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Mr. R. Guyon to H. E. Chao Phya Abhai Raja, Minister of Justice, President of the Commission of Codification:

Bangkok 19 th. October 1921.

Your Excellency,

I beg to submit to you the Report of the alterations suggested by both the Committee of Redaction and the Committee of Translation to the Draft Code of Obligations 1919 before the promulgation of the same.

The present Report concerns the first Part of the Code (sections 1 to 387) which contains any kind of general provisions of civil law, and is now translated into Siamese and ready to be promulgated and published.

Another Report will follow further to contain the alterations in the second Part of the Code (sections 388 to 1463) when ready for translation and promulgation.

I remain, your most faithful servant.



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[Signature]

ALTERATIONS
TO THE
DRAFT CODE OF OBLIGATIONS 1919
BEFORE PROMULGATION.

First Part: GENERAL (Sections 1 to 387).

ALTERATIONS

TO THE

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BEFORE PROMULGATION.

First Part: GENERAL (Sections 1 to 387).

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PARTS

The sub-divisions of Chapters (numbered as I, II, III, IV, etc.) shall be called "Parts".

The Committee of Translation suggest the addition of the word "bye-laws" which is used in the present Siamese texts of this kind.

18

The word "private" to be deleted: because it adds nothing to the word "agreement", and is only likely to induce the Courts to misconstructions.

18

This section has been reconsidered and a note submitted to that effect by the French Committee (see Annex I to the present Report).

As a consequence, it is suggested to redraft the section as follows:

"Creation, extinction or modification of rights, and fulfilment of obligations

"PARTS"

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must be made in good faith".

30

Instead of: "which version was considered to be the original....." say: "which version was intended to govern, the document executed in the Siamese language shall govern".

32

We have been of opinion that the illustration for this section is too complicated and has better to be substituted by the following one:

Illustration. - On the 1st. of July 2463 at 10 a.m. A lends to B 100 baht to be returned on the 1st. of September 2463. B is not obliged to return the money on this day at 10 a.m., but only before the end of the day.

48 2nd. par.

The words "in execution of the contract" are objectionable, because the word "execution" has not been used in the other parts of the Code, and is not advisable

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Instead of: "which version was considered to be the original....." say: "which version was intended to govern, the document executed in the Siamese language shall govern".

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owing to the habitual use of the word "performance" in similar cases.

It is suggested to substituted "in execution of the contract" by "as a performance of the contract".

52

Illustration to be deleted.

54

Minor alterations of wording in the illustration: instead of "retrospective effect". to read "stipulation".

60

Minor alterations in the wording of the illustration.

61

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61

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62

Minor alterations in the wording of the illustration.

Misprinting to be corrected, the second figure being "400" instead of "500".

74

Illustrations to be added to this section, as follows:

Illustration. - I. - A is a creditor of B for 10,000 baht money borrowed. At the time of performance, B asks for a delay, but A does not allow it and threatens B to exercise against him his rights of action for the recovery of the sum due and to seize B's properties if the latter does not immediately pay the money due or does not mortgage a property of his own as security.

B, fearing seizure of his properties, mortgages his house for the benefit of A. There is no duress from A.

II. - A, a cashier in B's firm, has misappropriated 1,000 baht from his employer. B discovers this criminal misappropriation when examining his cash-accounts, but does not warn the police because he takes in consideration that A was up to the present day a good employee. B orders A and his wife to

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Misprinting to be corrected, the second figure being "400" instead of "500".

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B, fearing seizure of his properties, mortgages his house for the benefit of A. There is no duress from A.

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[This alteration was not written in the copy yet.]

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come to his office, when he makes A confess his robbery and he threatens to send him to Court if there is no immediate return of money, or if A's wife does not consent to mortgage her own property as security of this return. A's wife, to save the honour of her husband, consents to do so. There is no duress from B and the mortgage is valid.

79

Two words "or fraud" have been omitted in the printing.

85

Minor alterations in the wording of the illustration.

86

"Invalidity" to be substituted by "voidity".

