

ON THE PROTECTION OF THE TENANTS IN JAPAN*

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1. General Review

1. The influx of wage-workers into cities brought about by the development of capitalism, several foreign wars, and severe calamities, has brought about a notable imbalance between the demand and supply of rented houses, that is, a severe housing shortage. Every country has sought, in one way or another, to protect the tenant's right of residence. In Germany, for example, special legislation was enforced during the period extending from July 27, 1917 when "Die erste Mieterschutzordnung" was promulgated in the course of the World War I, to World War II and after; there has been special legislation in France during the period extending from March 9, 1918 when "La loi du 9 mars 1918" was promulgated to September 1, 1948 when la loi was laid down and after; and special legislation in Great Britain, including "Increase of Rent and Mortgage Interest Act, 1915 etc." and "Landlord and Tenant (Rent Control) Act, 1949, 1954." etc. has been promulgated.¹ Japan also is in need of special legislation, since sufficient protection of tenants has been impossible within the framework of the old civil law theory. Nevertheless, Japan, whose special legislation in this area has been insufficient, has still to make the necessary amendments.² For this reason, cases which have been decided in court show an interesting trace of change. This paper is centered around the cases concerning the limitation of "rescission" (*Rücktritt*) or "notice to quit" (*Kündigung*) for the protection of tenants in Japan.

2. First of all, the relevant provisions of the Civil Code of Japan and the development of dwelling acts, to the extent that they are required in this paper, are given below.

(1) The Civil Code of Japan (enforced in 1898):

a) The Civil Code of Japan regards buildings as separate immovables from land

* Abbreviations:

J.C.C.—Civil Code of Japan; 1953. 1.30 S. C. Rep. 7. 1. 116—Supreme Court of Japan 1953. 1. 30. Supreme Court Civil Reports 7. 1. 116; 1929. 6. 19 F. S. C. Rep 8. 10. 675—former Supreme Court (*Daishin-in*) 1929. 6. 19. former Supreme Court Civil Reports 8. 10. 675; Osaka C. A. 1949. 2. 18. A. C. Rep. 2. 1. 37—Osaka Court of Appeals 1949. 2. 18. Court of Appeals Civil Reports 2. 1. 37; Tokyo D. C. 1950. 1. 21. Inf. C. Rep. 1. 1. 49—Tokyo District Court 1950. 1. 21. Inferior Courts Civil Reports 1. 1. 49.

¹ I am greatly indebted to messrs. Ariizumi, Suzuki, Ikuyo and Sekiguchi for their work on comparative jurisprudence, *Syakuchi-Syakuyahō no Kenkyū* (*The Research of the Rented Land Act and the Rented House Act*), Tokyo, 1958, and "Kyojūken no Hikakuhōteki Kenkyū" (*The Comparative Jurisprudential Research on the Right of Residence*) in *Hōsō Jihō* (*Lawyers Association Journal*), Vol. IV, No. 2, and Mr. I. Kawashima "The Rented House Laws of England and New York, U. S. A." (in Japanese) in *Hōsō Jihō* (*Lawyers Association Journal*), vol. 11, No. 12.

² The amendment of the Rented Land Act and of the Rented House Act has been a topic of discussion of late.

(J.C.C., Art. 86) without adopting the principle of "*Superficies solo cedit*" (that which is built upon the land goes with the land). Therefore, being different than German and French civil laws, the utilization of the others' land for owning buildings, is feasible not only by superficies (*Erbbaurecht*) (J.C.C., Art. 265 et seq.) which is a real right (*ius in rem*, *Sachenrecht*), but by lease (*Miete*) (J.C.C., Art. 601 et seq.) set up as an obligatory right (*ius in personam*, *Forderungsrecht*).³

b) Lease is subject, as a rule, to the principle "*Kauf bricht Miete*" (purchase terminates a lease). The lease of an immovable, *if registered*, shall be effective even as against persons who subsequently acquire real rights in such immovable (*Kauf bricht nicht Miete*) (J.C.C., Art. 605), but the registration is required of the lessor's (*Vermieter*) consent (Immovable Registration Act, Art. 26), who ordinarily denies it, and so the said principle is factually not observed.

c) The lease having a fixed period, comes to an end by the maturity of the period (J.C.C., Art. 616, 597. I). In case the period is not fixed, each of the parties may at any time give notice to the other party to quit, and in case of a building the lease shall come to an end upon the expiration of three months after such notice has been given (J.C.C., Art. 617).

d) A lessee (*Mieter*) must use the thing leased or take profits therefrom in such manner as is determined by the contract or by the nature of its subject matter (J.C.C., Art. 616, 594). In case a lessee does not pay rent or does not perform his obligations, the lessor may rescind the contract.⁴

e) A lessee cannot without the lessor's consent assign his right or sublease the thing leased. If the lessee allows a third person to use or take profits from the thing leased contrary to this, the lessor may rescind the contract (J.C.C., Art. 612).

(2) Subsequent special legislation:

The relationship, whereby one person uses the land of another person for the purpose of owning buildings on that land is an old problem. According to the Act concerning Protection of Buildings 1909, the only requirement for setting up one's lease or superficies against a third person is the registration of one's own building without needing that of superficies or lease of other's land itself.

Inflation, the housing difficulty, and the resulting fall and unstabilization of tenants to landlords (owners of houses) after World War I, made it entirely impractical to leave the control of rented houses to the provisions concerning the lease in the Civil Code described above. The Rented House Act, which was enacted in 1921 simultaneously with the Rented Land Act, was put into force in the six large cities which had been experiencing severe housing problems. In 1922, the following year, the Conciliation Act on Rented Lands and Houses was put into force.⁵ In 1941, the Rented House Act was amended

³ For this reason, in the subsequent special legislation, the Rented Land Act relating to superficies and lease set up utilizing the other's lands for the purpose of owning buildings, and the Rented House Act set up for renting buildings, are enacted separately. Therefore, only the latter is taken up in this paper.

⁴ There is at present a controversy concerning whether or not this rescission is due to the Civil Code, Art. 541, which is the general provision concerning the rescission of contract, or whether it is based on another source. This point will be discussed later.

⁵ The new institution of conciliation to be conducted at the judicial court, was established for the purpose of attaining adequate settlement through consideration of concrete circumstances of the parties concerned by avoiding uniform judicial disposition under the system of right of civil law.

with the addition of the 2nd of article 1,⁶ and the limitation of its applying area was lifted: this is the acting Rented House Act.

