THE NEW LAWS ON CIVIL PROCEDURE

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In B. E. 2473, important modifications were effected in the rules of Civil Procedure in force in the Siamese Courts. In general terms, the aim of these amendments was to improve the legal means at the disposal of the winner of the case to enable him to secure the execution of the judgment against the loser.

For a long time complaint had been made of the facilities afforded the dishonest debtor to enable him to injure the interests of his creditors, and particularly of the creditor whose claims had been fully recognised by a judgment in his favour. (See *The Bangkok Times* of the 10th December, 1927). During the whole time the case lasted, not only could the debtor freely transfer his goods to third parties either by fictitious deeds or at ridiculous prices, but he could freely squander his ready cash and leave his land uncultivated, without the creditor being entitled to raise any objection. The loser's own debtors could legally pay their debts into his hands. The money thus paid over or the merchandise thus delivered became immediately part of the estate of the debtor, and at his sole disposal. Worst of all, the loser could prolong the case indefinitely by dilatory proceedings, and particularly by appealing, the right of appeal being wide open.

Thus one looked on daily at the spectacle of creditors who had entirely uncontrovertible claims, the validity of which was moreover readily recognised by the Judges of first instance, and who not only failed to obtain payment but looked on helplessly at the complete ruin, real or feigned, but most of the time wilful, of their debtor. When at last they obtained a definite order of execution, there was nothing left. This did very considerable harm to trade by destroying credit.

We shall see how and in what measure the new laws have remedied this state of things. But, from now, it is well to note that, contrary to what is generally thought, one does not, in fact, find anything entirely new in these laws. They are limited to

strengthening the existing system under the power of the fundamental Law on Civil Procedure of the year R. S. 127. Now that is a somewhat disheartening thing to note, for in it the conclusion is implicit that for a long time past the law did provide for and organise quite satisfactorily security for the rights of the creditor, and that the acts of injustice noted were due mainly to lack of diligence in applying the legal texts. Is such a state of things going to be remedied by the mere fact that henceforth the creditor has at his disposal better and more efficacious means of obtaining payment of what is due to him? One must wait before giving a definite decision on that point.

The new laws referred to are two in number—"*The Law of Procedure in Civil Cases Amendment Act*, B. E. 2473" and *The Appeal Act*, B. E. 2473".

The modifications introduced by these laws into the former system of procedure are connected with the following four points, which we shall examine successively:

1. Measures to safeguard the property of the debtor;
2. Garnishee order;
3. Provisional execution of a judgment; and
4. Restriction of the possibilities of appeal.

MEASURES TO SAFEGUARD THE PROPERTY OF THE DEBTOR.

The attachment of the property of the debtor with the view of safeguarding this property was already provided for by the former Section 51 of the Law of R. S. 127, but the conditions under which such could be obtained were more strict.

It was necessary, in the first place, that the amount of the claim should be Ticals 1,000 or upwards. The new Section 51 has reduced that figure to 200.

On the other hand the Court could grant the attachment only in certain conditions, which were strictly limited, and which were the following:

It was necessary for the plaintiff to be able to bring proof, by the oath of two or more persons, that his claim was true, that the defendant was absent or that his place of residence was unknown, or that the defendant had removed his goods or intended to sell them, or that he had hidden them or had the intention of hiding them, or of running away with them, or of disposing of them to third parties, in order to defraud his creditors.

According to the new Section 51, the Court is empowered to grant an attachment of the property of the defendant, "if it considers that the claim is true and if proof is put before it that the defendant, with intention to delay or obstruct the execution of any decree which may be passed against him, is about to dispose of the whole or any part of his property, or to remove it from the jurisdiction of the Court, or on any ground which the Court in its discretion may consider just and reasonable".

Thus, henceforth, the Court has full liberty to decide if the claim is true. One does not have to place before it proof of that fact sworn to by two or more persons; the proof of the wrongful intentions of the defendant is given by ordinary means, and in particular by writing, testimony, confession, or oath (that of one person being sufficient). Finally, the Court has full power to form its own opinion of the intentions of the defendant; it is not limited by the enumeration made in the Act of the principal actions denoting an intention to defraud and may recognise others. It may even grant the order of attachment without there being any intention to defraud, for example in the case of the defendant being notoriously unable to manage his property.

