

# The diversification of land transactions in late imperial China<sup>1</sup>

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**Abstract** Based on original documents of contracts and legal cases, this article discusses three kinds of financial transactions involving rights of land during the Qing Dynasty. These three forms of financial transactions were debt financing through rights of land, the direct transferring of the rights of land, and the transaction of share of property right. This article attempts to first clarify the confusion between several types of debt financing through rights of land. *Ya* 押 was loan through land as guaranty and repaying the interest and capital by the rent of land or harvest. *Dian* 典 was loan through temporary transferring of right of land and harvest in a certain period of time. *Dang* 當 was various types of loans which involved the rights of land. *Di* 抵 referred to using a certain portion of land right as repayment of debt. Similar with modern financial methods, these financial transactions in the Qing dynasty allowed peasants to preserve their possessive rights over the land and also satisfied their financial needs. The direct transactions of rights of land and repayment of debt by harvest included *juemai* 絕賣 (finalized sale of land), *huomai* 活賣 (not finalized sale of land), *dianquan dingtui* 佃權頂退 (sell or purchase tenancy), *zhaojia* 找價 (bargaining price after transaction), and *huishu* 回贖 (redemption). The main purpose of these transactions was to protect the land proprietors as far as possible. Co-ownership and co-tenancy of land also appeared in the Qing dynasty. Such diverse financial transactions not only were substitutes of modern financing tools which allowed peasants to weather financial hardship, but also promoted the changing ownership of land which further encouraged the combination of different production elements and reallocation of resources in the land market.

**Key words** property rights of land, creditor's right, forms of transaction, diversity, allocation of resources

**摘要** 基于原始契约与刑科题本，本文揭示了清代地权交易的三大类型，一是债权型融通，二是产权转让，三是股权交易出现。借助于土地但不发生产权最终转移的融通性债权交易的各种形式常被混淆，本文加以考辨与厘清：“押”，以土地为担保并以地租或利租来还本付息；“典”，约定期限内的土地使用权转移与收益占有来偿还借债；“当”，以地权为中介的各种借贷形式；“抵”，发生地权分割，并以此抵还欠债。清代出现的这些交易手段使农户在保有地权的同时实现其融通性需求，它们与现代金融工具相似，其名称与方式延续并沿用至今。地权转让与收益补偿等交易形式则包括活卖、绝卖、佃权顶退、找价、回赎等，其规则取向是为了最大限度地保障地权所有者的权益。土地经营的合伙制与股权交易亦开始出现。凡此多样化的交易形式，不仅在金融工具缺失的时代充当了资金融通工具的替代，农户赖以济危解困，更促进了土地流转，使生产要素组合与资源配置通过地权市场得以活跃和发展。

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**关键词** 地权, 债权, 交易形式, 多样化, 资源配置

Emerging in the forms of the rights of top soil (田面权) and the rights of under soil (田底权), the dissolution of property rights of land and administrative rights of land accelerated the tradable revolution of land rights in the Qing Dynasty.<sup>2</sup> The diversified ways of transaction included the extremely confusing *dian*, *dang* (and *an* 按), *ya* (and *taijie* 胎借 mortgage by land as guaranty and repay it with the harvest), *di*, as well as the forms of redeemable sell, unredeemable pawning of land, repayment by tenancy, and bargaining of land, etc. Although being well known, some of the transaction rules and the differences of their functions are not yet clarified; some of them are even misread. This paper distinguishes and categorizes among the miscellaneous original contracts of land transactions and the cases of complicated land disputes<sup>3</sup> in mainland China, Taiwan, Hong Kong, Japan, and the United States. It differentiates these cases into three categories: debt financing through rights of land, direct transferring of land rights, transaction of shares (of ownership or tenancy of land), and examines thereof. It also inspects the differences among distinctive rules of each transaction form, analyzes their functions in the market of land rights and the economy of peasantry, and accordingly investigates the development of the market of land rights and dislocation of resources in the Qing Dynasty.

## **1 The analyses of *ya*, *dian*, *dang*, *di*, under the condition that property rights are unchanged**

*Ya*, *dian*, *an*, *dang* were all, under the pre-condition that property rights were not ultimately transferred, transaction methods that manipulate the right of land usage and its profits to gain funds. *Di* was slightly different, for it happened with the division of land rights. These forms of transaction were popular in traditional periods; however, differences among them were not easily distinguished. Moreover, the modern financing tools such as mortgage and pawn, different in their methods and usages, further confused these transaction forms.

1.1 *Ya*, *taijie*, *zhiya*: the loan that uses land rights as guaranty and land profits as repayment.

*Ya*<sup>4</sup> also used land rights as guaranty and land profits to repay the capital and the interests of loan. The loan by the rights of land ownership was repaid by land rent. ; the loan by the rights of land usage was repaid by the profits of land, but the right of land was not transferred. For example, in Liu'an, Anhui province, Zhang Nan'e

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<sup>2</sup> Long Denggao, 2008.

<sup>3</sup> The cases from *Xingke tiben* (XKTB) presented in this paper are adopted from *Qingdai dizu boxue*. Due to the complicated plots of each case, this paper doesn't quote the original texts but only gives the sources of each case, such as "XKTB: No. 214." The number refers to the serial number of each case in the book.

<sup>4</sup> There is also another form of *ya* as rent deposit. By paying a certain amount of cash, the rights to cultivate or rent the land can be gained, and accordingly the money is paid as the deposit to future payment of renting the land. On a certain level, *ya* is also a way to manage currency. This is also the consensus of the common people at that time. This paper, however, will not discuss specifically on this topic.

leased the right of land usage of 7 *shi* of temple land with 20 *liang* of silver. In the 30<sup>th</sup> year of the Qianlong reign, he used the right of land usage of 4 *shi* of land to mortgage 57 *liang* of silver from Zhu Congheng, which he was to pay back with 16 *dan* of crops from his rented land every year. (XKTB: No. 214). Through the transaction form of *ya*, he got the cash by mortgaging his future profits, and repaid the rent annually.

*Taijie*, which means “*li tai jie yin* 立胎借銀,”(setting up a contract for borrowing silver) was popular mainly in Taiwan and Fujian. It was a special way of referring to “*ya*”; making contract to borrow money with the land as guaranty repaying the capital and interests of the loan with crops of the land. Profit of the land belonged to the creditor, and if the loan was not repaid according to the contract, the right of land would be transferred. What follows was an example from Taiwan<sup>5</sup>:

Drawers of the “*dui dian tai jie yin* 對佃胎借銀” contract (mortgage the tenancy for silver), Jiang Gang included, according to their relatives relations, were supposed to receive their rights to a land located at Haishan. The land’s boundaries of the north, east, south, and west, along with its rights to water, were all recorded in the contract. Due to the lack of money, Gang and others were willing to mortgage this land. They first inquired after uncles and nephews among the relatives, and then resorted outward to borrow one hundred silver *yuan* from Li Jingyi through a middleman. The silver was collected by Gang’s relatives on that day and the three sides agreed on the contract. It was agreed that each silver *yuan* was to be repaid with extra interests of sixteen percents, which meant sixteen *yuan* of interests in total. The interests, divided into first and latter halves, would be paid separately in the early season by the end of June and the late season, by the end of October. As to the current tenant Xu Laoyong, his rent of the land should be paid to the creditor, and none of the amount should be owed. The loan period was two years, from the winter of the 20<sup>th</sup> year of Guangxu reign (1894) to the winter of the 22<sup>nd</sup> year of Guangxu reign (1896). After two years, the beginning date of repayment was set to before the Moon Festival in August; ten silver *yuan* were to be returned first, and the rest of the silver can be waited until the tenth day before the winter solstice, when all silvers were prepared, to be used to redeem the contract. The deadline should not be overdue; if by the time no silver could be submitted to the creditor, the term of the contract should be carried out. Gang and others should not dare to cause trouble accordingly. Such was the agreement of benevolence and righteousness, and both sides were willing and unregretful. In fear of the unreliability of speech, they drew up the *dui dian tai jie yin* contract and submitted a copy, two papers in total, for evidence’s sake.

Today the loan of one hundred *yuan* of silver is collected, as recorded in the contract.

This business is specified, so that afterwards if the land is leased by other tenants, the new tenant has to pay the interest to the creditor, and provide finger prints at site.

Another note: current tenant Xu Laoyong terminated the lease during October in the 22<sup>nd</sup> year of Guangxu reign, by which time Jianggang, Jingyi, and Xu agreed to lease the land to Liu Qi. Gang hence clarified the issues with silver and land contract with the new tenant Liu Qi, and dare not act against the contract.

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<sup>5</sup> Wang Shiqing.

Now that the tenant has changed, recognize the person who is to submit the interests, Liu Qi.

On behalf of him, Li Guangwu

Current tenant and interests payer, Xu Laoyong

Witness, nee Li Chen

Debtor, Li Jianggang

November, the 20<sup>th</sup> year of Guangxu reign

In this example of “*dui dian tai jie yin*,” debt owner Li Jianggang used the land as the mortgage, and repaid with the harvests of the land with a 16% interest. Moreover:

1) It was agreed that the tenant (Xu Laoyong) would submit the rent directly to the creditor (Li Jingyi).

2) Corresponded with the two harvests of the land, the interests would be divided into two payments per year, one by the end of June, the other the end of October.

3) If the tenant was changed, the new tenant Liu Qi would bear the responsibility of the previous tenant.

