

LAW OF CRIMINAL EVIDENCE IN JAPAN

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I

In Japan, the law of evidence is regarded as a part of the law of procedure, i. e. the law of civil evidence as a part of the law of civil procedure, and the law of criminal evidence as a part of the law of criminal procedure. The law of criminal procedure of Japan, which, like all other branches of law, had been modeled after Continental European law — at first French law, afterwards German law — since the Meiji Era (1868–1912), was under the strong influence of the inquisitorial system. The influence of the inquisitorial system on the law of criminal evidence of Japan could be seen chiefly in the following points: (i) statements of the accused were treated as important evidence for his conviction; (ii) he could be convicted, even if the only proof against him was his own confession; (iii) the judge examined the accused (not as a witness, because the accused is disqualified for a witness in Japan) before the examination of witnesses, and the testimonies of witnesses were treated rather as supplemental evidence; (iv) the system of direct examination and cross-examination having been unknown, it was the judge that examined witnesses, and neither prosecutors nor defense counsels could examine them without the leave of the judge; and (v) any evidence, e. g. even hearsay evidence, was admissible.

The new democratic Constitution on the American pattern, enacted in 1946 and put into effect on the 3rd of May, 1947, under Allied occupation, has in the chapter for the guarantees of fundamental human rights, i. e. a Bill of Rights for the Japanese people, some provisions relating to evidence, which were not found in the old Constitution of 1889 at all, as follows:

Article 37. [Subsection 2] The accused shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

Article 38. [Subsection 1] No person shall be compelled to testify against himself.

[Subsection 2] Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

[Subsection 3] No person shall be convicted or punished in cases where the only proof against him is his own confession.

In order to satisfy the minimum requirements of these provisions, "the Act for the Temporary Adjustment of the Code of Criminal Procedure in Consequence of the Enforcement of the Constitution of Japan," was put into effect at the same time as the new Constitution. This statute did not abolish the old Code of Criminal Procedure of 1922, which was entirely in the German style, but provisionally amended its worst abuses which were clearly far from the spirit of the new Constitution.

On the 5th of July, 1948, a completely revised Code of Criminal Procedure was enacted and put into effect on the 1st of January, 1949.¹ Based upon the new Constitution, which has the above-mentioned provisions relating to evidence, the new Code of Criminal Procedure adopted many American rules of evidence as a matter of course. The most noteworthy among them is the adoption of the hearsay rule, "the proudest scion of the Anglo-American jury-trial rules of evidence." It was necessitated by Article 37, Subsection 2 of the Constitution, reading, "The accused shall be permitted full opportunity to examine all witnesses,, " that guarantees the accused the right to cross-examine witnesses against him. I, here in this article, should like to discuss the adoption and the practical application of the hearsay rule in Japan. It serves, I think, as a good illustration of the way how Anglo-American legal rules can be transplanted into the soil of Continental European law, and grow thereon.

II

The new Code of Criminal Procedure has nine articles relating to the hearsay rule, as follows (some provisions omitted):

Article 320 [*Hearsay rule in general*]. Except as otherwise provided in Articles 321 to 328, no document shall be used as evidence as a substitute for an oral statement of a person made at the trial, nor shall an oral statement which contains a statement of another made outside of the court be used as evidence.

Article 321 [*Exceptions as to a written statement made by a person other than the accused and a document which contains the report of his statement*]. [Subsection 1] A written statement made by a person other than the accused, or a document which contains the report of his statement and is signed and sealed by him, may be used as evidence in the following cases:

(1) As to a document which contains the report of a statement of a person given before a judge, where he can testify neither at the preparatory proceeding nor at the trial because of his death, mental or physical illness, missing or staying abroad, or where he has, at the preparatory proceeding or at the trial, given a testimony different from his previous statement.

(2) As to a document which contains the report of a statement of a person made before a prosecutor, where he can testify neither at the preparatory

¹ As to this statute, see Appleton, Richard B., *Reforms in Japanese Criminal Procedure under Allied Occupation*, 24 Wash. L. Rev. 401-430 (1949).

proceeding nor at the trial because of his death, mental or physical illness, missing or staying abroad, or where he has, either at the preparatory proceeding or at the trial, given a testimony contrary to or materially different from his previous statement, and the statement was made under special circumstances, which show that the previous statement is more trustworthy than the testimony given either at the preparatory proceeding or at the trial.

