so far as this is not done in criminal matters by the aid of the police, and shall perform such other special duties as are provided for by this or any other law.

Art. 15. The establishment and abolition of courts shall be determined by Imperial Decree.

Changes in the places at which the courts shall sit, as well as changes in their territorial jurisdiction, shall be determined by the Cabinet.

Art. 16. In the following cases, in so far as the same are not specially provided for by law, the next higher court having jurisdiction over the respective courts shall, when duly applied to, decide what court is competent to deal with the matter in question : -.

1. When a court otherwise competent is, either on grounds of law or through particular circumstances, prevented from exercising its jurisdiction, and the court appointed by virtue of Article 19 of this law to act for such court is likewise prevented ;

2. When the competency of a court is in doubt, owing to uncertainty as to the boundaries of its territorial jurisdiction ;

3. When by virtue of law, or of two or more final judgments, (kakatei hanketsu) ^(ママウカ?) two or more courts have concurrent jurisdiction ;

4. When one of two or more courts that have declared themselves incompetent, or have been so declared, by final judgments, ought to exercise jurisdiction.

Chapter II.

THE LOCAL COURTS (KUSAIBANSHO).

Art. 17. The jurisdiction of a Local Court shall be exercised by a single judge (kantokuhanji), whether there be more than one judge belonging to the court or not.

In a Local Court, which has more than one judge, the business shall be distributed among them in accordance with the general principles laid down by the Minister of Justice.

Such distribution shall be decided upon annually in advance by the president of the District Court.

Anything done by a judge of a Local Court shall not be invalidated by the mere fact that such business, according to the arranged distribution, belonged to another judge of the same court.

The administrative business of a Local Court which has more than one judge shall be assigned to one of them, who shall be the superintending judge, by the Minister of the justice.

Art. 18. When the distribution of business has been once decided upon, it shall not be changed during the judicial year except on grounds of inconvenience of a permanent nature, such, for instance, as when the work of a judge becomes excessive, or when a judge is removed, or is absent for a long time from sickness or other causes.

Art. 19. The judges of a Local Court shall act as substitutes for each other in the order fixed upon annually in advance by the President of the District Court.

The Local Court that shall act as substitute for another, when such court is prevented on grounds of law or by circumstances from discharging its duties, shall be similarly determined annually in advance.

Art. 20. In civil actions, excepting those specially provided for by Article 33, the Local Courts shall have the following jurisdiction : -

1. Over claims to or concerning personal property which is of a value of not more than 100 *yen* ;

2. Over claims to or concerning real property which is of a value of not more

than 100 *yen*, provided that real property, or servitudes (*chiyeiki*), of a larger value, belonging in whole or in part to the defendant, are not thereby affected ;

3. Over money claims for not more than 100 *yen*, and over claims for specific performance for which not more than 100 *yen* might be claimed in the alternative by way of damages, provided that such claims do not involve the title to real property, or to servitudes, of a larger value than 100 *yen* ;

4. Without reference to value over disputes which concern only the position of boundaries of property, and which can be determined by a reference to official registers ;

5. Without reference to value over disputes concerning possession (*senyu*) only ;

6. Over disputes arising between lessors and lessees, other than such as come within the other provisions of this article, provided that the same do not concern a lease or tenancy, of either more than two years in length or with a monthly rental of more than 50 *yen* ;

7. Over disputes arising between employers and employees, other than such as come within the other provisions of this Article, provided that the same do not concern an engagement for a longer period than one year (disputes arising within the provisions of any special law for the trial of disputes between manufacturers and workmen excepted) ;

8. Without reference to value over disputes arising between travellers and hotel or restaurant keepers, or between travellers and carriers : -

a. With respect to payment for their board or lodging, or for the carriage of themselves, or the luggage accompanying them ;

b. With respect to the luggage accompanying them, or monies, or valuables, deposited by them with such persons for safe keeping ;

Art. 21. In non-contentious matters the Local Courts shall, within the limits and in manner provided by law, be competent to transact the following business : -

1. To direct and control the guardians of minors, lunatics, idiots, absentees, and other persons prohibited by law, or any judgment, from managing their own affairs.

2. To keep land registers wherein, after due examination, shall be entered copies of documents and matters affecting title to real property.

3. To keep registers of persons carrying on business in trade, either singly or in partnership, registers of companies, registers of shipping, and registers of those patents, trade-marks, and designs which have been already registered in the Central Registry.

Art. 22. The Local Courts shall have jurisdiction in bankruptcy when the property of the debtor does not exceed 100 *yen* in value.

Art. 23. In criminal matters the Local Courts shall have the following jurisdiction : -

1. Over contraventions.

2. Over delicts for which the normal punishment does not exceed two months imprisonment, with or without a fine of not more than 50 *yen*, or a fine of 100 *yen* only.

3. Over delicts which have been committed within their territorial jurisdiction for which the normal punishment does not exceed two years imprisonment, with or without a fine of not more than 200 *yen*, or a fine of 300 *yen* only, and which have been assigned to them by the public procurators office attached to the District Court, or branch division of such court, as appearing from the circumstances of a nature not to require a greater punishment than that mentioned in sub-section 2.

In prosecutions so instituted, the Local Court may, at any time prior to rendering judgment, if the offence, in case it be proved, appears to it to be of a nature which could not be adequately punished by such punishment as is mentioned in sub-section 2, declare itself incompetent to proceed further, and the public procurator shall then take the proper steps to bring the accused for trial before the competent court.

Art. 24. The further competency of the Local Courts is contained in the special laws concerning bankruptcy and the other matters mentioned in this chapter, as well as in the Codes of Procedure.

Art. 25. Each Local Court shall have in the public procurators office attached to it at least one public procurator.

The Minister of Justice shall be at liberty to authorize to assist him, and to act for him, either supernumerary public procurators (*yobikenji*) or aspirants (*shiho*), and, in case of necessity, supernumerary judges (*yobihanji*).

Chapter III. THE DISTRICT COURTS (CHIHOSAIBANSHO).

Art. 26. The District Courts shall be collegiate courts of first instance.

In every District Court there shall be one or more civil divisions and one or more criminal divisions.

If necessary, other divisions than the above may be constituted by special law, and may form special courts for dealing with matters of commerce, shipping, or questions arising between manufacturers and workmen.