Similar to “*ya*” was *zhiya* 质押. “Zhiya” usually referred to the action of loan that used movable properties as guaranty. When lands, as immovable properties, appeared in the form of paper contracts, they could also be referred to as *zhiya*. In the accountant book of the Wangs in Duo County, Hui prefecture, Zhang Youyi found that there were two lands that distinctively appeared on the record in the 8<sup>th</sup> and 12<sup>th</sup> year of Tongzhi reign (1869, 1873). Both of these two records were noted with words of “*zhiya*”<sup>6</sup>, which meant that the lands were used as guaranty of the loans from the Wangs..

1.2 *Dian*: to relinquish the rights of land for a loan and to repay the interests by the rent of the land

The persons in possession of land rights relinquish the rights to control the land as well as the rights to take profit from the land temporary for loans. After due time, these rights could be bought back by the original sum of the loan. Mortgagers usually had to “leave the property,” namely, to transfer the rights to use land to the creditor, and to “submit the rents to the creditors interests of the loan.” Interests in other forms and amounts would not be collected.

In the first year of the Tongzhi reign (1862), “a couple of contract drawers including Li Xiehe mortgaged their 11 *mu* and 8 *fen* of land:

Due to emergency, after discussions with grandmother and mother, it is agreed that they are willing to mortgage the land for a loan of three hundred *liang* of silver, in a time frame of ten years, from the year of 1863 to the end of 1872. The creditor will not collect additional interests, and neither will the debtor collect the rent of the land. .... After the loan is contracted, rents will be submitted as payment. It is not until the date of due can the land be redeemed. If the land is redeemed prior to the due dates, thirty-two *liang* of silver are required as compensation to the creditor. This land is indeed inherited from the ancestors, and is certainly not the guaranty or interests of other loans. If the rights of the land are questionable, they should be clarified and the rent should still be submitted to the creditor as payment of interests.<sup>7</sup>

<sup>6</sup> Zhang Youyi, 280.

<sup>7</sup> Xiao Guojian, Bu Yongjian.

The contracted period of loan lasted as long as ten years, for the debtor needed a larger amount of silver: 300 *liang*. Consequently, except using the land as guaranty of the loan, the interests needed to be repaid with rents of ten years. Land rights, tenant rights, land rents, as well as tenant rents, were all objects that could be used as guaranty of a *dian* loan. “*Dianzu* 典租” was, on the other hand, the action of contracting the loan by mortgaging land rents or tenant rents. This was exemplified in the fourth part of this article, in the instance of “*li dian zu qi*” from Taiwan in the 17<sup>th</sup> year of Jiaqing reign (1812).

Let us look at another two examples of the transfer of tenancy by “drawing up *dian* tickets.” In the 23<sup>rd</sup> year of Qianlong reign (1758), in Ninghai County in Zhejiang, Bao Youxiang originally leased three *shi* of land from Bao Youzang. In the 23<sup>rd</sup> year of the Qianlong reign (1758), he mortgaged his tenancy for a loan of 3,000 *wen* from his kinsman Bao Guangyu. A *dian* ticket was drawn up accordingly. In the 25<sup>th</sup> year of the Qianlong reign (1760), the ticket was “redeemed and the tenancy was returned to the debtor” by the original amount of the loan (*XKTB*: no. 318). The transfer of tenancy, in many contracts, equaled to the mortgage of tenant rights.

In Danyang of Jiangsu, Zhang Chaoyang had 4 *mu* and 4 *fen* of land. Jiang Chaozong rent the land with a deposit of 16 *liang* of silver and 2 *qian*, and he submitted 2000 *wen* as rent every year. Due to Zhang’s mother’s illness, he lacked money and intended to sell the land with more than 50 *liang* of silver. The prospective buyer Wang Jichang, however, was only willing to pay 19 *liang* of silver and 4 *qian*. Unable to reach an agreement on the sell price, they instead negotiated a *dian* contract. Owing to the few amount of the rent, Wang drew back tenancy rights to farm the land himself (*XKTB*: no. 229). Meanwhile, the original tenant Jiang Chaozong faced two alternatives: either he could demand the return of his deposit silver from the original landlord Zhang, which would result in the loss of tenancy rights, or that he could demand compensations from the creditor Wang. It was additionally noted, by the time of contract making, that because of the low price to *dian* the land (the annual rent of 2000 *wen*), compensation should be made from time to time to compensate the loss of the original tenant Zhang. The *dian* contract could become the transition to the final sale of land; if Wang (who got the mortgaged land) prolonged or increased his rights of the land, Zhang could demand subsidizations.

If the time was overdue and the debtor was unable to redeem the land, he could request a postponement from the creditor, namely, *yandian* 延典, or he could mortgage the land again. The debtor could also increase the price of *dian* (the annual rent of the land) again and again. The creditor would have to increase his subsidization to the original tenant until the *dian* contract become sale of the land,<sup>8</sup> and hence the transfer of property rights. In the 11<sup>th</sup> year of the Daoguang reign (1831), in Anlishe, Taiwan, a case of land mortgage contract for loans reflected the relationship of *dian* and loans among Wang Chengzong, Wang Jingshan, and the aboriginal woman of Anlishe:

The *dian* contract of this land has not yet fulfilled in its time frame of six years by the winter of 1837. Because of the aboriginal landlord’s lack of money, she demands cash of three hundreds and eighty *yuan* of silver from the creditors Wang Chenzong and Wang Jingshan. An amount of one hundred and fifteen *yuan*, as the deposit silver without interests as previously noted in the *dian* contract, is handed to the aboriginal landlord in person. After due negotiation, the tenancy of the land will be given to the farmer to be cultivated and

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<sup>8</sup> Zhang Fumei.

harvested for 17 entire years. Rents that are supposed to be received year by year will be listed in number to be counterbalanced.

It is also noted that the aboriginal landlord will prolong the *dian* contract for another ten and a half more years, until the early season of 1867.<sup>9</sup>

After the first time the aboriginal landlady mortgaged the land to the Han person Wang, she needed cash when there were yet six years to the due of the mortgage, and signed the contract again:

- 1) Prolonging the contract of for 17 years, and getting the cash of 380 *yuan*.
- 2) Included in the previous *dian*, the amount of 115 *yuan* for the sake of cash deposit of the land.
- 3) The above amount, along with the interest, would be repaid with the rents supposedly received year by year.
- 4) In the attached section of the contract the aboriginal landlady prolonged the *dian* for another ten and a half years, rendering the entire period of pledge 33 and a half years.

Such long time of mortgage was rare, meaning the loss of property rights to the land in a generation or two. It could be inferred that the aboriginal landlady was in desperate need of money, or it could also suggest her weak anticipation for future incomes, especially that if she was a woman of old age, she was reasonably willing to exchange the tenancy for cash.

The transfer of mortgage was another common phenomenon, although such transactions of did not result in final transfers of land rights. During the Japanese occupation, a “document of reason”<sup>10</sup> in Taipei County made a clear explanation:

The village of Niupu in the first castle of northern Zhu, Taipei county, numbered 46 in the 4<sup>th</sup> district.

An garden of 4 *fen* of land

Zeng Shi’s father Zeng Wen bought a garden located at Niupu village. At that time Zeng Wen lacked cash, and therefore mortgaged the garden to Cheng Jin and his sons Chen Fan and Chen Tianhe. Whence a contract of *dian* was constructed, and a handwritten one was submitted to be kept by Chen Jin, etc. Later, when Chen Jin and others intended to build other businesses, they transferred the mortgage of the garden to Zeng Lianfa, and the contract was turned in. Unexpectedly Zeng Lianfa lost all the four pieces of handwritten contracts, and the *dian* contract was the only thing left. By the 14<sup>th</sup> year of Guangxu reign (1889), this contract was submitted for tax’s sake, and after due examinations, the examination sheet was issued to the name of Zeng Lianfa. This land in fact belonged to Zeng Shi who lacked the money to redeem the land. Now thanks to the examination of lands, this document is conducted with due reason as a sheet of fact

June 12<sup>th</sup>, 34<sup>th</sup> year of Muji.

Taipei county, first castle of northern Zhu, village of Yada, inheritor of the diseased father, rightful owner of the land, Zeng Shi (fingerprints)

Tong county, castle of Tong, village of Keyaxi,

Inheritor of the diseased father Zeng Wen, the landlord Zeng Shi (fingerprints)

Inheritor of the diseased grandfather Zeng Lianfa, the creditor Zeng Wang (fingerprints)

<sup>9</sup> *Anli wenshu*, No. 411, recited from Chen Qiukun.

<sup>10</sup> Zhang Yanxian, Wu Xiaoyun.

Tong county, castle of Tong, village of Tong, person of the pledged, Zeng Shuicheng (fingerprints)

Tong county, castle of Tong, village of Tong, person of the pledged, Zeng Jin (fingerprints)

Tong county, castle of Tong, village of Tong, person of the pledged, Zeng Jiu (fingerprints)

Tong county, castle of Tong, village of Tong, person of the pledged, Zeng Ren (fingerprints)

Committee member, Xu De (printed name)

Head of village, Chen Yunru (printed name)

The minister of the Temporary Bureau of Taiwanese Land Investigation, Gotoo Shinbeii seal

This document disclosed the following contents, illustrating the consolidation of land rights in the concepts of the Qing people and legislation of the time.

Firstly, *dian* was constantly transferred and yet the rightful owner of the land remained unchanged: Zeng Wen—mortgaged the land to Chen Jin and his son—Chen Jin transferred the mortgage to Zeng Lianfa. In this document, the original creditors, Chen Jin and his son, did not sign their names and neither did they leave their fingerprints. This explains that the transfer of the mortgage did not affect the status of the landlord.

Secondly, moreover, although the rightful property owner was incapable of redeeming the land, the “document of reason” had to specify the name of the property owner and emphasized that “this is the property of Zeng Shi.”