Here let us briefly review the Rented House Act (enforced in 1921 and amended in 1941).

a) Its applied object is the building rented by legal lease contract with no difference from the Civil Code. The concrete description will be given later (see note 43).

b) The lease of the building simply with its *delivery*, its registration not being required, shall be effective even as against persons who subsequently acquire real rights to the building (Art. 1.).

c) In regard to the lease having a fixed term, if the one party concerned does not give notice to refuse renewal to the other party within from six months to one year before expiration of the term, the lease will "be deemed" to continue on the same condition as heretofore on expiration of the term. In addition, if a lessor does not express his disagreement immediately in case a lessee continues to use the building or to take profit therefrom after expiration of the term, even in case the above-mentioned notice has been given, it is none the less "deemed" to have the continuance of the lease on the same condition as heretofore (Art. 2).

d) In regard to the lease not having a fixed term, the notice to quit must be given six months before termination of contract (Art. 3).

e) The provision of the 2nd of Article 1 added in 1941 is most worthy of attention. It stipulates that "unless there is *justifiable cause*, including the case of lessor's own use of it, he can neither refuse the renewal of the lease nor give notice to quit." The said "justifiable cause" has been discussed in a great majority of the cases of conciliation and suits concerning the eviction from rented houses.

(3) The relation between the cause of rescission in the Civil Code and the "justifiable cause" in the Rented House Act:

It is now clear that the "notice to quit" or the "refusal of the renewal" cannot be done with out "justifiable cause", with indifference to a fixed term. However, the Rented House Act does not have any provision in regard to the rescission in the case of the lessee's breach of contract (J.C.C., Art. 541, 607 and 612), and it is generally understood it is still subject to the provisions of the Civil Code⁷. The relation between the "cause of rescission" in the Civil Code and the "justifiable cause" in the Rented House Act is generally understood to be as follows: the "justifiable cause" in the Rented House Act does not necessarily require the existence of the lessee's breach of contract, but the "rescission" done for the sake of the lessee's breach of contract as mentioned in the Civil Code, has been strictly interpreted for the purpose of protecting the lessee; nevertheless, even the breach of contract, which doesn't deserve the name in the strict sense of the word (inessential or nonessential breach), being combined with other relevant circumstances, may constitute the "justifiable cause" in the Rented House Act; *vice versa*, such lessee's breach of contract as being worthy of causing the reason for rescission in the Civil Code, may become a decisive factor of the "justifiable cause" in the Rented House

⁶ This had, as will be described later, a certain significance in that specific circumstances of landlords (owners of house) and tenants have been taken into consideration, not merely as the reason for conciliation, but also as a factor of right.

⁷ In this respect, Germany had a different elimination of the provision of the "*fristlose Kündigung*" of her civil code (BGB § 554, § 555) by virtue of MSchG., § 1.

Act. To this extent, the requirements of both are doubled.⁸

Description is given below regarding the limitation of the "rescission" to be made against the lessee's breach of contract in the Civil Code and the "justifiable cause" in the Rented House Act.⁹

II. Limitation of "Rescission" Due to Breach of Contract

1. Assignment of the lease and sublease of the thing leased without lessor's consent (J.C.C. Art. 612)

(1) The former interpretation taken in the judicial precedents was that when a third person has actually used the thing leased or taken profits therefrom,¹⁰ the lessor naturally can rescind the contract.¹¹ This indicates a faithful observance of the meaning of the words written in Art. 612 of the Civil Code when we read it without having in mind any other specific idea (refer to I 2 (1) e). This is based on the idea that the said fact will breach the trust given to the lessee by the lessor.¹² The precedent given in 1928 at the former Supreme Court (*Daishin-in*), which held that even in the case of the sublease of a part of subject-matter without consent the whole part of the lease can be rescinded, mentions "the breach of faith" as its basic view of the decision.¹³ The same view is found in another judicial precedent of the former Supreme Court which held that rescission is available even in case the restoration of the *status quo* is completed after the completion of the third persons use due to the assignment of the lease or sublease of the thing leased without consent.¹⁴

(2) Due to the extreme housing difficulty, and the shortage of funds and material with which to combat the latter, along with the deterioration of the living standard of the nation after the World War II, the people who had lost their houses and those who were repatriated from abroad faced extreme difficulty in obtaining dwelling space. Consequently, lessees began subleasing the rooms of their residences after being entreated to

⁸ This point will be discussed in detail later. The relation between the two will be referred in the decision of Tokyo D. C. 1950. 1. 21. Inf. C. Rep. 1. 1. 49.

⁹ For the discussion which follows the writer has drawn extensively on the following authors and their studies: Suzuki, "Chinsyakuken no Mudan Jōto to Tentai" (The Assignment of the Lease and Sublease of the Thing Leased without Consent), in *Sōgō Hanrei Kenkyū Sōsho* (Combined Research of Judicial Precedents), part of Civil Law Vol. 11, Tokyo, 1958, and, *Kyōjūken Ron* (On the Right of Residence), Tokyo, 1959, and, Furuyama, *Syakuya Hō* (The Rented House Act), Tokyo, 1950, and *Saikin ni okeru Syakuchi Syakuya no Syomondai* (The problems of the Rented Land and the Rented House in Recent Times), Tokyo, 1953; Usune, *Syakuchi Syakuya; Syakuya Hen* (The Rented Land and the Rented House, Part of a Rented House), Tokyo, 1954; Hirose, "Kaoku Akewatashi ni okeru Setōjiyu" (On the Justifiable Cause in the Delivery of Rented House) in *Sōgō Hanrei Kenkyū Sōsho* (Combined Research of Judicial Precedents), part of Civil Law, Vol. 1, Tokyo, 1956.

¹⁰ For instance, 1938. 4. 16. F. S. C. *Hanketsu Zenshū* 5. 9. 8.

¹¹ 1919. 11. 24. F. S. C. *Hanketsu Roku* 25. 2096.

¹² 1929. 6. 19. F. S. C. Rep. 8. 675 reads "In the contract of sublease, a lessee, viz., sublessor cannot make the sublessee use at will the thing leased without the lessor's consent, since the contract of lease is to be set up on trust to lessee himself, and consequently according to the nature of this contract it is not admissible for a lessee to make a third person use the thing leased at his own sweet will..."

In regard to the leased land, 1935. 4. 22. F. S. C. Rep. 14. 593.

¹³ In regard to the leased land, F. S. C. 1928. 8. 8. Law Paper (*Hōritsu Sinbun*) 2907. 12; 1935. 4. 22. F. S. C. Rep. 14. 593; Regarding the rented room, 1953. 1. 30. S. C. Rep. 7. 1. 116 is mentioned.