Art. 27. In each District Court there shall be a President (*Chihosaibanshocho*).

His duties shall be to direct the general affairs of the court, to superintend its administrative business, and legalize, when necessary, the signatures and seals of officials who reside within the limits of its territorial jurisdiction.

Each division of a District Court shall have a President (*Bucho*), whose duty it shall be to superintend the business of his division and determine its distribution.

Art. 28. One or more of the judges of each District Court shall be annually appointed by the Minister of Justice for the conduct of preliminary examinations in criminal matters belonging to the jurisdiction of the court.

Art. 29. The business of each District Court shall be distributed among the different divisions and judges of preliminary examination before the end of every judicial year for the ensuing year.

Such distribution should depend either on the nature of the business, of the place from which it comes, or on some other clear distinction, such as initial letters of the names of the defendants or accused.

The Presidents (Bucho) and members of the different divisions in each District Court shall also be decided upon every year in advance.

The matters above mentioned shall be settled by order of the President of the Appeal Court after he has received the report of the President of the District Court. In such report the President of the District Court shall have the right to name the division to which it is his intention to belong during the ensuing year.

Art. 30. Any business which has been commenced in any division, but not finished by the end of the judicial year or before the commencement of either vacation, may, if the President of the court should consider it expedient, be brought to a conclusion by such division composed of the same members.

Judges of preliminary examination may similarly be required to complete any business that has not been finished.

Art. 31. When the distribution of the business, and the disposition of the members of a court has been once decided upon in accordance with Article 29 it shall not, excepting during vacation, be changed during the judicial year, unless it be on grounds of inconvenience of a permanent nature, such, for instance, as when the work of a division becomes excessive, or when a judge is removed, or is absent for a long time from sickness or other cause.

In the event of the business being at any time found to be excessive for the existing divisions of a court, a new division or divisions may be established, if the Minister of Justice should consider it advisable.

Art. 32. If the President of a District Court be prevented from attending to his duties he shall be represented in such capacity by the President of division who is highest in rank, and in his capacity of President of a division by the judge who is highest in rank in that division.

If the President of a division is prevented from attending to his duties, he shall in similar manner be represented by the judge who is highest in rank of his division.

If two or more Presidents of Divisions or Judges should happen to have equal rank, the one who is senior in such rank should be preferred, and if they should also happen to have equal seniority in rank, the matter should be decided by seniority in age.

The other judges of a District Court shall act as substitutes for each other in the order of representation fixed upon annually in advance by the President of the Court, and based upon such general principles as may be laid down by the Minister of justice.

In the event of a judge being prevented from attending to a particular matter,

and there is no other judge of the same court who can represent him, the President of the court may, if such matter be of an urgent nature, order that a judge of a Local court within the territorial jurisdiction of the District Court, or a supernumerary judge, shall act as his substitute.

Art. 33. In civil actions the District Courts shall have the following jurisdiction :

1. In first instance—

a. Over all claims, irrespective of amount or value, brought either by or against the State (whether the Central Government or any authority acting under it) ;

b. Over all claims, irrespective of amount or value, brought against public officials, provided that the same originate out of official transactions ;

c. Over all other claims except those for which the Local Courts or special courts are exclusively competent.

2. In second instance—

a. Over appeals from judgments of the Local Courts ;

b. Over appeals in so far as the same are provided for by law against orders of the Local Courts.

Article 34. In criminal proceedings the District Courts shall have the following jurisdiction : —

1. In first instance—

Over all criminal matters which the Local Courts are not competent to deal with, and which are not within the special competency of the Supreme Court.

2. In second instance—

a. Over appeals from judgments of the Local Courts ;

b. Over appeals in so far as the same are provided for by law against orders of the Local Courts.

Art. 35. The District Courts shall have general jurisdiction, in bankruptcy, the limited jurisdiction conferred on Local Courts being alone excepted.

They shall also have jurisdiction over appeals from judgments and orders of the Local Courts in bankruptcy.

Art. 36. The District Courts shall have jurisdiction over complaints (kōkoku), in so far as the same are provided for by law, made against decisions of the Local Courts in non-contentious matters.

Art. 37. The further competency of the District Courts, and the extent and manner in which their jurisdiction is to be exercised, are, in so far as the same are not provided for by this law, contained in the special laws concerning bankruptcy, and those non-contentious matters over which the Local Courts have jurisdiction, as well as in the Codes of Procedure.

Art. 38. The Minister of Justice may, if he sees fit on account of the distance of a District Court from some of the Local Courts within its jurisdiction, order that one or more branch criminal divisions of the District Court be established for the transaction of part of the criminal business belonging to such court, and shall determine the Local Court or Courts at which such branch division or divisions shall

sit.

In the composition of such a branch division one judge, either of the Local Court where the branch division is established, or of a neighbouring Local Court, may be employed ; the selection of such judge shall rest with the Minister of Justice.

The Minister of Justice shall appoint the judges of preliminary examination, as well as the public procurators, who are to serve at such branch divisions. He shall be at liberty to appoint as such judges of preliminary examination judges of Local Courts within the territorial jurisdiction of the District Court of which the division is a branch, provided that such judges are qualified to be judges of a District Court.

The provisions of Article 32 with respect to representation are also applicable to branch criminal divisions.

Art. 39. In District Courts all matters, which by the Codes of procedure are to be tried and decided in court, shall be heard and decided by a division consisting of three judges, one of whom shall be the President of such division, and in which under no circumstances shall more than one supernumerary judge be allowed to sit.

Other matters shall be disposed of by the judges as provided for by such Codes.

Art. 40. In the public procurators office attached to each District Court there shall be a Head Public Procurator (Konjisho), who shall direct, distribute, and superintend the transaction of all the business of such office. The other public procurators of the office shall, however, have power to act for him in any matter without receiving special authority.

Chapter IV.

THE APPEAL COURTS (KOSOIN).

Art. 41. The Appeal Courts shall be collegiate courts of second instance.

In every Appeal Court there shall be one or more civil divisions, and one or more criminal divisions.

Art. 42. In each Appeal Court there shall be a President (Kosoincho).

His duties shall be to direct the general affairs of the court and to superintend its administrative business.