Thirdly, even if the original contract of mortgage and land certificate got lost, as long as the evidence (such as one of the *dian* contracts) could be verified, property owner could be recognized;

Fourthly, despite the change of dynasties, property rights remained the same. Although occupied by Japan, conventional regulations of property rights continued to function, and usually new rulers recognized them. From the Ming to the Qing, transactions and transformations of land rights by all parties of the contract were not at the least affected.

*Dian* did not involve with the change of land ownership. The Qing dynasty inherited from the Ming laws and did not demand taxes from such transactions of *dian*, though people who sold their lands had to submit tax after transferring the property rights. “For contracts of mortgaging lands or houses, taxes can be waived. Taxes are required for all kinds of sales, whether redeemable or not.”<sup>11</sup> This practically encouraged the debt financing by way of the transfer of non-property rights and consequently cheating behaviors of using repeating mortgage in replace of sales appeared. The multiple transactions of mortgage result in the gradual decline of loan money. For the first time, the debtor received larger amount of loan. The loan money though such mortgage decreased significantly for the second time and even lower for the third time. If the item was mortgaged again or turned to sale during the third time, the transacting price on the surface would be significantly low, and so would the burden of tax. To prevent such cheating action, the government regulated that the mortgage period of land had to be recorded; because comparatively, along with long periods of mortgage came high prices.

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<sup>11</sup> *Guangxu Da Qing huidian shili*.

1.3 *Dang* (and “*an*”): loan by means (as guaranties, mortgages, repayments, etc.) of land rights.

The definition of *dang* (henceforth pawn) was more obscure, and its extended use more widely manipulated, therefore, it can be associated with almost all other methods of debt financing, such as *diandang* 典當, *didang* 抵當, *yadang* 押當. Overall speaking, “*dang*” referred to using land rights as intermediary tools to process all forms of loans.

For one thing, the loans based on the guaranty of lands did not rely on the land for debt payment. If the debtor was unable to repay the debt within the time of contract, the lands or rights recorded in the contract would belong to the creditor. A contract of *dang* in Anhui in the 27<sup>th</sup> year of the Kangxi reign (1688) follows:

Contract maker Zhu Guochang, now due to the lack of money, is willing to pawn his inherited garden of Chakezhuying, located at Libianwu, to his lineage uncle for one *liang* two *qian* and five *fen* of silver with an interest rate of 20%. If no interests paid for one year, the property will be transferred without further protests.<sup>12</sup>

“*An*,” same as this form of “*dang*,” usually came in the cases of “pawn the land for receiving silver” (*an di jie yin* 按地揭銀)<sup>13</sup>. Two contracts<sup>14</sup> in Xiangshan County, Guangdong Province, reflected such forms of transaction. One was *jieyinqi* 揭銀契 (the contract of receiving silver) :

Kong Changhan and Kong Qiyuan as two partners, for the purpose of making a living, pawn two hill lands called Tangyong and Nuotang, three *mu* in total, along with the three *mu* of Kong Qiyuan’s inherited land of Dongguatan and Lijiaotou for a loan of 29 *liang* of silver. The contract is negotiated through middleman Kong Xianshen and drew up in the house of Feng Boxian, Kong’s cousin. It was agreed that the interest rate per *liang* of silver is 18% which should be paid as scheduled. No delay of interest payment is allowed. If the payment is delayed, both parties should follow the judgment of Bo without protest. Now for record’s sake, this contract of *jieyin* is drawn up, and two copies of fingerprints are made and handed to Kong Xianshen and Feng Boxian.

The actual pawned lands were Tangyong and Dongguatanko, six *mu* in total, evidenced by the contract with fingerprints

The actual silver received by the debtors was twenty-five *liang* and five *qian* of silver.

Middleman Kong Xianshen

Fellow debtor Kong Chaoyuan

June 15<sup>th</sup>, 8<sup>th</sup> year of Qianlong reign, debtor Kong Changhan

Obviously, this was a way of mortgage by pawning the land, and its repayment was not paid with rent or crops of the land. The 18% interest of had to be “calculated according to schedule, and delay of payment is not allowed.” “*An di jie yin*” sometimes could be contracted again and again. Now let us look at another contract of “*an yin* 按銀” (pawning for silver) :

The debtor Li Xianxing, for the medical needs, discussed with his wife and father and negotiated to mortgage the house of two units within the ninth mill

<sup>12</sup> Zhang Youyi, 93.

<sup>13</sup> “*An jin*” in certain dialects means “*Ya jin*.” Also called “*An jie*” nowadays, same as mortgage.

<sup>14</sup> Xiao Guojian, Bu Yongjian.



and a piece of land for silver. Guaranteed by the middleman Xiao Qi's letter, they received eighty *liang* of silver from Guisheng hall. It is agreed that the interest rate for each *liang* of silver was 12%. The period of this loan is six months. When the time is due, the capital silver and the interests should be paid together without any delay. If delay of payment occurred, Guisheng Hall has the right to lease the house, transfer the mortgage contract, and deconstruct the house for materials. .

Drafted on December 24<sup>th</sup>, the 29<sup>th</sup> year of Guangxu reign

February 10<sup>th</sup>, the 30<sup>th</sup> year of Guangxu reign, "another 40 *liang* of capital silver is borrowed for medical needs, and the interests will be calculated as previous."

And on May 28<sup>th</sup>, "because of the insufficient money for the funeral, another 49 *liang* of capital silver is again loaned to the debtor, and the interests calculated as previous."

Therefore, to provide medical resources for their family member, the Li family mortgaged houses and land again and again. The medical care proved ineffective at last (the first time the three of the Lis signed, and on the third time, only the wife and the son signed). The Li family still needed to borrow silver for the funeral expense. Three times in total, in less than a half year, they borrowed 120 *liang* of silver.

The second form of *an* used the land as the guaranty for loan and repaid the debts with rents of the lands. Such a mean of financing was equal to "ya."

In Wuxuan, Guangxi, the Tong people farmed "the same land, regardless of the change of land ownership, as if the tenancy is a generational business." The tenant Qin Fuhuan leased 4 *sheng* of land, and afterwards due to his disease of dysentery, he temporarily pawned the land to Qin Fufu for 4 *liang* of silver, and lived on the amount. As "the tenancy is temporarily pawned and redeemed by rent," he still cultivated the land himself (XKTB: No. 246). Qin Fuhuan used his future tenant rent as mortgages to repay the interests and got 4 *liang* of silvers in cash.

In Ruian, Zhejiang Province, the tenant Li Shisheng leased 3 *mu* of land from the Yins. Li paid the deposit according to the custom and received the rights of the land from the landlord. In the 2<sup>nd</sup> month of the 15<sup>th</sup> year of the Qianlong reign, Li "pawned (*yadang*, 押當) the land to Zhong Yingyuan for 5 *liang* and 2 *qian* of silver and agreed to redeem the land in the first month of the following year." When the date was due, Li had no silver to redeem the land. He then "relinquish (*ding* 頂 or sell) his tenancy of 2 *mu* of the land to Zhu Bao and received 5 *liang* of silver which he gave Zhong Yingyuan as debt repayment" (XKTB: No. 309) .

Here the "yadang" involved transaction of the tenancy rights of the 3-acre land, its property rights, cultivation, and benefits in the following year. The debtor received the cash in exchange of the future benefits from the land; by the due date of the contract, the debtor returned the silver and redeemed the land. When disputes happened, Li Shisheng stressed the fundamental distinction between "yadang" and "ding" (relinquishment or sell of tenancy rights), "I temporarily mortgaged the land to Zhong Yingyuan for 5 *liang* and 2 *qian* of silver, originally with the agreement that by the 1<sup>st</sup> month of the next year the silver will be returned and the land redeemed. I did not intend to relinquish the tenancy rights of the land to Zhong." "Ding" was the long-term relinquishment of property rights, and its price was higher: 5 *liang* of silver for 2 *mu* of land; "dang" was the temporary relinquishment of land rights within limited time frames (in this example, one year), and therefore the price was comparatively lower: 5 *liang* and 2 *qian* of silver for 3 *mu* of land.

The pawning object was sometimes simply part of the profit from the mortgaged land, as shown in the accountant book of the Hu family in Qimen.<sup>15</sup> For the land mortgaged in the 12<sup>th</sup> year of the Tongzhi reign, the Hu family only “took the 10 *jin* of the harvest” instead of the entire harvest of the land. In the 3<sup>rd</sup> year of the Guangxu reign, 7.5 *yuan* were paid, and the pawned a certain portion of the land and submitted payment of 2 *cheng* and 10 *jin* of grain annually. Six years later, another 7.5 *yuan* were paid, “with the interest of 2 *cheng* and 10 *jin* of grain from the land.” Mortgaged with the land, the payment should be turned in with the profit of the harvest.

Three, there were also *dang* cases in which the right of land was relinquished as well. “Dang” usually did not result in relinquishment of land rights, but in certain cases such things did happen. For example, in the Qimen Hus’ accountant book, quoted by Zhang Youyi, it is recorded that: “in the 8<sup>th</sup> year of Xianfeng reign, a land was pawned for 15 *jin* of harvests,” “in the 11<sup>th</sup> year of Tongzhi reign, a land was pawned for 20 *jin* of harvests,” “in the 5<sup>th</sup> year of Guangxu reign, a land was pawned for 15 *jin* of harvests,” and “in the 20<sup>th</sup> year of Guangxu reign, a land was pawned for 15 *jin*.” In Gui County of Guangxi Province, in the 14<sup>th</sup> year of Qianlong reign (1749), Li Shebao, who rented Huang Durong’s land, and “dang” (relinquish) his tenancy to Zheng Laohuo to cultivate the land. Li received 8 *liang* of silver. In the 16<sup>th</sup> year of Qianlong reign, he intended to redeem the land to cultivate on his own (XKTB: No. 257). But here the “dang” of relinquishing the tenancy was actually accomplished by making a deposit. Here, the meaning of pawning the land was the same as pawning one’s possessions in pawnshops. Movable properties, as guaranties, were taken to pawnshops to be taken care of by the pawnshop keepers; immovable properties, on the other hand, only needed contracts of both sides as covenants.

