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MERCHANT "HOUSE" (IYE) AND ITS SUCCESSION IN KYOTO DURING THE TOKUGAWA ERA†

EINOSUKE YAMANAKA*

Preface

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Preface

We have valuable studies on socio-economic history and legal history aspects of the Japanese farmer or peasant “House” (Iye) and its succession in the Tokugawa Era (1600-1868)¹⁾. We have, however, few studies on the merchant “House” and its succe-

† This is a summary of my Japanese article published under the same title. The original article constitutes a part of the collected papers, Osaka University Law Review (Handai Hogaku), No. 44. 45. dedicated to the memory of Prof. Toshio Muto.

* Lecturer of Legal History, Osaka University.

1) See Kaisaku Kumagai, “On Theories of Succession of Peasants in the Tokugawa-Shogunate”. Osaka University Law Review. No. 29. pp. 79-103. Hideo Ôtake, “Order of Succession Among The Peasant Class in the Edo Period”. Kobe Law Journal (Kobe Hôgaku Zatsushi). No. 1, 2. pp. 114-147. Nobuyoshi Toshitani, “The Establishment of the family Property in the Tokugawa Era”. Legal History Review (Hoseishi Kenkyu). Vol. XII. pp. 302-304.

ession in this era²⁾. Among these studies, we do not have any study of the legal history aspects.³⁾ That is the reason why the place which merchant family takes in the family legal system of this era, is not clear enough. Therefore, it is necessary for us to decide the point of view with which we will inquire into this problem.

I suppose, regulations against merchant family, under the feudal system, is a control of "House" on the circulation process separated from production, and shows different type of regulations from that of farmer or peasant family, as a unit of production. But we can not say, regulations against farmer or peasant family have no relation to merchant's. They have important relations to each other. The reason is as follows: the city in which merchants live, is forced to have a role in keeping reproduction structure of villages, on one hand. On the other, in the city where the Government office is and the rulers live, merchant desireings to gain profits were obliged to be in opposition to the rulers' controls. This opposition has a particular style because of relation to the former. The studies on regulations against merchant family, from these points of view, are important problems when we study concerning family law and system in either the Tokugawa Era or the Meiji Period. The purpose of this paper is to study merchant "House" and its succession in Kyoto, out of these problems, to clarify how the Government caught the property of "the House", how the Government embedded regulations in merchant life and their prospect toward the Meiji Period.

Chapter I Development of the law of merchant succession in Kyoto —“the House” (Iye) and its family property—

In this chapter, we are to observe the law of merchant succession in Kyoto, with special reference to the socio-economic back-ground. This observation is divided into two parts.

2) Of course, there is reason why we have few studies on the merchant "House" and its succession in the Tokugawa Era. The study on farmers' or peasants' should be carried on first, because farmers and peasants constituted most of the common people in the era and paid a greater part of the taxes which supported the Tokugawa Government. However, we can find the important direction similar to that of the law of farmer or peasant succession in the law of merchant succession in Kyoto. That is one of the reasons this paper has inquired concerning the law of merchant succession.

3) So, this paper could not rely on late studies enough. It only states my hypothesis on the problem.

I The first period (1600-1715)