Each division of an Appeal Court shall have a President (Bucho), whose duty it shall be to superintend the business of his division and to determine its distribution.

Art. 43. With respect to the distribution and completion of business and the representation in cases of necessity of one judge by another, Articles 29, 30, 31, and 32 shall be applied to Appeal Courts, subject to the following modifications :

a. That the power thereby conferred on the Presidents of the District Courts

shall be considered as conferred on the Presidents of the Appeal Courts ;

b. That the powers thereby conferred on the Presidents of the Appeal Courts shall be considered as conferred on the President of the Supreme Court ;

c. That when a judge of an Appeal Court is prevented from attending to any particular matter, and there is no other judge of the same court who can represent him, a judge of the District Court of the place where the Appeal Court has its seat, and not a judge of a Local Court or a supernumerary judge, may, if the matter be of an urgent nature, be required to attend the Appeal Court upon a notice being sent by the President of the Appeal Court to the President of the District Court to furnish him with such judge.

Art. 44. The Appeal Courts shall have the following jurisdiction : -

1. Over appeals from judgments of District Courts rendered in first instance ;

2. Over appeals, in so far as the same are provided for by law, against orders of District Courts.

3. Over appeals on ground of error in law against judgments of District Courts on appeals from Local Courts.

4. Over applications, in so far as the same are provided for by law, for the re-hearing by District Courts of actions (civil or criminal), or of other matters already decided by them on appeal.

5. Over complaints, in so far as the same are provided for by law, against decisions of the District Courts in non-contentious matters.

Art. 45. The further competency of the Appeal Courts, and the extent and manner in which their jurisdiction shall be exercised, are, in so far as the same are not provided for in this law, provided for by the Codes of Procedure, or by special law.

Art. 46. In Appeal Courts all matters, which by the Codes of Procedure are to be tried and decided in court, shall be heard and decided by a division consisting of five judges, one of whom shall be the President of such division.

Other matters shall be disposed of by the judges as provided for by such Codes.

Art. 47. In the public procurators office attached to each Appeal Court there shall be a Chief Public Procurator (Kenjicho).

With respect to his powers, as well as the powers of the other members of such office, Article 40 shall be applied.

Chapter V.

THE SUPREME COURT (DAISHININ)

Art. 48. The Supreme Court shall be the highest court of justice.

It shall have one or more civil divisions, and one or more criminal divisions.

Art. 49. In the Supreme Court there shall be a President (Daishinincho), whose duty it shall be to direct the general affairs of the court and to superintend its administrative business.

Each division of the Supreme Court shall have a President (Bucho), whose duty it shall be to superintend the business of his division and determine its distribution.

Art. 50. The President of the Supreme Court shall not belong to any of the divisions of the Court, but shall have the right to preside in any of them as he may see fit.

At such time the judge who is lowest in rank of the division shall withdraw, and the President of the division shall sit as an ordinary member. In determining which judge is the lowest in rank, the provisions of Article 32 shall be inversely applied.

Art. 51. The distribution of business in the Supreme Court, and the order of representation, shall be arranged annually in advance by the President of the Court after consultation with the Presidents of the divisions.

When a judge of the Supreme Court is prevented from attending to any particular matter, and there is no other judge of the court who can represent him, the President of the court may, if such matter be of an urgent nature, require the President of the Appeal Court at the place where the Supreme Court has its seat, to furnish him with a judge of his court to represent such judge.

Art. 52. The President, or any member of a division, may be at any time transferred to another division by order of the President of the court after first obtaining the consent to such transfer of such President or member.

Art. 53. When the composition of a division is changed under Article 52, the provisions of Article 30 shall be applied to the business then pending.

With reference to changes in the distribution of business during the year, the provisions of Article 31 shall be applied.

Art. 54. The opinions expressed by the Supreme Court on any point of law in giving any decision shall be binding on the lower courts in all proceedings in the same action (civil or criminal).

Art. 55. When an appeal is based on a point of law, which has been differently decided on previous occasions by individual divisions of the Supreme Court, the President of the court shall have the power to order such appeal, according to its nature, to be heard and decided by all the civil or criminal divisions, or by all the divisions of the court sitting together, but such order can only be made so long as the hearing of such appeal by an individual division has not been commenced.

Art. 56. If a division, after hearing an appeal, is of an opinion contrary to a former decision of one or more divisions of the court upon the same point of law, the President of the court shall, upon the request of such division, order all the civil or criminal divisions, or all the divisions of the court, according to the nature of the appeal, to sit together and retry and decide the appeal.

Art. 57. The Supreme Court shall have the following jurisdiction : -

1. In last instance :

(a.) Over appeals on ground of error in law against the judgments of the Appeal Courts, other than those rendered by virtue of Article 44, sub-section (3).

(b.) Over appeals, in so far as the same are provided for by law, against orders of the Appeal Courts.

(c.) Over applications, in so far as the same are provided for by law, for the re-hearing by the Appeal Courts of actions (civil or criminal) already decided by them.

(d.) Over complaints, in so far as the same are provided for by law, against the decisions of the Appeal Courts in non-contentious matters.

2. In first and last Instance :

Over the examination into, and trial of, crimes mentioned in the Penal Code, Book 2, Chapters I and II (crimes committed against the Emperor, the members of the Imperial Family (“Kōzo-ku”), and the State, as well as offences committed by members of the Imperial Family which render them liable to imprisonment or to a higher punishment.
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Art. 58. Against the judgments and decisions of the Supreme Court in last instance rendered by Article 57 (1), there shall be no further legal recourse.

Art. 59. The further competency of the Supreme Court, and the extent and manner in which its jurisdiction shall be exercised, are, in so far as the same are not provided for in this law, provided for by the Codes of Procedure, or by special law.

Art. 60. In the Supreme Court all matters which, by the Codes of Procedure, are to be tried and decided in court, shall be heard and decided by a division consisting of seven judges, one of whom shall be the President of such division.

In the cases provided for by Articles 55 and 56, at least two-thirds of the members of the combined divisions must attend and take part.

Other matters shall be disposed of by the judges as provided for by the Codes of Procedure.

Art. 61. The President of the Supreme Court shall for each particular case, which, by the provisions of Article 51, is to be tried by the Supreme Court in first and last instance, name a judge of the court to act as judge of preliminary examination, as well as another judge of the court, who shall act as his legal representative in the event of his being prevented from performing such duties.