¹⁴ 1935. 4. 22. F. S. C. Rep. 4. 593.

do so by relatives or acquaintances. As a result, numerous cases arose in which landlords (owners of houses) were inclined to request the eviction from houses by the rescission of the lease contract on the pretence of the lessees' sublease without consent for the sale of the houses at high price or sometimes for using said houses as their own residences. The housing conditions, however, have made it impractical for the judicial court to admit such landlords' requests by merely following the interpretation of the old precedents. Various precedents concerning this problem after World War II, indicate a trend of setting a limitation to the lessor's rescission for the protection of lessees or sublessees. There are many different methods or theories. Since a full explanation of each case, with its particular element, is impossible in the limited space of this paper, the illustrations given will be concerned chiefly with the theoretical matter.

In the theory of A type, the sublease of a part of the house leased without consent, *viz.*, renting rooms, should as a rule be regarded as the sublease without consent said in Art. 612,¹⁵ but with the following exceptions: (a) the case with the purpose of temporary use;¹⁶ (b) the case of not being compensated;¹⁷ (c) the case of the existence of a family relation or similar intimate relationship between the sublessor and the sublessee, or of that of employer and employee;¹⁸ (d) the case in which the rented room is not a substantial part of a house;¹⁹ in these cases, the sublessees concerned are not deemed to be the so-called "a third person" mentioned in Art. 612, Para. 2, or renting of a room is nothing but a factual relation and not deemed to be the establishment of the legal relation of lease (*Miete*) or loan for use (*Leihe*).²⁰

However, the fact that a third person is the lessee's relative or his use of a room is temporary or uncompensatory, will not always furnish the cause to deny that it is the assignment of lease or sublease.²¹

In the theory of B type, the assignment of lease and sublease are deemed to have done, but the lessor's implied consent or consent after the fact is considered to exist and thereby a brake will be applied to the exercise of the lessor's right of rescission; for example, in case one rented the house being used by its owner as apartments to let including the goodwill, the owner's consent to sublease is deemed to be included.²² In regard to the case in which the premium has been paid, relevant judicial precedents are not interpreted to be from the same view point; rather, the investigation of concrete facts will produce the decision for each case, since the legal character of a premium is greatly complicated. An illustration concerning the assignment of lease and sublease is given below; in case a lessor accepted the rent from a lessee with the knowledge of the existence of sublessee without expressing any objection, most of relevant precedents take the view that the lessor's implied consent is recognized.²³

¹⁵ 1953. 1. 30. S. C. Rep. 7. 1. 116.

¹⁶ Tokyo D. C. 1949. 5. 7. (in Furuyama, *Syakuya Hō (the Rented House Act)* p. 120)

¹⁷ Tokyo D. C. 1948. 6. 22; Tokyo D. C. 1949. 7. 29. (in Furuyama, *ibid.*)

¹⁸ For instance, Osaka C. A. 1949. 2. 18. A. C. Rep. 2. 1. 37.

¹⁹ Tokyo D. C. 1951. 1. 13. (in Furuyama, *ibid.*)

²⁰ As a matter of course, these facts ordinarily exist not by one but by more than two in most cases.

²¹ The reason is that the assignment of the lease and sublease without consent exist, notwithstanding whether or not it is temporary or uncompensatory, and making a third person use or take profits creates a larger problem than the contract itself of the assignment of lease and sublease.

²² Tokyo D. C. 1956. 10. 30. Inf. C. Rep. 7. 10. 3056.

²³ For instance, Tokyo D. C. 1949. 7. 16. (in Furuyama, *op. cit.* p. 122)

As the consent to sublease is not a formal contract, there is generally no hindrance to the recognition of the implied consent. However, there is a limit to finding of fact; and fiction, expansion and twisting of fact beyond the limit are not admissible. Such being the case, the theories of the aforesaid A and B types cannot provide a full solution to the problem.

In the theory of C type, the lessor's right of rescission is not generated in case there is no breach of faith on the part of a lessee, in which case he will be protected in compliance with the spirit of legislation of the Civil Code, Art. 612. In this connection, I would like to reiterate that the former Supreme Court took the view that in case a third person actually used the thing leased or took profits therefrom, the lessor could as a matter of course rescind the contract; this right of the lessor arises out of the violation of "the fiduciary relation" between the parties concerned, which lies at the basis of lease, *viz.*, "breach of faith." However, the Supreme Court has taken a new view since 1953. The present Supreme Court, taking a different view than the former one, and admitting the existence of the assignment of lease and sublease of the thing leased without consent, now considers as a separate problem whether it will cause the violation of the fiduciary relation between lessor and lessee, *viz.*, the lessee's breach of faith to decide whether rescission is adequate or not.²⁴ On the other hand, recent Supreme Court judicial precedent of the matter under discussion seems to have returned to the pre-war precedents,²⁵ and is now the subject of criticism among scholars.

At any rate, it is clear that there are two different meanings to the "fiduciary relation" or the "breach of faith", that is, there is a personal (what Max Weber calls *persönlich*) fiduciary relation and a materialistic (*sachlich* or *unpersönlich*) fiduciary relation²⁶. Fundamentally, the latter should be supported, but it will not be able to be consistently taken. From the viewpoint of the materialistic fiduciary relation, "breach of faith" would mean that lessor's right of the charge of rent is endangered and the maintenance of the subject-matter is damaged; but a complete understanding of this point is difficult if viewed from the point of economics only. For, in the present situations, the ownership of immovable property, especially dwelling house is not merely the right to take rent, but is inclined to be used by the owner himself as is described in the latter part of this paper (refer to Rented House Act, the 2nd of Art. 1); in addition, owing to the existence of the Rent Restrictions Act, the principle of the exchange of equal value does not yet sufficiently cover the immovable property, and thus some other factor than the pure economic benefit of lessors will have to be taken into consideration.

How, then, do judicial precedents consider "breach of faith" to exist?

²⁴ 1953. 9. 25. S. C. Rep. 7. 9. 979; 1955. 9. 22. S. C. Rep. 9. 10. 1294; 1956. 5. 8. S. C. Rep. 9. 10. 1294.

²⁵ In regard to leased land, 1956. 12. 20. S. C. Rep. 10. 12. 1581.

²⁶ We cannot say that the provision of Art. 1717 of C. C. of France, which stipulates that as long as there is no specific prohibition a lessee can assign his right or sublease the thing leased, will deny that the French Civil Code handles the relation of lease on the basis of the fiduciary relation between the parties concerned. The draft of the former Civil Code of Japan, taking C. C. of France as its model, "made it the principal rule to allow the assignment of right and sublease by taking many instances in foreign countries," but the present Civil Code of Japan "has made it a rule not to allow the assignment of right and sublease by adopting the customary precedents in many districts of our country"; that is to say, it was intended to regulate on the basis, not of "sachlich" fiduciary relation seen in many instances in foreign countries, but of "persönlich" fiduciary relation as the feudalistic master and servant relation of landlord and tenant remaining in "the customary precedents in many districts of our country."