(3) As to a written statement other than those provided in the two preceding items, where the person who has made the statement can testify neither at the preparatory proceeding nor at the trial because of his death, mental or physical illness, missing or staying abroad, and his previous statement is indispensable for the proof of the existence or non-existence of the offence indicted, and the statement was made under circumstances which show that the statement is specially trustworthy.

Subsections 2 to 4 provide the exceptions as to a written record which contains statements made by a person other than the accused either at the preparatory proceeding or at the trial, and a document in which is described the result of the inspection by a judge or a prosecutor, etc., and a document prepared by an expert witness.)

Article 322 [*Exceptions as to a written statement made by the accused and a document which contains the report of his statement*]. [Subsection 1] A written statement made by the accused or a document which contains the report of his statement and is signed and sealed by him, may be used as evidence, if the statement contains an admission by the accused of the fact which is against his interest, or if the statement was made under circumstances which show that the statement is specially trustworthy. But where a written statement or a document contains an admission by the accused of the fact which is against his interest and there exists any doubt that it has not been made voluntarily, it shall not be used as evidence against the accused in accordance with the provisions of Article 319, even if the admission is not a confession of a crime.

[Subsection 2] A document which contains the report of a statement made by the accused either at the preparatory proceeding or at the trial, may be used as evidence, if the statement appears to have been made voluntarily.

Article 323 [*Exceptions as to other documents*]. A document other than those provided in the two preceding Articles, may be used as evidence only when it is:

(1) A copy of a family register, a copy of a notarial deed or such other public documents certifying the fact which the public official (including an official of a foreign government) has the duty or authority to certify;

(2) An account book, a voyage log and other documents prepared in regular course of business; or

(3) A document, other than those provided in the two preceding items, prepared under circumstances which show that the statement is specially trustworthy.

Article 324 [*Exceptions as to a hearsay oral statement*]. [Subsection 1] As to an oral statement made by a person other than the accused either at the preparatory proceeding or at the trial, which contains a statement made by the accused, the provisions of Article 322 shall apply *mutatis mutandis*.

[Subsection 2] As to an oral statement made by a person other than the accused either at the preparatory proceeding or at the trial, which contains a statement of a person other than the accused, the provisions of Article 321, Subsection

1, Item 3 shall apply *mutatis mutandis*.

Article 325 [*Investigation of the voluntary character of a statement*].

Article 326 [*Exceptions based upon the consents of the both parties*].

Article 327 [*Exceptions as to a document made under the agreement of the both parties*].

Article 328 [*Exceptions as to an impeaching evidence*]. Any document or oral statement, which shall not be used as evidence according to Articles 321 to 324, may be used as evidence for the purpose of disputing the trustworthiness of a statement made by the accused, witness or other persons, either at the preparatory proceeding or at the trial.

It will be easily seen that those provisions are adopted in the new Code in order to receive the American principles on hearsay evidence, though, of course, they are different from American rules at minute points.

III

In drafting the new Code of Criminal Procedure, however, the American hearsay rule, which can work well because of the complicated and detailed exceptions established by a great many cases for centuries, could not easily be condensed into such short sentences as the Continental European Codes usually have. For instance, it was inevitable to use such abstract and general words as "a document other than those provided in the two preceding items [*which have mentioned important examples*], prepared under circumstances which show that the statement is specially trustworthy" (Article 323, Item 3), instead of mentioning documents admissible as evidence one by one. It is the task of the court to make clear what such abstract and general words do really mean. And, as will be mentioned later, the Japanese courts, which have been accustomed to Continental European law where any evidence is admissible, tend to interpret those abstract and general words extensively and to make Japanese law of evidence different from that of the common law.

As I have just mentioned, it was inevitable to use general and abstract words in the Code, but those who drafted it were sometimes not so wise in choosing such words. The same expression, "circumstances which show that the statement is specially trustworthy,"² is used both in Article 323, Item 3, and in Article 321, Subsection 1, Item 3, but their meaning must be different to each other. For, if they mean the same thing, since "a document prepared under circumstances which show that the statement is specially trustworthy" is admissible as evidence by Article 323, Item 3, without any further condition to be fulfilled, the other conditions in Article 321, Subsection 1, Item 3, namely "where the person who has made the

² Besides, similar expression, "special circumstances which show that the statement is more trustworthy than", is used in Article 321, Subsection 1, Item 2.

statement can testify neither at the preparatory proceeding nor at the trial because of his death, mental or physical illness, missing or staying abroad, and his previous statement is indispensable for the proof of the existence or non-existence of the offence indicted," would be nothing but nonsense. So we must conclude that the words "circumstances which show that the statement is specially trustworthy" in Article 323, Item 3, mean a higher degree of trustworthiness than that in Article 321, Subsection 1, Item 3. It is inappropriate to use the same words to denote two different things.

