Kyoto University
Economic Review

MEMOIRS OF
THE DEPARTMENT OF ECONOMICS
IN
THE IMPERIAL UNIVERSITY OF KYOTO

VOLUME III 1928

PUBLISHED BY THE DEPARTMENT
OF ECONOMICS IN
THE IMPERIAL UNIVERSITY OF KYOTO

THE TENANT SYSTEM OF FORMOSA

CHAPTER I
A GENERAL VIEW OF THE HISTORICAL DEVELOPMENT OF THE LAND SYSTEM.

The tenant system of Formosa is still in an undeveloped stage. It still retains the age-old customs in their original forms. For this reason a study of these customs is necessary for those desiring to survey the tenant system of the island. Thus a study of the land system of Formosa becomes imperative.

There are some records showing the condition of the island after its occupation by the Dutch in or about the year 1600 A.D. Before that date however, there is practically nothing to indicate the conditions that there prevailed. But there is no doubt that the whole island was inhabited by the aboriginess who were mainly engaged in hunting, and in crudely cultivating their fields and paddies in a very limited way. A small numbar of Chinese and Japanese pirates who ravaged the Chinese coast, migrated to the island or paid it predator visits.

After its occupation by the Dutch, Formosa began to be developed in a modern way, but the area of development was limited to a small territory in the southern part of the island with the Tsinan district as its centre. The Dutch at that time adopted the policy of a commercial colonisation which placed importance on trade advantages and commercial profits. Accordingly, they tried mainly to get a trade foothold in a good harbour or port, and were indifferent

toward any endeavours to retrieve the land from the wilderness, or toward the developmenf of agriculture. However, their presence in the island resulted in a certain amount of improvement and cultivation of the land.

No detailed account of the land system of the Dutch is available. However, the following modicum of information is given is the second report of the Special Commission of Enquiry into the Old Tenant Customs in Formosa:

"The Dutch supplied capital, letting the natives till the soil.....they collected the tax in kind, and their land was known as the crown land. The people did not possess hereditary ownership over their land which they received only for the purpose of cultivation. They thus had a tenancy right only. The ownership of the land belonged to the Dutch who seem to have adopted the system of government ownership of the '*den*' or farm land." (I shall later have occasion to explain the nature of "*den*".)

The Dutch held Formosa in possession during the years between 1600 and 1661, after which the island passed into the hands of a Chinese named Cheng Cheng-kung. The latter's rule paved the way for the subsequent control of Formosa by Chinese ideas and institutions, despite its military nature.

The system of developing land adopted by Cheng was a military colonisation. In order to replace the Dutch system, he divided all lands into the following three classes: government land, private land, and the military colony or "*eiban*". The government land corresponded to the crown land under the Dutch system, and was possessed by the Cheng Family and tilled by tenants. Thus the system of the government ownership of land was adopted. The private land was developed jointly by the relatives of Cheng, civil and military officers, and influential citizens. They invited farmers from China and the latter paid rent to the government; the land being owned by relatives of Cheng, government officials, and influential citizens. The land classified as "*eiban*" was that which was developed by garrison troops, and the name of "*eiban*" was given to the land cultivated by the troops.

On this point the commission's report says:

"After three years' cultivation, the land was classified into upper, middle and lower classes on which taxes of different scales were imposed accordingly." This land seems to have been held by private ownership.

Cheng's régime covered the years between 1661–1683. Then the land came under the rule of the Ting Dynasty, 1683–1895. During this period, the migration of Chinese (especially the people of Fukien and Kwangtung) to Formosa took place on a large scale, and the development of the land was carried on very extensively. The Tainan district fell into the hands of the incoming Chinese during the Ting régime.

Under the Ting régime, a radical transformation was carried out in the land system of Formosa. Both government and private lands were made private estates or "*gyo*". (I shall later explain the legal right of a "*gyo*"). The land formerly owned by Cheng was distributed anew among the people and the rates of the taxes was somewhat reduced. In short, the government ownership of all the land was established.

To sum up: the development of land in Formosa was first carried out with Tainan as the centre, and the land system of that part of Formosa underwent some changes with the change of rulers—the Dutch, Cheng Cheng-kung, and the Ting Dynasty. At first those who tilled the soil were merely the tenants of government lands, having no ownership in the land. During the Cheng régime, private ownership of lands other than government lands was recognised; and during the administration of the Ting Dynasty, government ownership of land declined, and private ownership was firmly established. During the Ting régime, however, ownership was not the same in nature as that of other civilised communities: it was merely an administrative right. Moreover, the tenant system was developed side by side with ownership; and there were many complicated relations of rights between the owner of lands and his tenants.

In order to investigate the details of the tenant system in Formosa, one must study the property rights which were developed under the Ting rule. Under this rule, all lands except those of the savage tribes were developed and ownership of land was recognised throughout the whole island. However, there were some differences in the customs of different parts of the island.

CHPTER II
RIGHTS OVER LANDS

Section 1. Introductory Remarks

In all countries where a feudal system exists, rights over lands are duplicated and the relations between various elements are highly complicated. This was true of the German as well as of English laws. In our old system of land tenure called "*shoen*", there was the "*ryokė*", or the "*honkė*", who held ownership of land, with the following officers: the "*jito*", the "*shoji*" or the "*shocho*", the farmer coming last. Later in the Tokugawa Régime, there was the daimyo at the head and under him was the "*shoya*" or the "*nanushi*", the farmer also coming at the end of the list. The farmer was of two kinds: the "*jinushi*" or the land owner and the tenant. Each of these men had a certain claim to part of the annual crop of the land, and his relations to the others were very complicated. In the case of Formosa, there is a duplicated system of claims which are known by the word "*soken*".

We shall now see the Formosan system as it actually works. The one who leases a land to a tenant is called "*shosoko*" or small rent-holder, and rent is called "*shoso*" or small rent. But often there is one who claims a share in the crop and who receives a rent from the "*shosoko*". He is called "*daisoko*" or big rent-holder and the rent he receives is called "*daiso*" or big rent. The "*shosoko*" and "*daisoko*" are popularly called "*toke*" or boss.

This system of claims may seem unjustifiably complicated, but it will be found to be the natural outcome of the peculiar circumstances under which the development of land was carried out. The "*daisoko*" (big rent-holder) was originally a government officer or one who secured from the natives the right to develop land. He does not till the soil himself but leases it to the "*shosoko*" (small rent-holder), receiving rent in return. The "*daisoko*" bears the burden of the taxes, and if he has secured the right to develop land from a native tribe, he pays the tribal tax or rent. When one tills the land, the right to the tillage of which he has secured from a native tribe, he himself becomes a "*shosoko*" (small rent-holder) and the tribal tax or "*banso*" automatically becomes "*daiso*" (big rent or tax).

Thus, the land system of Formosa has three main land rights, viz., the tenancy right, the "*shoso*" claim, the "*daiso*" claim, at the top. However, there is another claim. The lands in Formosa are mostly irrigated by artificial means, and those who receive the benefits of an irrigation system in which others have invested, pay a rent to them out of the annual crop. This is called "*suiso-ken*" or right-of-water rent. The tribal claim may either be regarded as substitute for the "*daiso*" or a claim superior to it.

The following will show the whole system:

Daiso (or *banso*)—*shoso*—*denjin* (cultivator)—*den-en* (farm)
Suiso (or irrigation charge)—

Banso—*Daiso*—*shoso*—*denjin*—*den-en* (farm)
Suiso—

The foregoing is the regular form. But sometimes the same man gets the benefits of both the "*daiso*" (big rent) and "*shoso*" (small rent) and the land is tilled, not by a tenant, but by a "*shosoko*" (small rent-holder). In some localities, different names are given to them. In other localities, there exist no "*daiso*" or "*shoso*" claims. There are also exceptional cases in which the duty of paying the tax and the rent does not fall on persons in the order given above, but a "*denjin*"

(tiller or cultivator) pays a part or the whole of the "*daiso*," "*suiso*" and "*banso*," on behalf of a "*shoso*" by contract. In actual practice, however, the duty of paying the tax and the rent depends much upon the nature of the supbly and demand between farms and tenants or "*denjin*" as well as upon the social and economic powers of both. Where the farm lands do not exist in sufficient quantity to meet the demands of tenants, or if the social power of the tenants is weak, they bear the entire burden—the "*daiso*," "*suiso*," as well as "*banso*." Such cases are not rare.

Section 2. *Gyo-shu-ken* or Right of Estate

As has been pointed out in Section 1, there is no conception of ownership in land such as the one found in Japan proper. In the case of arable lands, a "*shosoko*" (small rent-holder) has the right to occupy them and to dispose of their crops. His position, therefore, is similar to that of an owner. But he shoulders the duty of paying the "*daiso*" (big rent) and for this reason his right over the lands cannot be said to be complete and absolute. This is like the attachment of servitude on ownership.

In the first place, there is no conception of ownership in the Chinese system of law. In Formosa, the one having rights over land is known as a "*gyo-shu*" and his right is called "*gyo-shu-ken*". The content of this right is almost identical with that of ownership. It is an ownership with certain obligations.

Regarding this point the commission's report says:

"The Chinese legal theory of land ownership is like the English system. It does not recognise the existence of any land which does not belong to the Emperor. This is why there is no conception of land ownership in China. One may trace the origin of this idea to the feudal custom of identifying public law with private and territorial sovereignty with private rights over land. But the feudal idea was not the sole cause of the Chinese idea of land ownership. The

ancient idea in China was that lands should be owned exclusively by the State, and the prohibition of private ownership of land seems to have been the foundation of politics and economics in that country."

I believe that the foregoing report speaks the truth.

As to the meaning of the word "*gyo*" in "*gyo-shu*", it denotes immovables. The word "*gyo-shu*", therefore, means the owner of immovables. The word "*gyo*" does not refer to mere objects, but to those which are essentials of production such as land, houses, shops, etc. Movables are regarded as objects (goods and chattels) but not as "*gyo*". But waste land is not regarded as "*gyo*" because it does not participate in production. On the other hand, such movables as carriages and ships are regarded as "*gyo*".

The commission's report explains this point as follows:

"The concept of '*gyo*' resembles that of '*estate*' in English law. It does not necessarily mean land which is the object of right; it rather refers to the whole of the rights a person possesses over his land. And just as there are lease hold estates in England, there are in Formosa such *gyo* as those of *daisoko*, *shosoko* and *tenshu*. Each means the ownership of *gyo*. Thus, a *gyo-shu* in the case of land cannot be identified with an owner who has the supreme claim over the land; on the contrary, the term includes all those who have some claim on the land. Such must be the meaning attached to this word as used in Formosa."

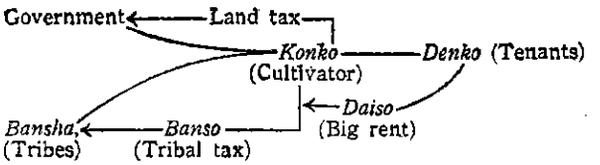
Thus, there is no perfect ownership of land in Formosa. In the case of farm land, the "*daisoko*" and the "*shosoko*" possess the so-called "*gyo-shu-ken*" and control the land, and the "*denjin*" or tenants rent out their lands for the purpose of cultivation. The relations of tenancy, therefore, exist between the holders of the "*gyo-shu-ken*" and the "*denjin*." We have already seen the two processes through which tenancy came into existence in Formosa. In the case of the first, those who have secured the right to develop lands from either the government authorities or the native tribes, invite colonists to do the work of land development as well as to

cultivate the soil as tenants. In the second case, those who have actually been engaged in the work of land development, invite colonists to till the soil for them. The difference between the two cases gives rise to the two different holders of land, namely, the "*daisoko*" and the "*shosoko*."