(a) Regarding land, some precedents take the old interpretation that the assignment of the lease of the site, accompanied with the assignment of ownership of a building, naturally makes the cause for rescission;²⁷ on the other hand, other precedents take the interpretation that as the change of the owner of a building is not deemed to bring about the difference in the manner of the use and taking profits of the site, the lessor of a land cannot refuse the consent to the assignment of the tenant's right of lease, provided that there are no circumstances to be doubted about the payment of rent of the site to be done by the assignee of the building, or there is a particular cause such as being unable to keep up the fiduciary relation between landlord (owner of land) and the assignee of the right of lease of the site.²⁸

(b) In regard to the house of business, many precedents hold that in case a lessee and a sublessee (or assignee of lease) are in substance the same, the breach of faith is not constituted and the cause of rescission is not made. An example is that of a lessee incorporating his private enterprise into the limited liability company or limited partnership for the purpose of lightening taxation.²⁹ As the substance is not changed by shifting the form in this case, relevant sublessee, *viz.*, juridical person, will be able to be handled by the theory of A type mentioned above with the interpretation that it is not "a third person" mentioned in the Civil Code, Art. 612 as well.

(c) A fair number of precedents hold that the breach of faith is not constituted in case the tenant has allowed his relatives, or person regarded to be relatives having no dwelling, to live in his house,³⁰ and according to circumstances, this case also may be handled by the same A theory saying that the assignment of right of lease and sublease are not constituted in this case.

(d) There are also many precedents taking the interpretation that the breach of faith does not exist in case the sublease is a temporary one, or a part of the subject-matter, and the *status quo* has been restored by sublessee's evacuation.³¹

However, there are some precedents interpreting the same case to have the breach of faith. The trend observed in recent Supreme Court decisions seem not to be favourable to the theory which holds that the cause of rescission is not made "unless there is the breach of faith," but instead, return to the interpretation taken in the former Supreme Court, in which the cause of rescission is made "unless there is a particular circumstances not fully constituting the breach of faith" in the case of the existence of the assignment of the lease and sublease without consent.³²

²⁷ 1956. 5. 20. Tokyo C. A. Decision Bulletin (*Saiban Jihō*) 7. 5. 117.

²⁸ Tokyo D. C. 1952. 7. 1. Cases Times (*Hanrei Taimusu*) 25. 62.

²⁹ Tokyo D. C. 1950. 7. 15. Inf. C. Rep. 1. 7. 1109; Tokyo D. C. 1955. 6. 15. Inf. C. Rep. 6. 6. 1136; Nagasaki D. C. 1954. 3. 20. Inf. C. Rep. 5. 3. 386.

³⁰ Tokyo C. A. 1953. 2. 9. Cases Times (*Hanrei Taimusu*) 31. 72; 1956. 12. 27. Tokyo C. A. Decision Bulletin (*Saiban Jihō*) 7. 12. 327; Osaka C. A. 1953. 4. 2. Inf. C. Rep. 4. 4. 474.

³¹ 1956. 5. 8. S. C. Rep. 10. 5. 475; Tokyo D. C. 1956. 9. 4. Inf. C. Rep. 7. 9. 2374; Tokyo D. C. 1957. 10. 10. Cases Bulletin (*Hanrei Jihō*) 141. 24; Nagoya C. A. 1950. 4. 13. Inf. C. Rep. 1. 4. 543; Nagoya C. A. 1954. 6. 23. A. C. Rep. 7. 7. 560; 1955. 12. 14. Tokyo C. A. Decision Bulletin (*Saiban Jihō*) 6. 12. 288.

³² The landlord's (owner of land) rescission was admitted despite the existence of a special circumstance between a landlord and tenant with respect to the assignment of the lease right of the site without consent to be followed by the transfer of ownership of building standing on the land leased (1956. 12. 20. S. C. Rep. 10. 12. 1581); 1953. 1. 30. S. C. Rep. 7. 1. 116 handling the case of a 2nd floor room subleased to a couple who had lost their home by air raid; 1958. 1. 14. S. C. Rep. 12. 1. 41 handling the case of a tenant living in high class quiet residential quarters who subleased to an American military officer and his sweetheart after accepting large monetary premium.

In the theory of D type, the assignment of the lease and sublease without consent is the breach of faith and would as a rule generate the right of rescission in case it is made between the lessor and lessee only; but in case it is made in the circumstances of extreme housing difficulty, as was witnessed during the earliest post-war period, it is sometimes not illegal and does not generate right of rescission.³³ But there is a view which holds that the problem of the other person's dwelling, needing urgent measures under a sort of emergency, excepting the relation between lessor and lessee, is not a matter pertaining to Article 612 of the Civil Code but to the theory of abuse of right.

Lastly, the theory of E type takes the interpretation that the right of rescission being generated must not be exercised by virtue of the general clause of the theory of abuse of right and the principle of *bona fides* (*Treu und Glauben*). There are a good number of precedents to support this interpretation.³⁴ But it is worthy of note that the precedents of the Supreme Court are critical of the attitude taken by inferior courts which rely on the words given in such general clause without positive analysis; furthermore, none of its precedents indicate an attempt to limit the exercise of right of rescission in the method of application of such general clause.³⁵

2. Nonfulfilment of other obligations of lessee

Besides the assignment of the lease and sublease without consent, both lessor and lessee can rescind the contract on the cause of nonfulfilment of various obligations imposed on the other party by each other. In fact, however, the real problem is merely the lessor's rescission due to nonfulfilment of the lessee's obligation under the present difficulty of obtaining residences.

There are, however, controversies in regard to the basic articles of rescission. Judicial precedents and recognized theory consistently maintain that rescission can be done by virtue of Art. 541 of the Civil Code, which is the general provision concerning contract.³⁶ But in the present housing difficulty, it is too cruel to a lessee that Article 541 allows rescission against delay of paying rent done only once, or against a breach of the slightest obligation. For this reason, judicial precedents and recognized theory are inclined to protect lessees by virtue of general clauses of the principle of *bona fides*, and the theory of abuse of right, etc.. Opposed to this view, the academic theory currently gaining influence, which accepts the German theory, holds that the lease, being a continuous contract, should not be applied by the provision of "rescission" (*Rücktritt*), which has essentially a retrospective effect as seen in temporary contracts, but that the cause of generation

³³ For example, Fukuoka D. C. 1950. 1. 31. Inf. C. Rep. 1. 1. 102 taking the interpretation of not allowing the rescission in the case of a partial sublease unless there is a special circumstances under the situation in which public opening of large houses is legally taken up; Tokyo D. C. 1950. 3. 14. Inf. C. Rep. 1. 3. 387 taking the interpretation of not allowing rescission in case the room sublessee evacuated after about half a year's room-renting and *status quo* has been restored in view of a great housing difficulty; Osaka D. C. 1950 6. 12. Inf. C. Rep. 1. 6. 881 taking the interpretation of not allowing rescission in case a tenant subleases his second floor and accepts payment only for the expense of light and heat to a war damaged person in sympathy for the cause that such room-rent to war-stricken people is a morally recommendable act.