Besides, there is nothing in Section 51 to prevent the writ of attachment from being granted against an insolvent debtor or in respect of property to accrue to the debtor in the future. The circumstances of the debtor may change for the better and property may be added to his estate by inheritance or otherwise. Therefore, it would serve no purpose to compel the creditor to wait for such an event before he could apply for a writ of attachment, there being no objection to giving him a writ at once even though enforcement may only become possible later on.

It is, then, easier than it was formerly to obtain an attachment of the property of the defendant. Now, that is an appreciable security, since the effect of the attachment is to withdraw from the defendant, not only the disposal, but even the management of his property, and to entrust it to the Sheriff or some other official appointed by the Court.

By the side of that measure, the new law has instituted another, which introduces a more flexible mechanism. Section 51 *bis*, added to the former text, is set forth in these terms:

> "In any case in which the Court is satisfied by evidence or otherwise;

"(1) That any property in dispute in such suit is in danger of being wasted, damaged or alienated by any party to the suit; or

"(2) That the defendant intends to remove or dispose of his property in order to defraud his creditors; or

"(3) That the defendant intends or is likely to repeat or continue the commission of the wrongful act or breach of contract complained of,

"The Court may grant a temporary injunction to restrain such act or conduct upon whatever terms the Court thinks fit or unconditionally, or make any other order at its discretion for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property, until the disposal of the suit or until further orders.

"The Court shall in all cases, unless it appears that the object of granting the injunction or other order would be defeated by the delay, direct notice of the application for the same to be given to the other party."

In this Section, the law is dealing with the same hypothesis as in the preceding Section, that is to say, an action contrary to the interests of the opponent, but it envisages this time what concerns both parties and not only the defendant.

On the other hand, in the case where the precautions are taken against the defendant—which none the less remains the most common case—it is no longer a matter of the seizure or even attachment of the property of the defendant. He is left in possession of his property and retains the free management of the same. The protection now granted to the plaintiff consists in the possibility of obtaining from the Court the prohibition of acts of disposal that might injure his interests, such as sale, gift, destruction, material damage, etc.

From the way in which the law is drafted, the Court appears to have the right to prescribe this provisional measure of its own initiative, without any request being made by either of the parties.

Besides, the greatest liberty is left to the Court in choosing the measures to be taken in order to guard against the danger that confronts it (the destruction, damaging or removal of the property) and in determining the conditions of these measures. But in fact the variety of the situations is not so great as one might suppose at first

sight, because it is always a matter of avoiding the vexatious consequences of a material action or of a juristic act.

Now, if it is a case of a material action, to wit destruction, damaging, or clandestine removal of goods beyond the jurisdiction of the Court, all that the Court can do is to threaten to condemn the refractory debtor to pay supplementary damages by way of reparation, or to attach his property. If it is the case of a juristic act, such as a sale, a gift, etc., all the Court can do is to threaten the debtor, independently of the preceding sanctions, with the nullity of the action it forbids.

The law, in fact, does not expressly speak of this last sanction, but it results implicitly from the prohibition to alienate the property, because it constitutes the best safeguard of the observation of the law.

Besides, this last sanction can easily be justified from the theoretical point of view. The legislator has, after all, instituted a new incapacity, temporary and special, that of disposing of a certain property during a certain time. Now acts which are not in conformity with the requirements concerning the capacity of persons can be annulled (Section 116 of the Civil and Commercial Code).

Unfortunately the quashing of the forbidden acts sacrifices the interests of third parties who, in good faith, are dealing with the debtor, under the blow of a prohibition to alienate. In order to obviate this disadvantage, it would be necessary to organise a certain publicity of the application for the interdict. Now in the final paragraph of Section 51 *bis*, the legislature has provided for a notification of this application only to the address of "the other party", that is to say, presumably, of the one of the two litigants against whom the case is brought. Such a measure—which is besides discarded in case of urgency—is sufficient to prevent acts of disposal of his property by a defendant in good faith, but not such acts on the part of a defendant in bad faith, which appears to be the hypothesis.