95

Instead of: "If the manager has not undertaken to act contrary.....",
to read: "If the manager has undertaken to

come to his office, when he makes A confess his robbery and he threatens to send him to Court in there is no immediate return of money, or if A's wife does not consent to mortgage her own property as security of this return. A's wife, to save the honour of her husband, consents to do so. There is no duress from B and the mortgage is valid.

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Instead of: "If the manager has not undertaken to act contrary.....",
to read: "If the manager has undertaken to

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[This alteration was not written in the copy yet.]

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act not contrary....."

96

Instead of: "If the manager has not undertaken to act contrary.....", to read: "If the manager has undertaken to act not contrary....."

108

Minor alterations in the wording of the illustration I.

109

Illustration to be deleted here, and transferred after section 111.

111

The beginning of the illustration to be modified as follows:

"Illustration (sections 109, 110 and 111). - A delivers to B an elephant, market value 2,000 baht, believing that such prestation was due. In fact, the prestation was not due. A is entitled to restitution from B.

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108

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If the elephant is still in B's possession.....etc."

113

Illustration. - Reference to section "109" to be substituted by reference to section "111".

117

First paragraph. - The word "for" (before "charges") to be deleted.

Illustration. - To be modified in order to be clearer, as follows:

"A is ordered under section 105 to restore to B a house which had been unduly delivered to him by B.

a) A has incurred 200 baht expenses in repairing the roof of the house and he has paid 50 baht house tax on it. B must reimburse these 250 baht to A. If A has leased the house and collected 150 baht rent, he is entitled to keep such rent if he was in good faith (section 114). But then these 150 baht profits must be deducted from the 250 baht to be reimbursed to him, that is to say that B would have finally to reimburse 100 baht balance;

b) If A has ascertained at a certain

If the elephant is still in B's possession.....etc."

113

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Illustration. - Reference to section "109" to be substituted by reference to section "111".

117

OCR-Data: P.37

First paragraph. - The word "for" (before "charges") to be deleted.

Illustration. - To be modified in order to be clearer, as follows:

"A is ordered under section 105 to restore to B a house which had been unduly delivered to him by B.

a) A has incurred 200 baht expenses in repairing the roof of the house and he has paid 50 baht house tax on it. R must reimburse these 250 baht to A. If A has leased the house and collected 180 baht rent, he is entitled to keep such rent if he was in good faith (section 114). But then these 150 baht profits must be deducted from the 250 baht to be reimbursed to him, that is to say that B would have finally to reimburse 100 baht balance;

b) If A has ascertained at a certain

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time that the house ^{was} ~~is~~ on the verge of falling in owing to floods, and has had to make 5,000 baht for the ground works, this is an expense for preservation. Then B must reimburse to A 5,000 baht; and no deduction shall be made of any rent collected by A and which he is entitled to keep on account of his being in good faith".

119

This section is to be read as follows:

"If the person who has in bad faith unduly received a property has made alterations in, or additions to it, he must return the property after having put it in its former condition at his own expense. If it is impossible to put it in its former condition or the property would be damaged thereby, he must return it in such condition as it is and he is entitled to no compensation for any increase of value accruing to the property from such alterations or additions, and he is liable to pay compensation for any decrease of value resulting from the same".

N.B. - The words which are new (underlined words) have been added to make clear an idea which was understood, but has better to be fully explained especially in the Siamese version.

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OCR-Data: P.38

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N.B. - The words which are new (underlined words) have been added to make clear an idea which was understood, but has better to be fully explained especially in the Siamese version.

120

In order to have a better discrimination of the words "intentionally" and "negligently", it is suggested to redraft the section as follows:

"Whoever intentionally causes injury to another person, or whoever causes such injury negligently, that is to say, under any of the following circumstances:

1) By omission of such care as may be expected from a person of ordinary prudence, or

2) By omission of such skill and care in a profession as may be expected from a person exercising such profession, or

3) In disobedience to any law, bye-law or lawful order,

is said to commit a wrongful act and is bound to make compensation to the injured person".

• 123

The illustration is objectionable, and it is proposed to give no illustration for this section which is perfectly clear by itself.

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OCR-Data: P.38

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124 and 125

It is suggested: first, that the rank of these two sections be reversed, to be read more logically; second, that the Court may, instead of being bound, decide the proportion in which the compensation must be borne by the wrongdoers, because, as a rule, the present practice of the Siamese Courts is repugnant to decide upon points which have not been submitted by the parties themselves.