Furthermore we can find some defects in these provisions, which probably have been caused by the drafters' ignorance of the Anglo-American rules of evidence.

In the first place, no exception to the hearsay rule as to an oral statement made by the accused, is recognized in these provisions, while it is recognized as to an oral statement made by a person other than the accused in Article 324. In America where the accused testifies as a witness when he wishes to offer evidence by means of his oral statement at the trial, the rule as to an oral statement made by a witness includes the rule as to that made by the accused. In Japan, however, as the accused, being disqualified for a witness, makes his oral statement at the trial in his status as the accused, it does not dispense with the provision relating to the exceptions of the hearsay rule as to an oral statement by the accused. Without such a provision a discordance would ensue between the rule as to an oral statement made by a witness and the rule as to that made by the accused. It is unreasonable that a hearsay statement made by the accused is never admissible as evidence, because it is included in "an oral statement which contains a statement of another made outside of the court" provided in Article 320, and no exception is provided to it, while that made by a witness is admissible in some exceptional cases. The drafters, having found that the exceptions of the hearsay rule as to an oral statement at the trial were written in American textbooks only as to that made by a witness, would have drafted these provisions discordant to each other by simply converting the word "witness" in the American rule into the words "a person other than the accused,"³ without paying any attention to the fact that the accused testifies as a witness in America when he wishes to offer evidence by means of his oral statement at the trial.

Secondly, as to impeaching evidence, i.e., evidence to dispute the trustworthiness of other evidence, Article 328 provides as follows:

"Any document or oral statement, which shall not be used as evidence according to Articles 321 to 324, may be used as evidence for the purpose of disputing the trustworthiness of a statement made by the accused, witness or other persons, either at the preparatory proceeding or at the trial."

³ This lengthy expression is used here in order to include both a witness and an expert witness, who is treated in Japan as a different species from the other.

According to the letters of this article, any hearsay evidence whatsoever would be admissible to discredit a statement made by a witness, etc. According to the American rules of evidence, however, such a rule is recognized only in case of self-contradiction, i. e., when the opponent offers as evidence a contradictory statement made previously by the witness outside of the court in order to discredit his own statement at the trial. And we can safely guess that the drafters of the Code did not intend to allow such a broad exception to the hearsay rule as the letters of Article 328 may suggest, but carelessly drafted this article without sufficient knowledge of the American rule on self-contradiction. For, the Attorney-General's Office translated this article as follows:

"Any document or oral statement, which shall not be used as evidence by virtue of Articles 321 to 324, may be used as a method for the purpose of determining⁴ the credibility of the statement made on the date either for the preparation for public trial or for public trial by the accused, witness or other persons (who have given the statements outside of the court)."

According to these translated letters, Article 328 applies clearly only in case of self-contradiction. According to the Japanese text, a very broad exception to the hearsay rule is recognized, in consequence of omitting the phrase, "(who have given the statements outside of the court)". Although mistranslation sometimes occurs in translation, it is unthinkable that a translator adds to the translation a phrase which is not found anywhere in the original. It probably shows that some of the drafters intended to adopt the American rule as regards self-contradiction in Article 328, but other drafters, who couldn't understand the problem well, omitted the above-mentioned phrase from the Japanese text which has remained un-omitted in the English translation.

These failures were almost inevitable, however, in the enactment of the new Code of Criminal Procedure which hurriedly adopted many common law rules into the system of law that had been under the overwhelming influence of Continental European law; because it is a very difficult task to fuse these two systems of law, entirely different, and it could not be expected that all the drafters of the Code had sufficient knowledge of the common law.

IV

In Article 321, Subsection 1, the drafters of the Code seem to have allowed intentionally wider exceptions to the hearsay rule than those in American law. Especially, Item 2 of that Subsection provides that a document which

⁴ This translation is not correct. It should be "disputing," which includes only "discrediting," "impeaching," excluding "restoring," "rehabilitating" (the trustworthiness of the statement).

contains the report of a statement of a person made before a prosecutor, and is signed and sealed by him, can be used as evidence,

"where he can testify neither at the preparatory proceeding nor at the trial because of his death, mental or physical illness, missing or staying abroad, or where he has, either at the preparatory proceeding or at the trial, given a testimony contrary to or materially different from his previous statement and the statement was made under special circumstances, which show that the previous statement is more trustworthy than the testimony given either at the preparatory proceeding or at the trial."