The strengthened procedure thus put at the disposal of the plaintiff, is not without a certain danger for the defendant, a danger which it is not always equitable to make him run. It definitively prevents him from freely disposing of the whole or any part of his property, and from that fact can cause him an appreciable detriment, by making it impossible for him to take advantage of advanced prices or a favourable situation in the market.

Therefore the legislator has left him two means of avoiding

this danger. These two means of security existed already in the old procedure (Sections 52 and 53 of the law of R. S. 127), but these Sections provided only for the case of the attachment of the property of the defendant, while the new law extends the advantage of this safeguard to the new supposition of an injunction to prevent the alienation of the property.

The first of these means of protecting himself open to the defendant consists in the possibility of his obtaining the withdrawal of the measures provisionally taken against him (attachment of his property or an injunction preventing his disposing of it), by giving good reasons in support of his request—the appreciation of the value of these reasons being left entirely to the discretion of the Court—and by giving security for payment, such as the deposit of a certain sum or the giving of a surety (Section 53).

In the second place, while granting the plaintiff's request for the attachment of the property of the defendant or an injunction to prevent his disposing of one or several pieces of property, or any such provisional measure whatsoever, the Court can make the granting of that measure dependent on the deposit—this time by the plaintiff—of a certain sum of money as security against any loss that might result to the defendant from the measures applied for, and in the case when this application has been made without reasonable cause. (Section 52). Under Section 57, indeed—a Section that contains no modification—if the plaintiff has applied without sufficient cause for the arrest of the defendant (Section 54), or the attachment of his property, or any provisional measure whatever, he is liable to be condemned to pay compensation to the defendant. The same applies to the case in which the Court dismisses the plaintiff's action, and it is found that such action was taken without sufficient reason (same Section).

GARNISHEE ORDER.

The second means placed at the disposal of the creditor to overcome the resistance of the debtor is constituted by the Garnishee order provided and regulated by Section 84 of the Law on Civil Procedure.

This Section sets forth: "If as a result of the judgment, the creditor has not been fully satisfied, and if he states upon oath that a third person is under obligation to pay money or to deliver goods to the judgment debtor, the Court may issue an order to such third person not to pay the money or deliver the goods to the judgment

debtor, but to pay or deliver the same to the Court, or to the official appointed by the Court to execute the judgment, within such reasonable time as may be fixed in the order."

It is supposed that some third person is a debtor of the loser in the case, a debtor in respect of a sum of money or of any payment in kind, that is to say, an obligation to deliver goods. In the absence of this order, this third person ought to put what he owes in the hands of his own creditor, that is to say, to pay to the loser of the case the sum of money that he owes him, or to deliver to him the goods that he has undertaken to deliver to him. This money or these goods would thus fall into the general estate of the loser, and he would be able to dispose of the same as of his other property. On the contrary, the effect of the writ of attachment is that the third party discharges his obligation into the hands of the Court or of the official who has been appointed to execute the judgment. In this way the sum of money or the goods in question do not fall provisionally into the whole of the property of the loser and so he is unable to dispose of such money or goods. The result from this is certainly an appreciable improvement in the position of the winner of the case, that is to say, of the creditor, whose right has been recognised and sanctioned by the Court.

This advantage was, it is true, already recognised as due to the winner by the former Section 84. But that Section provided only for the case when a sum of money had to be paid. The new Law extends this measure to the case when merchandise has to be delivered, and from the commercial point of view this constitutes an important innovation, because in practice debts consist often in the obligation to deliver goods.

