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SUMMARY OF CONTENTS

“Muddling through” of Modern Japanese Judges and Civil Procedure: Images in *Horitsu Shimbun* (1900-1926) (3)

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During period of Meiji Civil Procedure Code legal practitioners wished judges to intervene actively in fixing issues and proof-taking for the benefit of parties. Real judges in those days, however, only tended to thrust their bookish knowledge of law against parties and were harshly criticized for their authoritarianism and lack of “common sense”. Admiration for ideal, “wise and warm-hearted” judge was its natural reaction, but it should never be regarded as simple “backrush toward old tradition”: such admiration always went hand in hand with possible ideas for improving civil procedure practice. Moreover, it was often accompanied by criticism against predominant influence of German law and interest in England law.

Period of Meiji Civil Procedure Code, in which received modern law was gradually taking root in Japan, had these two sides inevitably: on the one hand, *Horitsu Shimbun* insisted strongly diffusion of modern law among non-professional and use of attorneys for preventive law and proof-taking. On the other hand, practitioners sometimes hinted skepticism against modern western law: nostalgia for “good old days” and independence from German influence.

Too rapid reception of modern western law had caused so much conflicts with “traditional” legal practice and legal sense. Practitioners had to face

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these challenges daily in court and, giving them realizable solution one by one, they came to understand received modern law more substantially and critically on practical basis. Opposition to party-control principle was one of its examples. Practitioners, judges and attorneys alike, often expected judge's directive power to play a more active role, in some cases going too far indeed.