“Zhuandang 轉當” (the transferring of the pawning) were allowed, and although there would be no final transfer of land rights, the “pawning debtor” could transfer the land to be cultivated by the third person.

In Baobai county of Guangxi, Liu Ya and his brothers, in the 8<sup>th</sup> year of the Qianlong reign (1743),

I received the relinquished land called Guanyinshan from Pang Yasan, Pang Shaonan, and Pang Shaorong by paying them 2 *dou* and 5 *sheng* and 3 *he* of rice, 5 *dan* of grain, 36,000 *wen* and 15 *liang* of silver. Later, because we were in need of cash, and the Pangs had no money to redeem the land in the last month in the 13<sup>th</sup> year of the Qianlong reign (1748), through the middleman Zou Guangzu, we had drawn up a contract that relinquish the land right to Long Tiande for 51,000 *wens*. We also gave our contract with the Pangs to Long Tiande who also had the right to cultivate the land” (No. 036) .

If the debt could not be cleared, the transformation from debt rights would become the transaction of land rights, and therefore the occurrence of transfer of land rights.

#### 1.4 *Di*: division of property rights as repayment of debts.

The use of property rights of the land or profit from the land to repay previous debts was usually referred to as “*di huan qian xiang* 抵還欠項” (to repay the owed items).

In Guangze County of Fujian province, Mao Shouzhao was unable to repay his debts owed to Wang Gonghuan. Mao Shouzhao drew up a contract, using the land as the guaranty to repay his debt to Wang by rent of land submitted by the tenants. After Shouzhao died, his son spent the rent and did not give it to Wang. Gonghuan

<sup>15</sup> Zhang Youyi, 402.

therefore found another tenant to cultivate the land. Disputes occurred and the government ruled that “the land should be managed by Wang Gonghuan” (XKTB: No. 188).

Here “*di* 抵” (repayment, relinquishment, etc) was to transfer the rent of land in the form of the harvest from the land to the creditors. Yet different from general transfer of land rights, in such cases the original landlord kept the right to use the land. Therefore, simply put: it is not accurate enough to say *di* involved the transfer of land rights. Misunderstanding consequently easily incurred. It should be put this way that what happened with “*di*” was the division of land rights. Such could be the route to form the right of eternal tenancy. When tenancy rights were mortgaged as property rights of land, the creditor got the “*lizhu* 利租” (profit from land as repayment of loan).

In Nanjing County of Fujian, Xu Bao rented Wang Jin’s 4 *dou* of land to cultivate, yet he was unable to do more farming because of his illness. In contrast to him, Xu Zhen had four sons, and his family was rich with labor. As a consequence, he used 32 *liang* of silver to take over 2 *dou* of Xu Bao’s tenanted land in the 16<sup>th</sup> year of Qianlong reign, and he paid 2 *shi* and 8 *dou* to the landlord Wang Jin annually. In the 22<sup>nd</sup> year of the Qianlong reign, Xu Bao owed Xu Zhen 17 *liang* 3 *qian* and 5 *fen* of silver, and he could only repay such a debt by relinquishing the profit from the rest 2 *dou* of land to Xu Zhen. Xu Bao still cultivated the land but he had to give Xu Zhen 3 *dan* and 5 *dou* of grain harvest from his land as repayment of his debt owed to Xu Zhen. (XKTB: No. 327)

Xu Bao owned the right of land usage, and he used it to repay his debts of 17 *liang* 3 *qian* 5 *fen* of silver, namely, using the future profits of rent income, 3 *dan* and 5 *dou* of harvest to repay his debt. Tenancy rights were transferred nominally, but the powers to control and to cultivate the land were still held by Xu Bao; the creditor (Xu Zhen), on the other hand, enjoyed the rights to a portion of profit from the tenanted land. This was a kind of division of land rights, the creditor got the land rights in the form of profit, and the original tenant held the rights to administrative and cultivated the land. Of course, these were all negotiated by both debtor and creditor, and it was possible to end up with complete transfer of property rights. For example, here is a “contract of tenancy” in the 49<sup>th</sup> year of the Kangxi reign:

The drawer of this tenancy contract Wang Yuansun, leased the land called Fangkengkou tian’erqiu, with a supposed rent of 11 *zu* 租 and 5 *jin* of harvest. Because of the delay of land rents for years, now through a middleman and Wang relinquished his tenancy right to the landlord Wang. When negotiated, the three agreed on the price of 4 *liang* of silver, and the silver was used by Wang as repayment of his delay rents to the landlord. The landlord would find another tenant for the land, and no objection is allowed...<sup>16</sup>

Because of “*di huan qian zhai*” (the mortgage and repayment of debts owed), Wang Yuansun lost his right of land usage.

### 1.5 Distinctions and analyses on all transactions of debt financing

*An* 按: similar to pledge, was loan by using the lands as guaranty.

*Ya* 押, *taijie* 胎借, *zhiya* 質押: same as collateral, was loan by using the land as guaranty and profit from the land as repayment. Their distinctions from “*an*” were

<sup>16</sup> History department of Nanjin University keeps the original document. Recited from Fang Xing, Jing Junjian, Wei Jinyu, 1806.

that they repaid the capital and the interests with profits from the land. Accordingly, when it came to the relationship with the land, “ya” was closer to the land than “an.”

*Dian* 典: also pawn broking, whose relationship with the land was rather closer. The right to use lands changed within agreed limit of time, and the debtor of a *dian* contract had to relinquish the rights of the land and profit from the land to the creditor and used land rent as repayment of loan interests. But the precondition was that the debtor had to redeem the land at the end. Even if all profits from the land and land rights were eventually transferred to the creditor, the owner of the land remained the same legally.

*Dang* 當: equals to pledge or hock, was to gain loans by using land rights as mediums. It could simply use lands as guaranty (as in contracts of “an”), or use land to mortgages the loan (similar to “ya”), and could also be pawned with the condition that the debtor relinquish his rights of land and profit of the land to the creditor. It could therefore be inferred that the use of *dang* was most popular and flexible. *Dang* could also be associated with other forms of transactions, such as *diandang*, *yadang*, *didang*, *zhidang*.

*Di* 抵: compared with the above three forms of debt financing, it significantly differed with two fundamental disparities: one was “to repay previous debts” by land rights, whereas other forms were all to mortgage new loans; the second was the division of land rights that accompanied “*di*.” Of course, nominally the debt had to be repaid by land rights, but the original landlord maintained his rights to use and control the land, although the rent of the land or rent in the form of harvest had to be paid to the creditor according to the agreement.

Distinctions of the above forms of transactions are rather subtle, yet surprisingly, most of the contracts from all places strictly distinguished between different forms of debt financing,<sup>17</sup> and only in very few areas or cases were these forms confusedly used.

In modern times, there are more and more combined usages of *dian*, *dang*, *di*, *ya*, *an*, *jie*, and so on, such as *diandang*, *didang*, and *diya*. This is also the reason to the difficulty in distinguishing above forms of debt financing. From the linguistic perspective, it is probably because of the customary usage of Chinese vocabularies prefers terms of double syllables; from the legal perspective, it is probably due to the slight difference in transaction regulations of laws in the Qing dynasty and modern era, rendering distinctions even more difficult. Nevertheless, in traditional times, differences among them should be clear and generally consistent in all places of China. Similarly amazing is how these forms of debt financing have continued in their distinct methods and names, and remained identical to the names of transaction in other fields. These proved the highly developed state of debt financing that used land rights as mediums. Such a state also further affected the development of financing methods at the time and for later times.

## **2 Transfer of land rights and its remaining effects of profits: protections for owners of the land rights**

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<sup>17</sup> I could not clearly distinguish it at first, and considered such phenomenon as randomness due to regional differences or the lack of strictness with language or laws. After due examinations, I found it was myself who was obscure, not the Qing people. Other scholars also had this kind of misunderstanding.

The above relationships of debtors and creditors, based on land and its profits, did not involve the transfer of land ownership. Transactions like *an*, *dian*, *dang*, *ya* did not come with the transfer of property rights, but they were easier to transform into the transacting relationship of land rights. The transfer of property right occurred when pawning became selling and land became unredeemable. Transacting forms and regulations of direct transfer of land rights, though not as complicated as the debt financing mentioned above, had their distinctive characteristics not only to reflect the financing function through the transfer of property rights, but also all aspects of benefit bargaining that surrounded the property rights.

2.1 Transfer of land rights: *huomai* 活賣(not-finalized sale), *juemai* 絕賣(finalizing the sale), *din* 頂, and *tui* 退. (including “*bao* 包”)

“Redeemable sale” was a form of land transaction, and similar to “*dian*,” the contract regulated that the original landlord kept the rights to redeem the land and bargain the prices. This was the arrangement to associate and protect the disadvantaged people who were forced to sell their land rights. Different from *dian*, in redeemable sales property rights were transferred in the end.