In order to meet these suggestions, the following alterations are proposed:

124. - If a wrongful act has been committed by several persons, the several wrongdoers are jointly liable for the payment of the whole of the compensation to the injured person unless otherwise decided by the Court.

125. - As between the several wrongdoers themselves, the Court may decide the proportion in which the compensation must be borne by each of them.

Instead of: "by section 91 of the Penal Code", to read: "by the Penal Code".

124 and 125

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129

This section deals with self-help and the second sentence says that a creditor who uses self-help contrary to the provisions of sections 127 and 128 commits a wrongful act and has no defence by alleging "that he was ignorant that his act was wrongful or that his ignorance was not due to his own fault".

This second sentence has been objected to as being useless or even not exact.

Since the creditor commits a wrongful act, we are governed by section 120 (definition of wrongful acts), and generally the wrongful act specified in section 129 will be committed by "omission of care".

On the other hand, to say that it is no defence to say that the creditor's "ignorance was not due to his own fault" appears somewhat difficult to understand for the reader. And, moreover, it has never been possible to exonerate oneself from liability for wrongful act by one alleging that one was ignorant without one's fault.

The first sentence of the section seems to be sufficient and it is suggested to delete the second sentence of the section.

129

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The first sentence of the section seems to be sufficient and it is suggested to delete the second sentence of the section.

188

130

Second paragraph. - To delete the word "lawful" (in "lawful command"). This word is objectionable, because the command, which was to be obeyed by the injuring person as being a subordinate, has probably been something not lawful in itself.

Cf. the words: "who wrongfully gave the command".

133

The words "as refer to restitution made" are to be deleted as having no utility.

135

To say "for medical treatment" instead of "during illness".

Cf. de Becker's Japanese Code Commentary under section 710.

136

To say "for medical treatment" instead of "during illness"; Cf. 135.

To say "or" instead of "and" in the enumeration of parents.

130

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Cf. the words: "who wrongfully gave the command".

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136

To say "for medical treatment" instead of "during illness"; Cf. 135.

To say "or" instead of "and" in the enumeration of parents.

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[This alteration was not written in the copy yet.]

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189

187

Instead of: "by section 96 of the Penal Code", to read: "by the Penal Code".

188

The name of Division II (Of Some Particular Kinds of Obligations) has been objected to. The English word "Particular", it is said, has not the meaning of the French word "Modalités" which is used in the Swiss Code. To come nearer to the French wording, it is deemed convenient to say: "Of Various Kinds of Obligations".

148

Minors alterations in the illustration.

151

Misprinting. To read: "149" instead of "146".

164

Illustration: Instead of: "debt", to say: "sum due".

137

Instead of: "by section 96 of the Penal Code", to read: "by the Penal Code".

138

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146

Minors alterations in the illustration.

151

Misprinting. To read: "149" instead of "146".

164

Illustration: Instead of: "debt", to say: "sum due".

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[This alteration was not written in the copy yet.]

🔗 **OCR-Data:** [P.45](#)

[This description does not mention the changes to the illustration.]

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[This alteration was not written in the copy yet.]

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165

Second paragraph. Instead of: "he is ..
entitled to.....". to say: "the
debtor may....."

This second paragraph becomes section
166.

166

This section shall be numbered 167.

167

This section shall be numbered 168.

168

This section shall be numbered 169.

169

This section shall be numbered 170.

170

This section shall be numbered 171.

165

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This second paragraph becomes section
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167

This section shall be numbered 168.

168

This section shall be numbered 169.

169

This section shall be numbered 170.

170

This section shall be numbered 171.

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171

The suppression of this section has been requested because the solution which is proposed in section 171 has been given up about twenty years ago in Siamese law and is disfavoured as being unfit for the customs of the country.

Any way, the matter may be reconsidered when the Civil Procedure Code shall be drafted.

177

The reference "167" to be substituted by "168".

184

Omission in printing. Instead of: "in favour of one joint debtors", to read: "in favour of one of the joint debtors".

185

The suppression of this section has been requested in the same conditions as for section 171 (see herebefore).