³⁴ For example, Fukuoka C. A. 1950. 4. 10. Inf. C. Rep. 1. 4. 532; Tokyo D. C. 1950. 5. 31. Inf. C. Rep. 1. 5. 845; Kobe D. C. 1950. 6. 26. Inf. C. Rep. 1. 6. 996; Osaka D. C. 1952. 7. 14. Inf. C. Rep. 3. 7. 969. etc.

³⁵ For example, 1953. 1. 30. S. C. Rep. 7. 1. 116; 1956. 12. 20. S. C. Rep. 10. 12. 1581.

³⁶ J. C. C. Art. 541 "If one of the parties does not perform his obligation, the other party may fix a reasonable period and demand its performance, and may rescind the contract, if no performance is effected within such period."

of rescission should be sought in the theory of the relation of the continuous contract and only in the case in which the occurrence of such a grave nonfulfilment, as making the continuance of the contract unjust to be compulsorily observed by lessor by violating the fiduciary relation which lies at the basis of continuous contract, should exclusively undergo the exercise of "*fristlose Kündigung*" with analogy of Article 628³⁷ relating to the contract of employment. At any rate, let us examine the interpretation shown in the following judicial precedents. It is as follows:

In case rent has been paid a little after the elapse of the period of request owing to unavoidable circumstances, the exercise of right of rescission by lessor will be abuse of right.³⁸

Additionally, in regard to the case in which a lessee has changed the purpose of the use of the rented house without lessor's consent, or has breached the obligation of custody resulting from extension or rebuilding,³⁹ if the restoration of *status quo* is feasible or the degree of the breach of obligation is so slight that the fiduciary relation between the two parties is deemed not to be affected, the rescission of contract might not be put into effect or is not allowed from the viewpoint of the principle of *bona fides* and the abuse of right, in which case the protection of a lessee is promoted.^{40 41}

III. Limitation of the "notice to quit" (*Kündigung*) in the Rented House Act

1. The trend of cases before institution of the Rented House Act

During the period when the contract of lease was subject only to the Civil Code, that is, before the institution of the Rented House Act, the contract having a fixed term terminated at its expiration, and that not having a fixed term was entirely subject to the intention of a landlord (refer to I 2(1) C); what a tenant could do at most, was to plead invalidity of the notice to quit by virtue of the principle of *bona fides*, or the theory of abuse of right (J.C.C., Art. 1). Most judicial courts did not simply rule in favor of

³⁷ J. C. C. Art. 628 reads "Even where a period for the service has been fixed by the parties, either party may, if any unavoidable cause exists, immediately terminate the contract; ..."

³⁸ Osaka D. C. 1950. 10. 4. Inf. C. Rep. 1. 10. 1584.

³⁹ J. C. C. Art. 594 Para. 1 reads "The borrower must use and take profits from the thing in such manner as is determined by the contract or by the nature of its subject-matter". Art. 616 reads "The provisions of Art. 594 para. 1, ... shall apply with necessary modifications to a lease."

⁴⁰ Tokyo D. C. 1952. 4. 17; Tokyo D. C. 1950. 3. 24. Inf. C. Rep. 1.3 .391; Tokyo D. C. 1959. 6. 29. Cases Bulletin (*Hanrei Jihō*) No. 1959. 8. 11, which interprets the "fiduciary relation" which lies at the basis of the relation of lease as follows: The "fiduciary relation" does not mean co-existence of the individual and subjective confidential feeling between the parties concerned, but means a particular relation with the content of mutual expectation so that the other party should act within the spirit of *bona fides* (*Treu und Glauben*) as lessor or lessee, and is, after all, the concrete expression of the principle of *bona fides* governing the relation of lease, meaning that the mutual relation between the parties concerned should fundamentally be ruled by the principle of *bona fides*... Therefore, the fiduciary relation in the relation of lease should not be decided by the subjective confidential feeling of the parties concerned, but must be viewed from the social viewpoint in accordance with concrete circumstances after taking into full consideration the social function of lease, in other words, as an objective matter in compliance with the prevailing social concept and the principle of *bona fides*. Extinction of subjective confidential feeling should not necessarily mean the extinction or destruction of the fiduciary relation itself..."

⁴¹ Even if it does not become the cause for "rescission" in the Civil Code, it may, when considered along with other factors, become a "justifiable cause" in the Rented House Act, thus furnishing the cause for "notice to quit," which will be discussed later in this paper.

tenants; some examined the circumstances of both lessors and lessees and gave judicial decisions by virtue of the theory of "abuse of right."⁴²

2. "Justifiable cause" in the Rented House Act

Since the 2nd of Art. 1 of the Rented House Act was added in 1941, the landlord's rescission of the contract of rented house—irrespective of having a fixed period and notwithstanding whether it is the notice to quit or refusal of renewal—has been required of "the case where the house is needed for the lessor's own use or other justifiable cause," in which case amendment was made to the principle of freedom of rescission of contract in the Civil Code (refer to I 2(2) e). In short, the general clause of the "justifiable cause" has become a standard by which relevant problems are supposed to be solved in Japan, in contrast with Germany and Great Britain where the special legislation having detailed statutory causes is the criterion. Accordingly, the content of the "justifiable cause" is changeable depending on both the time during which the case occurs and the specific nature of the case. The gist is as follows:⁴³

(1) Formerly, when the said 2nd of Art. 1 was supplemented by the amendment of the Rented House Act in 1941, "the case in which the house is needed for the lessor's own use" was considered naturally to constitute the "justifiable cause." This was actually the intention of the legislator, and various relevant precedents appearing after enforcement of the amended act, putting partial stress on the landlords' subjective circumstances such as the necessity of their use, and not taking into consideration the unrest a tenant had to experience by eviction from his rented house, suggests a return to past practices rather than to those precedents prior to enforcement of the amended act which took into consideration the theory of abuse of right, etc.⁴⁴

During the period when the former Supreme Court held to the view described above, inferior courts issued some cases taking the view that it was necessary to take into consideration not only the circumstances of the lessor, but of the lessee and of objective circumstances as well.

