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SUMMARY OF ARTICLES

ADELSHERRSCHAFT UND KÖNIGSFREIHEIT IM FRÜHMITTELALTER (IV) (S. 1-S. 28)

Takeshi ISHIKAWA
a. o. Professor (Rechtsgeschichte)
Rechtswissenschaftliche Fakultät
der Universität Hokkaido

VI. Organisation der Königsfreien—Königsfreien und Hundertschaft; Königsgut und Staatsland.
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i) Der Prozeß des Streites um Hundertschaftsfrage zwischen H. DANNENBAUER und Th. MAYER.
ii) Gab es schon in der merowingischen Zeit Huntari als Organisation der Königsfreien?.
2. Königsgut und Staatsland.
i) Der Begriff des Königsguts bei H. DANNENBAUER.
ii) Der Begriff des Staatslandes bei Th. MAYER.
iii) Finden wir Königsfreien nur auf dem Königsgut oder Staatsland?—Servi fiskalini; Ursprung der Mansi ingenuiles.

VII. Königsfreien, Grafschaft, Adelsherrschaft.
i) Begrenzung des Gegenstandes.

(Fortsetzung auf dem nächsten Heft)

LA NOTION DE SERVICE PUBLIC EN DROIT ADMINISTRATIF FRANÇAIS (I)

Chapitre I L' apparition de la notion de service public et son développement

Par Akira KAMIYA
Prof. adjoint (Droit administratif)
Faculté de Droit,
Université de Hokkaido.

Depuis la fin du 19e siècle vers le commencement du 20e, le droit administratif français a connu une profonde transformation de sa théorie fondamentale : l'abandon de la théorie de distinction entre l'acte d'autorité et celui de gestion pour adopter la notion de service public comme la base de la science de droit administratif. La notion de service public fut introduite dans la jurisprudence administrative, croyait-on, pour la première fois par l'arrêt Blanco en 1873. Mais cette interprétation historique, reconnue incontestable au moins avant la deuxième Guerre Mondiale, ne peut plus être à l'abri des critiques de doctrines récentes.

Dans la Section I de ce Chapitre, on verra d'abord l'examen des arrêts Blanco, Terrier, Feutry et Thérond dont la succession a été interprétée comme genèse de la notion de service public, et ensuite le résumé des opinions que les professeurs Chapus, Rivero, Corail et Vedel ont récemment proposées à l'égard de ces arrêts. Ce n'est pas par les deux arrêts Blanco et Terrier, conclut la Section, mais par les arrêts Feutry et Thérond que la-dite notion—dans son sens pur du point de vue de "but"—fut introduite dans la jurisprudence, et c'est sous la puissante influence de l'Ecole de Duguit qu'elle est devenue alors courante comme la notion de base dans la science administrative.

Section II commence par examiner les notions de service public préconisées par deux Maîtres de l'Ecole, Duguit et Jèze, et les confronte avec les oppositions soulevées contre eux par Berthélemy et Hauriou. Les observations en amènent à une conclusion selon laquelle la notion de service public qui est essentiellement une notion politique ou sociologique ne peut se manifester sous une

forme pure comme Duguit en a parlé, mais qu'elle doit se présenter toujours derrière elle avec l'élément juridique qu'est la puissance publique, comme justement dit Hauriou.

Section III va demander combien en réalité la jurisprudence administrative a utilisé avant la deuxième Guerre Mondiale la notion de service public en tant que la règle pour la distribution de compétences, notamment en ce qui concerne le contrat administratif et le service industriel ou commercial de l'Etat. Dans ces deux domaines, on pourrait constater le fait indéniable que la jurisprudence avait mis quelques exceptions ou réserves pour l'application de ce critérium même avant la dernière Guerre mondiale. A propos du contrat administratif, elle n'était pas, dès le commencement, un seul critérium de contrats pour la juridiction administrative, comme témoignent les arrêts Compagnie d'assurance "Le Soleil" en 1910 et Société des Granits porphyroides des Vosges en 1912. C'est ce que les professeurs Laubadère, Chapus et Vedel ont récemment mis en relief. Les exemples de refus de la compétence administrative ne sont pas moins nombreux à l'égard de services commercial et industriel (arrêts Colonie de la Côte-d'Ivoire de 1921, Kuhn en 1932 et Melinette en 1933), non sans cependant quelques arrêts qui ont reconnu la compétence administrative en adoptant la théorie de service public (arrêt Verbanck en 1933).

(à suivre)

MATRIMONIAL PROPERTY LAW OF ENGLAND (III)

Kimiko ASAMI
Asst. of Comparative Law
The University of Hokkaido
Faculty of Law

Under the principle of separation of property which was established by the Married Women's Property Act, 1882, and the Law Reform (Married Women and Tortfeasors) Act, 1935, there exists merely husband's property or wife's property. But in normal family life, husband and wife probably regard most property as their common property and they do not distinguish the property of one spouse from that of the other.