Further, the use of the Garnishee order is more completely settled by the new Section 84. The law now provides for the case where the third-party-debtor, whose name is thus put forward by the creditor, denies or disputes the obligation thus alleged against him. In that case the Court can hold an enquiry (Section 84, second paragraph), that is to say, hear witnesses and cause to be produced any documents of a kind to throw light on the point. If the Court is then satisfied that the obligation exists, it orders the third party to perform the same in the manner aforesaid, under pain of a personal prosecution and the issue of a writ of execution against his personal property (Section 84, third paragraph).

If, on the other hand, it appears to the Court that the defence

of the third party to be distrained on is serious, that is to say that the alleged obligation does not in fact exist, or that it is prescribed, or that it exists in regard to objects that cannot be distrained on, the Court simply dismisses this subordinate petition of the creditor. But when the question cannot be clearly settled in this way, that is to say when the existence of the obligation is doubtful, or a matter of legal dispute, the Court plainly cannot issue a writ of execution. But what then ought it to do? Here the intention of the legislator does not seem very clear. Section 84, second paragraph, decides, in fact, in that case that: "If the Court is of opinion that the matter cannot be conveniently settled by such an enquiry it may make any other order for its determination which seems expedient". The only possible measures appear to us to be the opening of a supplementary enquiry, or the postponement of the decision till the existence of the debt has been thoroughly investigated, or placing the question before a Court that is competent to decide on this question when, according to the rules of competency, it is not the Court which has to decide the principal action.

On this point it is well to note that, for the writ of attachment to be possible, it is sufficient that the obligation cited exists, and that it does not matter whether it has fallen due or not. That at least appears to be the conclusion to draw from the very wide expression used in the law:—"a third party ..... under obligation to pay ..... or to deliver". To hold otherwise would be to deprive the writ of attachment of all practical value, because if the writ can be used only in the case of debts that have fallen due, the *mala fide* debtor would arrange to dispose to his own advantage of the amount of the debt from the very day of its falling due and before the writ of attachment could intervene.

Moreover it is not necessary that the obligation relied upon by the applicant be either determined or liquid, that is to say that its amount he ascertained; what matters alone is the existence of the obligation. For the same reason an obligation which is subject to a time-clause or conditional or even contingent, may serve as the basis of a writ of execution. All these solutions, which authorise the widest possible use of the writ of attachment, present no practically serious inconvenience since they apply a simply conservatory measure, entailing no modification of the obligation attached, and being unable to aggravate the position of the debtor. These measures are admitted in French law, where the Garnishee order has been functioning

for a long time in a satisfactory manner.

The law does not either place any restriction on the scope of the Garnishee order. It can then, it seems, be applied to the emoluments and pensions of officials, to the pay, salary, and any compensation due to employees and workmen, without any exception and without the fixing of any attachable maximum. In that there is a certain danger, since pay and small emoluments often represent for their holder the minimum necessary for existence.

Provisional Execution of Judgments.

One of the most effective means for obtaining the execution of the judgment against the loser is unquestionably to deprive the appeal of any suspensive effect, by deciding that, despite the appeal, the execution of the judgment will take its ordinary course. That was already the solution of the former Section 96 of the Law on procedure, and this solution has been again adopted by the legislator in the new section (Section 96, second paragraph).

But we have there only a general rule which provides for the normal case of a debtor in bad faith, who has recourse to an appeal in order to delay the settlement of the matter. In the contrary case, since the immediate execution of the judgment is a great inconvenience to the debtor, and may even cause his ruin, it is well to leave him a way of escape. That is what the legislator does in Section 96, in permitting the debtor, at the same time as he makes his appeal, to ask the Court to suspend the execution.

This request should be accompanied by proof in justification, that is to say, the appellant is bound to produce valid reasons for not executing the judgment immediately—for example, an illness, an unfortunate incident occasioning a temporary embarrassment in his business, etc. The Court has a discretionary power to grant or refuse this application (Section 96 (2)). It seems even, from the way the law is phrased, that it can make the order *ex officio* (Section 96 (2) end). It can make its order subject to such conditions as may seem to it to be desirable, for example, the deposit of a sum of money, the providing of a security or the entering into a solemn bond not to dispose of his property while the appeal is pending. The law also, as a condition to be imposed by the Court, provides for the deposit of the amount due under the judgment; but one fails to see, in that case, what interest the appellant can have in the suspension of the execution.