When the final transfer that came after the not-finalized sale occurred, the actual action of trading had to take place. On buyer’s part, buying out by increasing the price was called “*jiajue* 加絕,”(the finalization of the sale) “*duangu* 斷骨” (breaking the bone) . The seller called it “*zhaojia* 找價”(price bargaining) . If the continuant and the repetition of *dian* were the leftover prior to the final transfer of property rights, *zhaojia* was the compensation after the transfer of property rights. The only distinction was, if any, that there was only one time for the buyer to call for the finalization of the sale, whereas seller could bargain the prices twice, three times, or more. For example:

In the 28<sup>th</sup> year of the Qianlong reign (1763), the Ni brothers in Yuanhe, Jiangsu province, “received the relinquished right of the 10 *mu* and 5 *fen* of land from Chu Cangpei with 22 *liang* of silver.” In the 32<sup>nd</sup> year of the Qianlong reign (1767), Ni used 8 *liang* and 5 *qian* of silver to finalize the sale of land from Chu Cangpei (No. 293).

In Shanghai County, Zhang Zhongshan sold 4 *mu* of land to Zhu Feng for 43 *liang* of silver but kept the sale not-finalized. In the 25<sup>th</sup> year of the Qianlong reign (1760), Zhang bargained with Zhu for extra increase of 6 *liang* of silver for the price and 3 *liang* of silver as commission fee for the middleman who drew the contract of finalized sale (XKTB: No. 208).

Some people consider that people in the Qing dynasty regarded *dian* as sale,<sup>18</sup> which is a misunderstanding of the Qing concept. *Dian* and not-finalized sale appeared similar on the surface: *dian* required the temporary relinquishment of land rights, and redemptions were allowed. *Dian* was allowed to prolong or contract additional items, while sales of land allowed price bargaining or price compensation. However, the distinction between *dian* and not-finalized sale was clear. In Qing concepts and laws, *dian* was a kind of debt financing through temporal relinquishment of land right in contracted time period which could be as short as one or two years or as long as more than 10 years. Even when the contracted time period was as long as

<sup>18</sup> Li Li. Contracts of price finding listed in this article are all contracts of sale, yet the author termed them with “*dian*.”

37 years, the property rights remained under the name of the original landlord, as clearly verified in the case of Taiwanese “document of reason.” In truth, the Qing laws accurately regulated that taxes were not required for *dian*, though in selling actions tax was mandatory. The owner of the property remained the same in cases of *dian*, and so were his rights and obligations, which included submitting tax to the government. Secondly, there was distinct difference between price bargaining and redemptions. The price bargaining after the transfer of land rights were processed. *Dian*’s continual or addition was, on the other hand, processed prior to the transfer of property rights. The continual of *dian* was simply to prolong the time of *dian* in order to get more funds; after the continual of *dian*, property rights remain unchanged. *Dian*’s “receipt of redemption” or “redemption” took place at the end of the contracted time period while there was no time frame for redemption in not-finalized sales of land. It depended entirely on whether the original seller had the financial capacity to redeem. To illustrate with concepts of modern civil laws, what the buyer got was the right to the object, and what the creditor of *dian* contract got was the right of the profit of the object. The creditor’s right to control the object was limited to the control of usages, and the right to profit from the object. Such distinction, like in modern times, was also clearly defined in the Qing dynasty.

“Finalized sale” was, on the other hand, the final relinquishment of the rightful possession of the land, and the original landlords could not redeem or bargain prices in such cases. However, cases in which the original owner plead for chance of prices bargaining were not rare. During the Qianlong reign, it was once regulated that price bargaining was allowed even in cases of finalized sales, with the purpose of protecting the rights of the disadvantaged in receiving profits of the land.

*Ding, tui*: transactions of tenancy rights

Transactions of tenancy rights, named “*tui*” from the perspective of the original tenant, and “*ding*” from the perspective of the new tenant, were equal to “sell” and “purchase” respectively. Subsequent transactions of *ding* and *tui* were, on the other hand, called “*zhuantui*” and “*zhuanding*”; these transactions all involved trades of money. For example:

In Yudu of Jiangxi province, Xiao Zuoqiu had a land, yet because of the distance, he could not cultivate the land himself.

In the 15<sup>th</sup> year of the Qianlong reign, Xie Xiuyong purchased the tenancy right of the land from Xiao with an agreed price of 135 *liang* of silver. He paid 115 *liang* of silver when the contract was being drawn, owing 20 *liang* of silver.

In the 17<sup>th</sup> year of the Qianlong reign, he sold the tenancy right (*tui* 退) of the land to Ma Boliang with an agreed price of 110 *liang* of silver. Xie received 49 *liang* of silver as the contract was being drawn. It was agreed that the rest of the payment should be made in the second month of the following year.

When disputes occurred, the government ruled that “20 *liang* of silver would be given to Xiao on that very day, the compensation was waived. When Xiao was capable, he should redeem the land with its original price of sale” (XKTB: No. 310).

The form of “*bao* 包” (contracting) appeared in certain contracts and transactions, yet no explanations of this type of transaction has been made. *Bao* was neither trading of land rights and sale of tenancy right, nor tenant farming; it also had fundamental distinction from employment. A case that involves “*bao*” farming and transfer of *bao*, in Jingjiang, Jiangsu province, goes as follows: (XKTB: No. 307)

Yu Wenxuan, in the 13<sup>th</sup> year of Qianlong, contracted the cultivation of Xu Shunzhang's 20 *mu* of land and received wage payment of 1 *liang* 8 *qian* and 5 *fen* of silver. According to the local tradition, "it is agreed that the harvest of rice belongs to the landlord, and the harvest of wheat goes to the tenant." Wenxuan later transferred a part of his contracting land (6 *mu* and 5 *fen*) to Guiyuan, and paid him with 6 *qian* of silver. Guiyuan also divided half of the land to be cultivated by Yu Wenxuan's lineage nephew Yu Wusheng, paying him with 3 *qian* of silver. Both Shunzhang and Wenxuan were not notified of this arrangement.

This piece of contracted land was additionally contracted twice. If any of the elements of this contracting chain was interrupted, disputes would easily rise. Later, Yu Wusheng failed to harvest the contracted half share of rice because he was away. Shunzhang urged Wenxuan, and Wenxuan urged Guiyuan. Guiyuan was busy doing works he contracted from another household and was not able to harvest the rice. The interrupted part of this contracting chain was not able to be restored and disputes occurred consequently.

We can see from here the obvious distinctions between *bao*, *dian*, and *gu* 雇 (employment) :

*Dian*—the tenant submitted deposit, gained tenancy of land, and managed it independently. *Dian* could be transferred, bought or sold (*ding*, *tui*).

*Bao*—the landlord paid the capital in advance, and the recipient of the *bao* administered independently. *Bao* could be transferred, but not bought or sold. This had a lot in common with modern corporations' use of external contractors for exclusive productions of products.

*Gu*—the landlord paid the salary and administrated the business. The employees could neither transfer the employment, nor could he involve in its buying or selling. In other words, the landlord purchased the labor.

Both *dian* and *bao* belonged to business contracting, and hence a commissioner-contractor relationship was formed. *Gu* and *bao* both belonged to the investment of the landlord, but *bao* did not constitute a relationship of employer and employee.

## 2.2 Additional profits: *zhaojia* 找價, *jiajue* 加絕 (both mean price bargaining), and *huishu* 回贖 (redemption)

After the not-finalized sale of the land took place, if the buyer bargained the sale price, the sale would become finalized. From the seller's point of view, it was termed "zhaojia" (*zhaoxi* 找洗 or *zhaotie* 找貼). After the sale of the land was finalized, due to reasons such as the increase of land value or life difficulties of the seller, the seller could request to increase the sale price. This custom was actually supported by the government, and was specified in legislation. Price bargaining could be found usually in transactions of not-finalized sales, but it also existed in cases of finalized sales. Not only did it take place in transactions of the rights of land ownership, but also in those of land usage.

In the first year of the Yongzheng reign, Xu Zhenxun from Jieyang bought Li's 6 *mu* of land. The land was originally leased and cultivated by Xu Yingjie. The owner of tenancy remained the same (Xu Zhenxun). Because of flood and landslide, the land was overflowed and Yingjie quit farming, relinquish his tenancy and took back the original deposit of the tenancy 18 *liang* and 5 *qian* of silver, and went away for making a living. Zhenxun restored the land to cultivable state with his own fund and

labor. In the 6<sup>th</sup> year of the Qianlong reign, Yingjie returned with the hope of getting compensation of 10 *liang* of silver for his previous relinquishment of tenancy (XKTB: No. 249). Xu Yingjie was the original tenant of right of land usage, and he hoped to get compensating money from the usage rights he gave away 19 years ago.

In Taiwan, Pan Tansheng sold his land to the Han tenant Xu Lueguan. Later, however, Pan raised a petition: “Today due to the lack of food, the famine is severe. I entrust a middleman to pledge the current tenant Xu Lueguan to provide me with some edible food as compensation from my previous sale of land. I asked for four *dou* of grain which should be submitted in two seasons annually, and an extra 5 *yuan* for supporting my diet.”<sup>19</sup>

This case of price bargaining was special, for the original landlord asked the original tenant—the new landlord—to give him not only 5 *yuan* of cash but also 4 *dou* of grain annually. Such a request was almost a restoration of the previous relationship between the landlord and the tenant, although petitioner spoke with a pleading tone. It is unknown as to what reason was involved in such a case of price bargaining after the sale of the land was finalized, probably having to do with the Han immigrants’ disadvantage when dealing with the aboriginal people. Actually, many landlords in China, if came as outsiders of their residing community, usually could not help but to face strong power holders in the community.

Cases of repeating price bargaining were not rare. Often, the new bargaining price would be added on the original contract of sale. In an original contract of Yilan, Taiwan, I found Qiu Zhenkun’s two contracts which involved three price bargainings:<sup>20</sup>

In the second year of the Tongzhi reign, “again bargaining the price”: sold in the year before last year, “the sale price was bargained and ten *yuan* plus the 9 *yuan* owed to Qiu previously were paid,” which made 19 *yuan* in total.