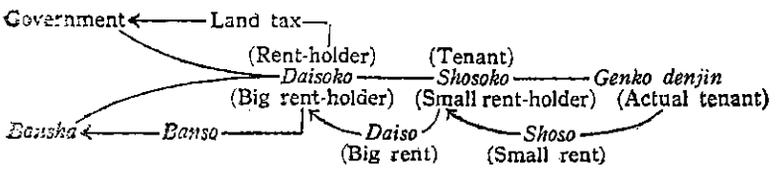
In the former case, tenancy relations exist between the "*konko*" or the holder of the right to devolop the land and the "*denjin*" or tenants; in the latter, between the "*shosoko*" and the actual cultivator. In the latter case, as the "*denjin*" when opposed to the "*konko*" (or *konsha*) becomes a "*shosoko*," the person who rents the land from him for the purpose of cultivation is known as a "*genko-denjin*" (tenant actually cultivating).

The following graphs will show the two cases:

(1). The simple case (when there is no *genko-denjin*).



(2). The complex case (when there is a *genko-denjin*).



The relations among the different elements as given above show a great complexity. Such complexity, however, is unavoidable in all the tenant systems which have evolved out of the development of lands. It is possible to find such relations in the tenant system of Japan proper. Tenancy relations may exist between the "*jinushi*" (land owner) which corresponds to the "*konko*" and "*kosakunin*" or tenants. Intermediate tenants also may exist between the two. But in the case of Japan proper, its tenant system has undergone various changes and has been readjusted under a legal

system, and consequently there does not exist a complicated mass of relations such as that which exist among the "*daisoko*," "*shosoko*," and "*genko-denjin*," etc. In Japan proper also, the right of the landlord over his land should be regarded as the "*gyo-shu-ken*" rather than the ownership which is recognised by the Civil Code. At least before the adoption of the Civil Code, the right over farm land was similar to the "*gyo-shu-ken*," which has been noted as a right single and independent though complicated and many-sided. If it could be termed ownership, then it existed in the dual form of a higher and lower ownership. This is particularly so in the case of the emphyteusis system. Needless to mention that the right of the tenants was at the bottom of all rights.

We have noted the nature of "*gyo-shu-ken*" and the relations of the owner of a "*gyo-shu*." We shall now consider the tenant system itself.

Tenancy in Formosa is known as "*boku-shutsu*" (to let out as tenant-land). On this point the commissin's report says:

"In Formosa there are found such terms as *boku-shutsu*, *boku-den*, *boku-kan* etc. The meaning of each of these terms is that the occupier of a farm permits others for a concidaration, to cultivate his land or engage in other works of farming. In the Chinese dictionary compiled in the first year of fhe era of Kōki (1662–1723), the word *boku* is not found. However, such words as *sho-boku* (to invite tenants) and *boku-ko* (to cultivate tenant-land) are used in China in the same sense in which they are used in Formosa. In an encyclopedia (edited later in the same era) is found the word *boku-den*, its meaning being defined as a farm hand who tills the soil on behalf of the possessor of the land. This word may be held as synonymous with the word *boku*. The word *boku-ben* and *buku-kan* also have similar meanings, denoting farm hands. The word *boku* may have been transformed form the word servant."

Continuing to explalain the legal aspect of the word "*boku-shutsu*," the same report says:

"We have seen the meaning of the word *boku*. Now,

the word *boku-shutsu* in its right sense denotes the granting of tenancy rights. The relations between the grantor and grantee of tenancy are those of lease-right and lease-obligation only, the former securing the right to receive an annual rent. Tenancy is to be effective only during a certain fixed term and for this reason does not involve a transfer of the *gyo-shu-ken*.....The main idea of tenancy or *shutsu-boku* is that the tenant tills the soil in behalf of the landowner."

Thus, the relations of tenancy in Formosa are those of "*boku-den*." The relations are formed by the granting of "*boku*." He who grants it is the posessor of "*gyo-shu-ken*" and he who receives it is a "*denjin*" or "*genko-sakunin*" (actual tiller). The latter pays rent or "*shoso*" to the former. The idea of rent or "*so*" is based upon the relations of the "*daiso*" and the "*shoso*." In order to know the tenant relations with rent as the centre of analysis, a detailed study of the "*daiso*" and the "*shoso*" will be necessary.

CHAPTER III
THE DAISO AND THE SHOSO

Section 1. Their History

The conception of "*so*" or rent is an important factor in tenancy relations in Formosa. The commission's report defines rent as follows:

"*So* is an income which the possessor of a right receives as the result of private legal relations concerning land. It is sometimes called *zei* or tax. The *daiso* (big rent) and the *shoso* (small rent) are the greatest of all rental rights in Formosa. That which the possessor of a land owes to others is called *daiso* while that which the possessor of a land receives from a *denjin* (tenant) is called *shoso*."

Thus the "*shoso*" has the most important significance in tenancy. However, it is so closely related to the "*daiso*" that adequate study of it is possible only together with a study of the latter.

As has been already pointed out, those who secured the right to develop lands, hired persons to till the land and the latter paid in the capacity of "*denko*" an annual rent to the owner of the land. Thus, the owner of the farm or "*konshu*" became "*daisoko*" (big rent-holder) and came to possess only the right to collect the rent from the "*shosoko*" (small rent-holder) who was formerly the "*denko*" (tenant) but now the real controller of the farm. Originally the "*konshu*" were powerful citizens of localities who possessed large tracts of land and who had control over a number of "*denjin.*" They were like petty princes and the revenue they received was more of a tax than a rent in its nature. Their right over the land gradually became a right over the "*denko*" (tenant) and became in time divorced from the land; while the real control of the land fell to the "*denko*" who actually tilled the soil. The right the "*konshu*" gave to the "*denko*" was of the nature of tenancy, but it was a sort of emphyteusis and had an element of real right.

With the passing of time, many "*konshu*" lost their power and control over the land, but the power of the "*denko*" was increased. The tenant relations of the two gradually disappeared, and many "*denko*" disposed of the land or sub-let it to others, some of whom were sub-tenant, who came to be known by the name of "*genko-denjin*" or actual cultivators. Thus, two rights of collecting revenue from the same land became recognised; the one collected by the "*konshu*" from the "*denko,*" and the other collected by the "*denko*" from the actual cultivator. The revenue of the former was called "*daiso,*" while that of the latter, "*shoso.*"

After the establishment of the two forms of revenues, lands were freely bought, sold, and pawned and the legal position of the lands became extremely confused. In 1886 China sent a governor named Lieu Ming-hung to Formosa. He directed his efforts to carrying out various reforms, and in 1889 fixed the range of general rights. By proclamation he recognised the "*shosoko*" as the owner of the farm land, exempted the the "*daisoko*" from paying the tax. Then four-

tenths of the revenus of the "*daisoko*" was given over to the "*shosoko*" who, in turn, was made responsible for the tax. Lieu's act merely readjusted the existing relations of the rights over farm lands and did not transfer the right of ownership from the "*daisoko*" or "*shosoko*."

Section 2. The Nature of *Daiso* and *Shoso*

We shall first consider the "*daiso*." It is an annual rent which is paid by the "*shosoko*" to the "*daisoko*" in the form of a cereal. The amount of the rent is fixed. It is the same as that which was first fixed between the "*konshu*" and the "*denko*." It is the custom not to make any change in the rent value because of good or bad harvests, or for any other consideration. There is an exceptional practice of paying the rent in accordance with the nature of the crop instead of in a fixed amount which practice is known by the name of "*seiso*". Legally, the duty of paying the "*daiso*" is shouldered by the "*shosoko*," but in actual practice the "*denjin*" pays it to the "*daisoko*" in accordance with the agreement made between the "*shosoko*" and the "*denjin*."

As has already been noted, the "*daisoko*" is not seised of the land, and for this reason he cannot cancel the contract with the "*shosoko*" even when the latter fails to pay the required rent; nor can the former make any claim either to the land or to its products. So unimportant is the position of the "*daisoko*" that in some cases the name of the "*daisoko*" is not generally known.

Regarding the nature of the *daiso*-claim, the commission's report says:

"There is no right in Japanese law which may be likened to the legal nature of this claim. Servitude cannot be placed in the same category with it because in the former case one is obliged to permit the acts of the claimant or at least, not to hinder his acts. If we are to seek a similar claim in the laws of other countries, we may place it in the same class as the rent change in English law and Real-

last in German law. But there is this difference between them and the *daiso*-right: whereas these rights have direct relations with the land and one fulfils one's obligation out of the products of the land or make the land a security for the obligation, the *daiso* right has no direct relation with the land, it being a personal right of the *shosoko* himself..... Although the right of *daiso* is a claim, its effects are not fixed among the related persons as in the case of ordinary claims. Any one who has come to possess the right of *daiso* becomes a claimant, and anyone who has the right of *shoso* becomes an *obligant*, and within this limit the substance of the right may be advanced against a third person."

The foregoing explanation of the "*daiso*" shows that it is a peculiar right of which no counterpart may be found elsewhere.

Regarding the right of the "*shoso*," the same report gives following explanation:

" Legally, it must be regarded as an ordinary tenancy but in reality it is a strong emphyteusis and a real right for the following reasons: (1) the right of occupation belongs to the *denko*, (2) This right is unlimited and perpetual, and (3) the *denko* can freely choose the method of cultivation and gather the products therefrom."

Thus, the right of "*shoso*" is more definite than those of "*daiso*" and ever since the very beginning was a sort of emphyteusis which much resembles ownership. The following are the elements of the right of "*shoso*": (1) the "*shosoko*" has the right of possession over the land, and even when the land is rented out, he possesses the right of possession which belongs to the owner of the land in the ordinary relations of renting; (2) the "*shosoko*" has complete and unlimited right over the use of the land and of deriving products therefrom. He can also freely change the character of the land or damage or destroy it. He may also freely rent out the land to a "*genko-denjin*" or actualc ultivator with whom he may enter into any agreement. When the land is tenanted,

the "*shosoko*" may derive rent therefrom according to the agreement, but his tenure of the land suffers no limitation because of that fact.

The commission's report says on this point as follows:

"The name '*shosoko*' was derived from the custom of renting out the land and getting the rent named '*shoso*' in return. .....The right of receiving the rent is only one of the utilities of his right over the land. Judging from the utilities of this right, we may say: (1) the right of *shoso* is a right of directly controlling the land and may be asserted against a third person; there is no doubt that it is a real right; (2) the right of *shoso* is subject to the duty of paying the *daiso* and includes such functions as the use of the land and of the disposal of the proceeds therefrom.....is the highest real right over the land and according to the old customs of Formosa it must be recognised as a real estate right over the farm land.....from the standpoint of contemporary jurisprudence, it is a sort of an ownership with certain financial obligations."

We may therefore regard the "*shosoko*" as landlord and the "*denjin*" under him as tenant. The relations of tenancy take place between these two parties. The right which the tenant has towards the landowner is largely determined by the nature of the tenant contract, but its nature as a right is an ordinary right of lease and no more.

Section 3. Substance, Amount and Method of the Payment of *Daiso* and *Shoso*

"*Daiso*" was formerly paid in cereal or unhulled rice in the northern part of Formosa, but now it is paid in kind only in the case of paddy fields; that of dry fields is paid in money, its amount being equal to the price of the products taken at the time of the development of the land. In the southern part of the island, rent is paid in kind and also in money. In the case of payment in kind, such goods as crude sugar is sometimes used. Where money is used in

payment of rent, it is computed in silver. There are two kinds of rent, fixed and the share system. This is true in the north as well as in the south of the island.