— Enactment of the institution of reporting the will —

The Tokugawa Government (Tokugawa Bakufu) depended on the taxes paid by farmers and peasants, whom it governed, for its financial support. In this period, commerce and industry were developed, accompanied, however, with an increment of agricultural producing capacity. The Government, therefore, had to take a policy to suit commercial and industrial developments on one hand⁴⁾ and on the other, to regulate those who violate the Tokugawa feudal system. Taking this policy, it attempted to grasp the wealth produced by commerce and industry. This is the reason why the Government ruled the important cities, Edo, Osaka, Kyoto, Fushimi, Sakai, Nagasaki, Nara, etc. In these cities, townsmen, especially merchants, were ruled by officers of the Government (Shoshidai, Jyōdai, Bugyō). Among these cities, Kyoto as a center of Kinki Province before the Genroku Year Period (1688-1703), had been more prosperous both commercially and industrially than Osaka. Moreover, Kyoto was the most important city because the Government could watch the Imperial court (Chōtei), the Kinki territory of the Government and 33 feudal lords (Daimyo) in the Western areas. It is natural that merchants of Kyoto should be strictly watched and ruled by the Government. The Government intended to catch and place restraints on merchants so as to rule them, keep order in the city in which they live and collect various kinds of taxes from them. A standard for the taxes was "Nokiyaku". It was decided by the amount of frontage. Therefore, first of all, it was necessary for the Government to catch and place restraints on merchant's buildings and lands. However, merchant's property was more exchangeable than farmer's or peasant's. Thus the rulers (the Government and its officers) strictly limited a merchant in selling his building and land⁵⁾, and tried to catch and place restraints on it easily. For this purpose, a successor had to be chosen who had the best ability for keeping alive and consolidating an inheritance, (chiefly building and land) in order to prevent it from dissipation and transference. But how to know who will make the best successor was the problem. Then, it was supposed that an eldest son is suitable for a successor. According to such supposition, they enacted the law of succession which ordered only an eldest son to

4) See Kunizo Akiyama, "The History of the Town Association in Kyoto" (Kōdō Enkaku-shi), Vol. I. pp. 245-250.

5) Ibid., p. 353. p. 355.

receive the inheritance. This law declared that an inheritance must not be shared with others going to one person only, the eldest son⁶⁾. This naturally consists with the principle which sustains the order of feudal system. Here, we can find the property is prohibited from being shared. We name it the family property, "Kasan" in Japanese. The law attempted to set the bounds of family property at the fundamental property of merchant i.e. building and land, in order to keep alive and consolidate it. Through the law, the rulers tried to regulate against merchants of Kyoto. Therefore, we can say such law of succession aimed to let one child of ability succeed to the family property, rather than to make an eldest son succeed it. This is expressed in that the rulers did not always force merchants to select the eldest son as a successor, even though the father chose as a successor one of his children, other than his eldest son. If a successor is most capable of maintaining the family property, the rulers were willing to accept him as a successor. This was because, such a successor could keep alive and consolidate the family property as they expected and there was none like the father to chose such a successor of ability from his children.⁷⁾

Thus, the law of succession in this period enacted the principle by which an eldest son must succeed to the whole family property. Also, it enacted the succession of the whole family property by the father's will. But this was not the succession based on father's will. I think, it was to be contained by the former principle. For, in the case of such succession, the merchant was forced to obey the principle by which only one son must receive the whole family property when he makes his will and report it to the town official before his death.⁸⁾

And here, we can see the preliminary law of succession which is established next. In the 11th year of Meireki Year Period (1655), the law established by Makino Sadonokami, the supreme government officer in Kyoto (Kyoto Shoshidai), enacted the institution which ordered the reporting of the will to the town official.⁹⁾ This institution ordered all merchants of Kyoto to make their wills with approval of the town official, one of the five family group (Goningumi) and report them. Through this institution,

6) Legal History Association, Ryosuke Ishi (Riviser), "The Collected Laws in the Tokugawa Era" (Tokugawa Kinreiko), Vol. VI. No. 6. p. 16.

7) Ibid., p. 16.

8) We find this so in that the supreme officer in Kyoto had ordered the townsmen of Koromodana-chō to show their wills before death, in the 6th year of Kanei Year Period (1629). See Kunizo Akiyama, "The History of the Town Association in Kyoto", Vol. I. p. 302.

9) Ryosuke Ishi, "The Law Summaries in the Edo Period" (Kinsei Hōseishiryō Sōsho), Vol. II. pp. 136-137.

the rulers tried to keep the principle of succession of which I have already mentioned. Thus, I suppose, this principle was gradually embedded into merchants of Kyoto.¹⁰⁾

By the way, it was issued by the Government policy to keep alive and consolidate the merchant's family property, chiefly building and land, as I had mentioned. Therefore, according to this principle, it was natural that a successor who has no capacity for keeping his family property, should be turned out, even if he is an eldest son, who is a successor presumptive. This was done in case a successor became a house-holder. An incapable house-holder was turned out of his position by his family members.¹¹⁾ They put a capable one in their house-holder position. We can suppose the one thing which ruled the house-holder and limited his family property possession lies in this point. This thing is nothing but "the House" (Iye). It shows that the true possessor that possesses the family property is not the house-holder as a person, but "the House". The house-holder possesses his family property as long as he is a representative of "the House". Here, the succession is a mere change of the representative of "the House". Thinking as this, the institution ordering the reporting of the will to the town official, shows the ruler's attempt at seizing the merchant's family property through "the House," which the house-holder represents.