No exception equivalent to this is allowed for the accused. It is no exaggeration to say that this provision puts the prosecutor in a better status in the field of the law of evidence than the accused, influenced by the traditional Continental European idea.

Moreover, the constitutionality of this provision is very doubtful.⁵ For, in spite of Article 37, Subsection 2, of the Constitution, which reads, "The accused shall be permitted full opportunity to examine all witnesses,.....," Article 321, Subsection 1, Item 2, of the code of criminal Procedure admits the use of a document which contains the report of a statement made before a prosecutor, without giving the accused any opportunity to examine the man who made that statement, not merely as impeaching evidence but as substantial evidence to convict the accused.

In order to determine the constitutionality of this provision, we must first clarify the meaning of the word "witness" in the first half of Article 37, Subsection 2, of the Constitution. That may be interpreted in two different ways. One is to interpret the word formally and in a narrow sense, as meaning "a man who is examined at the trial as a witness." The other is to interpret the word substantially and in a broader sense, as meaning "a man who gives evidence by his oral statement," i. e., "a man whose oral statement is used as evidence." The Supreme Court took the former view. It said,⁶

"Article 37, Subsection 2, of the Constitution, which provides that the accused shall be permitted full opportunity to examine all witnesses, means simply that the accused shall be permitted full opportunity to examine all witnesses subpoenaed to the court either by the initiative of the court or by the request of one of the parties. This provision does not absolutely exclude from evidence a document which contains the report of a statement given by a witness (*etc.*), whom the accused has never been given the opportunity to examine."

And as a justification of this interpretation, it, relying on the latter half of Article 37, Subsection 2, of the Constitution, which reads, "The accused shall have the right of compulsory process for obtaining wit-

⁵ The new Constitution of Japan of 1946 has borrowed the system of judicial review from America (Articles 81 and 98), which had not been recognized in the old Constitution of 1889.

⁶ 3 *Supreme Court Reports, Criminal Case Series 789*, decided on the 18th of May, 1949, by the full court.

nesses on his behalf at public expense," said,

"A document, which contains the report of a statement made before a prosecutor, is read to the accused at the trial. The accused who has something to object, can, as a constitutional right, request to subpoena to the court, at public expense, the man who had made the statement, and cross-examine him on any point of his statement, for the purpose of clarifying what he meant in the statement or whether his statement is correct. So we can safely conclude that it does not damage the accused's interest to use such a statement as evidence according to the free weigh by the trial judge."

The Supreme Court, however, in a case in which the interpretation of the latter half of Article 37, Subsection 2, of the Constitution was the very point disputed, said,⁷

"The Constitution does not demand the court to examine all the witnesses requested by the parties..... It is within the discretion of the court to select witnesses from among those requested by the parties, so long as such discretion is reasonable. The latter half of Article 37, Subsection 2, of the Constitution..... should be interpreted as to be applied only to those witnesses whom the court permitted to examine."

As we have seen before, the Supreme Court justified its own formal and narrow interpretation of the word "witness" in the first half of Article 37, Subsection 2, of the Constitution, by referring to the latter half of that subsection. But here, it denies its own justification. For, according to this judgement, it is not guaranteed that the court will always subpoena to the court a man whom the accused requests to be subpoenaed as a witness in order to cross-examine him about his statement made outside of the court.

Even if that were guaranteed, the latter half of Article 37, Subsection 2, of the Constitution cannot serve as justification for the narrow interpretation by the Supreme Court relating to the word "witness" in the first half of that subsection. That subsection should be interpreted as meaning just the same as the similar provisions in the Sixth Amendment of the Constitution of the United States, which reads, "In all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor"; i. e., the first half as providing as to witnesses against the accused, the latter half as providing as to those in his favor. Therefore, when the prosecutor wishes to use a statement as evidence against the accused, he himself must give the accused the opportunity to examine the man who made that statement. It cannot be said that the accused's interest is not damaged by imposing on him the burden of requesting the court to subpoena the man who made that statement. The Supreme Court which has taken the view to the contrary, must be criticized that it

⁷ *2 Supreme Court Reports, Criminal Case Series 734*, decided on the 23rd of June, 1948, by the full court.

misinterpreted the provisions of the Constitution that have adopted the principles of American law.