Art. 62. At the head of the public procurators office, attached to the Supreme Court, shall be the Public Procurator-General (“Kenjisocho”).

With respect to his powers, as well as the powers of the other members of such office, Article 40 shall be applied.

PART III.

THE MEMBERS AND OTHER OFFICIALS OF THE COURTS OF JUSTICE AND OF THE PUBLIC PROCURATORS OFFICES.

Chapter I.

THE NECESSARY PREPARATION AND QUALIFICATION IN ORDER TO BE- COME A JUDGE OR PUBLIC PROCURATOR.

Art. 63. Subject to the exceptions in this law contained, two competitive examinations must be passed in order to become a judge or public procurator.

Art. 64. The qualifications necessary for candidates (shigansha) in order to enable them to compete for such examinations, as well as all particulars concerning such examinations, shall be settled by the Minister of Justice in the Regulations for Examinations for judges and public procurators.

Candidates who have passed the first examination shall, before competing for the second examination, be required to go through a period of three years practical training in the courts and public procurators offices as aspirants (shiho).

The particulars concerning this training shall also be provided for in the said Regulations.

Art. 65. Before an aspirant enters upon the period of training mentioned in the preceding Article he shall take the prescribed oath, or solemn affirmation, that he will faithfully serve the Emperor, and discharge his duties.

Art. 66. If the conduct of an aspirant appears to the Minister of Justice to merit it, he may at any time dismiss him, and forbid him the right to compete in the second examination.

The particulars concerning such dismissal shall be also provided for in the said Regulations.

Art. 67. Those aspirants who have gone through at least one year of training, may transact certain judicial business in Local Courts if required to do so by the judge, who has for the time being the superintendence of their training.

Judges of preliminary examination in Local Courts, and judges acting under commissions issuing from District Courts, can similarly make use of aspirants under their charge to do certain work for them.

Art. 68. Aspirants shall in no case be competent to transact the following business : -

- a. To try any action, or proceeding, or any interlocutory application therein ;
- b. To render any judgment, or decision, or make any interlocutory order, whether in contentious or non-contentious matters, or in bankruptcy ;
- c. To take evidence (except when the law permits it to be taken on commis-

sion) ;

d. To make entries in the land registers.

Art. 69. An aspirant, who has successfully passed the second competitive examination, shall be created a judge or public procurator.

Art. 70. Such judge or public procurator shall, so soon as there be a vacancy, be appointed to a Local Court, or to a public procurators office attached to a Local Court, as the case may be.

Until there be a vacancy he shall be appointed to act as a supernumerary judge (Yobihanji) or supernumerary public procurator (Yobikenji), and shall be employed by the Minister of Justice either in the Ministry of Justice, or in a Local or District Court, or in a public procurators office attached to such a court.

Art. 71. A supernumerary judge, or supernumerary public procurator, when employed in a Local or District Court, or in the public procurators office attached to such a court, may, when the ordinary course of representation either cannot be followed or can only be followed with great inconvenience, be authorized by the Minister of Justice to represent, in accordance with the principles of this law, a judge, or public procurator, who is prevented from attending to his duties.

The Minister of Justice may also authorize a supernumerary judge, or supernumerary public procurator, to fill, in so far as the law permits, any vacant position of judge or public procurator in a Local or District Court, or in the public procurators office attached to such a court, so long as such vacancy continues.

Art. 72. A person who has been for at least three years an advocate, or professor of law of the Imperial University, may be created a judge, or public procurator, without passing the examinations mentioned in this chapter.

Art. 73. No person can be appointed a judge or public procurator : -

a. Who has been convicted of a crime, unless such crime be of a political nature and he has been rehabilitated ;

b. Who has been convicted of a delict punishable with hard labour ;

(NOTE.—Subject to the revision of the Penal Code.)

c. Who is an undischarged bankrupt.

Chapter II.

THE JUDGES.

Art. 74 The judges shall be created by the Emperor upon the nomination of the Minister of Justice. Such creation shall be for life.

Art. 75. A judge, so soon as he has been created, shall be appointed by the Minister of Justice as judge of a particular court, or if there be no vacancy, he shall be appointed a supernumerary judge until there be a vacancy.

All subsequent appointments shall be made by the Minister of Justice with the exception of the appointment to the presidentship of the Supreme Court, which shall be made by the Emperor.

Art. 76. No person shall be appointed judge of a District Court unless he has

served at least one year in a Local Court as judge, or supernumerary judge, or as public procurator, or as supernumerary public procurator, in the public procurators office attached to such court, or unless he has been for at least three years either an advocate or a professor of law at the Imperial University.

Art. 77. No person shall be appointed judge of an Appeal Court unless he has been for at least six years either a judge (including service as supernumerary), a public procurator (including service as supernumerary), an advocate, or a professor of law at the Imperial University.

Art. 78. No person shall be appointed judge of the Supreme Court unless he has been for at least ten years either a judge (including service as supernumerary), a public procurator (including service as supernumerary), an advocate, or a professor of law at the Imperial University.

Art. 79. In calculating the periods of time mentioned in Articles 77 and 78, it shall not be necessary that the service should have been continuous in one only of the employments mentioned, provided that it has been continuous in one or more of them up to the time of the said appointment.

Such continuity shall not be considered interrupted by service in the Ministry of Justice, although the time so passed shall not be taken into calculation.

Art. 80. Judges, so long as they remain on the list of the judicial service, shall not be permitted :—

- a. To publicly interest themselves in politics ;
- b. To be members of any political club or society, nor of any local, municipal, or district assembly (kukwai, gunkwai, kenkwai) ;
- c. To occupy any public office to which a salary is attached, or which has for its object pecuniary gain ;
- d. To carry on any trade or to do any other business prohibited by the Administrative Regulations.

Art. 81. Subject to the provisions of the following Article, a judge shall not, against his will, be either dismissed, or (except he be a supernumerary judge) be transferred from one court to another, or have his salary lowered or made to retire from the judicial service, or be temporarily or permanently suspended from exercising his judicial functions, unless it be by virtue of a disciplinary judgment or a criminal sentence which entails the suspension of public functions.