The fixed "*daiso*" was determined at the time of the development of the land and based upon the nature of the soil as well as of the irrigation system thereon. Although there is no common standard for the fixed rent, in many cases one-tenths of the total crop is paid. All paddies and dry fields are classified into three groups. In the case of paddy fields, six *koku*, four *koku* and two *koku* respectively are paid. Usually, neither the nature of the annual crop nor a change of landlord or tenant affects the amount of rent paid.

In the case of the share system, the proportion is sometimes as one to nine or as 5 to 85. There are also other proportions.

"*Shoso*" is paid both in kind and money (silver). In paddies, the former method is usually employed, while in the case of dry fields, the latter is generally adopted. The Formosan natives give different names to the rents that are paid by different methods, as, for instance, such names as "*boku-ko*," "*sakubun*" and "*chu-toku*" or "*bunshu*."

On this point the report says:

"Native Formosans give the name of *boku-ko* to the rent the amount and period of which are fixed and which must be based on a contract. On the other hand, *sakubun*, *chutoku* or *bunshu* is a rent which is not fixed as regards amount or period, but is divided between *denjin* and *gyo-shu* according to some definite ratio. In some localities *boku-ko* is replaced by *bakushu* which literally means 'tied to death' because of a simlarity in the pronounciation of the two words.

"The real meaning of the word, however, refers to the duty of paying the fixed rent regardless of the nature of the annual crop. On the other hand, under the system of *sakubun*, the annual crop is divided between *gyo-shu* and *denjin* regardless of the nature of the crop, and for this reason no party suffers a special loss under the system. Whereas the

former is known by the name of *koso* (hard rent) or *shoso* (death rent), the latter is known by the name of *chutokuso* (profit-sharing system) or *seitokuso* (living rent), as in the case of *daiso.*"

The difference between the two forms of rent is a matter of name only. They are the same before the law, and constitute relations of lease.

The amount of the "*shoso*" is dependent on such things as the degree of the fertility of lands, the nature of the irrigation facilities, the economic value of the lands, the nature of the general economic conditions, and the practical relations between landowner and tenant. Unlike the "*daiso,*" there is no general standard for the "*shoso.*"

Agreements on rent covers the whole of the farms and their accessories—the houses, barns and the like—all of which are rented together with the land, so that the rent for the land includes those on the houses, barns, etc. Moreover, there is a system of paying a deposit to a landowner by a tenant at the time of concluding a contract. This naturally affects the amount of rent. Furthermore, the amount of the "*daiso,*" the nature of the "*suiso*" (water tax) and of transportation also affect the amount of "*shoso.*"

In the northern district, a rent of between 6 *koku* and 50 *koku* of unhulled rice was paid for an upper grade paddy field or between 5 *yen* and 35 *yen* for an upper grade dry field. In the southern district the rent was between 5 and 10 *koku* of unhulled rice for a lower grade paddy field, about 20 *koku* or a middle grade paddy field, and 35 *koku* for an upper grade paddy field. The rent for the dry field was: 10 *yen* for a lower grade dry field, 20 *yen* for a middle grade field, and between 30 and 40 *yen* for an upper grade field.

In the case of the share system, there are the following three kinds: 50–50 for both the landowner and the tenant, forty per cent for the landowner and 60 per cent for the tenant, and 60 per cent for the former and 40 per cent for the latter.

In short, it may be said that the "*shoso*" is more comlpex than the "*daiso*" both in respects of the amount and the rate. The right of the "*shoso*" was a rental right in the beginning, but later it came to assume the nature of ownership. At first both the "*daiso*" and the "*shoso*" were rental in character but with the lapse of time the former assumed the legal aspect of a tax, while the latter remained pure rent. In investigating the nature of the tenant system in Formosa, keen attention should be paid to the nature of the "*shoso*" and the time of its payment as well as its amount and rate.

CHAPTER IV.
"*DEN*" RELATIONSHIP

Section 1. History and Significance of "*Den*"

Tenancy relationship in Formosa is known as "*den*" relationship. "*Den*" relationship commenced, as has already been pointed out, from the time when the island was in the hands of the Dutch settlers. At that time all the farmers were tenants of the crown lands. Even during the Cheng régime, the system of government ownership under Dutch régime continued to be applied in the case of the crown lands. The followers and officials of Cheng invited, in cooperation with the influential citizens of the island, farmers who tilled lands which were regarded as in private ownership. After Formosa passed into the hands of the Ting Dynasty of China, the government ownership of lands was abolished, the tenancy relationship of government lands ceased to exist, and the "*denjins*" (cultivators) became landlords. This, however, gave rise to relations between the "*konko*" and "*denko*." First, the "*konko*" was the owner of the land, but, later, the control of the land passed into the hands of the "*denko.*" At this time the number of new arrivals increased and presently the demand became greater than the supply. Then there appeared those who tilled the soil for the "*denko*" and who were known by the name of "*genko-denjin*" or actual cultivator.

The origin of tenancy in the modern sense came into existence in Formosa during the second stage of its development.

Now, what is the nature of the "*den*"? According to the government report on old Formosan customs, the "*den*" refers to the act of land cultivation. It was at much later time that the word "*denjin*" came into existence to connote the person who is opposed to the "*gyoshu*" or landlord. Moreover, the word "*den*" has a broader meaning, and refers to all land which are cultivated by persons other than the "*gyoshu*" or from which profits are derived by persons other than the "*gyoshu.*" But in its narrow sense, it refers to the tenancy of the land under the control of a "*shosoko,*" and for this reason the land owned and cultivated by a "*shosoko*" (small rent-holder) cannot be said to be a "*den.*" Hower, as in its origin "*shosoko*" derived his right from "*daisoko*" (big rent-holder), even today a "*daisoko*" often calls a "*shosoko*" by the name of either "*denko*" or "*denjin.*" Moreover, the transfer of the "*shoso*" (small rent)-right is often regarded as that of the right of cultivation. But all these have only a historical significance.

Section 2. Ordinary "*Den*" Relations

"*Den*" then refers to the leasing of land for the purpose of cultivation. There are two kinds of "*den.*" The first is the long term lease in which the one who has secured the lease acquires rights over the land itself and his legal relations assume a real character. This is called the "*ei den*" (permanent *den*) and belongs to the same category as the relations of emphyteusis in Japan proper. The other form of "*den*" is a simple and short termed lease of land in which the "*denjin*" only secures the right to use the land from the landowner. This is the "*den*" in the ordinary sense and may be likened to ordinary tenancy in Japan proper.

In this section I shall consider the ordinary "*den*" relations, leaving the permanent "*den*" relations to the next section.

"*Den*" relationship is established by a contract between a lannlord and his tenant, or "*denjin.*" The majority of such

contracts are made orally. Written forms are adopted only in the case of a possible dispute over the payment of rent whether in kind or in money, or in those special cases in which the assurance of the inviolability of contracts is particularly desired.

"*Den*" contracts are entered into in the case of lands and fields other than the ordinary farms, including sugar cane plantations, in which case the term of a contract is sufficiently long to create a perment "*den*" relationship. In the case of tea farms and fishery zones the tea factory and fish cannery also become the objects of the lease.

The usual term of a lease is from three to five years, very seldom is it as long as ten or more years. Many contracts do not have any specific term, and this is understood not as constituting permanent lease but as meaning that the contracts may be cancelled at any time. In actual practice, however, the leasing relations continue for many years where payment of rent is regularly made.

As soon as a lease relationship is established, a "*denjin*" secures rights and shoulders certain obligations. He has the right to cultivate the leased land and to receive the yields therefrom. He has also the right to live in the residence situated on the leased land and to use its furniture. Although he has the right to determine how to use the land, he cannot change the form of the land or reconstruct the farmstead without the consent of the landlord. Usually the repairing of the farmstead is made by the tenant, but he is free to enter into a contract to have all repairs done for him by the landlord. The tenant has the obligation to preserve the farm land. Usually he has no right to ask exemption or reduction of rent even when the land is devastated by some natural calamity.

The right of the tenant cannot be disposed of or transferred without the consent of the landlord. When it is transferred to a third person with the consent of the landlord, the former becomes a tenant of the latter with regard to that particular piece of land.

The landlord has the right to dispose of his land without the consent of his tenant and the new landlord has the right to demand the withdrawal of the tenant even within the term of the old contract. In actual practice, however, it is defficult to change the tenant before the end of the second crop in the fall, because in Formosa the first and second farm seasons constitute the whole year. For this reason the tenant usually continues to till the soil until the end of the second season even when the ownership of the land he tills has changed hands.

We shall now consider the obligations of the tenant. His main duty, no doubt, is to pay the rent or "*shoso.*" It is paid in some cases in kind and its amount is between four-tenths and six-tenths of the total amount of the crop. Usually his share is insufficient for his year's subsistence, while his life is made miserable by the fluctuations of the price of farm products and by natural calamities. The time of rent payment is not the same for all cases; it is dependent upon the kind of land, local customs, the nature of his contract. However, there are two kinds: rent is paid either before or after harvest time. In the first case, rent for next year is paid during December (the lunar calendar), while the latter is paid after the harvest in December. In some cases, the rent is paid in February or March in the following year. The former system is adopted in fertile regions where demand for land is enormous, while the latter system, in barren regions where such a demand is least felt.

I have already stated that rent either in kind or in money must be paid regardless of the natur of the crop. Although this is the general practice, sometimes in the case of a drought or other natural calamity, reduction is made in the rent by a joint agreement between a landowner and his tenant.

The tenant also shoulders through contract such financial burdens as "*doiso,*" "*suiso,*" "*banso,*" etc. He promises to pay these on behalf of his landlord, and he really pays them in accordance with his own financial ability.

Thus, it will be clear that "*den*" relations are of the

nature of lease relations—claim aud debts—between one landlord and his tenant; the relations are not to be treated as real rights over a land.

Section 3. Perpetual Lease Relations

There exists a system of perpetual lease which enables a tenant to possess a landed right which is upheld by him even after the ownership of his rented land changes hands. Under this system, the term of lease extends over many years. The system has survived from the old time but there is no new contract to establish the same system.

Perpetual lease in Formosa means not only that the term of the lease is long; but that it must be perpetual as well. However, there are some cases in which the real right over a land is recognized, although the term of lease is not perpetual. Thus, different periods of leases are due to the different ways in which the leases originated; and in consequence, the strengths of claims are of various degrees. The tenants naturally have a deeper attachment to the lands under perpetual lease than those of shorter terms.

Generally speaking, however, perpetual lease means that the tenant secures a right over the land he tills—a right which he can assert against a third person and dispose of or sell as he pleases. Such phenomena as these are seen where the terms of lease holds are perpetual or so long as ten or twenty years.

A perpetual lease is instituted in the same way as that in which an ordinary lease is made; but in modern times such a form of lease is rarely made. Formerly, it was mostly pledged orally. Various names were given to written contracts.

Rent in the case of a perpetual lease is the same as in an ordinary lease and is fixed at the time of the conclusion of the contract, and paid either in kind or in money. It is limited to where a tenant requires a vast amount of capital and labor, and in consequence it is usually established on

plantations or other large-scale farms. It is often concluded where the reliability of lease relations is of paramount necessity.

What I have described so far was the land system that existed until the time of the occupation of Formosa by the Ting Dynasty of China. Even after the island passed into the hands of Japan, however, there remained the three elements, namely, "*daisoko*," "*shosoko*," and "*genko-denjin*"; "*den*" relations also continued to exist. Governor-General Kodama in 1903 began the reform of the "*daiso*" system. In December of the same year, he fixed the system and prohibited its further continuance. In the following year he abolished the system altogether, compensating the owners for their losses, the amount of which was arrived at by multiplying the actual land area by a rate fixed by the Government-General of Formosa.