171

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Any way, the matter may be reconsidered when the Civil Procedure Code shall be drafted.

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185

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192

186

This section shall be numbered 186.

187

This section shall be numbered 186.

188

This section shall be numbered 187.

189

The first paragraph of this section shall be numbered 186.

The second paragraph shall become section 189 reading separately as follows:

"If the release is granted to a debtor personally, his share only in the obligation is extinguished to the extent of the release".

195

The wording of the first paragraph is slightly altered as follows:

"The joint debtor who has satisfied the creditor is subrogated to the rights of the creditor against the other joint debtors up

186

This section shall be numbered 185.

187

This section shall be numbered 186.

188

This section shall be numbered 187.

189

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"If the release is granted to a debtor personally, his share only in the obligation is extinguished to the extent of the release".

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The wording of the first paragraph is slightly altered as follows:

"The joint debtor who has satisfied the creditor is subrogated to the rights of the creditor against the other joint debtors up

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193

to the amount satisfied by him on behalf of such other joint debtors".

202

The attention of the Commission of Codification has been called upon the use of the words "distress", "attachment" and "seizure" in the Siamese legislation.

After a careful examination of the respective meaning of these words in English, the Commissioners have been of opinion that to use only the word "seizure" is sufficient and more proper for the Siamese language, provided that distinction between a seizure before or after judgment shall be made when necessary. (Cf. the word "saisie" in French).

Several sections of the Code of Obligations have been altered accordingly.

Section 202 shall read: "An obligation seized by an order of a Court, before or after judgment, cannot be transferred by the creditor".

213

Section 213 deals with the right and conditions of transfer of rights which are subject to litigation.

Upon the request of the Committee of

to the amount satisfied by him on behalf of such other joint debtors".

202

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After a careful examination of the respective meaning of these words in English, the Commissioners have been of opinion that to use only the word "seizure" is sufficient and more proper for the Siamese language, provides that distinction between a seizure before or after judgment shall be made when necessary. (Cf. the word "saisie" in French).

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213

Section 213 deals with the right and conditions of transfer of rights which are subject to litigation.

Upon the request of the Committee of

OCR-Data: [P.70](#)

[The alteration on P.70 was not completed yet; the word "attached" still remained. In the promulgated version of the Code of 1923, this word was removed; see [Sec.268.](#)]

OCR-Data: [P.75](#)

Translation, this important ^{question} has been reconsidered and discussed again (see Annex II to the present Report).

After this examination, it has been decided that section 218 of the Draft would be substituted by the following one:

"Any transfer of right for a reciprocal prestation, whilst subject to litigation, is void".

229

See note for section 202.

Section 229 shall read: "If the debtor performs the obligation notwithstanding an order for seizure before or after judgment.. .."

259

Instead of: "from the moment when", to read: "after".

263

Instead of: "before", to read: "at the time when".

Translation, this important [question] has been reconsidered and discussed again (see Annex II to the present Report).

After this examination, it has been decided that section 213 of the Draft would be substituted by the following one:

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See note for section 202.

Section 229 shall read: "If the debtor performs the obligation notwithstanding an order for seizure before or after judgment.. .."

259

Instead of: "from the moment when", to read: "after".

263

Instead of: "before", to read: "at the time when".

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Illustration II has been redrafted.

287

The English version has been modified in order to be clearer.

No. 1 shall read: "if he has received the earnest money, he is entitled to forfeit it";

No. 2 shall read: "if he has delivered the earnest money, he can claim double amount of earnest money".

289

Instead of: "from the time when", to read: "after".

310

See note for section 202.

Section 310 shall read: "If the property of a debtor has been seized by order of the Court in execution of a judgment....."

270

Illustration II has been redrafted.

287

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No. 1 shall read: "if he has received the earnest money, he is entitled to forfeit it";

No. 2 shall read: "if he has delivered the earnest money, he can claim double amount of earnest money".

289

Instead of: "from the time when", to read: "after".

310

See note for section 202.

Section 310 shall read: "If the property of a debtor has been seized by order of the Court in execution of a judgment....."

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OCR-Data: [P.110](#)

OCR-Data: [P.111](#)

OCR-Data: [P.118](#)

315

Misprinting: the reference "294" to be substituted by "314".