I have surveyed the law of succession developed in the first period. Hereafter, we shall observe that of the second period.

II The second period (1716-1867)

— Improvement of the institution of reporting the will —

In the Kyoho Year Period (1716-1735), poverty of the ruling class was increasing more than before. One reason for its poverty lay in the ruling class's debts owed to the merchants. In order to help the ruling classes, the Government prohibited merchants from suing them for their debts. It goes without saying that this prohibition did damage to merchants. This shows the ruler's merchant policies had greatly changed since the Kyoho Year Period. From this period merchants were in bad circumstances until the end of the Tokugawa Era (1867). Such circumstances were apt to cause dissipation and transference of the merchants' family properties. Under these conditions, the Government was compelled to dissolve the strict limit to buying or selling of mer-

10) See one sentence on the merchants of Kyoto in Saikaku Ihara, "Nihon Eitaigura" (the 5th year of Jyokyo Year Period (1688)).

11) "The Collected Laws in the Tokugawa Era", Vol. I. No. 6. p. 16.

chants' buildings and lands. It resulted in increasing dissipation and transference of merchant's family properties. The order of Kyoto City was disturbed, the number of quarrels over succession increased, and the townsmen family order became confused. Such results much troubled the rulers which were trying to rule strictly the merchants and collect taxes more smoothly than before. They were against the Government policy. Then, the Government intended to prevent merchants' properties from dissipating and being transferred and to learn who were new possessors of transferred properties. The official notice in which this intention was prescribed, was sent out in 5th year of the Kyoho Year Period (1720). This notice ordered townsmen, whenever buildings and lands were sold, at the same time, to let the others (the town officials and relations) know it. He must also change the registered name to the buyer's, as a new possessor of buildings and lands. Unless a townsman obeyed this order, he was robbed of his buildings and lands by the Government.¹²⁾ Thus, the Government attempted to seize exactly the places where merchants' buildings and lands (family properties) are. Such Government policy led to a firmer establishment of the principle which lets only an eldest son succeed to the whole family property. That was the reason why this principle was most useful in preventing merchant's family property from dissipating and transferring in succession.

The direction in which the establishment of this principle led,¹³⁾ could be seen in the tendency of one losing his position as a successor, except an eldest son.¹⁴⁾ Because, for the purpose of keeping this principle, only an eldest son should succeed to the whole family property, it was against the principle that any other than an eldest son could succeed. However, I don't say that the principle forced merchants to make only an eldest son succeed to the family property. For, generally speaking, an eldest son was supposed to be the most capable person in keeping alive and consolidating his family property. Besides, such a supposition naturally consists with the principle which sustains the order of feudal system. So, we can say, the true purpose of the principle lay in compelling merchants to make universal succession of their family properties. Thus, in order to carry out this principle, it was natural that the institution of reporting the will should

12) Ibid, Vol. II. No. 2. p. 201.

13) Besides, it is certain that the Ideology of superiority of the house-holder, elder, man which was forced to the common people's life by the Government, since the Kyoho Year Period, worked strongly in establishing this principle. See Ken Ishikawa, "The Educational History of Common People" (Nihon Shomin Kyōikushi), p. 325. Einosuke Yamanaka, "Regulations against Adultery and Its Private Settlement in the Edo Period". Osaka University Law Review. No. 38. p. 43.