This land reform left only the "*shosoko*" and the "*genko-denjin*" in the land system of Formosa, the former becoming land owners in consequence. This change was effected because the nature of the "*shosoko*" was so close to that of ownership. His status was therefore elevated to that of a real owner. This made the "*genko-denjin*" a real tenant.

In 1923, the Civil Code of Japan proper with the exception of those provisions relating to relationship and inheritance was put into effect in Formosa. The result is that all the old customs of land relationship were swept away and there are only landowners and tenants just as in Japan proper. However, the old customs are respected to a certain degree among the inhabitants of the island.

CHAPTER V
THE PRESENT CONDITION OF THE TENANT SYSTEM

As has been pointed out, the tenant system of Formosa has come down from the old time to this day in the same

condition, in its essentials in whicn it was found during the Chinese régime. The change made by Governor-General Kodama was based upon the actual condition and made the system a little simpler. The system as a whole has remained the same.

I shall now dwell in this chapter in detail upon the kinds of tenant contracts and their essential nature.

The first fact that challenges our attention is the importance of tenant farms in Formosa. Of the total area of arable lands in Formosa, tenant farms take up about 58 per cent. The importance of tenancy will become apparent when it is remembered that the percentage of tenant farms in Japan proper is 46 per cent of the total area of arable lands.

The following figures show the proportion between the peasant farms and tenant farms in Formosa:

Land	Area	Percentage
Peasant farm	289,317 *kō*	41.84
Tenant farm	402,046	58.16

Of the total number of farmer families, tenant families constitute 42 per cent, and if peasant-tenant families are added, the percentage will be 63.5, as the following figures indicate:

Family	Number	Percentage
Peasant families	154,078	36.40
Tenant families	178,508	42.17
Tenant-yeomen farm houses	90,692	21.43

The foregoing figures show the important position tenant farming occupies in Formosa. Its customs and defects, therefore, will have an important bearing upon questions of agricultural policy and tenancy problems in the island.

I shall therefore dwell in detail upon the forms of tenant contracts, the terms of tenancy, rents and other important elements of such contracts, the nature of tenancy, cancellations of contracts and compensation therefor, mindful of the facts in each case. I shall principally take the rice field

with sugar fields and tea farms as supplimentary objects. Needless to state that rice fields are paddies, while sugar fields are dry lands. Sugar fields are peculiar in nature while sugar plantations are carried out very extensively with a huge capital. Separate consideration will be needed for the last named item.

CHAPTAR VI
TENANT CONTRACTS

Section 1. Forms of Contracts

A tenant contract in Formosa consists in the setting up of "*den*" relations. As in European countries and in Japan proper where share systems exist, tenant contracts are made mostly orally and in very few cases are they made in writing. However, the steadly increasing tendency is toward written contracts, due in no small degree to the increase in tenant disputes, and to the general development of legal conceptions. The general condition in the tenant system of Formosa resembles that of Japan proper, but as it is in a more primitive stage, the system of oral contracts exists more generally than in Japan proper.

According to the government report on the old tenant customs, written tenant contracts in the northern districts of the island are signed jointly by the landowner and the tenant, each of whom keeps a copy of the same contract paper. Sometimes the landowner and the tenant prepare different papers which are then exchanged between them. Occasionally, the landowner only prepares a contract which is then handed over to the tenant.

In the southern districts, tenant contracts are made orally in about eighty or ninety per cent of cases and written contracts are made only when disputes are likely to occur or there is a special desire for the assurance of the fulfilment of the stipulations. Of the three forms of written contracts already pointed out, that where only the landowner gave a

paper to the tenant was in greater vogue than the other two forms in the old time, and the system of the tenant's handing his paper over to the landlord in exchange for the landlord's paper is of comparatively recent origin.

According to the report of the Government-General, the present condition is roghly the same as that which is described above. Thus, in Taihoku Province tenant contracts are mostly made orally, written contracts being limited to the following cases: in case the term of the contracts is long, where one party is a big landowner or a corporation, or where there is no friendly feeling between the parties concerned a condition which usually guarantees the fulfilment of oral contracts. The same thing prevails in Shinchiku Province. In that province written contracts are made over paddy fields. In Tainan and Takao Provinces, written contracts are made in the case of sugar companies, big landlords, or when landowners reside elsewhere or when landowners cannot secure the full confidence of of the tenants.

Registration of contracts in Taihoku Province is made infrequently in the following cases: when a landowner secures an enormous amont of money as a land deposit, when a tract of land is to be developed for the purpose of tenancy; when the tenant field is a communal or public property; when a piece of land is held as mortgage or pawned, or when a landlord is desirous of having a good tenant cultivate his land for a long period of time. In Shinchiku Province, registration of contract is made also rarely in the following cases: when a landowner wants to invest an enormous amount of the income from rent for a long period of time; when communal land is tenanted; when piece of land is rented out to a sugar company; when a landowner wishes to have his land cultivated by a good tenant for a long period of time. In Taichu Province the registration is made when a tenant makes a long term contract for the lease of a land in return for a large land deposit or loan, or when public land is tenanted. In Tainan Province, registration is made in the following cases: when

a landowner invests income from rents for a long period of time, when a tenanted land is public property, when a tenant is of good repute and in whom full confidence may be placed, or when the identity of a tenant is doubtful. In Takao Province, the registration is made when the area of a tenanted land is especially large, when the term of a contract is long, when a piece of land is to be developed for the purpose of tenancy, when a deposit is made, when the tenanted land is public property. The system is adopted rather as exceptional to the general custom.

According to a report by a different authority, the registration of contracts in Taichu Province is made only when a tenant is under the necessity of completing the term of his tenant contract. Such a registration is made not only in the case of a field producing fruits, tea, and hemp, but also in the case of annual crops.

We shall now consider the time of making tenant contracts and of the transfer of farm lands. The times vary in the south and the north, due to the differences in latitude. In Taihoku Province, a contract is made before August 15 (in the lunar calendar) and the transfer of a farm land before November 30 or after the gathering of the second crop. In some cases, the transfer is made before December 16. Usually dry fields are transferred before the first part of February of the year following. The same is true of Shinchiku Province. In Taichu, the contract on either paddy fields or dry fields is made before August 15. Rarely is a preliminary contract made as early as July or August, and the formal contract is made before October 15. The transfer of paddy fields takes place in the middle of October and that of dry fields between February and April, in the following year.

In Tainan Province, a paddy field contract is made before the end of November; in the case of dry fields, it is usually made before December 16. The transfer of paddy fields takes place before or during January, and that of dry fields around March 23. In Takao Province, the conclusion of contracts in the case of two-farm-season fields in the northern

districts is made in the fall of the preceding year, and in the southern districts, in February of the following year. Where a one-farm-season system and a two-farm-season system exists side by side, a contract under the former system is concluded during the months between February and June, while a contract under the latter system is formed in October or November. Where a single-farm-season prevails a contract is formed some time during the months between November of the preceding year and February of the following year.

Contracts over dry fields are mostly concluded during February or March in the solar calendar. They are sometimes concluded in January or April or June. In tne north, the transfer of two-farm-season lands is made in November. In the central south districts, the fields, contracts of which are made in February, are transferred in May. Where the execution of the contracts begins at the end of a single farm season, the lands are transferred during the months between November and January. In the case of a two-farm-season system, they are transferred in May or June. In the case of paddies and dry fields of the single-farm-season system, the transfer of the fields is made at the same time the contract is made.

Section 2. Periods of Tenancy.

Tenant contracts may be divided into two classes: the permanent and ordinary contracts, the former being perpetual and the latter limited by time. There is a vast difference between the two with regard to their rights and other elements. Although the differentiation into two classes of tenant contracts cannot be based solely on the length of the periods of contracts, it is nevertheless an important element.

The government report on the old tenant customs in Formosa gives the following account concerning the periods of contracts in the northern parts of the island:

"A farm is tilled for a certain period of time.....The usual term is three years, but rarely it is six years or more. In actual practice there are many cases which are rather to

be regarded as perpetual inasmuch as the contracts usually are in force even after the expiration of the periods fixed, provided the tenant faithfully fulfils his obligations. However, there has arisen a recent tendency on the part of the landlord to conclude a new contract at the expiration of the old contract, stimulated no doubt by the general rise in the value of lands.

In recent years the landlord a rule prefers to conclude a new contract at the expiration of the old contract, or to change tenants for the purpose of increasing the rate of rent or to increase the amount of the deposit. This tendency has been created by the general rise in the value of lands."

The same report says as follows regarding the system in the southern part of Formosa:

"The tenant system in the southern part of the island is roughly the same as that in the northern part. In the case of sugar farms, the term is generally one year, rarely is it as long as four years. The term in other cases is not always the same but often it is between three and five years. Occasionally the term is longer than ten years but such a term is to be regarded as a permanent tenancy at least at the present, although it may not have been so regarded under the old customs;.....the tenant lands which are considered here are those whose periods are less than ten years. The majority of those lands whose periods are not specified are to be considered, not as permanent tenant lands, but as ordinary tenant lands whose tenants can be changed at the landlord's will."

"Of course, the change of lands does not usually take place where the tenant has faithfully paids the rent fixed by a contract, and some contracts indeed contain clauses regarding this point. The Ordinance No. 2, promulgated in the 33rd year of Meiji (1900), fixed 20 years as the maximum period of tenant contracts; for this reason it may be said that all tenant contracts whose periods is less than 20 years are ordinary tenant contracts. The statement was made to the effect that the proper limit of the periods of tenant con-

tracts should be 10 years and that all those whose periods are above this number should be classed as contracts of perpetual tenancy. An explanation of this statement is needed in view of the maximum period of 20 years. According to the customs of Formosa, ordinary tenant relations are regarded as a sort of ordinary lease relationship. For this reason, if registration is regarded as a requisite for the formation of tenancy, it should be applied only to these contracts whose periods are more than 10 years; while those whose periods are less than 10 years are to be effective through registration against a third person, at the will of the parties concerned, a legal unity having thereby been established in the whole tenancy."

The foregoing is the old tenant custom as interpreted legally. According to the investigation carried out by the Government-General regarding the present condition, the majority of the ordinary contracts have no periods specified. This, in a sense, is highly insecure, as the contracts may be cancelled at any time at the will of one of the parties. On the other hand, it may be said that such contracts are to be continued for an indefinite period of time without the need of renewing the agreement so long as the relationship of contract is maintained, and that for this reason the system is highly convenient for both the landlord and the tenant. The tenant, in particular, can cultivate the same farm for many years so long as he justly administers the land, pays the rent regularly, and otherwise, no faithfully observes the terms of the contract; and thereby can secure the stability of his livelihood.

Accordingly, not only in Formosa but in other places where the share metayer system and other undeveloped forms of tenancy exist, it is customary not to fix the term of a tenant contract. And although the system itself is undeveloped, the relations between the tenant and the landowner is not merely legal relations or a routine business, but are even relations of friendship; and for this reason the contract is usually made orally and not in written form; the term is

not specified and the tenant relations are maintained as long as the circumstances permit. If the parties come to realize the need of cancelling the contract, they do so at any time without a wrangle. Such practices have been adopted in the majority of tenant contracts in Japan proper, and this is also true of the Formosan tenant system.

The Government-General's investigations into the tenant practices of all provinces throw a light on this point. In Taihoku Province, some contracts do not specify their periods at all, while others have three years as their term. In Shinchiku Province, usually tenant contracts have no periods specified. In Taichu Province, it is usual to have no term specified but occasionally it is fixed at one year where a share system prevails or the amount of the crop is highly speculative. In Tainan and Takao Provinces, no period is specified in contracts most of which are made orally. Ordinary written contracts have periods between three and six years. Special ones which are registered are of ten or more years.