In the 7<sup>th</sup> year of the Tongzhi reign, “to bargain the sale price for the third time”: “Qiu had pleaded for another price bargaining twice as proved by words on the contract. Now propelled by others, he filed a lawsuit against the buyer of his land. Kuan later repent for his action. His income was not sufficient to support his family; therefore he implored the buyer Zhang Quanguan to give him another 10 *yuan* of silver as compensation for the sale of his land.”

The repeating price bargaining illustrated the power of property rights and the affects brought by the land profit. Such power and affects were actually sympathized and recognized by the society. On the other hand, as reflected in the previous example, the seller was usually local people; if the buyer was an outsider of the local community, he could probably only yield to local people in certain aspects. Yilan’s Qiu Zhenkun seemed to manipulate this to force the buyer to allow the third price bargaining. In addition, by demanding the seller to confess and apologize in contract, the buyer sought to avoid trouble by losing money.

For the original land owner, price bargaining was, for the first thing, compensation for market price of land; for the other, the last resort of weathering risk and hardship. Usually it included the most imploring language under reluctant conditions. The pleading language of the two contracts from Yilan was rather common.<sup>21</sup> Such price bargaining was more like begging for the seller and merciful acts of the buyers. In the 14<sup>th</sup> year of the Daoguang reign, “the seller finalized the sale of his land with a

<sup>19</sup> Xie Jichang, 78.

<sup>20</sup> *Yilan wenxian congkan*, 003, 004.

<sup>21</sup> *Ibid.*, 001, 002.



contract;” however, as she later appealed, “my husband is dead, my son is young, and my family is poor. Because of the poor life and the lack of money, I can not pay for the funeral expense. I have no way but to entrust the original middleman to implore the buyer,” for 20 *yuan* of silver as compensation of sale price. “I will never initiate such price bargaining again. This is for emergency’s sake.”

A contract dated in the 27th year of the Daoguang reign stated: “how dare I say I am here to bargain the sale price, however, life has been hard and I cannot afford daily food... I plead to the buyer for 20,000 *wen* of copper coin to save my need for food.” Price bargaining also reflected an arrangement of convenient transactions. As Mio Kishimoto explains, “decreasing in advance the sale price of land became virtually a custom of later payment for the finalized sale of the land.”<sup>22</sup> This actually lowers the standards for land trading, and it can also be referred to as the blooming of installment in land trading.<sup>23</sup> In the 7<sup>th</sup> year of the Yongzheng reign, Lai Yongsai from the Guishan County, Guangdong, had 6 *dou* of land which he sold to Peng Guozhen and his brothers for 39 *liang* and 5 *qian* of silver. In the 10<sup>th</sup> year, he bargained the sale price for an extra 1,300 *wen*, and drew up an additional contract in which he stated that he would never bargain for the price again. But in the 16<sup>th</sup> year, when Lai saw the rise of land value, he intended to further bargain the price (XKTB: No. 260).

Therefore, price bargaining at least reflected the following meanings: first, the compensation for the change of market price of land was a kind of protection for the disadvantaged seller; secondly, it was the last resort of means and protections for the original land owner in time of hardship; thirdly, it was a custom of lowering the sale standard so to make transactions convenient; fourth, it illustrated the strong recognition with property rights in society. The affects of land profits were always there. Such affects continued the sellers’ time of receiving land profit and allowed a certain amount of compensation even after losing property rights of the land for a certain period of time

The custom of redemption was also meant to protect the seller’s legal status and his hope and legitimacy of restoring the sold land. The Qing laws had regulations on redemption accordingly.

### 2.3 Tendencies of transaction methods: protecting the interests of land right owners

In the traditional agricultural society where financial tools were scarce and the ways to earn a living were exclusively singular, land rights presented the means of making a living and hope of the land possessor. Consequently, land right carried a diversified function. On the other hand, owner and the government both made their utmost efforts to protect the peasants’ possession of land rights.

The first level of efforts was to fulfill the financing needs of the peasants through land profits or rights of usages. In agricultural times when financial tools were few, arrangements that rely or use land rights as medium, such as *ya*, *dian*, *dang*, *di*, was a kind of effective substitute.

The second level was the redeemable not-finalized sale of land and selling or purchasing of tenancy leaving possibility of renegotiation after the transfer of land rights was finalized, so that the original landowner might have a chance to restore his ownership.

The third level was finalized sale of land, symbolizing the ultimate lost of the

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<sup>22</sup> Mio Kishimoto.

<sup>23</sup> Wen Ming.

ownership of land. It was often the last resort for desperate peasants.

The fourth level: even after losing land rights, price bargaining could be attempted, so that the original owner of land rights was not cut off from the land profits completely, and by bargaining subsidies, he was able to live through the difficult times.

During the Kangxi and Yongzheng reigns of the early Qing dynasty, some governor generals announced limitation in the system of bargaining sale price, prohibiting the seller from bargaining the finalized sale price or redeeming the land.<sup>24</sup> This was mainly because the disputes caused by bargaining sale prices became a huge burden for local officials. However, subsequent legislations inclined to protect the original owner of land rights. In the 8<sup>th</sup> year of the Yongzheng reign, a government statute states:

If the contract did not record words of finalized sale of the land, or there was a limited time frame for redemption noted in the contract, the seller of the land shall be allowed to redeem. If the seller was incapable of redemption, a middleman should negotiate a price bargaining and then draw a new contract of finalized sale of the land.<sup>25</sup>

In the 51<sup>st</sup> year of the Qianlong reign, the Shandong Provincial Administration Commissioner reported:

And yet the property of these common people was the source of food and clothing for them. For the sudden need of money for emergency's sake, it was empathetic how they ended up losing their previous properties eternally. Therefore I think in order to promote Your Majesty's benevolence, we should follow the example of Henan province and allow redemption, regardless of the sale of the land being finalized or not, so that the impoverished would not grow old without properties.<sup>26</sup>

The policies of unconditional redemption carried out in Henan and Shandong were approved by the Qianlong Emperor. Of course, such policies also caused the increase of disputes, sometimes resulted in the disorder of the market. It was not until the 60<sup>th</sup> year of the Qianlong reign that it was clearly regulated that no redemption was allowed for any land sold more than 30 years ago, or when the contract did not specify the term of the sale. Similar to this, *Da Qing lu li* 大清律例 (The Qing codes) protects the rights of the *dian* debtor, stipulating that even the date for redemption passed, redemption was still allowed:

The time frame for redeeming the houses and gardens, etc. passed and the original owner had prepared money to redeem the land. If the creditor was unwilling to return the land, he shall be flogged 40 times. The debtor shall make up the payment of interest for the years after the contracted period of time ended and the land shall be redeemed with the original price of the loan.<sup>27</sup>

### 3 Transaction of share of land rights and incorporating transaction

#### 3.1 Incorporating transactions: *huodian* 伙佃 and *gongdian* 共佃 (both mean co-

<sup>24</sup> Li Wenzhi, 510-511.

<sup>25</sup> *Da Qing huidian shili*.

<sup>26</sup> The memorial in July of the 51<sup>st</sup> year of Emperor Qianlong's reign. The Provincial Commissioner of Shandong once announced the Emperor's oracle that officials and rich merchants were banned in transboundary purchase of properties.

<sup>27</sup> *Da Qing lǜli huitong xinzuan*, 979-980. *Duli cunyi*, 095-00.

tenancy)

“Co-tenancy,” or partnership of tenancy, was a kind of incorporating management of land cultivation. When tenancy became a type of property rights, co-tenancy was formed. Co-tenancy and co-ownership were similar to modern cooperate business. The partners contracted agreement and funded and managed business, enjoyed the profit, and took the risks together. They also shared unconditional responsibility to the business debts and each partner had the obligation to repay the business debt as a whole.

In the 36<sup>th</sup> year of the Qianlong reign, Lin Laoli borrowed 20,000 *wen* from Ye Tianxin, and he submitted 6 *dan* of harvest to Ye every year. During the 12<sup>th</sup> month of the same year, together they bought the tenancy of a land from Peng Shirong, each paying 33,100 *wen*. Ye Tianxin borrowed another 52,000 *wen* in his name and resulted in a fund of 118, 200 *wen* in total. “The land was given to Lin Laoli to cultivate, and it was agreed that except for paying rent to Peng, the rest of the rice would be harvested together and shared.” However, Lin Laoli harvested by himself, conflict then took place. Ye Tianxin considered that, Lin Laoli’s investment, minus his previous debts owed to Ye (33,000-20,000=13,100 *wen*), was not even enough to counterbalance the money he owed. Therefore, Ye controlled the land alone, and he later contracted the land to others in the 38<sup>th</sup> year of the Qianlong reign (XKTB: No. 289). In this case, the partnership of tenancy was actually the incorporation of capital (Ye), labor (Lin), and land (Peng).

In Dianbai, Guangdong province, Lai Shixuan leased 24 *shi* of land from Xiao Dasan. In the 19<sup>th</sup> year of the Qianlong reign, he sold the tenancy of 10 *shi* of the land to Deng Rong. In the next year, the two of them became partners and cultivated together. Deng Rong provided labors and ox, while Lai provided the fertilizer and seed. The harvest would be divided equally between them. Because Lai was ill and could not tend to the farming and Deng Rong did not want to cultivate either, “and hence the tenancy of the land was sold to Ling Zhuochao for 13,000 *wen*. Deng Rong received 5,000 *wen* as labor fee and had his ox back. I should be entitled to receive seeds and 8,000 *wen* as price of the cottage”(XKTB: No. 313). This was a very reasonable arrangement, because whereas the harvest divided into two, Deng Rong had not yet paid his part of labor at this point. From co-tenancy to the sale of tenancy rights, the process was a transaction through partnership. From the term “total sale of tenancy,” it could be illustrated that the property rights were transferred as a whole.