(2) Due to the growing deterioration of the housing situation from the last stage of the World War II to the post-war period, judicial precedents, reflecting the severe social and economic situation, have shown a shift in the criterion of the "justifiable cause." On September 18, 1944 (Law Times (*Hōritsu Taimusu*) 7, 66), the former Supreme Court

⁴² 1941. 3. 18. F. S. C. Rep. 20. 306; F. S. C. 1941. 11. 22 *Hōgaku* 11, 619; F. S. C. 1941. 9. 12 Law Paper (*Hōritsu Shinbun*) 4730. 6.

⁴³ The objects to which the Rented House Act is applicable are rented houses set up in the legal lease contract. Accordingly, (a) sublessee and assignee of lease without lessor's consent, is excluded, (b) uncompensatory loan for use (*Leihe*) is also excluded. In this connection, there is a problem concerning the company's house (corporations residence), since its employees usually pay extraordinarily low rent. Some relevant precedents hold that the Rented House Act does not apply; others hold that while the Rented House Act applies, stress is to be put on the circumstances of the corporation in concrete consideration of the "justifiable cause". While it appears that the latter is more common and more appropriate for settling this matter, each specific case should be considered as a separate problem, since no relevant statutory provision exists in Japan. (c) Merely a rented house is required; it does not matter whether it is (1) a dwelling house exclusively, (2) a purely commercial establishment, or (3) a combination of (1) and (2); or whether it is a high class residence or a low class (although some difference is produced in applying the Rent Restrictions Act). A part of a Japanese-style house, particularly a room separated by a paper sliding door, or an other type sliding door ("*Shōji*" "*Fusuma*") is not deemed to be an independent building in its structure, its efficacy of use, and in general social concept, and therefore, in most cases, is not admitted to be a so-called "house" in the Rented House Act.

⁴⁴ For example, 1943. 2. 12. F. S. C. Rep. 22. 57; F. S. C. 1942. 1. 24. Law Paper (*Hōritsu Shinbun*) 4757. 17.

gave an interpretation regarding the justifiable cause for the notice to quit, saying "the decision of the matter should be made after comparative consideration of profit and loss of both lessors and lessees, and further consideration of various circumstances including public benefit and social life"; this interpretation has become a confirmed theory of relevant cases of today,⁴⁵ and is unanimously accepted in academic theories. Thus, the ownership of the house to let had been controlled only in its exchange price at the early stage, but subsequently has been controlled in its use price, as well. It is worth while to note that there is now a trend to judge the "justifiable cause" by putting partial weight on the consideration of the circumstances of landlords again as the housing shortage grows less acute.

(3) Practical handling of justifiable cause

a) Data of criterion

The circumstances to be taken into consideration as the data of the criterion of the justifiable cause, as is clear from the above description, "have a broad extension, covering occupation, the circumstances of livelihood, number of family, health, structure of building, present situation of the dwelling of lessor, the situation of the use of building by lessee, assets, whether or not tenant has a house to which to remove, whether tenant did any insincere or untrustworthy act or not, the circumstances of the conclusion of the lease contract and the particulars of the negotiation concluded before and after giving the notice to quit." Moreover, in concrete cases, the factors favourable to lessor, and those favourable to lessee are intricately entangled and conflict with each other. Since it is impossible to discuss numerous precedents for the introduction of the whole feature here, I will limit my discussion to how various factors were evaluated in some precedents. As a matter of course, it goes without saying that in case there is one similar factor while other factors are different, the solution of a specific case might produce a different outcome.

b) Circumstances concerning lessor

(i) It is needless to say that "necessity of his own use" is the most favourable element to a landlord; the problem in this case is the degree of urgent necessity; and it is always to be compared with the factor of tenant's pain to be undergone by eviction. In most cases, it is a situation in which persons owning one house, but living in another house, such as, repatriates, returning evacuees, and war-stricken people who need living space due to their present landlords' urgent request of eviction;⁴⁶ but it is not required for a lessor that the purpose of the use is for dwelling since in Japan there is no statutory provision of the limitation. The use as a store will also constitute necessity of his own use (note 43); the problem in this case is the comparison of the content of the use as a business house and the degree of necessity of residence of a tenant, and is to be decided conclusively only after full deliberation; for instance, in case the only means of livelihood for the landlord is to use the house as a place to conduct a business, it will be fairly justifiable cause;⁴⁷

⁴⁵ For example, 1954. 1. 22. S. C. Rep. 8. 1. 207.

⁴⁶ Consequently, no justifiable cause will generally be admitted in the following cases: a) in case a landlord has a different house and would encounter no difficulty living there (though, see Tokyo C. A. 1951. 7. 18. Inf. C. Rep. 2. 7. 900); b) in case a landlord is wealthy enough to obtain a different house (Tokyo D. C. 1949. 3. 9; Tokyo D. C. 1949. 3. 30; Tokyo C. A. 1956. 11. 13. Cases Times (*Hanrei Taimusu*) 66. 59.

⁴⁷ Tokyo C. A. 1949. 11. 5. A. C. Rep. 2. 2. 253; Tokyo D. C. 1950. 2. 24. Inf. C. Rep. 1. 2. 264; 1951. 4. 24. S. C. Rep. 5. 5. 301.

but in a case in which the landlord requests eviction for purposes of expansion of enterprise,⁴⁸ or for acquiring a more favorable location for enterprise,⁴⁹ full deliberation in order to determine whether either is more urgent than the necessity of residence of tenant will be required.

(ii) Handled in a similar manner is the case in which landlord finds it necessary for his family, near relative or a person deemed to be in the same degree of relation with him to use the house. In this connection, I should mention the problem of the use of the employees' residence owned by a corporation (the company's house for its employees).⁵⁰ Even in case the legal relation of the said residence owned by corporation is understood to be the lease relation to which the Rented House Act applies, it is deemed to be of a high degree of justifiability for employer to give notice to quit to resigner and the dismissed for purposes of securing residence for present employees.⁵¹

(iii) To give the notice to quit for the purpose of selling the rented house to a third person at a high price, instead of using it for the owner himself, is generally deemed to be of no justifiability.⁵² But justifiable cause will be constituted in the special case whereby owner's only means of livelihood is found to be that of selling.⁵³

(iv) In case demolition or rebuilding of the house is required for the public benefit, such as security of public peace and sanitation, justifiable cause is deemed to exist in many instances. And in this case, the circumstances of lessee including his necessity of residence, was not taken into consideration, the reason being that lessee must cooperate for the cause of public benefit.⁵⁴

c) Circumstances concerning lessee

(i) The most important factor, and the nucleus of the problem, in almost all precedents, has always been whether or not eviction from house by lessee is very painful to the latter. Needless to say, this is the matter which must be judged together with the degree of the landlord's (owner of house) necessity of the house in question. Tenant's poverty and his extreme difficulty in obtaining a house to which to remove in the early post-war period furnished a powerful cause to reject the lessor's request of eviction.⁵⁵ But it is worthy of note that not a few precedents of late have admitted the lessor's request of eviction by taking into consideration the recent favourable change in the housing problem and the economic situation in general.⁵⁶

(ii) -The fact of a tenant's prolonged residence in the house in question is also taken into consideration, though not absolutely.⁵⁷

(iii) The kind of occupation will furnish a datum of comparative consideration of

⁴⁸ Fukuoka D. C. 1950. 8.8. Inf. C. Rep. 1. 8. 1224; Tokyo C. A. 1953. 8. 17. Inf. C. Rep. 4. 8. 1146; Fukuoka C. A. 1952. 11. 26. Inf. C. Rep. 3. 11. 1659.