According to the report of the Taichu Provincial authorities, the number of the tenant families cultivating paddy fields for a definite period of time is given at 943 out of 12,235 or 7.7 per cent of the total number of tenant families. Of the same total number, 9,987 families have no period of cultivation specified, the number constituting 81.6 per cent. The number of those which cultivate their fields for the period of a single year is given as 1,292 or 10.6 per cent. Of the total number of 3,354 dry families, those having definite periods of cultivation are given at 636 or 19.0 per cent; those having no specific periods, 2,274 or 67.8 per cent; those having the period of a single year, 436 or 13 percent. Thus it is proved that those having no specific periods fixed for cultivation constitute an overwhelming majority in both paddy and dry fields.

Now, what are the actual periods during which tenants cultivate their lands? Tenant contracts may be divided into the following four classes according to the length of periods: ten or more years, between six and nine years, between three

and five years, and a single year. For convenience sake, the first one is called the long term, the second one, middle term, the third, short term, and the fourth, the single year term. In the case of paddy fields cultivated for definite periods of time, the following are respective percentages of the total number of 1,281: long term, 18.3 per cent; middle term, 23.3 per cent; short term, 32.9 per cent; single year term, 25.4 per cent. Thus, it will be seen that the short term lands are the most numerous, followed by the single year term lands. In the case of paddy fields cultivated for indefinite periods of time, the following are the respective percentages out of a total of 10,954: long term, 29.4 per cent; middle term, 25.7 per cent; short term, 36 per cent; single year term, 8.8 per cent. Thus, the short term contracts also constitute the largest number followed by the long term ones.

Of 785 dry fields cultivated for definite periods of time, the following are the respective percentages: long term, 28.5 per cent; middle term, 24.6 per cent; short term, 28.8 per cent; single year term, 18.0 per cent. Thus the percentages of short and long terms are about the same. In the case of 2,569 dry fields cultivated for indefinite periods of time, the following are the respective percentages: long term, 19.8 per cent; middle term, 25.5 per cent; short term, 43.2 per cent; and single year term, 2.5 per cent. Thus, those of short terms are greater than any other.

The foregoing figures will show the general nature of the length of the tenant contracts. Both in paddy and dry fields, those for short periods preponderate. At the same time those for ten or more years are also comparatively large in number, their percentage being between 20 and 30 per cent.

Section 3. Tenant Rent

By far the most important provisions in the tenant contracts are those concerning tenant rent. The tenant rent in Formosa corresponds to what is known as "*shoso*" (small rent). We have already seen the nature of this rent. Now

that "*daiso*" (big rent) has been abolished, "*shoso*" is the only rent paid by tenant farmers in Formosa at present.

We shall now see what the reports of each province in the island say regarding the present conditions of rent.

1. KINDS AND NATURE OF RENTS

The rate of all the rents of paddies is estimated in unhulled rice. In the northern and central parts of the island, the rate of rent is estimated in dry measure. In the southern part, it is estimated by weight, rent in actual practice is usually paid in unhulled rice in the case of paddy fields. In the northern district where rice called "*hōrai*" (originally transplanted from Japan proper) is raised, a reduction of rent was used to be made or money was given by the landlord to the tenant. The practice, however, has fallen into disuse at the present. This is because the practice had been intended for encouraging the production of this particular kind of rice, but now there is no need of such encouragement as all tenants prefer to cultivate it

Tenant rent is usually paid in kind but money may be substituted in the following cases:

1. Where rice and sugar cane are raised and if the unhulled rice is insufficient for the rent.
2. When a tenant land is situated at a great distance.
3. When a tenant has sold his standing grain.
4. When the crop is insufficient for the use of the tenant's own family.
5. When a demand for such payment is mady by the landowner.

The foregoing provisos apply to paddy fields. Usually the payment of rent for dry fields is made in money.

Formerly, there was no restriction placed on the quality of the rice paid as rent, but recently there has come in the system of placing a restriction of weight on the unhulled rice paid in. In Formosa, too, the inspection of rice has been instituted. Formerly all rice underwent inspection but

at present it is carried out only when rice is transported from one place to another. As the system of inspection is still crude, the quality of the rent-rice is not seriously questioned. So far the standardization of the quality of rice has not yet been established.

An investigation was made into the actual condition of tenancy in Taichu Province and a report thereof has elucidated some important points as regards rent—its kinds, amount, and proportion to the crop. A report of the investigation has divided tenant rents into the following four kinds: share system, kind, money paid as substitute, and money. In the case of paddy fields, rent in kind is more frequent than other forms and is followed by money paid as substitute. In the case of dry fields, money payment is most frequent and is followed by payment in kind. The following figures show the percentages of different kinds of rent and are based upon the number of 12,235 tenant families of paddy fields and 3,354 of dry fields:

Field	Share System	In Kind	Substitute	Money
Paddies	4.6%	87.1%	6.4%	1.9%
Dry Fields	2.8%	12.2%	4.4%	80.6%

The proportions of the share system are the following five kinds: landowner 7 tenant 3, landowner 6 tenant 4, landowner 5 tenant 5, landowner 4 tenant 6, landowner 3 tenant 7. Of these the 5–5 system is most frequent in both paddy and dry fields. This system prevails among more than 70 per cent of the total families under investigation. Then comes the system of landowner 6 and tenant 4 in the case of paddies, and that of landowner 4 and tenant 6 in the case of dry fields.

Rent paid in kind, as has already been shown, is more numerous than all others, within itself those between 20 *koku* and 30 *koku* per one *kō* constiute a greater portion than any other amounts. (Of 10,658 tenant families of paddy fields, 54.2 per cent is paid in kind). Next comes those between 30 *koku* and 40 *koku* (22.8%), followed by those below 19 *koku* (19.1%).

Money payment as substitute is adopted where things other than rice (sugar, for instance,) are cultivated, or when a tenant must reserve the rice crop for the food of his own family; and its amount is obtained by converting the rent in kind into its prevailing market value.

It has been noted already that payment in money is adopted chiefly in the tenant dry fields, its amount being as follows: of the number of 2,703 tenant families those rents the amounts of which are between 40 *yen* and 80 *yen* per *kō* constitute 40.5%; those between 20 and 40 constitute 44.1%. Some were as high as 200 *yen* (2.5%) while others are as low as 19 *yen* (11.1%).

As to the proportion of rent to the crop in the case of paddy fields, those below 50 per cent lead the list, their number taken from the 12,235 investigated families being 44.8%, followed by those below 60 per cent and less their number being 26.2 per cent of the families; those of 70% and above are 12.2 per cent, and those of 40% or below, are only 13.6 per cent. Those of 30% and below constitute only 3%. In fertile lands, the proportion of the rent to the crop is generally greater than that of barren fields.

The above figures were taken from Taichu Province only but similar figures will be found true of the whole island of Formosa. There is some difference between the northern and southern parts of the island as regards the kinds of farm products as well as the proportion of shares. Moreover, there are some differences in these respects within a province itself.

2. TIMES OF RENT PAYMENT

There are some differences in the times of rent payment in different localities. In the case of farms where the two-crop system prevails, the time of rent payment should be considered together with its partial payment. Reports on this question made by various provinces give the following information:

In the case of two-crop paddy fields in Taichu, sixty or seventy per cent is paid during July (solar calendar), and the remainder is paid in November or December. Where the harvest of the second crop is uncertain on account of natural calamities, the whole rent is paid after the harvest of the first crop. In the case of dry fields, rent is mostly paid in advance by November 30 (lunar calendar) of the preceding year. Very seldom is it paid so far in advance as in March of the year. Sometimes it is paid by August 15 (lunar calendar). Again, it is sometimes paid in two instalments in April and September, or in June and December, or on August 15 (lunar calender) and November 30 (lunar calender).

In Shinchiku Province, rent is usually paid in two instalments, 70 per cent of the amount contracted in July and the remainder in December. Where the harvest of the second crop is doubtful, the rent is paid at the time of the harvest of the first crop as in Taichu Province. Where the instalment system is in vogue as stated above, the ratio is sometimes 6–4 or 5–5. The rent of dry fields is usually paid in November of the preceding year. Sometimes it is paid in two instalments, May and September.

In Tainan Province the rent of paddy fields is paid in three instalments, viz., in July, November, and December. The rent of dry fields is usually paid in advance in February or March, but in some localities it is paid in February and in September.

In Takao Province, the rent of paddy fields is rendered in two payments, viz., in May or June and November or December, their proportions usually being 6–4 and 5–5. That of dry fields is paid also in two instalments viz., in February or March and September or October. But sometimes it is paid in a lump sum in one of these months, or after the main crop has been harvested.

As two crops of rice are gathered in Formosa, and as the rent of paddy fields is paid in kind, it is largely paid in two instalments. As the rent of dry fields is paid in money,

it is usually paid at one time in advance, but in some cases it is paid in several instalments. Divisional payment of rent is due largely to the nature of farm products and to the economic ability of the tenant.

3. PLACE OF RENT PAYMENT

In Taihoku Province, the rent of paddy fields to be paid in unhulled rice is transferred from the tenant to the landowner in front of the former's house, after estimating it by dry measure. As soon as unhulled rice is sufficiently dry, the landowner is notified of the fact by the tenant. Sometimes unhulled rice to be paid as rent is sold by the landlord to a merchant who receives it from the tenant. This is of course a matter of expediency only. When the rice is transferred to the landowner from the tenant, the transportation charge is borne by the former, because the rent in principle is to be transferred at the residence of the tenant. When the rent of dry fields is paid in money or when money is substituted for some farm product as rent, it is taken to the landlord's house by the tenant. When the rent of dry fields is paid in kind, it is transferred on the spot.

In Shinchiku Province, unhulled rice as rent is transferred from the tenant to the landowner either at the place where rice is dried or at the rice warehouse. Some landowners direct their tenants to sell the unhulled rice which is to be paid as rent at a certain price and the proceeds are turned in to the landlord. Generally the tenant has to take the rent to the landlord when it is paid in money. When the rent of a dry field is paid in kind it is transferred on the spot, just as in other provinces.

In Taichu Province, unhulled rice as rent is handed over to the landowner by the tenant in the presence of the former or his representative. If the rent is transported to the landowners house or any other specified place, the expense is borne by the landowner, as in Taihoku Province. Many big

landlords sell the rice to be paid as rent to merchants who receive the actual payment at the house of the tenant. When the rent is in money, or other substitutes are utilised, the required amount or quantum is taken by the tenant to the landlord's house as in other provinces. Where the share system is in vogue, the crop is divided between the landowner and the tenant in the presence of the former.

In Tainan Province also inspection is made by the landowner or his representative as soon as the unhulled rice is dried and ready for use. The landowner calls on his tenants and receives the payment of rent. When money is substituted for rice, it is taken by the tenant to the landowner.

Practically the same customs prevail also in Takao Province.

Roughly, the same practices exist in all provinces. Rent in kind is paid at the house of the tenant, while money and other substitutes are taken to the house of the landlord by the tenant. Thus, there are some differences between the tenant system of Formosa and that of Japan proper under which rent in kind also is taken by the tenant to the house of the landowner.

4. REDUCTION AND ALTERATION OF RENT

No reduction of rent is usually made in all provinces in the case of paddy fields. In principle, the rent of a paddy field is fixed; this is especially so in the tenant farms of big landowners. Reduction of rent is usually made when the crop is short of the normal amount by forty or fifty per cent, although in some localities reduction is made even where a twenty or thirty per cent shortage in crop is reported. In some localities, when the crop is below the amount of rent, it is divided between the landowner and tenant, the former receiving sixty or seventy per cent. This obtains in Taichu Province. In some localities, notably in Tainan Province, the tenant is given seed when the crop is below the amount of rent.