If the appellant does not comply with those conditions, the Court can order the attachment of the whole or part of his property, and even, when it is a case of furniture, can have them sold by auction, if that seems to it to be advisable or necessary, for example when it is a case of perishable goods or goods the preservation of which would lead to excessive expense (Section 96 (2)).

The new Section 102 provides for the case when the loser in the first instance sees the Court of Appeal reverse in his favour the judgment against him. The law then enables him to apply to the Court to cancel the attachment of his property or to order the return of the money deposited. Immediately or after due enquiry, the Court will decide if it is proper or not to comply with this application. It may happen, indeed, that on a further appeal to the Dika Court the judgment of the Court of first instance will be restored in full force; the Court may then think it well to preserve for the creditor his guarantees of payment.

RESTRICTION OF THE POSSIBILITIES OF APPEAL.

Appeal was already the subject of a certain number of Sections in the original Law on Civil Procedure (Sections 96 to 99); and the Amendment Act has subjected these sections to minor modifications which we shall take up again later. But that has not prevented the legislator from devoting a complete special law to appeal. We cannot fail to note in passing the originality of a legislative proceeding which consists in publishing at an interval of a few months in two distinct legislative texts the rules governing a single subject. It is as if one had purposely sought to add to the confusion which is already great in this subject.

The new law on appeal, which is entitled *The Appeal Act*, B. E. 2473, has for its purpose, as is stated in the preamble, to prevent unnecessary delay in disposing of cases. Let it be noted at once that this law does not proclaim any amendment or repeal of the previous laws on appeal, and we have particularly in mind Section 96 and the following sections of the Law on Civil Procedure. So far as these sections are concerned, then, it can only be a question of a tacit repeal in the case of those provisions which are incompatible with the new ones.

What is new in the law of B. E. 2473 comes to a more strict regulation of the conditions of appeal. The legislator has certainly been prompted in this matter by the former laws on the Dika petition

(Original law of B. E. 2457 and the Amendment Acts of B. E. 2461 and B. E. 2469), which had successively restricted the free exercise of this means of relief.

Appeal remains possible in principle, but a particular issue is provided for by Section 3 in the following hypothesis:

> "In criminal cases where the maximum punishment is imprisonment not exceeding three years or fine not exceeding Tcs. 2,000, or both, and when the Court of First Instance has acquitted the accused, or sentenced him to imprisonment not exceeding six months or fine not exceeding Tcs. 200, or both; and in civil cases where the amount claimed does not exceed Tcs. 200....."

One readily notes that here, in the view of the legislator, it is dealing with a case of small importance in regard to which there is an advantage in economising both time and money by taking the decision of the first judges as definitive. However, even on this hypothesis, the legislator has no desire of suppressing the right of appeal altogether. Appeal is always possible, but on rigorous conditions, the character of which varies according as the appeal bears on questions of fact or on questions of law.

In the case of an appeal on questions of fact, it can be received only on condition "that the Chief Judge of the Court of First Instance or his deputy has given leave to appeal, in writing, or that any Judge who has been present at the hearing of the case, or the Attorney-General certifies that there are reasonable grounds for appealing or unless there is a dissenting opinion . . . ." (Section 3). When these conditions are fulfilled, the appeal ought to be received and proceeded with.

On the other hand, if it is a case of an appeal on a point of law, for example when the appellant urges the false interpretation by the Court of a section of the Code or of any legal text whatever, the appeal can be received without regard to any of the conditions enumerated in Section 3 being complied with. The appeal is submitted only to the ordinary conditions of admissibility, which we shall deal with again.

But the position of the appellant in this case is far from being absolutely favourable. First of all in deciding on this appeal bearing on questions of law, the Appeal Court is bound by the facts as set forth in the file by the Judges of the Court of First Instance. (Section 4). That is to say that one cannot contend in an appeal that

the facts are in reality other than the Court has already envisaged them. Further, all the points of law relied upon by the appellant must be stated in the appeal petition (Section 5); that is to say that the appellant cannot adduce new points in the course of the hearing of the appeal. This restriction requires of lawyers the greatest attention and care in drawing up the petition of appeal.

