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SUMMARY OF CONTENTS

“Muddling through” of Modern Japanese Judges and Civil Procedure: Images in *Horitsu Shimbun* (1900-1926) (1)

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In this article we try to make clear actual situation of civil procedure practice under Meiji Civil Procedure Code (1891), how legal practitioners felt about it and its backgrounds, using as sources the most famous legal media of this period: *Horitsu Shimbun* (『法律新聞』The Legal News, 1900-1944). We take up judge's directive powers for fixing issues and proof-taking, especially exercised orally; these could be sometimes in conflict with so-called party-control principle of modern civil procedure, but this principle was often criticized harshly in this newspaper.

Very little is known about actual situation of intervention *ex officio* for fixing issues, i.e. clarification by judges in this period. In *Horitsu Shimbun* we can recognize so many articles in which judges' power of clarification is described vividly. We try to analyse how judges exercised their power in reality against attorney or party without representation, and what legal practitioners expected judges to do.

So many practitioners appreciated and wished active exercise of this power from early on: Japan had accepted modern western law too rapidly, so there existed many attorneys without enough knowledge or experience as professional. Parties without attorney was common, preventive law was not widespread. Moreover, intervention through clarification power was thought

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requisite in order to make procedure quicker with its quality sustained.