Usually no reduction is made in the rent of dry fields.

We shall now consider the alterations of the amount of rent. Exemption or reductions are made in case the farm is destroyed, washed out, or devastated. The amount of rent is increased when the price of rice goes up, or when the ownership of the land changes hands, or when tenants compete with one another in order to rent a farm.

There are some differences in different provinces as regards the customs of changing the amount of rent when the surface of tenant land is transformed or the productivity of tenant land is changed.

In Taihoku Province, when a dry field is turned into a paddy field, the rent of neighbouring paddy fields is adopted as the standard in fixing the new rent. If the work of transforming the surface of the field is performed at the expense of the landowner, the crop is divided fifty-fifty between him and the tenant for three years. On the other hand, if the work is carried out at the expense of the tenant, the landowner gets 40 per cent and the tenant gets 60 per cent, or no change is made in the amount of the rent for about three years.

In Shinchiku Province, when the enterprise is done at the expense of the tenant, no change is made in the amount of rent. Should the enterprise be financed by both parties, the rent is either increased or decreased after a certain period of time. Where it is financed by the landowner alone, the rent is either increased or decreased, beginning the following year.

In Taichu Province when a dry field is transformed into a paddy field by the labour of the tenant, no change will be made in the amount of rent for several years. If the landowner has borne the expenditure, the rent will be raised beginning the following year. When a paddy field is changed into a dry field, its products are divided between the two parties either equally or 60 per cent for the landlord and 40 per cent for the tenant. In case the productivity of a field is increased through the creation of an Artesian well, if the

expense thereof is borne by the landowner, a suitable increase will be made in the amount of rent beginning in the same year; if the expense is borne by the tenant, an increase in the rent is made several years later.

In Tainan Province, if an enterprise is carried out at the expense of the tenant, no change in the amount of rent is made during the period of the contract; in the case of a joint enterprise, the new rent is decided upon jointly; and if the enterprise is carried out at the expense of the landlord, an increase is made in the amount of rent, taking the rent of neighbouring fields as the standard.

In Takao Province, if a dry field is turned into a paddy field through the expense of the landowner, the crop is either divided between the two parties equally or in a 7-3 ratio in favour of the landowner; sometimes a paddy-field rent is paid beginning with the next time of planting. When the charges are borne by the tenant, no change in the amount of rent is effected for two or three years. In case a single-crop field is made a two-crop field through the establishment of irrigation facilities, if the expense is borne by the landowner, a two-crop rent is charged beginning with the next time of planting; in case the expense is borne by the tenant, a proportionate discount is made in the rent for two or three years.

5. DELINQUENCY IN RENT PAYMENT

In case of delinquencies in the payment of rent, one of the following steps is adopted: payment is deferred to the next term or next year; the contract is cancelled after the amount of rent has been deducted from the deposit; the rent is collected from the tenant's surety. When the deferred payment of rent is permitted, it is accompanied by the payment of interest thereon. (This is practised in Shinchiku Province). When a tenant gives a promissory note to the landowner instead of paying the rent, the rate of interest thereof is to be between 10 and 15 per cent. (This is the

practice in Takao Province). Occasionally the legal proceeding of attachment is resorted to in case of a failure to pay the rent.

We have roughly dwelt in this chapter on the forms and terms of tenant contracts in Formosa and the actual practices in connection with them. We shall treat in another chapter other phases of tenancy, such as restrictions on the use of tenant lands, cancellation of contracts and indemnification therefor, and the dealing with tenant contracts upon the transfer of tenant lands, all of which should be discussed in the chapter on tenancy rights.

As has already been noted, the custom of the tenant's paying a deposit to the landlord is extensively adopted in Formosa, and a special section should probably have been devoted in the present chapter toward the discussion of this matter. However, there are other customs which conspire to make the burdens of the tenant heavy and his life a miserable one and which will be treated together with the custom of deposit payment under the next chapter on tenancy rights.

CHAPTER VII
TENANCY RIGHTS

1. GENERAL REMARKS

Generally speaking, it is only under the system of permanent tenancy that an independent right of tenancy exists. Under permanent tenancy, the right of tenancy is recognised as a real right; it exists independently of the will of the landowner and the tenant can either sell, transfer, or lease it to others. On the other hand, ordinary tenancy relations are a sort of personal obligation. The tenant's right is a right against the landowner. It is formed by the mutual relationship of the will of the landowner and of the tenant; it is not a direct right over land as in the case of emphyteusis.

In the tenant system of Formosa also, perpetual tenancy as a real right exists in a special case in which the term of contract is for a number of years, but no such right exists in ordinary tenant relations. We have already seen that tenant right is a sort of personal obligation. When we use the term right of tenancy we mean the claim which the tenant possesses in that sense.

2. ASSURANCE OF TENANCY RIGHT

We shall now consider how assured is the right of tenancy in the above sense. It is comparatively certain when a tenant contract is made in written form or when it is registered with the Government. On the other hand, its certainty is difficult to be ascertained when a contract is made orally. However, the fact remains that not only in Formosa but wherever a primitive form of tenancy exists the relations between a landowner and his tenant are based on friendly sentiments as much as on business interests. It is undeniable that such friendly sentiments still play a large part in the tenant system of Formosa. Where such friendly sentiments exist, oral contracts are not necessarily uncertain. It is assumed that both the landowner and the tenant will observe good faith and require no written contract. Where such a custom prevails, the right of tenancy is quite secure and the relationship of tenancy is maintained for many years. It may be on the other hand, where the landowner and his tenant each considers his own interests, no written contract would be sufficient to maintain heir tenancy relations, and the right of the tenant would be correspondingly insecure.

The Provincial Government of Taichu has made an investigation into the condition of tenancy in that province. All tenant contracts whether written or oral which endured for six years or more were grouped into two classes: the first class comprising those which endured for ten or more years and the second-class comprising those which have endured more than six years and less than ten years. Of

15,406 tenant families investigated, the first class which the provincial government regarded as firmly established was composed of 4,292 families or 27.9% while the second class which the government regarded as less firmly established numbered 3,341 or 21.7%. Thus about one half of the tenant families investigated were more or less firmly established.

3. TRANSFER AND RE-LEASE OF TENANCY RIGHT

Theoretically, it is impossible to transfer tenancy right with any freedom, however securely the tenant may hold it, because it is based upon his personal relationship with the landowner. Accordingly, there is no custom of transferring tenancy right except in Takao Province where it is adopted in case of special farms. The price of tenancy right in that province is estimated at between 300 *yen* and 350 *yen* per *ko* of land.

The practice of re-leasing the tenancy right which is extensively carried on in Japan proper is also found in each province of Formosa. Those who re-lease tenancy right have business as their object. The practice has several names. In Taihoku Province, there are persons who undertake the work of collecting rent in accordance with a contract made between the landowner and tenant.

4. USE OF TENANT LANDS

In ordinary tenancy relations, the tenant is not usually allowed to make use of the land in ways other than specified in the contract. Nor is he permitted to transform the land. In Taihoku Province, a tenant must secure the consent of the landowner when he makes any change on the rented farm. The cultivation of products, such as sugar cane, which are likely to reduce the productivity of the soil is either prohibited or limited. In some cases the planting of trees is either prohibited or limited. When such undertakings are

allowed, the consent of the landowner is required. Similar practices are also adopted in Shinchiku Province. The consent of the landowner is required for the putting up or removal of property attached to the land. The planting of trees on the ordinary farm is strictly prohibited. The cultivation of sugar cane in paddy fields in the year in which a contract expires is also prohibited. Similar customs prevail also in Taichu and Takao Provinces.

5. CANCELLATION OF CONTRACTS

We shall now consider the cancellation of contracts. All written contracts contain the period during which they are to be enforced. In oral contracts also such periods may be provided. Theoretically all contracts come to an end as soon their periods are expired, and there ought to be no issue about it. However, many oral contracts do not mention any period at all. We must therefore see how such contracts are cancelled.

In Taihoku Province, one of the parties should make known his desire to cancel the contract by August 15 (lunar calendar) of the year before the desired determination of the contract, and then the landowner returns the deposit to the tenant and finally the transfer of the land takes place. In Shinchiku Province, notification is to be made at the same date, but in some localities it is to be made as early as June 22 (lunar calendar). In Taichu Province, notification is usually made by August 15 (lunar calendar) of the previous year, but seldom is it made three months before the harvest time. The same rule prevails in both provinces as regards the return of the deposit. In Tainan and Takao Provinces, notification is made one to three months before the time of the actual transfer of the land.

The government reports on the tenant customs of Formosa mention the above custom of cancellation as "mid-way cancellation," but the term is hardly justified. A "mid-way cancellation" must mean cancellation before the expiration

of the term of a contract; it therefore cannot be used in reference to a contract which provides no term. The contracts we have been dealing with are those that can be cancelled at any time from a theoretical standpoint, but in actual practice some rules are observed because of the consideration for mutual convenience in the management of farms. The cancellation of contracts we have seen above are the regular cancellation of contracts without definite term, and ordinarily such cancellation is not accompanied by any question of indemnification.

6. INDEMNIFICATION FOR MID-WAY CANCELLATION.

When a contract with a definite period of enforcement is cancelled before its expiration, one of the parties may suffer a material loss, thereby giving rise to a question of indemnification. Various practices prevail in different provinces. In Taihoku Province, when cancellation is made by the landowner, there is no indemnification in the case of the cultivation of ordinary annual farm products. Indemnification is made by the landowner in case many-year plants are involved, the amount being estimated at his own discretion. But when the tenant cancels his contract, the amount of loss incurred thereby is deducted by the landowner from the deposit. There have been very few cases of "mid-way cancellation" of tenant contracts in Shinchiku Province. But in that province, if a contract is cancelled by a landowner, no indemnity is paid by him even in the case of a standing grain. Very rarely are deposits returned to tenants, a sum is given for moving expenses and indemnification is made at the rate of between three *yen* and five *yen* for each ten *koku* of grain.

There have been very few cases of "mid-way cancellation" in Taichu Province. In case a contract is cancelled by a tenant, the deposit is usually forfeited, thereby falling into the hands of the landowner. In case cancellation is proposed by the landowner, he may be called upon to indemnify the

tenant for the expenses incurred by him in improving the land and purchasing seeds and fertilizers, provided the cancellation actually takes place after August 15 which was fixed by the old tenant customs to be the period of renewing tenant contracts. A special investigation carried out by the authorities of Taichu Province indicates that a landowner is bound to make good the loss sustained by his tenant in the following few cases: when the contract is cancelled in spite of standing grain because of some unavoidable circumstances, or when the tenant has contributed funds or labor towards the irrigation of the tenant land. The same investigation shows that of 1,620 landowners who have cancelled their contracts, only 104 or 6.7% paid indemnities.

In Tainan Province, also, very few cases are found. When the cancellation of a contract is proposed by the landowner, reduction or exemption of rent is made and standing grain is also compensated for by estimation. No compensation is made when a contract is cancelled owing to some wrong on the part of the tenant. In case the tenant cancels a contract, the rent already paid is not returned to him; nor is compensation made for the standing grain, although some landowners give small sums to their tenants by way of compensation. Takao Province also has very few cases. When the cancellation of a contract is made by the landowner the crop of standing grain is estimated and after deducting the amount of the rent from the estimated amount, the remainder is given to the tenant. There are some cases in which a landowner compensates the tenant for the expenses incurred by him for labor, fertilizers, seeds, etc. When a contract is cancelled by the tenant, if he is economically capable, he is made to compensate the landlord for loss sustained by him or pay one half of the rent. Otherwise, the landowner will take possession of the standing grain.