The above provision shall not apply to the temporary suspension of judicial functions which may be permitted by law, either at the commencement, or during the pendency of a disciplinary enquiry, or a criminal prosecution.

Art. 82. In the event of a change in the organization of a court being made by law, or of the abolition of a court, the Minister of Justice shall have the power, if there is no vacancy to which he can appoint a judge who is then left without a post, to place such judge temporarily on half-salary to await a vacancy.

In the event of any change in the organization of a court being made by the Minister of justice, a judge who is left without a post shall, while waiting for a vacancy, be entitled to receive his full salary.

Art. 83. The judges(including Supernumerary judges) shall receive fixed salaries.

Such salaries shall depend upon their official rank and the particular class of such rank to which they for the time being belong.

The judges shall have the following rank : -

1. The judges of Local Courts and supernumerary judges shall be Soninkwan of 4th, 5th, or 6th rank.

2. The ordinary judges of District Courts shall be Soninkwan of 2nd, 3rd, or 4th rank.

3. The ordinary judges of the Appeal Courts shall be Soninkwan of 1st or 2nd rank.

4. The ordinary judges of the Supreme Court shall be Chokuninkwan of 1st or 2nd rank, or Soninkwan of 1st rank.

5. The Presidents of divisions shall be of the highest rank of the ordinary judges of the court to which they belong.

6. The Presidents of District Courts shall be Soninkwan of 1st or 2nd rank.

7. The Presidents of Appeal Courts shall be Chokuninkwan of 1st or 2nd rank.

8. The President of the Supreme Court shall be Shinninkwan.

Art. 84. Judges without a particular post shall, so long as they remain on the list of the judicial service, receive their full salary, unless it be a case provided for by Article 82, by which the judge is only entitled to half salary.

A Judge representing another judge for more than one month shall, whilst so acting, be entitled to salary estimated on the lowest scale of salary payable to such office, if the same be more than what he is actually receiving.

Art. 85. Judges shall not be at liberty to receive any other remuneration than their salary for the transaction of judicial business, allowances and compensations permitted by law alone excepted.

Art. 86. Judges, upon their retirement from the judicial service, shall be entitled to pensions in accordance with the provisions of the Pension Law.

Art. 87. The salary of a judge shall continue to be paid him in spite of his having been suspended from discharging his duties on account of a disciplinary enquiry, or criminal prosecution, having been instituted against him.

Art. 88. The courts of justice shall be exclusively competent to try claims preferred by judges, which arise out of their judicial position

Chapter III.

THE PUBLIC PROCURATORS.

Art. 89. Articles 74, 75, 85, and 86, are similarly applicable to public procurators (including supernumerary public procurators) with the following modifications : -

(a.) The Public Procurator-General is appointed by the Emperor ;

(b.) Public Procurators although created for life may be dismissed against their

will by virtue of a disciplinary judgment, or a criminal sentence, which entails the suspension of public functions.

Art. 90. The public procurators (including supernumerary public procurators) shall receive fixed salaries.

Such salaries shall depend upon their official rank and the particular class of such rank to which they for the time being belong.

The public procurators shall have the following rank : -

1. Public Procurators of Local Courts and supernumerary public procurators shall be Soninkwan of 5th or 6th rank.

2. Public Procurators of District Courts shall be Soninkwan of 3rd or 4th rank.

3. Public Procurators of Appeal Courts shall be Soninkwan of 2nd or 3rd rank.

4. Public Procurators of the Supreme Court shall be Chokuninkwan of 2nd rank, or Soninkwan of 1st or 2nd rank.

5. Head Public Procurators (Kenjisho) shall be Soninkwan of 2nd or 3rd rank.

6. Chief Public Procurators (Keujisho) shall be Chokuninkwan of 2nd rank, or Soninkwan of 1st rank.

7. The Public Procurator-General (Kenjisochō) shall be Chokuninkwan of 1st rank.

Art. 91. The public procurators shall not in any way interfere with the judges in the discharge of judicial duties, nor shall they transact any judicial business.

Art. 92. The public procurators shall obey the orders of their official superiors.

Art. 93. Head Public Procurators, Chief Public Procurators, and the Public Procurator-General shall have the power to transact personally any business coming within the scope of the duties of a public procurator in any court within the limits of the respective districts in which they have authority to act.

They shall also have the power, within the same limits, to transfer any business from the public procurator who should in the ordinary course transact it to another public procurator.

Art. 94. The members of the judicial police shall obey all orders issued to them by the members of a public procurators office within the territorial limits of such office, as well as orders issued to them by the official superiors of such members.

The Department of Justice, and the Department of the Interior shall, in consultation together, determine those members of the police force who shall act as judicial police within the district of each court, and whose duty it shall to be receive and carry out such orders.

Chapter IV. COURT CLERKS.

Art. 95. The courts and public procurators offices shall be provided with a sufficient number of clerks in accordance with Article 13 of this law.

Such number shall be annually determined by the Cabinet in the National Budget after it has received the report of the Minister of Justice.

There shall in general be appointed at least one clerk for each judge in Local Courts, and for each division in collegiate courts.

Art. 96. In the clerks offices of collegiate courts, and of the public procurators offices attached to such courts when they have a separate clerks office, there shall be a chief clerk (shokicho).

In the clerks offices of Local Courts there shall, if there be more than one clerk, be a superintending clerk (kantokushoki).

Chief clerks and superintending clerks shall, subject to the orders of their official superiors, have the control and management of the business in their respective offices.

Art. 97. Anything done by a clerk, within the limits of the duties of such an official, shall not be considered invalid by the mere fact that such business, according to the arranged distribution of business, ought to have been performed by another clerk.

Art. 98. Clerks shall be created and appointed by the Minister of Justice.

Chief clerks of the Supreme Court and of Appeal Courts shall be Soninkwan, and shall also be appointed by the Minister of Justice.

Clerks (including chief clerks) shall receive fixed salaries.

Such salaries shall depend upon their official rank.

The cases in which they shall be entitled to pension, and the amount of such pension, shall be provided for by the Pension Law.

Art. 99. Two competitive examinations must be passed prior to being created a clerk.