I think that the word "witness" in the first half of Article 37, Subsection 2, of the Constitution, should be interpreted substantially in a broader sense as meaning, "a man who offers evidence by his oral statement." Only by thus interpreting this word, the hearsay rule of Japan can be said to derive from the Constitution. This provision in the Constitution, however, declaring the fundamental principle, does not forbid reasonable exceptions which do not violate the fundamental principle. As to the above-mentioned provision in the Sixth Amendment of the Constitution of the United States, the exceptions to the hearsay rule, which had been recognized in the law of evidence at the time of the adoption of the Constitution, are held to be allowed equally under the Constitution, this constitutional provision having added no new guarantee.⁸ On the contrary, Article 37, Subsection 2, of the Constitution of Japan, is a provision, which has created a new guarantee, in order to protect the freedom of the people more fully than it had been under the old Code of Criminal Procedure, and must lead the future law of evidence. It having no such historical background as that of the Sixth Amendment of the Constitution of the United States, the extent of the exceptions allowed to the fundamental principle provided by it, should be determined by theory. In doing so, however, we should refer to the principle underlying the numerous exceptions to the hearsay rule, worked out by the incessant efforts of the Anglo-American people. [Article 97 of the Constitution of Japan contains a passage, "The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free." It was the Anglo-American people that struggled to get the hearsay rule.]

Theoretically, it can be generalized that exceptions to the hearsay rule are allowed in the American law of evidence, when there exist the following two elements, i. e., "necessity" and "circumstantial guarantee of trustworthiness." "Necessity" means that there is a special necessity for using the hearsay evidence in question. "Circumstantial guarantee of trustworthiness" means that some special circumstances exist diminishing the risk of untrustworthiness which ordinarily exists in hearsay evidence, thus supplying the lack of cross-examination. I think that these two elements should also exist in order to allow exceptions to the provision of the first half of Article 37, Subsection 2, of the Constitution.

According to this interpretation of the Constitution, I cannot but

⁸ *Mattox v. U. S.*, 156 U. S. 237 (1895). "The Constitution shall be interpreted in the light of the law as it existed at the time it was adopted, not as reaching out for new guarantees of the rights of the citizen, but as securing to every individual such as he already possessed as a British subject — such as his ancestors had inherited and defended since the days of Magna Carta."

conclude that Article 321, Subsection 1, Item 2, is unconstitutional. The document which is allowed to be used as substantial evidence for the proof of the indicted crime by virtue of the first half of this item, is that which contains the report of a statement made before the prosecutor, who heard that statement for the purpose of obtaining enough knowledge to determine whether he should indict the suspected. No opportunity to cross-examine the person who made the statement is given to the accused. Such an exception to the hearsay rule is unconstitutional, because even if the element of "necessity" is satisfied, the "circumstantial guarantee of trustworthiness" cannot be found at all. The latter half of this item requires indeed that "there exist special circumstances which show that the statement is more trustworthy than the testimony given either at the preparatory proceeding or at the trial" but such a relative trustworthiness (i. e., to be more trustworthy)⁹ does not amount to "circumstantial guarantee of trustworthiness" required as a substitute of cross-examination. Consequently the latter half of this item is also unconstitutional.

No case of the Supreme Court has been reported on the constitutionality of Article 321, Subsection 1, Item 2, of the Code of Criminal Procedure. All cases of the Supreme Court mentioned above are those relating to "the Act for the Temporary Adjustment of the Code of Criminal Procedure in Consequence of the Enforcement of the Constitution of Japan." Nevertheless, the interpretation by the Supreme Court of the word "witness" in the first half of Article 37, Subsection 2, of the Constitution, suggests that the Supreme Court will surely hold that provision (Article 321, Subsection 1, Item 2, of the Code of Criminal Procedure) constitutional. A lower court (Sapporo High Court) held the first half of that item constitutional.¹⁰

V

Before the adoption of the principles of the American hearsay rule by the new Constitution and the new Code of Criminal Procedure, the Japanese law, under the strong influence of Continental European law, allowed any kind of evidence to be substantial evidence. Influenced by this tradition, the drafters of the Code drafted provisions which recognize wider exceptions to the hearsay rule. The court, also influenced by this tradition, seems to hold those provisions constitutional, as we have seen before. Furthermore, in interpreting the provisions in the Code of Crimi-

⁹ Lower courts have often held that there exist "special circumstances which show that the statement is more trustworthy, " when the statement made before a prosecutor is more logical than that made at the trial, or when that made before a prosecutor accords more with other evidentiary facts proved than that made at the trial.