Thus, it will be seen that in very few cases are the losses sustained by the cancellation of mid-way contracts indemnified in all provinces. The majority of the cases reported must be those in which compensation was made

on the part of landowners, because ordinarily tenants do not need to pay formal compensations, as the losses incurred by landowners can be made up by deducting the corresponding amont from the deposits which are paid by tenants upon the conclusion of contracts. Sometimes such deposits are confiscated in their entirety. Thus, whereas landowners have comparatively few occassions for indemnification, tenants, in actual practice, are made to pay for the losses sustained by the former.

This one-sided obligation to compensate for losses incurred through the cancellation of contracts is due to the weak position which tenants in Formosa occupy. In fact the practice itself has been responsible for the aggravation of their weak position. Their economic misery is due to the custom of making a tenant deposit sums of money with landowners upon the conclusion of contracts. I shall later refer to this practice which is one of the greatest evils of the tenant system in Formosa. Although the position of tenants in Japan proper is also weak, fortunately they occupy a more advantageous position over tenants in Formosa, because they do not have to observe such a deplorable tenant practice. Tenants in Japan proper may not be regarded as being much better off, but tenants in Formosa are in much worse condition.

7. TRANSFER OF TENANT LANDS AND TENANT RELATINOS

The effects of the transfer of tenant lands upon the status of the lands are obvious, when one takes into consideration the essential nature of tenancy right. As emphyteusis is a real right, it is not affected by the transfer of a land from one owner to another; it enjoys an independent existence against ownership and may be asserted against a third party. Thus, the new owner of the land must observe the old tenant relations and maintain them. Emphyteusis is attached to the land and cannot be divorced from it to whomsoever the latter may be transferred.

On the other hand, ordinary tenant relations are personal relations. In consequence, if the land is sold to a third person, the landowner no longer can maintain his claim. On the other hand, the new owner must be at liberty to decide whether or not the former tenant relations should be inherited by him and be made the basis of new tenant relations. The tenant, also, should be free to decide whether or not he should conclude the same tenant contract with the new landowner. At any rate, the tenant relations between the former landlord and the tenant terminate upon the sale of the land. When the tenant enters into relations with the new landowner, the old tenant relations are not continued: new tenant relations are created. Both the new landowner and the tenant are free to decide whether or not they should conclude new tenant relations.

There is no fixed rule to decide whether or not the old tenant relations should be continued or whether or not new relations should be created. The whole question depends upon the nature of the personal relations between the tenant and the new landowner. When the old relations are continued, only one of the two parties is changed. However, the question remains as to whether or not the old terms of tenancy should be continued. When the old tenant relations are entirely abandoned and the relations of the old tenant and the land have disappeared, the period of the termination of tenant relations and of the transfer of the land becomes an issue. The following are the practices in different provinces concerning this matter.

In Taihoku Province, registered contracts can be maintained until the expiration of their perids, because they may be asserted against a third person. In ordinary contracts, the old landowner notifies his tenant of the sale of the land and cancels the contract. In some cases, the old tenant concludes a new contract with the new landowner, but in many cases he ends his relations with the land, and a new tenant concludes a contract with the new landowner. In such cases the terms of contracts are usually modified. In

different localities, the following practices are adopted: when the transfer of a tract of land takes place after August 15 (lunar calender), the old contract is maintained for another year; the contract is fulfilled during its term despite the transfer of the land; the contract is continued when it is in written form; before the transfer of the land takes place, the old landload asks the wishes of his tenant and if the latter prefers to continue his tenant relations, he is allowed to maintain the old relations until the expiration of the period of the contract; the old tenant is allowed to cultivate the land under the old terms for one year as a manifestation of friendly sentiments. Thus practices are varied.

In Shinchiku Province, the old landowner notifies the tenant of the sale of the land, and the latter proposes the conclusion of a new contract with the new landowner. In such a case, the usual custom is to let the tenant cultivate the land after negotiating on the terms of a new contract, so long as the new owner does not cultivate the land himself, whether or not the old contract is written or oral.

In Taichu Province, the usual custom is that the old tenant concludes a new contract with the new landowner. In some localities, the following practices prevail: at the time of the transfer of the land, the old landowner introduces his tenant to the new landowner for the purpose of inducing the new landowner to let the tenant continue to cultivate the land; so long as the new landowner does not cultivate the land himself, he and the tenant conclude a contract the same as the old one; if the transfer of the land takes place after August 15, the terms of the old contract are maintained until the same date in the following year.

In Tainan Province, the old contract is maintained until the time of harvest or until the end of the same year.

In Takao Province, when a contract is for one crop or one year, the old contract is maintained during the whole period. In the case of a long term contract, it is continued either until the harvest time or until the end of the year.

In the case of dry fields, contracts are maintained until the end of the year.

In short, various customs prevail in different provinces, because, as has been already noted, ordinary tenant relations are based upon the personal relations and are determined by the nature of personal circumstances between the landowner and tenant. The time of the cancellation of contracts is determined from the standpoint of actual convenience.

So far we have seen various matters relating to tenancy right in ordinary tenant relations. The tenant practices pointed out above are enough to indicate the weak nature of tenancy right. This is practically the same as in the tenant relations of Japan proper. As has been stated, the position of tenants in Formosa is much weaker than that of tenants in Japan proper.

Both in Formosa and Japan it is necessary to establish a special tenant law which shall be independent of the section of the Civil Code, if the right of tenants is to be made securer and richer in content. I do not find any need for establishing separate laws for Formosa and Japan proper. A single law would be enough for both. The peculiarities of the tenant practices of Formosa do not justify the establishment of a separate tenant law for the island. There is no impediment to the application of a universal law in the circumstances and characteristics of the tenant system in Formosa. Of course much will depend upon the nature of the tenant law, but so long as it is intended to strengthen the content of tenancy right, there is no reason for the enactment of a separate law for the island.

We shall now see how various public burdens and expenses on tenant lands are shouldered.

In Taihoku Province the landowner has to pay the following burdens: the land tax, the land sur-tax, the fees of the agricultural association, the fees of the land adjustment union, the special irrigation rate, etc. In case there is no special water tax, ordinary irrigation rate is partly borne by him. The expenses for the repairing of the

land, fields, and ditches damaged by natural calamities. Small expenses are usually shouldered by tenants, while big ones, by landowners. Tenants either bear part of big expenses or contribute labor.

In Shinchiku Province, landowners shoulder the same taxes and other public expenses, while tenants bear ordinary water rate and seldom special irrigation rate.

In Taichu Province, landowners bear all the public burdens of the land excepting the ordinary irrigation rate; while tenants shoulder the ordinary irrigation charges and some small expenses for repairing ditches.

The same is true in Tainan Province. Landowners shoulder all the public burdens of the land. In some localities landowners also bear the irrigation costs. Where a share system prevails, the burden of irrigation is also equally divided between a landowner and his tenant. As for the expense of repairing land and ditches damaged by natural calamities, it is either borne by landowners entirely or a large proportion is paid by the landowner and the remainder, by the tenant. It is divided half and half between the landlord and his tenant where a share system prevails.

Much the same system obtains also in Takao Province. The expense of repairing damages caused by natural calamities are borne jointly by the landowner and his tenant, their respective amounts being fixed through negotiation.

The foregoing account indicates that the shouldering of the public burdens of tenant land is rightly apportioned. It is a universal principle that the burden on the land should be borne by the landowner. The question of who shall bear the expense for irrigation depends on whether it should be regarded as an expense relating to the land or to the management of the farming enterprise. In many localities, it is regarded as a charge on the farm management and accordingly is imposed upon tenants. Sometimes it is borne either partly or entirely by landlords, because tenants are not in a financial position to pay it. The special irrigation cost such as one for the opening of a ditch is borne by the landlord

because such an expense is held to be part of the expenses of the land. When dry land is turned into paddy through the opening of a ditch, the expense thereof is justly shouldered by the landowner, not by the tenant.

CHAPTER VIII

DEFECTS OF THE FORMOSAN TENANT SYSTEM

We have seen the history and the present condition of the tenant system in Formosa. What has been pointed out in the several foregoing chapters is enough to indicate in what an undeveloped state the system still is and what are its defects. We cannot point out all of the latter, because there are so many of them. We shall only point out the principal ones. This will be imperative in tracing the causes of the existing tenant problems on the one hand and for improving the system on the other.

1. DEFECTS IN THE FORMS OF CONTRACTS

As we have already noted, the great majority of tenant contracts in Formosa are made orally even today. This custom has merits at a time when simplicity and honesty prevail among the farming community in which contracts were observed with fidelity and sincerity. But after the psychology of farmers has undergone a serious transformation, tenant relations have become business relations pure and simple, and tenant contracts are formed solely from the standpoint of economic interests, the lack of written contracts result in the rise of serious disputes between landowners and tenants. This is especially so on the part of tenants whose weak position as a party to contracts render them unable to assert their own rights. They would be compelled either to suffer losses meekly or become a party to tenant disputes.

Oral contracts as such do not constitute a defect in a

tenant system, but they do constitute such a defect where tenant relations have become economic relations only as in the case of Japan proper and also in Formosa. In Formosa also, old oral contracts are being turned into written contracts. Many oral contracts so far unmodified are likely to give rise to disputes of various kinds because of the vagueness of the terms of such contracts.

2. DEFECTS IN PERIODS OF TENANT CONTRACTS.

Usually no period of tenancy is definitely specified in an undeveloped tenant system under which contracts are made orally. Contracts under such a system are continued so long as the parties are willing to do so. They can terminate their tenant relations any time they please, provided they observe certain rules as regards the time of the transfer of lands and the notification of the cancellation of contracts. But so long as they have no desire of cancelling the contract, it continues in force for an indefinite period of time. Oral contracts usually are found to be highly convenient where friendly sentiments prevail in the relations between a landowner and his tenant.

However, after tenancy has become a business relationship, such a system often gives rise to disputes. Formerly, oral contracts continued in force more than ten years even in the ordinary tenant relations; in some cases they were handed down from generation to generation; but gradually this has been disappearing. It has become necessary to fix the periods of tenant contracts clearly when the contracts are made. This necessity is closely related to the general trend toward replacing oral contracts with written ones.

It is desirable, therefore, that even in the case of contracts in which no periods are mentioned, to specify the time of the cancellation of the contracts and the periods before which notice regarding a desire of cancellation should be served. It is possible as well as convenient at times to have

no period mentioned even in a written contract; but such a contract should at least clarify the terms of cancellation.

Despite changes in general, tenant contracts are still highly vague in their contents. Therein lies one of the greatest defects of the tenancy system of Formosa.

3. DEFECTS IN TENANT RENT

It is customary in nearly all undeveloped tenancy systems to make certain reductions in the amount of rent, even where the amount is fixed, in case the crop is bad. Such a practice is adopted in the tenant system of Japan proper. This is based upon the necessity of assuring the means of livelihood to the tenant whose status in the system is almost at the mercy of the landlord, who pays no attention to a theory of rent. The tenant is given barely enough to keep body and soul together, and he would not be able to live in seasons of bad harvests unless a reduction be made in the amount of rent.

In Formosa, however, no such practice prevails. In case a fixed amount of rent is paid, neither exemption nor reduction is recognised. Such a rent is known as "iron rent" or as "death rent." It is fixed and unchangeable. This places tenants in Formosa in a position which is much more difficult than that of tenants in Japan proper. Where tenancy has assumed a nature of a capitalistic undertaking as can be seen in England, rent is paid in a fixed amount and no reduction is made therein. However, in such a country, the position of the tenant is as strong as that of the landowner the amount of rent is determined according to the Ricardian theory of rent; and the tenant assumes all the risks involved in the nature of the annual crop. But such a system is a highly developed form and therefore cannot be placed on the same level with the tenant system in Formosa, where the tenant assumes all the risks although he is in a deplorable condition both socially and economically.