⁴⁹ 1950. 5. 2. S. C. Rep. 4. 5. 161.

⁵⁰ Refer to Note (43).

⁵¹ 1953. 4. 23. S. C. Rep. 7. 4. 408; Osaka C. A. 1954. 4. 23. A. C. Rep. 7. 3. 338; Osaka D. C. 1955. 5. 10. Inf. C. Rep. 6. 5. 976, etc.

⁵² Tokyo C. A. 1951. 1. 29. A. C. Rep. 4. 3. 39; 1953. 10. 23. S. C. Rep. 7. 10. 1114.

⁵³ 1952. 3. 18. S. C. Rep. 6. 3. 342; Tokyo D. C. 1953. 1. 24. Inf. C. Rep. 4. 1. 73.

⁵⁴ 1954. 7. 9. S. C. Rep. 8. 7. 1338; Tokyo D. C. 1951. 2. 20. Inf. C. Rep. 2. 2. 241; Kofu D. C. 1951. 7. 2. Inf. C. Rep. 2. 7. 849; Osaka D. C. 1953. 2. 25. Inf. C. Rep. 4. 2. 305.

⁵⁵ S. C. 1954. 4. 20. Cases Bulletin (*Hanrei Jihō*) 27. 6.

⁵⁶ For example, Fukuoka C. A. 1952. 11. 26. Inf. C. Rep. 3. 11. 1659; Tokyo C. A. 1952. 12. 4. Inf. C. Rep. 3. 12. 1724; 1954. 8. 9. Tokyo C. A. Decision Bulletin (*Saiban Jihō*) 5. 8. 180.

⁵⁷ Kobe D. C. 1950. 1. 10. Inf. C. Rep. 1. 1. 9.

safety of residence of both parties concerned.⁵⁸

(iv) The circumstances of dwelling of a cohabitant who is not a relative, but is treated almost as relative and is intimately connected with the tenant's life, not to mention a legal relative, is also taken into consideration.⁵⁹ The same treatment is accorded the residence of a legal sublessee who had the lessor's consent.⁶⁰

(v) The lessee's untrustworthy act will also be a factor in judging whether or not justifiable cause in the Rented House Act exists, irrespective of whether or not it is the cause for rescission of contract in the Civil Code, which is created by lessee's failure to fulfill his obligation. This instance is found in the case whereby a lessee does not pay the house-rent, insisting on his ownership despite no appropriate reason for his belief in his ownership;⁶¹ the case where a lessee did certain violence, including kicking out mud to sprinkle the old mother of the owner of house;⁶² and the case where a lessee committed acts calculated to threaten the cohabiting life for landlord, including actual wounding of the landlord.⁶³

(vi) Sublease without consent is a typical instance of a tenant's untrustworthy act; and even if it is done in such a way so as not to create the cause for rescission in the Civil Code (J.C.C., Art. 612 II), it can, when combined with other circumstances, become the reason for the existence of the "justifiable cause."⁶⁴

(vii) Some instances of the negotiation of eviction are given below: the case in which a landlord tendered suitable alternative accommodation at the time of giving notice to quit,⁶⁵ or tendered compensation for removal,⁶⁶ the case in which a tenant refused these offers despite having no reasonable cause for refusal⁶⁷; the case in which a tenant attended conciliation hearings only once, although the latter continued for as long as two years, made no effort to find a new residence, and did not consider purchasing his present residence;⁶⁸ the case in which a tenant wasted two years without making any effort in finding the house despite receiving the landlord's notice to quit.⁶⁹ The above-mentioned cases were all interpreted to have created the "justifiable cause."

d) The case in which a new landlord gives the notice to quit

A new landlord, who purchases a house to let from the former landlord, can give notice to quit with a justifiable cause; in this case, all relevant circumstances before and after the succession of lease are taken into consideration as the data for judging justifiable cause⁷⁰; however, this creates instability in the status of lessee and threatens the security of his residence. In this case, special attention should be paid to whether the purchaser

⁵⁸ 1953. 1. 30. S. C. Rep. 7. 1. 99; Tokyo C. A. 1951. 7. 18. Inf. C. Rep. 2. 7. 900; Tokyo D. C. 1951. 5. 12. Inf. C. Rep. 2. 5. 626.

⁵⁹ Osaka C. A. 1949. 2. 18. A. C. Rep. 2. 1. 37; 1950. 11. 16. S. C. Rep. 4. 11. 582.

⁶⁰ Fukuoka C. A. 1949. 6. 27. A. C. Rep. 2. 1. 83.

⁶¹ 1951. 4. 24. S. C. Rep. 5. 5. 301.

⁶² Nara D. C. 1951. 1. 18. Inf. C. Rep. 2. 1. 58.

⁶³ Tokyo D. C. 1952. 2. 27. Inf. C. Rep. 3. 2. 248.

⁶⁴ Kobe D. C. 1952. 3. 7. Inf. C. Rep. 3. 3. 324; 1953. 4. 23. S. C. Rep. 7. 4. 409.

⁶⁵ Tokyo D. C. 1950. 2. 24. Inf. C. Rep. 1. 2. 264; Fukuoka D. C. 1950. 8. 8. Inf. C. Rep. 1. 8. 1224; Nagoya C. A. 1954. 8. 25. Inf. C. Rep. 5. 8. 1360; 1957. 3. 28. S. C. Rep. 11. 3. 551.

⁶⁶ Fukuoka C. A. 1950. 2. 20. Inf. C. Rep. 1. 2. 249; 1952. 3. 18. S. C. Rep. 6. 3. 342; Osaka D. C. 1955. 5. 10. Inf. C. Rep. 6. 5. 976.

⁶⁷ Tokyo C. A. 1951. 10. 9. Inf. C. Rep. 2. 10. 1179.

⁶⁸ Tokyo D. C. 1953. 1. 24. Inf. C. Rep. 4. 1. 73.

⁶⁹ Fukuoka C. A. 1950. 2. 20. Inf. C. Rep. 1. 2. 249.