¹⁰ 3 *High Court Reports, Criminal Case Series 283*, decided on the 10th of July, 1950.

nal Procedure relating to exceptions to the hearsay rule, the court tends to interpret extensively the abstract and general words therein used. This attitude of the court is gradually making these provisions mean something different from the American rule.

One of the High Courts, in a criminal case on "the Tax on Intoxicating Liquors Act," held that a document which contains the report of a statement made before a tax-collecting official, who was investigating a tax-offence, is allowed to be used as evidence, because, in the opinion of the court, it is "a document prepared under circumstances which show that the statement is specially trustworthy" provided in Article 323, Item 3.¹¹ [This Item provides, after Item 2 which reads "An account book, a voyage log and other documents prepared in regular course of business," "A document, other than those provided in the two preceding items, prepared under circumstances which show that the statement is specially trustworthy."] That this decision is wrong can be easily seen by comparing it with Article 321, Subsection 1, Item 2, which provides that a document which contains the report of a statement made before a prosecutor may be used as evidence only when it satisfies several requirements. [I think that even this provision is unconstitutional, as I mentioned before.] This decision allows a document which contains the report of a statement made before a tax-collecting official to be used as evidence without any requirement to be satisfied! The court said that the trustworthiness of the document was guaranteed by the sign and the seal of the interrogated (in addition to those of the tax-collecting official) demanded by "the Investigation of Tax Offence Act." But the document which contains the report of a statement made before a prosecutor must also be signed and sealed by the person who made the statement, in order to be admitted as evidence (Article 321, Subsection 1, Item 2). The trustworthiness demanded by Article 323, Item 3, is of a far higher degree than that decided to be sufficient by that High Court. It should be of such a degree as to make it possible to treat that document equal to "a document prepared in regular course of business."

Let us take another example. It is a case in another High Court relating to Article 324 as to a hearsay oral statement. In that case a witness (C) testified as follows: "A man (B), whom I know well but his name, came to see me and offered to sell a pair of trousers owned by the Allied Forces, which he had bought from A (the accused)." The Court held that this testimony may be used as evidence against A, indicted with the crime of illegal possession of property of the Allied Forces.¹² As this

¹¹ 7 *High Court Criminal Cases Reports* 93, decided on the 19th of April, 1950, by the Akita Branch of the Sendai High Court.

¹² 13 *High Court Criminal Cases Reports* 44, decided on the 8th of June, 1950, by the Osaka High Court.

testimony is "an oral statement given by a person other than the accused either at the preparatory proceeding or at the trial, which contains a statement made by the accused," it may be used as evidence by Article 324, Subsection 2, only when it satisfies the requirements prescribed in Article 321, Subsection 1, Item 3. The Court held that this testimony satisfies the requirement that it should be made "in circumstances which show that the statement is specially trustworthy," because "that (B's) statement was made when B came to see C for the purpose of selling a pair of trousers, and that statement coincides with other trustworthy statements." [Other requirements were satisfied in this case.] But the admissibility of an evidence must be determined by the nature of that evidence, and the trustworthiness of B's statement is not guaranteed at all. B might have told a lie about the seller. Neither was it a spontaneous statement. Consequently, the judge which held that the statement in question may be used as evidence, is wrong.

VI

With the signature of the Peace Treaty, it is expected that the occupation of Japan by the Allied Forces will come to the end in the near future, and Japan will regain her sovereignty. How will the law of criminal evidence of Japan develop thereafter? Japanese lawyers, both in bench and bar, are still under the strong influence of the ideas of Continental European law which have been predominant in Japan for many years, although they have gradually obtained some knowledge of Anglo-American law during the occupation. Now it is sometimes advocated to re-amend those provisions, which were amended during the occupation in order to adopt the principles of Anglo-American law. But I think that such a re-amendment will not easily be carried out in the field of criminal evidence, which is indispensable for the protection of the freedom of the people, because they will not let themselves be deprived of the protection of freedom once obtained. The problem to be answered in the future, seems to be whether those (or similar) provisions will be interpreted freely so as to place the law of evidence of Japan somewhere between Anglo-American law and Continental European law, or whether they will be interpreted strictly so as to make the law of evidence of Japan nearly the same as the rules in Anglo-American law. The answer depends upon whether the Japanese lawyers will come to understand more thoroughly the fundamental principles of Anglo-American law of evidence.