14) See Akiyama, *op. cit.*, p. 368.

be improved. The best way to carry out the principle, was nothing but an improvement of this institution. Though the institution of reporting the will had begun with the 1st year of Meireki Year Period (1655) as we have already seen, at that time, the will was reported to the town office only. But, now, in the official notice¹⁵⁾ issued in 17th year of the Kyoho Year Period (1722), the will had to be reported to both the town office and the branch Government office in Kyoto (Machi Bugyōsho). Moreover, this notice ordered a merchant house-holder to report to the branch Government office, accompanied by a town official and one of the five family group and register his will in a note book prepared there. A Iso, a house-holder was allowed to rewrite his registered will many times. This shows that the Government wanted to get as capable a successor to the family property as it was possible to do. If a house-holder should not report his will, he might be threatened with being deprived of his buildings and lands, family property, by the Government. Thus, this institution was spread among the townsmen.

By the way the Government ordered a house-holder to register his will, it shows that the Government tried to catch buildings and lands through a house-holder who represents "the House," which is the true possessor of the family property.¹⁶⁾ We can see this in that the institution of reporting the will asked a house-holder to report his will in order to register his buildings, lands and his successor in the note-book prepared at the branch Government office. So as to let you understand this more clearly, I shall show you next, the fixed form of registered will reported to the branch Government office by a house-holder.

To the Honorable Officer

I have the honour to inform you; my buildings and lands in this street, its number (how many), after my death, one (a successor's name) shall succeed.

I have already reported this to the town official.

| | |
|--------------------|------------------------------------|
| Name of the Street | Date |
| | A town elder: Name |
| | One of the five family group: Name |

15) Ibid., p. 304.

16) This shows that the Government tried to seize the "House" in direct connection of the material part with the personal part. However, here, the "House" was caught through the town community and the connection of the family property with the "House" was not sufficient. Their complete connection was realized in the Kyoto Family Register Law (Kyotofu Koseki-shiho). This law rises in "Chōshu-Han (Fief)" Family Register Law in the 8th year of Bunsei Year Period (1825). But its ideology is equally found in the institution of reporting the will in Kyoto.

A house-holder: Name¹⁷⁾

Chapter II The Law of succession and the examples of succession

As we have seen in the former chapter, in the Tokugawa Era, especially since the Kyoho Year Period, merchants of Kyoto were in the worst circumstances. The transformation of socio-economic background, besides regulations of the Government threatened stability of commercial houses in Kyoto. Against these circumstances, merchants had to consider sincerely the way to stabilize their commercial houses. At that time, merchants had two ways. One was the proper way as merchant, the other was the way of "chōnin" which the Government asked of merchants. Then, merchants found the way to their stability in a practical compromise of these two ways. They described the way in their house rules, family precepts or shop rules. And, they made these rules secret. Therefore, now, when we inquire into these, we can find the practical examples of merchant lives in them.

In this chapter, at first, we are going to observe the examples of merchant succession through these rules.¹⁸⁾ And next, we study the relation of these examples and the law of succession, especially the institution of reporting the will. Then, through this study, we try to learn how much the law of succession could catch the actual practice of merchant succession and how much the law could influence it.

I Examples of merchant succession

—— "merchant House" and succession of merchant father's occupation ——

In one of "Mitsui"¹⁹⁾ house rules (Sōjiku Isho)²⁰⁾, the succession is described as follows: the successor is to inherit the merchant father's occupation or business. The

17) See Akiyama, *op. cit.*, pp' 304-305.

18) The practical examples which we can observe through these rules, are chiefly of wealthy merchants. Therefore, I intend to point out the part which seems to be common to ordinary merchants.

19) "Mitsui" house was originally the merchant of Ise Province, ran a dry-goods store in Kyoto in the 1st year of Enpo Year Period (1673) and placed its head-store in the 3rd year of Jyokyo Year Period (1686). It developed to one of the zaibatsu corporations owned by the Mitsui family in the Meiji Period.

20) It is the one of house-rules which Takahira Mitsui made from his father Takatoshi's will in the 7th year of Kyoho Year Period. Its summary is shown in Takao Tuchiya's, "A Study on the Business History of Japanese Capitalism". pp. 27-35.

descendant's duties are to attend to his father's occupation. This occupation was hereditary and unchangeable, as the calling of "Mitsui" house. Thus, we can say, the succession of father's occupation has its own limit.²¹⁾

However these descriptions show that the succession of father's occupation is most important for merchants. Because, in commercial business, among the means by which business is carried on, those, other than land, are more necessary. Here lies the reason why the father's occupation is respected in merchant life.