The qualifications necessary for candidates in order to enable them to compete for such examinations, as well as all particulars concerning the same, and the preparatory service to be gone through after passing the first of them, shall be settled by the Minister of Justice in the Regulations for Examinations for clerks.

Art. 100. A candidate who has been created a clerk shall, if there be a vacancy, be appointed as such to a clerks office, but if there be no vacancy, he shall be meanwhile appointed a supernumerary clerk.

Such a supernumerary clerk can be temporarily appointed to act as a clerk and, whilst so acting, shall be entitled to receive the lowest salary payable to such official if such salary be in excess of what he is actually receiving.

Art. 101. The following business shall, subject to the exceptions hereinafer mentioned, be solely performed by clerks : -

1. To receive and file all documents delivered to the courts in any matter or proceeding, and to see that the fees thereon are duly paid.

2. To make a record of all proceedings that are held in court.

3. To issue legally certified copies of judgments orders decisions, and all other documents or writings under their control, and which form a part of the records or registers of the courts.

4. To issue, in manner provided for by the Codes of Procedure, the necessary certificates, or writs, for putting the judgments, orders or decisions of the courts

in execution or for enabling the same to be acted on ;

5. To receive applications for the registration or entry of documents, and matters, in the registers and books of the courts ;

6. To have the custody of the records of all proceedings in the courts, as well as of the registers required to be kept by the courts.

Art. 102. Clerks shall be competent to affix the seals of the courts to any property when such sealing is legally required, and also to remove such seals.

They may also, when there is no notary practising within the limits of the jurisdiction of the court to which they belong, or when, if there be one, his services cannot be obtained, transact the following business : -

a. To note and protest bills of exchange, promissory notes, and other negotiable instruments ;

b. To make inventories.

Before doing any such business as is provided for in this Article, the clerks shall on each occasion obtain the permission of the President of the Court, or, in the case of a Local Court, of the judge or superintending judge.

The further competency of clerks, in so far as the same is not provided for by this law, is provided for by the Codes of Procedure, or by special law.

Art. 103. Clerks shall obey the orders of their official superiors. In the sittings of the court they shall obey the orders of the presiding judge, or, if there be only one judge, then of that judge.

They shall similarly, when employed in a public procurators office, or when attached to any judge, or public procurator, for any particular business, obey the orders of such office, or judge, or public procurator, as the case may be.

If such order concerns the taking down of any statement, or the making or alteration of any written document, record, or register, and in their opinion the writing they are so ordered to make is not justified by the circumstances, or by the facts, they shall be at liberty, when making such writing, to attach thereto an explanatory note stating their own views.

The further duties of clerks and the manner in which their business is to be conducted, shall be determined by the Minister of Justice in the Regulations concerning clerks.

Art. 104. The President of a collegiate court, or the judge, or superintending judge of a Local Court, may temporarily authorize an aspirant employed in his court to transact the business mentioned in Article 101.

In such cases such aspirant shall, when signing his name officially, show that he does so by virtue of a special authority.

Art. 105. Supernumerary clerks shall be equally competent with clerks to transact the business mentioned in Articles 101 and 102.

The occasions on which such competency should be exercised, as well as the other duties that supernumerary clerks shall be competent to perform, shall be determined in the said Regulations for clerks.

Chapter V. PROCESS SERVERS (SHITATSURI).

Art. 106. The courts shall be provided with a sufficient number of process servers.

Such number shall be annually determined by the Cabinet in the National Budget after it has received the report of the Minister of Justice.

Art.107. Process servers shall be created and appointed by the Minister of Justice, or by his authorization. He shall have power to authorize the President of an Appeal Court to make such creations and appointments in any court within the jurisdiction of such Appeal Court.

Art. 108. Process servers shall receive fixed salaries. Such salaries shall depend upon their official rank.

The cases in which they be entitled to pension, and the amount of such pension, shall be provided for by the Pension Law.

Art. 109. Persons, before they can be created process servers, must have qualified themselves for such position either by previous Government service, or by having passed either the examinations for process servers, or for clerks.

The further necessary qualifications, and the particulars concerning the examinations, and the preparatory service to be gone through after passing the first of them, shall be settled by the Minister of Justice in the Regulations for Examinations for process servers.

Art. 110. Process servers shall only be appointed to the Local Courts. There shall be at least one process server appointed to each such court.

They shall have authority to perform their duties anywhere within the territorial limits of the District Court that is over the Local Court to which they belong.

Art. 111. Process servers shall be competent to serve all documents issuing from the courts (except when otherwise provided for by the Codes of Procedure), and to carry into execution their judgments and orders. They shall also be equally competent, with the other persons mentioned in the Public Sale Regulations, to conduct the public sale of real property, provided that there be no notary public practising within the district of the local court, where the property to be sold is situated.

The further competency of process servers is provided for by the Codes of Procedure or by special law.

Art. 112. Process servers before being appointed shall be required to give satisfactory security for the proper discharge of their duties.

The particulars concerning the amount and nature of such security, as well as the further duties to be performed by process servers, shall be determined by the Minister of Justice in the Regulations for process servers.

Art. 113. Process servers shall obey the orders of the clerks of the court to which they are appointed, as well as of the clerks of the District Court over that

court and of the official superiors of any such clerks.

Chapter VI.

USHERS.

Art. 114. Ushers shall be engaged and dismissed in the District Courts, Appeal Courts, and the Supreme Court by the Presidents of those courts, and in the Local Courts, by the Presidents of the District Courts.

Art. 115. Ushers shall be employed to attend the sittings of the courts, and for such other business as may be laid down in any general Regulations published by the Minister of Justice.

They may, in the event of the services of a process server being not procurable, be employed by a Local Court to serve documents and orders at the place where such court has its seat.

PART IV.

THE ADMINISTRATION OF JUSTICE.

Chapter 1.

SITTINGS OF THE COURTS.

Art. 116. The sittings of the courts shall be held at the place where the court, or branch division of a court, is established.

A Local Court that has more than one judge may, however, upon the order of the Minister of Justice, if circumstances should appear to him to require it, hold sittings periodically at fixed places within the limits of its territorial jurisdiction other than the place where it has its seat.

Art. 117. In collegiate courts the presidency and the direction of proceedings shall devolve on the President of the division that is sitting, and in Local Courts on the judge holding the sitting.