Finally and especially, the points of law invoked in appeal must have arisen in the Court of First Instance (Section 5). In other words one cannot invoke new arguments on appeal; from the beginning of the suit one ought to set forth the legal reasons which one depends upon for the support of one's claims and to stick with them during the whole procedure.

That is a very grave restriction to the faculty of appeal, and one which is, besides, not admitted in the systems of procedure of the principal countries. In France, for example, if new claims cannot, in principle, be received on appeal, new arguments are, on the other hand, perfectly admissible. It is, besides, difficult to justify their exclusion because a litigant may find in the very decision of the Judges of first instance, excellent reasons in support of his claim, and may perceive only at that moment how it would be necessary to present and maintain them. To forbid him to profit by the development of the argument and the experience of the Judges, seems to us to be exaggerated formalism.

In any case, although the law does not say anything about it, it appears that one ought to make an exception to this inadmissibility of new arguments when they rest upon considerations of public order. In such a case, indeed, there is a higher interest which allows the appeal. In French law, in particular, under which new grounds of appeal cannot be received by the final Court, an exception is made in this case, but solely on condition that the facts on which the argument now adduced rests, have already been submitted to the former Judges. That is so, for example, when one pleads for the first time before the Court of Cassation the incompetence of the Court that had the case before it in the first instance, the irregular composition of that Court, or the transgression of good morals, etc.

By virtue of Section 6 "all appeal petitions ought to be examined by the Court of First Instance, whose duty it shall be to forward them or refuse to forward them to the Court of Appeal, in accordance with the rules contained in this Act (The Appeal Act) or the Laws on Civil Procedure and Criminal Procedure; if there is a

refusal (to forward the appeal) the reasons for it must be stated in the order of the Court."

This section is general, and applies to all appeal petitions, whatever be the amount at issue or the seriousness of the penalties incurred or inflicted. Likewise there is Section 7, according to which the appellant has a recourse against the decision of the Court refusing to forward his appeal petition to the Court of Appeal. According to this last section, indeed, the appellant can address a new appeal petition to the Court, one which the Court is obliged to forward to the Court of Appeal.

Thus the law has organised a kind of investigation of the admissibility of the appeal petition in two stages: first by the Court of First Instance which has heard the case, and then by the Court of Appeal itself, if that is necessary, that is to say, in case the first Court refuses to forward. The idea which has guided the legislator was presumably to limit the number of appeal cases, by stopping from the outset a certain number of petitions as not admissible. The Appeal Court would have to pronounce only on the merits of the appeals admitted. But the system adopted does not appear to be well adapted to lead to the result desired.

The examination of the conditions under which an appeal can be received constitutes, indeed, a problem more complex and more delicate than the legislator appears to suppose. Assuredly when it is a matter of knowing whether the appeal petition has been filed within the proper period, or if the case is of the civil or the criminal type, or what is the sum total of the judgment or the amount of the claim there is every reason to leave it to the decision of the Court which had the case before it in the first instance. But if the point in dispute is whether the appeal is on points of fact or of law, or whether the points of law adduced rest on facts which have already been submitted to the first Judges, or whether the appellant adduces reasonable grounds in support of his appeal, the Court of First Instance does not seem to us the better qualified to decide, for the good reason that it has just taken a decision to the contrary in dealing with the suit. There is little chance that the Court, which has just decided the other way, will acknowledge, even implicitly, the soundness of the reasons that may be adduced against its decision.

Since, in case the Court definitely refuses to forward the appeal petition, the appellant can all the same address himself to

the Appeal Court it would have been simpler, speedier and less costly to allow him to do so directly. It is probable, in fact, that the appellant, who by his very name is dissatisfied, will always have recourse to this final expedient.