There were many cases of property transactions in types of co-ownership of property among contracts of Huizhou. According to the accountant book of Sun family in Yi County edited by Zhang Youyi, 49 in 89 land transactions were co-ownership. Such co-ownerships involved as few as 3 or 5 households, and as many as 28 households. The share of rent income for each house was usually between 20 to 50 *jin* of harvest. In the accountant book of the Hu lineage in Qimen, among the 34 land properties with recorded names of landlords, the number of landlords was up to 105. Among these, one land belonged to 11 owners. (Table 1) Among contracts of the forestland in the Miao area in Guizhou, organized by Tang Li and Luo Hongyang, co-ownership of property was also very common.<sup>28</sup>

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<sup>28</sup> Tang Li; Luo Hongyang.

**Table 1** Transactions of co-ownership of land as recorded on the accountant book of the Hu lineage in Huizhou

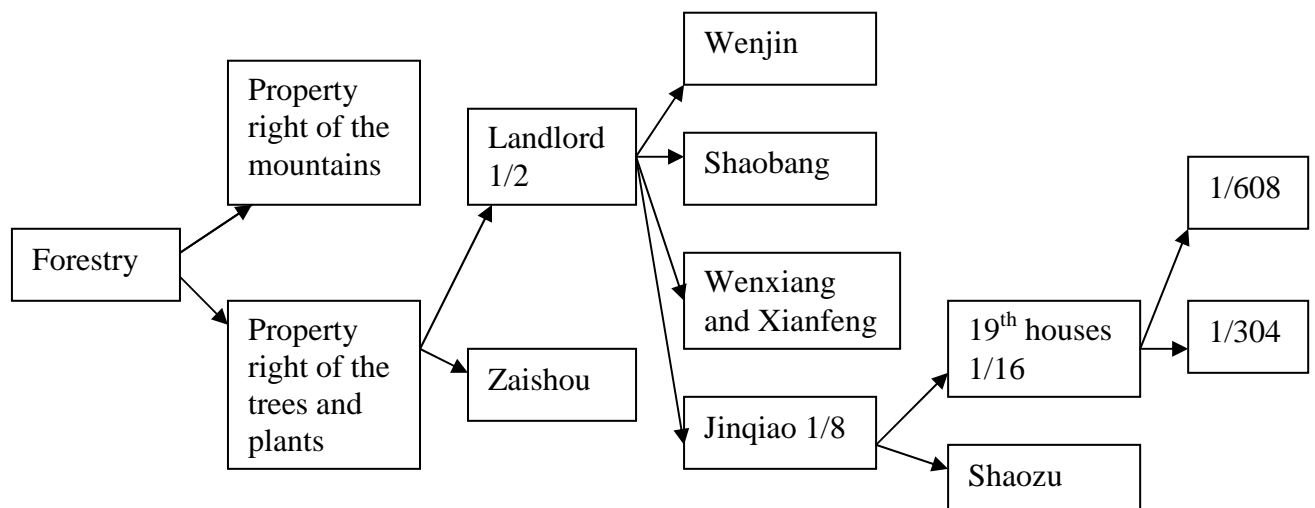
Number of households involved in the co-ownership	2	3	4	5	7	8	28	Unknown
Number of land property	16	13	10	5	1	1	1	1

### 3.2 Transactions of share of land rights: case study of wood trading in Guizhou

The Miao mountainous area in Guizhou was an important area for forest plantation and trading of woods. The remaining documents of contracts reflected the transaction of share of property rights, a case in the first year of the Daoguang reign was amazing:<sup>29</sup>

Drawers of this contract of trading Chinese fir, the Yanwan natives Fan Xianzong, Xianxiu, Weiyuan, Shaopei, and Shaozhai, for the lack of silver, were willing to give away a log of Chinese fir, located at Ranlou..... the right of this log would be divided into two shares, the planters took one while the landlord took the other; the landlord's share could be further divided into four shares: Wenjin took one, Shaobang took one, Wenxiang and Xianfeng shared one, Jinqiao took one; Jinqiao's one share was further divided into two shares: Shaozu took one and the other one share went to the 19 households. Today the share was sold by the 19 households to Jiang Yinghui. The parties agreed a sale price of 10 *liang* 1 *qian* and 5 *fen* of silver. After the transaction, the property would be under the administration of the buyer, and the sellers' brothers and irrelevant people should not utter any protest. In fear of the lack of evidence later, this contract of sale was to be kept for examination's sake forever.

Note: the 19 households were listed in the following (including the contracts with the landlord): .....it is indeed the truth that the 19 households sold their share together. (There was also share division within these households. Youcai and Decui each received half of one household's share.)



**Fig. 1** (above) A chart of transaction contracts of shared rights to woods and trees in Guizhou

<sup>29</sup> Luo Hongyang. "Qing dai dong nan jin ping miao zu lin ye qi yue zhi mai qi yan jiu." *Min zu yan jiu*. 2007: 4.

As the contract was charted in figure 1, the relationships between all parties became clear, and the history of transaction of shared rights of woods was recovered:

In this chart, “landlord” included 4 shares. Three shares belonged to three natural persons or families (Wenjin, Shaobang, Wenxiang and Xianfeng), and one belonged to a legal entity (Jinqiao). “Landlord,” “Jinqiao,” and “19 households” were all legal entities, not natural persons and formed on the base of share holding.

*Gu* 股 (share) was the transferrable right of receiving profit and was purchased by the shareholders with a certain amount of fund. From the economic perspective, *gu* was part of the property right, which was the rightful possession of the property, excluding property rights of legal entities. The transfer of share right would not change the completeness of property rights; neither would the trading of share rights. In the contract, as part of “Jinqiao”’s share, “19 households” could place their share on the market for sale, and the property right as a whole would not be affected. The responsibility and profit of share rights were both limited. Neither of them was the system of partnership. Since being not the property management through partnership, the partial share could be detached from the entire property right. Based on the trading price of 10 *liang* 1 *qian* 5 *fen* of silver, every household could receive the sale profit of approximately 0.5 *liang* of silver, and 0.25 *liang* for Youcai and Decui. If we use the share of these 19 households to estimate the whole value of the woods, the value would be 162.4 *liang* of silver.

Some people regard the phenomenon that two landlords share the rightful possession of a land as the beginning of share system;<sup>30</sup> such assumption is wrong. The property right of land ownership and that of land usage were two independent property rights that were completely different from each other. Although these two rights were attached to the land, they were not share rights of an identical property right. The concept of land with two landlords and that of share system were opposite logics. In the share system, the property right as a whole was composed of many transferable share rights. In cases of two landlords co-owning a land, the land right was divided into two independent property rights, namely, the right of land usage and right of land ownership. When there appeared mutually independent right of land usage and that of land ownership, the land was no longer *qingyuetian* 清業田 (land whose right of usage and ownership belonged to one holder). In other words, the form of property rights of *qingyuetian* no longer existed.

Transaction of woods was also a transaction of futures, which means that the prospective grown woods that were the objects of transactions. It was also called “purchasing in advance,” a custom which came to existence as early as the Song dynasty (960-1279). After the transaction took place, the buyer received future profits; if he was “the hand in charge of the planting,” usually he would even be in charge of the management of wood trading. Dated in the 10<sup>th</sup> year of the Daoguang reign, a contract of “buying out fir woods” stated: “after being sold, the care of the sold wood will be undertaken by the buyer. Later after the trees were grown, and cut down, and transported downstream by the river, the land still belonged to the original landlord.” In such a case, “rent” referred to profit from the land—forestry. This kind of rent was not submitted annually as the profit of harvest but was submitted every 10 or 18 years. Because of the lengthy period of awaiting profit, the cost of hired labor for caring the forest was excessively high and hence often resulted in partnership. From thousands of contract of mountain sale in Huizhou in the Ming dynasty (1368-1644), Zhang Chunning finds that most forest farms were often co-owned by lineage

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<sup>30</sup> Jiang Taixin.

members. A couple of contracts even showed that the buyers and sellers had relative relations or co-ownership.<sup>31</sup>

### 3.3 Fair profit divisions according to share holding were not share trading: the case of Haishan, Taiwan

“Angu junfen 按股均分”(equal profit division according to share holding) constantly appear in all kinds of contracts; are they the transactions of share rights? In the collection of Fu Sinian Library “gu wenqishu 古文契書,”(Contracts in ancient times) I found two relevant contracts in Haishan, Taiwan, dated in the 59<sup>th</sup> year of the Qianlong reign. These two contracts described different ways of transactions on an identical land. One was constructed in the 11<sup>th</sup> month, “li heyue zi,” (立合約字 words of contract) followed by the 12<sup>th</sup> month’s “li dumai tianwu qizi.”(立杜賣田屋契字)<sup>32</sup> With due translation, distinctions on systems of partnership and of rights of share could be discovered.

Contract drawer Yuanhui and Zhaolin combined their investments, and bought the tenancy of a farm field from Peng Fuzai of Haishan, along with gardens, houses, ponds, and so on. Landlord has measured the land as 11 *jia* 3 *li* and 3 *hao*, and the major amount of harvest submitted to the landlord is 80 *shi* 6 *sheng* 4 *he*. The minor amount of harvest submitted to tenancy holders and their deposit are divided into 8 shares according to their investment. The rent: 5 share for Shiye, 1 share for Master Meng Wulang, and 2 for Hao and his brothers. The brothers were willing to sell their tenancy of 2 *jia* and 7 *fen* of land; Yuanhui and Zhaolin have prepared silver of 1,300 *yuan* and bought the tenancy as partners. Each of them shares half of the tenant rent and the deposit. Now that they together signed a contract on two separate papers, each one kept a copy for records.