The powers belonging to a presiding judge shall also be vested in any single judge when acting judicially.

Art. 118. The trial of any proceeding which involves a judgment of a court shall take place in open court, and all judgments shall likewise be delivered in open court.

Art. 119. The stipulations of the preceding article shall not prevent a court from excluding the public from any such trial, if it be of opinion that publicity would endanger public order, or be injurious to public morals.

Its decision on such point, with its grounds for so deciding, shall be given before the public is excluded, and the public shall in such cases always be readmitted when its judgment is to be delivered.

Advocates, in their official dress, shall always, by virtue of their profession, have the privilege of remaining in court during any such trial, even though the public be excluded.

Art 120. The presiding judge shall always have the right, in spite of such exclusion of the public, to admit into the court-room persons to whom he may see fit to give special permission.

Art. 121. The provision of Article 118 shall not prevent the court, for reasons to be recorded in the minutes of proceedings, from limiting the admission of the public to a certain number of persons, or from excluding from the court-room women or children as well as persons not properly dressed.

Art. 122. The maintenance of order during the sittings of a court shall rest with the presiding judge.

Art. 123. The presiding judge shall have the power to exclude any person from the court who interrupts the proceedings, or who behaves himself improperly. He shall also have the power, if the conduct of such person appears to him to require it, to order him to be taken into custody and to be detained until the end of the sitting when the court shall either order him to be set at liberty, or shall punish him with a fine not exceeding 5 *yen*, or with imprisonment not exceeding five days.

Such punishment shall be without appeal, except on ground of error in law, and shall be without prejudice to any criminal prosecution for such offence, if it constitutes a delict or crime.

Art. 124. The provisions of the preceding Article shall also be applicable to parties accused, witnesses, and experts, subject to the following modifications : -

(a.) The court may punish such a person at once instead of at the end of the sitting ;

(b.) The court may, if the offender be a plaintiff, in addition to any punishment awarded, refuse to proceed further with the case, until he has purged himself by apology, or by obedience, of his contempt.

Art. 125. The presiding judge shall be at liberty to refuse an advocate who makes use of improper language the right to further address the court in the same case.

Such refusal shall be without prejudice to any disciplinary prosecution for such conduct.

Art. 126. The powers conferred by Articles 123, 124, and 125 for the keeping of order in the sittings of the courts, may also be exercised by a judge holding a preliminary examination, or acting under a commission, or by an aspirant when legally discharging such functions.

In these cases a protest may be lodged with such judge or aspirant within 24 hours.

If the order has been made by a judge of preliminary examination or an aspirant commissioned by him, such protest shall be dealt with by the criminal division, or branch criminal division, of the court to which such judge belongs, and if

made by a judge acting under a commission, or an aspirant commissioned by him, by the court which has commissioned such judge.

Art. 127. Any exercise of the powers conferred by Articles 123, 124, 125, and 126 shall be entered in the record of the proceedings as well as the reasons that necessitated it.

If the act constitutes a crime or delict, or is an act that should be punished disciplinarily, such entry should contain full particulars, and a report should be made by the presiding judge to the authorities competent to deal further with the matter.

Art. 128. Judges, public procurators, and court clerks shall, at sittings held in open court, wear their dress of office as determined by the Cabinet.

Advocates, who take part in the proceedings in such sittings, or who at such time desire to enjoy any privilege belonging to their profession, must also wear their dress of office as determined by the Cabinet.

Chapter II.

THE LANGUAGE OF THE COURTS.

Art. 129. The language of the courts shall be Japanese.

When a party to any proceeding, or a witness, or expert, is unacquainted with that language, the service of an interpreter shall, when the Codes of Procedure or special Law so require, be employed.

Art. 130. Regulations with reference to the appointment, employment, and duties to be performed by interpreters in judicial proceedings shall be issued by the Minister of Justice.

Art. 131. When the services of an interpreter are not easily procurable, court clerks may, with the consent of the presiding judge, and if they have a sufficient knowledge of the language, be used to interpret.

Art. 132. When all the persons interested in any proceeding to which a foreigner is a party are acquainted with a particular foreign language the presiding judge may, if he deem it expedient, permit the oral proceedings to be conducted in such foreign language, whilst keeping the official record of such proceedings in Japanese.

Chapter III.

THE DELIBERATION AND DELIVERY OF JUDGMENTS AND ORDERS.

Art. 133. Judgments and orders of collegiate courts shall be deliberated and delivered by the required number of judges in accordance with the provisions of this law.

The opinion of the majority shall constitute the decision of the court.

Art. 134. In criminal trials which will probably last more than three days, the President of the court may appoint a supplementary judge to attend the trial.

Such judge shall be competent, in case a judge during such trial should be prevented from illness, or other cause from further taking part in it, to take his place and conclude the trial (including the deliberation and delivery of the judgment) in his stead.

Art. 135. The deliberations of the members of a court, and the delivery of their opinions, shall not take place in public.

This shall not prevent aspirants, supernumerary judges, or the members of other divisions of the court, from being admitted, but it shall have the effect of excluding public procurators.

Strict secrecy shall be observed with respect to what takes place at such deliberations, as well as with respect to the opinions of the different members, and the number of the majority or minority.

Art. 136. No judge shall be at liberty to refuse to give his opinion on any question that has to be decided.

Chapter IV.

TRANSACTION OF BUSINESS IN THE COURTS AND PUBLIC PROCURATORS OFFICES.

Art. 137. The Minister of Justice shall prepare Regulations for the guidance of the Presidents of Appeal Courts and of the Chiefs of the public procurators offices attached to such courts. Under such Regulations they shall respectively issue instructions to the courts and public procurators offices within their districts, for the general and as far as possible uniform transaction of business, and more particularly with regard to the hours during which the offices of the courts and the public procurators offices should be open, and the hours and days of the courts sittings.

The Supreme Court shall draw up its own business Regulations, but before putting the same in force shall obtain the approval of the Minister of Justice.

Chapter V.

THE JUDICIAL YEAR, VACATIONS, AND HOLIDAYS.

Art. 138. The judicial year shall correspond with the ordinary calendar year commencing on the 1st January and ending on the 31st December.

Art. 139. The summer vacation of the courts shall commence on the 11th July and shall end on the 10th September.