Moreover, since many contracts in Formosa are made

orally, it often happens that the rate of rent is raised by the landowner without the consent of the tenant. When the price of rice goes up or when there is a tenant who is willing to pay a higher rent, the landowner attempts to raise the rate of rent; and if the tenant refuses to agree to the new rate, the former will threaten to cancel the contract altogether. The rate of rent rises every time the tenant changes, and in fact tenants are changed only for the purpose of raising the rate of rent.

This phenomenon rises from the fact that the rights of tenants in Formosa are insecure and there is no means of protecting them. Although this is also more or less true in the conditions in Japan proper, it must be regarded as one of the serious defects of tenancy in Formosa. So long as the present conditions prevail in the tenant system of the island, it is impossible for the tenant to engage in his occupation with easiness of mind, or to carry out any economic plan; the great part of his revenue from the land is turned in to the landlord as rent and his economic condition will never be improved.

4. DEFECTS IN CANCELLATION AND INDEMNIFICATION

There is an institutional defect in the custom of cancelling contracts. Because contracts are largely made orally, their cancellation is often made easily and simply at the arbitrary will of the landowner. An extreme case may be found in the practice of cancelling a contract at the failure of a tenant to pay the rent even once. A contract is often cancelled for the sole purpose of raising the rate of rent. Contracts are not infrequently cancelled at the time of the transfer of the land from one owner to another. Like the previous case, this phenomenon is traceable to the fact that the rights of tenants are not securely established, and its economic consequences are just as disastrous. This is a great institutional defect.

As has already been pointed out, landowners very infrequently indemnify tenants for the losses sustained by them upon the cancellation of contracts, because there is no adequate institutional arrangement regarding the landlord's duty to make good the loss sustained by the tenant who has made improvements upon the tenant lands while the contract was in force. It is just and right that the landowner should compensate the tenant for the investment he has made in improving the land, thereby increasing its productivity, or in establishing various facilities making the cultivation of the land highly convenient. If compensation for these is not made, the landowner's revenue from the increment of land value resulting from the improvement of the land and establishment of facilities, must be regarded as an unjustifiable income.

When a piece of land with standing grain is given up by a tenant, the landowner should compensate him for the grain. Otherwise, that landlord would be getting an unjustifiable income therefrom.

There is no established custom regarding such compensation. Nor is there any legal provision for it. On the other hand, tenants are forced to make compensations for any losses sustained by the landowner because of the existence of the system of making deposits with landowners when contracts are made. All losses suffered by the landowner are deducted from these deposits. This one-sided institution places tenants in a very disadvantageous position. This system is not found in Japan proper and should be regarded as the greatest defect in the tenant system of Formosa. Once a deposit is paid, the landowner would resort to all means to retain it, and if he have encountered no loss, the money is often confiscated by him on one pretext or another. In reality, the deposit is a sur-rent paid in advance and by that much is the rate of rent increased. This makes the life of tenants unbearable indeed. However, the practice is limited to the northern part of the island only.

5. NATURE AND PRACTICE OF RENT DEPOSIT

The commission's first report on the old tenancy practices explains the system of deposit or "the *seki-chi* money" as follows:

"The word '*seki*' means sand and gravel. *Seki-chi*, therefore means waste land. All farm lands in Formosa used to be waste lands which were turned into arable lands by their occupants.

"For this reason the *seki-chi* money should be compensated for when the land is transferred from one tenant to another. However, it is a sort of deposit such as made in Japan proper when a person rents a house. The landowner is entitled to make use of the money without paying any interest thereon. If the tenant fails to pay his rent, the corresponding amount is taken out of the deposit. When damages are found to have been inflicted on the appurtenances of the land when it is returned to the landowner by the tenant, compensation for the injury is also deducted from the deposit. It should be returned to the tenant in full upon the completion of the tenant period with satisfaction to the landowner. The system of the *seki-chi* money may be traced to the fact that in the beginning most tenants were wanderers or vagabonds and for this reason landowners, in the absence of a sufficient legal protection, wished to protect their interest by an economic method.

"The amount of *seki-chi* money is decided upon by an agreement between the landowner and tenant and is based upon the amount of rent. It is specified in the contract. Its amount, therefore, depends upon the class of land, the existence of farm accessories, and the price of cereals. It tends to rise with the general economic development..... When rent is paid in advance it is called '*gensho*' or cash payment and no deposit is required. Although the amount of the deposit is based upon that of the rent, the former also

affects the latter. The interest on the deposit is taken into consideration in fixing the amount of rent. If the amount of a deposit is large, an amount equal to the interest thereon is usually deducted from the amount of rent when the latter is decided upon. Thus, when one says that no interest is paid on the deposit, he means that the amount of deposit when paid back upon the cancellation of a contract is the same as when it was originally paid by the tenant. The interest on the deposit is actually paid through the rent.

"The deposit is paid in several different instalments. One tenth of the amount is first paid in August (lunar calendar) when a farm contract is made. The second payment of four-tenths of the original amount is made at the time of the harvest in the following year. In October of the same year when rent is paid, another four-tenths is turned in. The remainder is paid at the end of the same year.

"The transfer of the deposit is dependent upon the morality of the landowner so that where a landowner is not a man of strict probity, his tenant will suffer great loss. The right of a tenant is that of renting a farm only. When, therefore, land is sold, or pawned or mortgaged, its tenant has no right to assert his right of tenancy against the new possessor of the land; he must divorce himself from the land. Then the question arises from whom the tenant should receive the deposit he paid to the original owner of the land. If the new owner refuses to pay it and the former owner is unable to pay it, the tenant would be in an unfortunate position of having his right trampled upon without a just compensation. There is a custom regarding this in Formosa. When land is transferred to a buyer or pawnee, the amount of the deposit thereon is specified by the original owner who then receives an amount minus the deposit for his land, and thus the new owner becomes responsible for the payment of the deposit to the tenant. When land is actually transferred, the purchaser or pawnee should pay the deposit out of their own coffers. Thus the payment of a deposit has very much to do with the probity and credit of the persons concerned. The oc-

currence of disputes over the matter is not infrequent in Formosa. It seems that one of the following rules is necessary: the owner of a piece of land at a given moment should be held responsible for the payment of a deposit, or negotiations of the old owner, the buyer or pawnee with the tenant should be required when a tract of land on which a deposit has been made is transferred."

The foregoing legal aspect of the deposit is enough to show the fact that the system is beneficial to the landowner and detrimental to the tenant. Although the system might have a historical reason for its existence, namely, protection against irresponsible tenants who were new arrivals in the island, the fact remains that it is a great source of distress to honest tenants at present. The system should be justly regarded as the greatest defect in the tenant system of Formosa. As has already been pointed out, a deposit is often confiscated by a landowner on one pretext or another, or is forfeited altogether upon the transfer of the land. This means that the payment of a deposit increases the amount of a rent by that much. A tenant pays an extra rent when he pays a deposit to the landowner. It places a heavy financial burden upon a poor tenant.

A detailed account of the practice of this custom follows.

In Taihoku Province a deposit known as "*teito* money" or fixed sum money is paid by a tenant to his landowner upon the formation of a contract. Its amount is usually two *yen* it may be as big as twenty *yen*. In some cases it is fixed but at one-eleventh of the "*seki-chi* money" or the regular deposit.

The "*seki-chi* money" is a security money on rent. It is not required of a tenant in whom the landowner has much confidence. However, it is usually required in all contracts on paddy fields. Its amount is usually two *yen* per one *koku* of unhulled rice, but in localities where bad or insufficient transportation prevails, it is as low as one *yen*, one *yen* and fifty *sen*. No deposit is required in the case of dry fields

the rent of which is paid in advance. However, where rent is paid after harvest, a deposit between forty *yen* and sixty *yen* is paid.

The deposit is paid in instalments. The first instalment of the "*teito* money" is paid at the time the contract is made, and the remainder is paid either at the time of the transfer of the land in December, or in further instalments, viz., one half of the amount is paid after the second harvest and the remainder, at the time of the transfer of the land. This method is pointed out in the commission's report which has already been cited.

Usually the deposit is kept by a landowner free of interest, though rarely it is charged either on the whole or on half the amount. A deposit is returned by a landowner in the following manner: an amount equal to the "*teito* money" is handed over to the tenant at the time of the notification of cancellation of a contract viz., in August (lunar calendar); one-third or one-half of the remainder is paid after the second harvest, and the last remainder is paid when the rent has been paid in full. Where a farm house is attached to the land, a part of the deposit is sometimes held back until it has been found that the tenant has left all the belongings of the house intact, after he has vacated the house.

Very frequently a deposit is paid by the new tenant to the former tenant when a shifting of tenants takes place.

The custom of deposit is universally adopted in Shinchiku Province, its nature being substantially the same as in Taihoku Province, although different appellations are adopted as regards different forms of payment.

The same custom prevails in the northern part of Taichu and in and around the city of Taichu. Different names are given to the same custom in different localities. In other parts of the province, the custom is adopted when the competition of tenants is keen or when a landlord does not place much confidence in his tenants. The first payment which is known by the name of "*tei kin*" or fixed money is to guarantee against the violation of a contract, while the other

payments of the deposit are made against the failure to pay the rent.

The amount of the first payment is between two *yen* and five *yen*, while the deposit is about one *yen* per *koku*; sometimes it is fixed at between one hundred *yen* and two hundred *yen* per *ko* of area.

The manner of paying the deposit is the same as in other provinces. In many cases the deposit is returned in exchange for the payment of the last rent.

In Tainan Province, there is no system of deposit adopted universally. It is utilised in a few extraordinary cases such as when the area of tenant farm is exeptionally large, or when there is a guardian for a landlord who is a minor, or when cash is urgently needed by the landowner. In such cases, the rent is cheaper by ten or twenty per cent than the ordinary amount.

The amount of deposit is determined according to several standards such as the amount of unhulled rice, the annual amount of rent, and the area of the land. The method of paying the deposit is the same as in other provinces. In some cases the first instalment of the deposit only is paid.

Takao Province also lacks a universal system of deposit. it is adopted in one of the following cases: when the area of land is especially extensive, when the tenant's credit stands low with the landowner, when competition among tenants is keen, when a landowner desires to be prepared against the possible demand of his tenant for exemption or reduction in rent.

A deposit is paid at the time of concluding a contract. When a contract is registered the deposit is paid after the registration, and is returned to the tenant after the cancellation of the registration.

Its amount is usually fixed according to the area of land, but occasionally depending on a person's credit.

No interest is charged on some deposits, while in others an interest of between eight per cent and ten per cent is charged and the corresponding amount is deducted from the rent.

As has been pointed out already, the custom of deposit universally exists in the northern districts and rarely in the southern districts. Various reasons may be ascribed for this fact. The southern districts have undergone an earlier development, tenants are well settled, and tenant contracts there are comparatively secure so that no security money is required. Thus the need of a deposit has died a natural death. Moreover, sugar plantations in up-to-date style are extensively found in the southern districts and this has exercised a wide influence over tenancy relations in general. The environment of the sugar plantations discouraged the existence of the system of deposit-making.

At any rate, the system of deposit-making is a great financial burden upon the tenant even if he is not forced to forfeit it.

I have so far made a general survey on the actual working of the tenant system in Formosa. I might observe the tenancy disputes, the public and private institutions calculated to meet such disputes, as well as the general agricultural movements. I shall treat these problems in a separate article in the near future.

SHIRO KAWADA