⁷⁰ Osaka C. A. 1948. 9. 21. A. C. Rep. 1. 2. 167; 1952. 11. 18. S. C. Rep. 6. 10. 984; 1955. 6. 7. S. C. Rep. 9. 7. 865.

has really been requested the eviction from his present dwelling and whether the safety of residence of the tenant is guaranteed or not;⁷¹ for instance, it must be taken into consideration whether or not the new landlord has tendered a suitable new address to the tenant and his family or has notified them of the existence of a specific house for sale or to let.⁷² However, this is not an absolute requisite, and "in case the need of new lessor's use of building is notably greater than that of lessee, new lessor can immediately give the notice to quit."⁷³

e) Decision of partial eviction and the like

In case both tenant and landlord deem the use of the house in question to be indispensable under conditions of extreme housing difficulty, the judicial court makes an unusual effort to find a concrete and adequate solution by giving some degree of satisfaction to the need of both parties. One solution is to admit "the decision of partial eviction," which both scholars' theories and judicial precedents admit, but which is not statutory provision; another is the "decision of eviction on the condition of providing alternative accommodation," and the "decision of eviction on the condition of compensation for removal."

(i) The "justifiable cause" seen in the 2nd of Art. 1 of the Rented House Act, in the theory admitting the decision of partial eviction, is interpreted as reading, "taking into consideration circumstances in which the deprivation of a tenant of his dwelling, in spite of no blamable point on his part, ordinarily would lead to the destruction of his life, the most appropriate means of solution is to judge whether or not lessor's own use of the house leased has an urgent necessity, and in the event it does, to terminate the lease to such extent as the said necessity requires."⁷⁴ While size of family, occupation, actual use, etc. of both parties concerned are important matters to be considered in determining the extent of the obligation of partial eviction, the structure of the building and the stability of cohabiting life after partial eviction create a special problem.

To provide conditions for the cohabiting life of lessor and lessee in the same building, the structure of the building should be dividable and suitable for such cohabiting life.⁷⁵ In this respect, the Japanese-style building, not being suitable for cohabiting life, requires special consideration.⁷⁶ If the stability of cohabiting life is not expected, partial eviction will be meaningless; therefore we should not disregard the fact whether or not mutual understanding and cooperation between the parties concerned is obtainable.⁷⁷ So far as the law of civil procedure is concerned, lessor must have the intention of partial rescission of contract; but in the event he insists on total rescission, he is understood to have no objection with partial rescission as well, provided there are no special circumstances.⁷⁸ Moreover, partial eviction is not admitted in the following cases: (1) in case the structure of the building is not suitable for cohabitation;⁷⁹ (2) in case the layout of the house is unfavorably planned and the parties concerned are not on good terms;⁸⁰ (3) and in

⁷¹ 1952. 12. 26. S. C. Rep. 6. 12. 1338; Osaka C. A. 1948. 9. 21. A. C. Rep. 1. 2. 167; 1951. 3. 23. S. C. Rep. 5. 4. 163.

⁷² S. C. 1954. 4. 20 Cases Bulletin (Hanrei Jihō) 27. 6.

⁷³ Tokyo D. C. 1949. 12. 5.

⁷⁴ Tokyo D. C. 1947. 8. 5.

⁷⁵ Osaka C. A. 1950. 4. 1. Inf. C. Rep. 1. 4. 463.

⁷⁶ Osaka D. C. 1951. 12. 13. Inf. C. Rep. 2. 12. 1434.

⁷⁷ S. C. 1954. 3. 26.

⁷⁸ 1949. 8. 2. S. C. Rep. 3. 9. 291; S. C. 1954. 3. 26.

⁷⁹ Fukuoka C. A. 1949. 6. 27. A. C. Rep. 2. 1. 83.

case the character of lessor and health of lessee are so incompatible as to be deemed to make the continuation of cohabitting life difficult.⁸¹

However, the decision of partial eviction, meaning compulsory request of cohabitting life, should be made only after careful and deliberate consideration, particularly when the case involves a Japanese-style building. It is an understandable phenomena that the decision of the partial eviction so often taken in the period of the severe housing shortage, is now gradually disappearing as the housing shortage grows less acute.

(ii) The decision of eviction on the condition of providing alternative accommodation has taken the place of that of partial eviction. Even if the request of unconditional eviction is not interpreted to constitute the "justifiable cause," the request of eviction on the condition of furnishing alternative housing, thereby guaranteeing the tenant's residence, is considered to have the "justifiable cause." This has also been the ruling of the Supreme Court.⁸²

(iii) Furthermore, there is now a problem concerning the request of eviction on the condition of payment of the compensation for removal, instead of the provision of alternative accommodation.⁸³ The opinion found in relevant precedents is divided, it is the writer's opinion, however, that this should be interpreted in the same way as the furnishing of alternative accommodation.

Conclusion

It is quite clear from the foregoing discussion that legislation for the protection of tenants is much simpler in Japan than it is in Great Britain, Germany, France, and other countries. Foreign readers will note, however, from the many precedents cited in this paper, that a practical application of the much simpler provisions of Japanese legislation nevertheless leads, in most cases, to the same legal results as does the more comprehensive provisions of legislation in other countries. It would be interesting, and certainly worthwhile, to pursue this matter further so as to provide interested scholars, legislators, etc., with a comprehensive comparative study. The writer, while he does have some knowledge of the comparative legislation, has refrained from examining the latter in this paper primarily because it is expected that the present paper will provide a basis for comparison for those foreign readers familiar with their own country's legislation. The writer feels that his purpose will have been served if this study serves as a basis for comparison, and as a reference, to interested readers in the future.

⁸⁰ Tokyo D. C. 1950. 4. 5. Inf. C. Rep. 1. 4. 501.

⁸¹ Kobe D. C. 1950. 12. 13. Inf. C. Rep. 1. 12. 1960.

⁸² Nagoya C. A. 1954. 8. 25. Inf. C. Rep. 5. 8. 1360; 1957. 3. 28. S. C. Rep. 11. 2. 551. Here we have two cases: one is the case in which the fact that an alternative accommodation was tendered in the past—this does not mean a guarantee to tender one in the future—is taken as the datum for the judge in determining whether or not justifiable cause exists; another is the case in which a landlord cannot request a eviction in the future without first tendering an alternative accommodation, *viz.*, the decision of the exchange supply. Here the latter case becomes a problem.

⁸³ The affirmative answer is seen in Tokyo C. A. 1951. 10. 9. Inf. C. Rep. 2. 10. 1179, and negative answer in Tokyo D. C. 1958. 8. 9. Cases Bulletin (*Hanrei Jihō*) 163. 20.