The winter vacation shall commence on the 24th December and shall end on the 7th January.

Art. 140. During the vacations all civil proceedings, other than the following, already begun, shall be stayed, and no fresh proceedings, other than the following, shall be commenced : -

1. Claims concerning bills of exchange, promissory notes (when negotiable),

and other negotiable instruments ;

2. Claims *in rem* against ships, freight, or cargo ;

3. Disputes arising out of the seizure of any personal property, or taking the same under an execution ;

4. Disputes between lessors and lessees in respect to the giving up of possession, or the use, or occupation, of any house, lodging, or tenement, or in respect to the detention of a lessee's furniture or effects by a lessor ;

5. Claims for alimant ;

6. Claims to obtain the giving of security ;

7. Any other claim or matter which, in the opinion of the vacation division, or the President of such division, as the civil Code of Procedure may require, or in the opinion of the judge of a Local Court, is of sufficiently urgent nature to justify its being immediately proceeded with.

Art. 141. Vacations shall not suspend or delay criminal proceedings, non-contentious proceedings, execution of judgments, proceedings in bankruptcy, and all those proceedings which by the civil Code of Procedure may be conducted in a summary manner.

Art. 142. In collegiate courts one or more divisions, to be called vacation divisions ("kiukabu"), shall be constituted to transact business in vacation.

The composition of such division or divisions shall be settled by the President of the court before the commencement of each vacation. The provisions of Article 80 shall be applicable to such divisions.

In Local Courts that have more than one judge the manner in which vacation business is to be transacted shall be arranged by the superintending judge.

Art. 143. The offices of the courts shall be open every day of the year except : -

1. Sundays.

2. The Emperor's Birthday.

3. New Year's Day.

4. The anniversary of the accession of Jimmu Tenno.

5. Those days named by Imperial Decree, or by order of the Cabinet, to be observed as holidays.

Chapter VI.

JUDICIAL COOPERATION.

Art. 144. The courts shall, in the case and in manner provided for by the Codes of Procedure or by special law, render each other legal assistance.

Such legal assistance shall, except when otherwise provided for by law, be rendered by the Local Court of the place where the business in question is required to be transacted.

Art. 145. Public procurators offices shall similarly render each other legal assistance in the performance of business required to be done within their respective territorial districts.

Art. 146. Court clerks offices shall also render each other legal assistance in matters coming either within their own competency, or within the competency of the process servers under their orders.

Such assistance shall be rendered in the cases and manner provided for by the Codes of Procedure, or by special law.

PART V.

JUDICIAL ADMINISTRATIVE DUTIES AND POWERS.

Art. 147. It shall be the duty of the Minister of Justice, in addition to the business specially required to be performed by him by this law, to see that justice is properly administered throughout the Empire.

The Presidents of collegiate courts, judges, or superintending judges of Local Courts, and the Public Procurator-General, and chiefs and heads of public procurators offices shall be the officials through whom he shall perform such duty.

Art. 148. The duty in the preceding Article mentioned shall carry with it the power of supervision, which shall be held and exercised in manner following : -

1. The Minister of Justice shall have supervision over all the courts and public procurators offices ;

2. The President of the Supreme Court over that court and all inferior courts ;

3. The Presidents of Appeal Courts over their courts, and all inferior courts within the respective districts of their Appeal Courts ;

4. The Presidents of District Courts over their courts (including branch criminal divisions [if any]), and all local courts within the respective districts of their courts ;

5. The single judges, or superintending judges, of local courts over the clerks and other officials (not judges) employed in their courts ;

6. The Public Procurator-General over the public procurators office attached to the Supreme Court, and all inferior public procurators offices ;

7. Chief Public Procurators over their offices and all public procurators offices within the respective districts of the Appeal Courts to which their offices are attached ;

8. Head Public Procurators over their offices, and all the procurators offices within the respective districts of the District Courts to which their offices are attached.

Art. 149. The power of supervision in the preceding article mentioned shall carry with it :

a. The power of drawing the attention of officials (judges included) to any business that has been improperly or insufficiently performed and of instructing them to transact it within a fixed space of time and in a proper manner ;

b. The power of warning officials (judges included) for any conduct unbecoming their position, whether in the discharge of their official duties or not, but before giving such warning the official must have had the opportunity of offering an

explanation.

Art. 150. The officials mentioned in Article 94 as having to assist the public procurators, shall be included in the officials over which supervision is to be exercised by virtue of Article 148.

Art. 151. In so far as Article 149 cannot be applied, or is insufficient, any official (including judges) of the courts, or public procurators offices, who fails to properly discharge his duties, or whose conduct is unfitting his position, shall be prosecuted disciplinarily according to the Disciplinary Law.

When, however, the official to be so prosecuted is a judge, he shall, if he be a member of a Local Court or of a District Court, be tried by a court consisting of five judges, who are members of the Appeal Court over the court to which he belongs, and if he be a member of an Appeal Court, or of the Supreme Court, by a court consisting of seven judges, who are members of the Supreme Court.

From disciplinary judgments of a court composed of members of an Appeal Court, and which involve suspension or dismissal, an appeal shall lie to a court consisting of seven judges, who are members of the Supreme Court.

The judges to compose the courts in this Article mentioned shall be those who are highest in rank of the members of the court from which they are taken.

The presiding judge of any such court shall be the one who is highest in rank of those sitting.

Art. 152. The powers of administration and supervision conferred by the preceding Articles shall not be made use of to procure satisfaction from a judge, or public procurator, of any claim brought against him for anything done by him in his official or any other capacity. Such claims must be enforced by means of the courts in the ordinary course of justice.

The above provision shall not apply to the repayment of any monies received in excess or by error from the State.

Art. 153. All complaints made against the manner in which justice is administered, and more particularly such as are directed against the manner in which any business is conducted, or against delay in doing it, or refusal to transact it, shall be dealt with under the powers of administration and supervision conferred by this Part.

Art. 154. The courts and public procurators offices shall, when requested by the Minister of Justice, or by the judge, or public procurator having the power of supervision over them, give their opinion on any matter of a legal nature, or which concerns judicial administration.

Art. 155. In a civil action brought against the Department of Justice, the public procurators office attached to the court in which such action is brought, shall represent and defend the interests of the Department.