325

See note for section 202.

Section 325 (second paragraph) shall read: "The lessor can object to such movables being removed until he has been satisfied, and seize them if necessary to prevent their removal".

328

See note for section 202.

Section 328 (third paragraph) shall read: "Provided that such monies or properties be seized by order of the Court, either before or after judgment, before they are paid or delivered to the debtor".

A misprinting is to be corrected: the words "by the creditor" have been omitted (line 2, after "exercised").

338

The practice of the Siamese Civil Procedure (Civ. Pr. Code, s. 83) is that civil

315

Misprinting: the reference "294" to be substituted by "314".

OCR-Data: [P.120](#)

325

See note for section 202.

Section 325 (second paragraph) shall read: "The lessor can object to such movables being removed until he has been satisfied, and seize them if necessary to prevent their removal".

OCR-Data: [P.122](#)

328

See note for section 202.

Section 328 (third paragraph) shall read: "Provided that such monies or properties be seized by order of the Court, either before or after judgment, before they are paid or delivered to the debtor".

A misprinting is to be corrected: the words "by the creditor" have been omitted (line 2, after "exercised").

OCR-Data: [P.123](#)

338

The practice of the Siamese Civil Procedure (Civ. Pr. Code, s. 83) is that civil

OCR-Data: [P.129](#)

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actions provided for by section 338 are exercised in the name of the creditor.

The Committee of Translation have requested that the words "in the name of the debtor" be substituted by "in the name of the creditor".

No difficulty. The words "in the name of the debtor" have been the translation of the French meaning "au nom du débiteur" what means as well in English "on behalf of the debtor".

It is then proposed to say, to be clear and complete: "in his own name on behalf of the debtor".

340

In this section, to say that the defendant "can have such action dismissed" would mean, according to the Siamese Civil Procedure, that the costs should be borne by the plaintiff (creditor suing in the name of the debtor).

Of course, the costs must be borne by the defendants; to avoid any difficulty, it is suggested to redraft the section as follows:

"The judgment creditor can exercise a right of action belonging to the debtor for the whole amount due to the debtor, irrespect-

actions provided for by section 338 are exercised in the name of the creditor.

The Committee of Translation have requested that the words "in the name of the debtor" be substituted by "in the name of the creditor".

No difficulty. The words "in the name of the debtor" have been the translation of the French meaning "au nom du débiteur" what means as well in English "on behalf of the debtor".

It is then proposed to say, to be clear and complete: "in his own name on behalf of the debtor".

340

OCR-Data: [P.130](#)

In this section, to say that the defendant "can have such action dismissed" would mean, according to the Siamese Civil Procedure, that the costs should be borne by the plaintiff (creditor suing in the name of the debtor).

Of course, the costs must be borne by the defendants; to avoid any difficulty, it is suggested to redraft the section as follows:

"The judgment creditor can exercise a right of action belonging to the debtor for the whole amount due to the debtor irrespect-

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tive of the amount due to the creditor. But the defendant can satisfy the creditor by paying the amount due to him, provided that, if the original debtor joined as plaintiff, he may proceed to judgment for the balance".

348

The Committee of Translation have requested that the Drafting 1910 be taken again for this section: so that the words "judgment creditor" by the ends of No. 2 and No. 3 be substituted by the words "creditor". The wording would be very clear without such a repetition.

The Committee of Redaction have no objection against the alteration, being understood that no misconstruction may arise, and that any way the "creditor" named by the ends of Nos. 2 and 3 is and remains the "judgment creditor" named by the beginning of the section. Of course, in law, it is necessary that the creditor entitled to exercise the action specified in section 243 be a creditor the title of which is anterior to the transfer or renunciation made by the debtor in fraud of the creditor's rights. The consequence being that the date of the title must be known and ascertained accurately and undisputedly. Then, as in Siam there is no better way to

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343

OCR-Data: P.132

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have such date made sure and definite than
a judgment of a Court, it is necessary that
the creditor be always a judgment creditor.

344

Same objection has been raised against
this section as against section 340, viz:
the word "dismissed" would, according to
the Siamese Civil Procedure, mean that the
plaintiff has to bear the costs and fees of
the case.