The right of addressing oneself after all to the Court of Appeal for the admission of one's petition in appeal, is none the less subject to certain supplementary conditions which the appellant has to satisfy before the Court agrees to forward his petition (Section 7).

In a civil case the appellant ought first to deposit a sum of money representing the costs in the action. One must understand by that, presumably, the costs in the Court of First Instance, although one could arrive at an approximate estimate of the costs of appeal. Further he ought to pay into Court the amount of the judgment debt as decided by the Court of First Instance, or furnish security for the payment of this latter sum, this on the supposition, of course, that he has not obtained a suspension of the execution of the judgment. Finally the appellant must deposit his petition within ten days starting from the day when the order of the Court rejecting his appeal petition has been delivered, or ought to have been delivered. Beyond that period it is excluded (Section 7). This last condition is general, and applies to a criminal as well as to a civil case.

In order not to cause needless delay in the investigation of the case by the Court of Appeal, the Court of First Instance must forward to that Court "without delay" the appeal petition together with the whole record of the case (Section 7).

In the cases foreseen by Section 3, if leave to appeal on questions of fact is requested of the Chief Judge, the Court of First Instance must forward to him the appeal petition, together with the rest of the record (Section 8). Thus, concerning a case, whether criminal or civil, which the legislator considers of minor importance by reason of the amount of the claim or of the penalty incurred or the sentence passed, the appellant who has addressed himself to the Chief Judge of the Court in order to obtain leave to appeal on questions of fact, finds himself deprived of any further recourse in case of a refusal by that Judge, to forward his appeal. For that very reason it is probable that, when they come to know that fact, litigants will rarely apply for the good offices of the Chief Judge to obtain leave to appeal. They will doubtless prefer to have it certified by one of the Judges who has heard the case that there are "reasonable grounds" in support of their appeal. In that way

their petition will have to be forwarded, and a decision will have to be given on their appeal (Section 3).

We have said that the Act of B. E. 2473 dealing with procedure also contains provisions the object of which is to restrict the possibilities of appeal, to facilitate the settlement of cases and to prevent litigants in bad faith from prolonging cases indefinitely. These provisions are as follows:

(A). One cannot appeal from an order or decision made in the course of the trial before final judgment has been delivered in the case, unless it is an order inflicting fine or imprisonment. (Section 96-(1)). The concluding part of this provision makes allusion, for example, to the case of an act of fraudulent disposition of property. (Section 79 of the original Law on Civil Procedure).

If the parties have good reasons to urge against decisions made in the course of a trial, it is necessary to allow them to be noted. That is why the law rules that the objections thus raised must be taken down in writing and attached to the record, in order to facilitate the disposal of the case by the Court of Appeal. (Section 96-(1), towards the end).

(B). The appeal against a definitive judgment may be received only within the month following the day on which that judgment was delivered or ought to have been delivered. (Section 96-(2)). It is the appeal petition which must be filed in that month, except in the cases in which leave to appeal is necessary; and in such cases it seems it is the date of the petition for that leave which should be taken into consideration. The legislator, however, would have done better to determine all these points precisely.

(C). The parties at issue in the Appeal Court are the same as in the Court of First Instance. (Section 96-(3)). By this provision, a little mysterious in its form, it seems that the law meant to remove the possibility for third parties—for example the creditor, the insurer or the surety—to intervene by way of appeal or to be called into an appeal by way of intervention. That is a conclusion which proceeds, by way of consequence, from the above-mentioned prohibition of new issues and new arguments.

(D). All appeal petitions must be in writing. (Section 96-(4)). A copy must be addressed to the respondent, and, within 15 days from the receipt of that copy, the respondent has the right to submit an answer to the Court in which the appeal petition was lodged. (Section 96-(6)).

(E). The petition on appeal must, in fact, be addressed to the Court of First Instance which tried the case, and not to the Court of Appeal, as logic would seem to prescribe. Section 96-(4) expressly reproduces this requirement, which we have criticised above in studying the dispositions of the Law on appeal.