Therefore, in a commercial house, it goes without saying succession and prosperity of the father's occupation should be superior to all other things. So, even though one is an eldest son as a successor, if he is incapable of keeping and prospering his father's occupation, he is disinherited. In such a case, the occupation was carried on by an adopted son, who was selected from relatives.²²⁾ This shows how much the principle which let only the eldest son succeed to the whole family property influenced the actual practice of merchant succession. And, after one had become a house-holder, when he had no ability for keeping and prospering his father's occupation, he lost his position as a house-holder. He was sent into retirement by his relatives, managers and clerks.²³⁾ We can find the existence which ruled a house-holder and set limits to his carrying on business. This existence is after all "merchant House" (Iye) which exists in real merchant lives. A house-holder's possession of his father's occupation has set limits by this very "merchant House". His possession is not a free and private one as it is now. This proves that the true possessor of merchant father's occupation is not a house-holder as an individual, but "merchant House" itself. A house-holder only becomes the possessor as long as he represents this "merchant House". Here, the succession is thought of as an alternation of the representative of this "merchant House". This "House," however, is not merely equal to "the House" which was caught by the Government. It is the true possessor of the merchant father's occupation and has been made for the purpose of keeping and prospering merchant father's

21) See Takafusa Mitsui, "The Opinion on Merchant" (Chōnin Kokenroku). Sammaries of Japanese Economic Classics (Nihon Keizai Taiten). Vol. XXII. p. 69.

22) See Sōjiku Isho. Tuchiya, *op. cit.*, p. 31.

23) See Yasunao Nakata, "The Constitution of the Mitsui House at the Kyoho Time". The Socio-Economic History (Shakai Keizai Shigaku). Vol. XX. No. 1. p. 48. The Research Institute of Cultural Sciences of Ritsumeikan University, "The Father's Occupation — Study on Cloth Wholesale Store at Muromachi in Kyoto —". Memoirs of the Research Institute of the Cultural Sciences of Ritsumeikan University. (Ritsumeikan Jinbunkagaku Kenkyūsho Kiyō). No. 5. p. 316.

occupation. The merchant real succession was an alternation of the representative of such "merchant House". Therefore, it was natural that the actual practice of merchant succession should be universal succession of merchant father's occupation. This is found in a merchant's custom of succeeding his father's name. Its reason is as follows: universal succession of merchant father's occupation is after all the succession of all rights and duties referring to the father's. The house-holder who represents the "House," which is the true possessor of the merchant father's occupation, has these rights and duties. As merchant succession is an alternation of the house-holder, through succession, these rights and duties are naturally transferred to the successor, as they are. In such a case, the house-holder and his successor have different bodies but they are the same persons in that they have the same rights and duties. To succeed to his father's name shows that the successor became the same person as his father who had been the house-holder. Thus, we can say, the custom of receiving the father's name is an expression of the universal succession of the merchant father's occupation, in the actual practice of merchant succession.

II Relation of the law and examples

As you will well understand from what I have already mentioned, the important difference between merchant succession in the law and that in actual practice, lay in that the former is the succession of merchant family property, chiefly buildings and lands and the latter is that of the merchant father's occupation. Here, I shall endeavor to show the relation of these two successions. Then, in the later, we shall start to inquire concerning the merchant father's occupation. The merchant father's occupation is business which is carried on by "merchant House", as a true possessor of the father's occupation. Its contents consist of buildings, lands, shop, household effects, money, credit, all obligatory rights and debts referring to business. We find this in a merchant of Kyoto, Seibē Ōta's private will.²⁴⁾ The Government intended to keep alive and consolidate the buildings and lands out of the contents of merchant father's occupation as the family property through the law of succession, through the institution of reporting the will. Of course, we can suppose the family property in the merchant father's occupation as its fundamental property. This property, however,