Especially after the 2nd world war, the rigid principle of separation of property has been mitigated by the judicial decisions applying the s. 17 of the Married Women's Property Act, 1882. The s. 17 provides that "in any question between husband and wife as to the title to or possession of property, either party···may apply···to any judge.···the judge···may make such order with respect to the property in dispute···as he thinks fit···".

Many judicial decisions established the rule, concerning this section, that in any cases on family assets, if both spouses contributed to the price of the property and it was bought to the welfare of the whole family life, this property belonged to the both spouses in equal shares.

Furthermore, it was held that the deserted wife in matrimonial home had a right to remain in it by the exercises of the power of discretion which was empowered to the court under the s. 17 of the Married Women's Property Act, 1882.

Royal Commission on Marriage and Divorce prepared the legislative solution on these points. Why this principle of separation of property must adopt the factors of the community of property which are suggested by the above-mentioned judicial decisions and recommendations of the Royal Commission?

Here we must reconsider the process of the formation of the statutory matrimonial proporty law of England. Indeed, the Married Women's Property Act, 1870, and the Married Women's Property Act (1870) Amendment Act, 1874, were imperfect and tentative reform, but these Acts might be in conformity with the property relations between the spouses in real family life at that time. When the Married Women's Property Act, 1882, achieved a systematic reform, it began to aim at realizing the principle of legal equality between the sexes, rather than aim at regulating the real property relations between the spouses.

Of course, this Act retained the character to regulate the property relations between the spouses in real family life. It may be said, therfore, that difficult questions which arose in connection with the husband's liability for his wife's tort resulted from this double character of this Act.

But when the Law Reform (Married Women and Tortfeasors) Act, 1935, which eliminated the words "wife's separate property", removed aforesaid husband's liability from the statute, and established the principle of separation of property, it merely represented the general principle of the legal equality between the sexes in the form of the matrimonial property law. Because, it merely declares that in order to realize the general principle of equality between the sexes, the matrimonial property law must be the separation of property. It does not, therefore, take account of the fact that there really exists various differences between the spouses.

If the matrimonial property law of England is regarded as the declaration of the general principle, it must be necessarily assumpted that it needs any measure to connect this general principle with the real property relations between the spouses. This measure has been undertaken by aforesaid judicial decisions and recommendations of the Royal Commission. But, from the treatment of the spouses as a unity, arose the difficult questions concerning with the third person.

In the 4th chapter, the law of social security is dealt with, because, it will give suggestions to the problems proposed in the 3rd chapter.

Under the law of social security, the fundamental principles of

the property relations between the members of a family are those that the earnings of all members of the family are regarded as a common family fund and that the duty to supply this fund primarily falls on husband.

Furthermore, in this chapter, it is observed how this principles are realized in the provisions of the law, and the concept and the contents of the family fund are explained.

It is noticeable that under the law of social security, the maintaining members of the family or household are distinguished from the maintained members, with a severe attitude, but when it is determined that some members are "dependent" on the other members, the welfare state takes for granted to give the benefits to the maintained members.

Doesn't connect the process of the development of the new matrimonial property law with the property relations under the law of the social security?

In the efforts of the judicial decisions and the recommendations of the Royal Commission to realize that general principle in the matrimonial property law, we must remark that the Royal Commission valued the wife's work in running the home and looking after the children and regarded it as the problems concerning the matrimonial property law. Moreover, it acknowledged the protection of deserted wife's right to remain in matrimonial home and tried to treat the matrimonial home and its contents as a common property of the spouses.

These tendencies seems to accord with those under the law of the social security.

But, if, under the existing legal system, one tries to treat the spouses as a unity or value the wife's work, it may work to the disadvantages to the third person. The same difficult questions were found in aforsaid problems concerning tort. The Royal Commission dissolves one of these questions by registering the order of the court as to the wife's right to remain in the matrimonial home. This must be the best solution for the conflict between the existing legal system and the new matrimonial property law. Under the law of social security, however, these difficult questions couldn't be perceived.

But, here it must be also remembered that the attitude of the court has formed the new matrimonial property law, applying the s. 17 of the Married Women's Property Act, 1882. Indeed, the court does not directly value the wife's work in running the home, but because of this, it is free from "the wife's work in running the home". It fixes the position of the spouses in the family life from the fact that they live in common household and co-operate with in it. Besides, it rather prefers the protection of the family at the cost of the disadvantages to the third person.

These tendencies suggest us that there may exist a important moment in which the new matrimonial property law actively workes on the existing legal system. When these elastic means are reserved, the matrimonial property law could be closely cocnected with the law of the social security.

In this meaning, we must pay our attention to the functions of the judicial process in England.