(F). The appeal petition has to be accompanied by a deposit of the amount of the costs which the appellant has been ordered to pay to the other party by the judgment of the Court of First Instance. (Section 96-(4)). In contrast with the Law on appeal, the present law makes no mention of the amount of the judgment debt. It really seems to follow that, apart from cases in which Section 7 of the Appeal Act is applied, that is to say apart from criminal cases, the appellant is required to deposit only the amount of the costs in the Court of First Instance, and not the amount of the judgment debt (fine, restitution, damages).

When the Court, having admitted the petition of appeal, is of opinion that this appeal will necessitate the payment of new costs by the party who won in the first instance, it can, in conformity with the scale of fees in force, order the deposit by the appellant of a supplementary sum to cover these costs. In that case the Court fixes the time within which this supplementary sum has to be paid, but in no case must it exceed ten days, counting from the expiration of the time allowed for appeal. If the deposit is not made in good time, the appeal is barred. (Section 96-(4)). It seems indeed that that must be the normal hypothesis, because it is normal that the appeal should involve new costs for both the parties. On the other hand as it is the loser who must in the end bear the burden, and as in the mind of the Court the loser can only be the appellant, it is likely that the Court will always order the supplementary deposit of which the law speaks.

These new provisions of Section 96 of the Law on Procedure are the more interesting since, according to the new Section 101 of the said Law, they apply *mutatis mutandis* when a further appeal is presented to the Dika Court. As, however, the special laws concerning this latter recourse have not been abrogated, they apply also, particularly as regards the fundamental conditions on which a Dika appeal may be received, conditions which are, in principle, the same as those laid down by the Law on Appeal—the distinction between questions of fact and questions of law, the obligation on the Dika Court to accept the facts as they are recorded by the Court of

Appeal, the impossibility of adducing new points of law, etc.

As most of the recent laws which seriously amend a previous state of things, the laws the principal provisions of which we have just analysed, include a transitory provision meant to settle what is to be done with cases already instituted when these laws came into force. Both Acts have adopted the same principle of excluding any retrospective effect, that is to say, in both cases, the legislator has understood that actions already commenced should remain subject to the former legislative system. This solution, wise in principle, is not generally followed in procedure, because in this matter the immediate application of the laws does not as a rule cause any loss to the litigants. The legislator has, however, acted rightly in deciding that the above-mentioned laws should apply only to futures cases. Besides purely formal provisions, both Acts in fact contain provisions that are restrictive of the rights of the litigants, since they limit the right of the defendant to dispose of his property, and they submit the exercise of the right of appeal to conditions that are sensibly more rigorous. It is then quite in conformity with the general principles of the law to limit its application to the future.

There is besides a slight difference between the two transitory provisions above-mentioned. According to Section 12 of the new Law on civil procedure, "cases instituted prior to the coming into force of this Act (1st April, B. E. 2474) shall be subject to the provisions of the old law until finally disposed of." According to Section 9 of the Appeal Act, "all cases in which appeal petitions are filed prior to the coming into force of this Act (1st April, B. E. 2474), shall be subject to the provisions of the old law until finally disposed of." This latter provision allows a concession to the system of the retrospective application of the laws, since it permits the new law on appeal to be applied to cases entered up previous to its coming into force on the sole condition that the appeal petition had not been filed previously. The system of absolutely barring retrospective application would have required the new provisions to be applied only to cases in which the first motion in the Court of First Instance came after this law was in force. It is the more surprising to see the legislator adopt here a different ruling from that of the new Law on procedure, since the latter also contains rules on appeal. As the case may be, and according as such and such condition of appeal is concerned, the same appeal may find itself subjected to the former laws or to the new laws, without reconcilement between these two

orders of provisions being always possible. This observation brings out again the disadvantage, noted above, shown by the dispersion in several legal texts of the rules governing the same subject.

But whatever may be the criticisms which we have been able to propound in the course of this analysis of the new laws on civil procedure and on appeal, it is none the less true that they constitute a serious legislative effort, and that they now form, with the older laws, a whole sufficient to assure a good execution of judgments and respect for the decisions of justice.