24) Date: May, the 17th year of Kyōho Year Period. It is possessed by Law Faculty of Osaka University.

will consist of buildings, lands, shop, household effects etc. though they have some differences in proportion to varieties of business constitution. I think, such property can be called the family property from the merchant point of view. It works as business capital and has possibilities of making business prosper, expand itself.²⁵⁾ On the contrary, the family property from the Government point of view, was set up in order to control the merchant's growth and prosperity, keep order in Kyoto city and collect taxes from merchants by catching their buildings and lands consolidated. Thinking as this, the former will be contrary to the later: the former is static and consolidated, contrary to it, the later is dynamic and growing. This, however, does not mean that the law of succession, especially the institution of reporting the will, could not catch all of the practice of merchant succession as it actually existed. As we have seen already, in the real life of the merchant, the practice of merchant succession was the universal succession of the merchant father's occupation. Such succession properly aimed at making business prosper, contrary to the law of succession, the controls placed on merchants and the socio-economic transformations. Because, by way of this succession, the merchant could make his business stable through preventing his family property from disintegrating and transferring, besides, all obligatory rights and debts could be transferred to one successor. It prevented immature business transactions, during that era, from falling into confusion. It, however, resulted in the application of the law of succession, the institution of reporting the will. As I have already pointed out, the institution asked a merchant house-holder reporting his buildings, lands and his successor, the next house-holder, to the town office and the branch office of the Government in Kyoto. In this case, the buildings and lands are the center of the merchant father's occupation, the house-holder represents his "merchant House," which is the true possessor of the merchant father's occupation as well as "the House" which is true possessor of the family property, chiefly buildings and lands. Thus, through the institution, the Government could catch the center of the succession of the merchant father's occupation. And through the medium of a house-holder, the Government could know, to a certain extent, the state of the commercial house or business, control the actual practice of merchant succession and commercial house or business. Moreover, these functions of the institution served to preserve the succession of the merchant father's occupation, to make merchant business stable, against the socio-

25) For example, a branch family, a cadet house and the same family were founded on this property, But the inquiry is omitted here.

economic transformations after the Kyōho Year Period, by keeping alive and consolidating buildings and lands as the family property, which is the center of the merchant father's occupation.

By the way, such law of succession and the actual practice of merchant succession as we have observed concerning merchants of Kyoto in the Tokugawa Era, were carried over in Kyoto during the Meiji Period.

Conclusion — Prospect toward the Meiji Period —

In the early period of Meiji socio-economic foundations laid in the end of the Tokugawa Era were not changed so rapidly. Therefore, it was natural that the law of succession in the Tokugawa Era should be carried over to the New Government in Kyoto. The New Government made use of this law for a while.²⁶⁾ It, however, was in the Kyoto Family Register Law of the New Government (Kyotofu Koseki-shiho) that the Tokugawa Government intention to catch "the House" of the merchant with the family property was completely realized. This Family Register Law was followed by the Family Register Law (1871), especially "the Law of the House-Head" (Koshu no ho).²⁷⁾ It was the legal system established on the Family Register Law. But it after all went in the direction of disintegration. It was for this reason the title of deed, which was made to confirm the ownership for the purpose of carrying on the Land-Tax Law (1873), led up to separation of "the House" and its family property. Besides, the family-register (Koseki) was losing its effect of regulating against real property realtions.

"The Law of the House-Head," through the process of its recomposition, was succeeded by "the System of House" (Iye-system) provided in the Civil Code of Japan (1898). This Civil Code, however, did not provided the conceptions of the father's occupation and the family property existing in the real society of Japan. Only in the Income Tax Law (1887) and Sake-manufacture Tax Law (1896), were these conceptions enacted.

26) The order of Kyoto City Control Office in the 1st year of Meiji Year Period. See Akiyama, *op. cit.*, p. 448.

27) On "The Law of the House-Head", See Nobuyoshi Toshitani, "The Structure and Function of the Iye (House) System in the civil code of 1898". The Journal of Social Science (Shakaikagaku Kenkyū). Vol. XXIII No. 2, 3. pp. 1-85. No. 4. pp. 12-102.