The same modification is proposed as
for section 340, that is to say:

"In such action, the Court shall hold
the plaintiff as duly satisfied if the de-
fendant pays off the judgment creditor's
claim".

356

See note for section 202.

Section 356 shall read: "A debtor can-
not notify set off after the obligation has
been seized by order of the Court, either
before or after judgment".

have such date made sure and definite than
a Judgment of a Court, it is necessary that
#[the] creditor be always a judgment creditor.

344

OCR-Data: [P.133](#)

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this section as against section 340, viz:
the word "dismissed" would, according to
the Siamese Civil Procedure, mean that the
plaintiff has to bear the costs and fees of
the case.

The same modification is proposed as
for section 340, that is to say:

"In such action, the Court shall hold
the plaintiff as duly satisfied if the de-
fendant pays off the judgment creditor's
claim".

356

OCR-Data: [P.137](#)

See note for section 202.

Section 356 shall read: "A debtor can-
not notify set off after the obligation has
been seized by order of the Court, either
before or after judgment".

859

Instead of: "at once", to read: "at the same time".

363, 364, 365 and 366

These sections deal with prescription and consider the following points:

shall prescription be set up by the Court itself, when the parties did not do so?

shall prescription be set up as a defence at any stage of the proceedings and in any Court?

The question is an important one, and the Committee of Translation have requested to reconsider the questions from the Siamese point of view.

The French Committee have quite agreed that section 363 of the Draft entitling the Court to set up themselves the prescription as a defence when the parties did not do so, is contrary to the practices of many other Codes (French, German, Swiss, Japanese, etc.).

The reason to adopt this provision twelve years ago, was, as we read in the Preparatory works, that it was feared that the parties in this country were often unaware of their own rights. And the point was rather much discussed.

359

OCR-Data: [P.138](#)

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363, 364, 385 and 366

OCR-Data: [P.139](#)

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OCR-Data: [P.140](#)

35201

But twelve years have elapsed and the French Committee are quite prepared to admit that such fears may be given up at the present time. They propose therefore to cancel section 363 and to say:

"When prescription has not been set up as a defence, the Court cannot dismiss the claim on the ground of prescription".

As to section 364, the position is not so clear. Indeed, the present practice is not only that the defence of prescription cannot be set up before the Dika Court for the first time, but that even it cannot be set up before the Appeal Court for the first time. This is the English Law, which is contrary to the Continental Law in the matter. The French Committee are of opinion that the point requires some consideration more, and can hardly be decided and settled up for a special case like that of section 364 alone: as a fact, the point is connected with the whole Civil Procedure, and it would be better to reserve it, to say nothing in the Code of Obligations, and to have a full consideration of the matter when coming to the examination of the Civil Procedure. It may be noted that the Japanese Civil Code has done so.

This suggestion having been adopted, to avoid renumbering of the whole Code,

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This suggestion having been adopted, to avoid renumbering of the whole Code,

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it has been proposed:

- to cancel section 364;
- section 365 being numbered 364;
- section 366, paragraph 1, being numbered 365;
- section 366, paragraphs 2 and 3, being numbered 366;
- Illustration of 366 accordingly.

386

This section deals with period of prescription for obligations resulting from judgments, etc. The Committee of Translation have suggested that the end of the section (whatever the original cause of action may have been) is objectionable because it has been avoided in the Code to use the word "cause", which besides is ambiguous in the present section. It has been agreed that no doubt may arise as to the interpretation of the section if the said words are deleted, and it is suggested to do so.

18 th. October 1921.

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- to cancel section 364;
- section 365 being numbered 364;
- section 366, paragraph 1, being numbered 365;
- section 366, paragraphs 2 and 3, being numbered 366.
- Illustration of 366 accordingly.

386

OCR-Data: [P.148](#)

This section deals with period of prescription for obligations resulting from judgments, etc. The Committee of Translation have suggested that the end of the section (whatever the original cause of action may have been) is objectionable because it has been avoided in the Code to use the word "cause", which besides is ambiguous in the present section. It has been agreed that no doubt may arise as to the interpretation of the section if the said words are deleted, and it is suggested to do so.

18 th. October 1921.