The contract disclosed forms of transactions and relevant parties in transactions of land rights:

(1) Owner of property: got major rent of more than 80 *shi*. In this contract, property owner was neither been mentioned, nor did he sign. Usually the landlords were aboriginal people.

(2) Owner of tenancy: got minor rent and provided the deposit. The distribution of profit was practiced with share holding: eight shares in total, and Hao and his brothers had two shares.

(3) Two shares of transaction: the buyers Yuanhui and Zhaolin bought the property together. Such partnership signified that they, as legal entities, had unlimited responsibilities among the owners of tenancy. Their purchase price for tenancy was 3,000 *yuan*.

(4) The transaction of two shares was an independent action, so other share holders did not have any function in the contract. It was not necessary for them to appear in the trading, nor did they need to sign, this explained that the transaction share did not influence the property right as a whole. Fair division according to 8 shares was division of profit and did not involve the management of the property right as a whole. In perspectives of profit distribution, this was extremely similar to transaction of rights of share.

Yet the following contract of relevance required further examinations and

<sup>31</sup> Zhang Chunng.

<sup>32</sup> *Guwen qishu*, FSN01-02-036; FSN01-02-037.

corrections on the fourth point mentioned above. There was another contract set a month later, by both sides of the transaction, providing more information on the parties involved:

Drawers of this contract of sale, lineage nephews Zhenhao and Zhenfeng, bought a farm together with other uncles and nephews few years ago. The land was located in the village of Pengfu, Haishan, along with houses, bamboo garden, ponds, vegetable garden, and so on. The owner of property had measured the land to be 11 *jia* and 3 *fen*. The land also had convenient watering facilities with bamboo garden and houses around it. Those facilities were all recorded in the contract. The entire property was separated into 8 shares. Hao and his brother had 2, and they held the tenancy of 2 *jia* 7 *fen* 8 *li* 3 *hao* of fertile land. .... Now due to need of silver cash, Hao and his brother were willing to sell their share. They first inquired lineage brothers but they were unable to purchase the shares. They entrusted a middleman to carry the message to two lineage uncles, Yuanhui and Zhaolin, who were willing to purchase the shares. The three parties agreed on the market price of the shares, 1,300 *yuan*, on that very day. The money and contracts were also exchanged. The farms and houses were immediately given to Yuanhui and Zhaolin for cultivation and administration, rent submission and so forth, as their own property in the future. ...

Four pieces of paper on the sale contract from Jiang Chaofu and Liu Xiushen, from whom the property was acquired, along with the paper of contract on the sale of the house by Liu Xiumei, were kept by Zhaolin for record. A paper on the sale of land by Liu Xiumei, along with two papers of cultivation contract, and a contract on land measurement, five papers in total, were kept by Yuanhui for record. ...

Owner of property

Witness: lineage uncle Rongguang, son Guanfu

Middleman: lineage uncles, Dingjin, Wei Tailiang, Panyang

Upon close examination of the size of land, prices and times of transaction, and both sides of the transaction, it should be the transformation of transaction on the same land—from the transaction of rights of share to the transaction of property rights. The first contract and signature only involved the distribution of profits, not the entire property rights and its administration. In the second contract, however, land rights were clearly divided and given away. If the property rights attached to the sold shares had been clearly in the divided status, it could not be called as system of share, for the property rights attached to the sold two shares could not represent the whole property rights held by other share holders. The profit of that part of land was divided among its holders. As for the transaction in the second contract, it was surely not system of share, but of partnerships. Nevertheless, the partnership between Yuanhui and Zhaolin in the first contract was not affected by the second contract.

To this point, it is clear that: first, the sale contract in the 12<sup>th</sup> month was the division and transfer of tenancy rights, so the terms of the contract were much stricter and detailed than the one in the 11<sup>th</sup> month. Secondly, the contract of the 11<sup>th</sup> month was only the equal distribution of profits according to shares, and its property rights of land distinctively belonged to each shareholders. The right of each shareholder did not represent the property as a whole. Although it was possible that the property was managed by all shareholders, such a management was not part of the shares of right. Thirdly, “sale contract,” “contract rightly distinguished differences between transaction of property rights, partnership administration, and profit distribution.

Many of the equal distribution according to shares were only limited in the distribution concerning land profits. The property right of each shareholder was substantial and independent and did not represent the whole property right; hence, the equal distribution according to shares should not be considered as trading of shares.

#### **4 Diversified ways to promote transaction of land rights and satisfy the peasants' need of debt financing**

The diversification of land right transactions ways enabled peasants to manipulate any form of transactions, whether large or small, long or short term. The multi-layered market resulted from the division of property rights enable the expensive unmovable properties to accommodate many independent owner of property right and made the trading of land right convenient. By lowering the standard for entering and exiting land right markets, large population of petite peasants could participate in transactions. Hence, land right became generally accepted and commonly used financial tool, satisfying peasants' need of debt financing and promoting the combination of productive elements. The following cases testify such results.

Case 1: Wang Hanying and his son use land right markets to process all kinds of arrangements and rearrangements (XKTB: No. 330).

In Zhuji County, Zhejiang, Wang Hanying had a rented land of 4 *mu*. In the 9<sup>th</sup> year of the Qianlong reign, his father sold the tenancy to Jiang Yuqian, though the land was still cultivated by the Wangs, with a yearly rent of 10 *dan* of grain. Being originally the landowner of *qingyetian*, the Wang family sold the right of land usage for the need of cash, and in the mean time maintained the tenancy rights of cultivation for labor profits.

In the 30<sup>th</sup> year of the Qianlong reign, the Wangs sold the tenancy rights to Su Bangxin, with a price of 6,400 *wen*.—giving away tenancy rights in exchange for cash.

In the 34<sup>th</sup> year, due to the rise of tenancy prices, the Wangs intended to redeem the sold tenancy right and resell it to repay the debt for the market price of the previously sold tenancy right increased to 10,000 *wen*. By redemption, the Wangs received profit resulted from the change of market price of the tenancy right.

However, the buyer Zhou Shangwen only had cash of 3,000 *wen*, so he mortgaged his tenancy right of other land to Wang Hanying. In other words, Zhou used his own tenancy right to repay the 7,000 *wen* which he owed to Wang Hanying. By flexibly using the method of “*di*,” these peasants were able to overcome the drawbacks of transaction barriers and the lack of financial tools so the transaction of land right could be completed. Although the Wangs could not get sufficient cash as they hoped, they accomplished the anticipation for future labor profits.

In the 35<sup>th</sup> year of the Qianlong reign, Zhou Shangwen's another 4 *mu* of land was contracted by Wang Hanying for cultivation, and paid him 320 *wen*. Again, the form of “*bao*” appeared, and the Wangs received cash of 320 *wen* as the payment of the labor contribution in the future.

Wang Hanying and his son processed four land transactions in 29 years, and flexibly used transaction methods involving right and land profits like *qingyetian*, right of land usage, sale of tenancy right, purchase of tenancy, and contracting farming. This was similar to modern investment by using combination of different investment objects. Of course, it appeared that land right markets provided multiple



tools to be chosen from, though in reality such tools were reluctant compromises forced by life. Yet, it was better to have choices. These tools of debt financing indeed enabled the Wangs to withstand the difficulties a couple of times, and to prolong their own reproduction and life.

Case 2: Four times of trading transaction processed by the family of Dayu Ganjin, with the purpose of remaining their property rights.

In the documents of Dadu Village, Taiwan, I have discovered the Dayu Ganjin family's three contracts with 4 land transactions conducted within 32 years.<sup>33</sup> The first two were the contracts made by Dayu Ganjin for his father-in-law. The later ones were about the transactions by him and his son respectively. Let us look at the two contracts conducted within 10 years and regarding the same piece of land by his father-in-law, Pu Lishe:

In the 7<sup>th</sup> year of the Jiaqing reign, due to the lack of money, Pu Lishe rented the eternal tenancy of his land for 160 *yuan*. "A rent of 4 *dan* and 8 *dou* of grain was submitted to the landlord after measuring a set of land and hills." "By the arrangement of a middleman, a Han Chinese, Chen Tingguan, agreed to purchase the eternal tenancy, be in charge of cultivation, and submitted the rent without any increase or decrease annually. Pu's descendents should never attempt to redeem the tenancy and make trouble."

In the contract dated in the 17<sup>th</sup> year of the Jiaqing reign: the aboriginal Pu Lishe of Beidadu village had a land inherited from his grandfather. The tenant Chen "paid rent of 40 *dan* each year. Now due to the lack of silver, Pu was willing to mortgage 2 *dan* from the rent for a loan. He had first inquired aboriginal relatives if they were interested, and yet they had no desire to take the deal." He therefore negotiated through a middleman with the uncle and nephew of the Chens, the original tenant, "and they were willing to take the deal. The three parties agreed on price of 7 *yuan* of silver. The money was submitted on the day with record. Pu's 2 *dan* of rent will be given to the creditor (Chen) as interest payment, and nobody should dare to stop him. This contract started in 1873 and would be terminated in 1875. The debtor remains the right to redeem the original contract. If the silver is not ready when the date is due, the creditor will still have the contract as interest payment."

Dayu Ganjin's father-in-law Pu Lishe, in need of cash, sold the right of land usage at first, and got 160 *yuan* of silver accordingly. He himself kept the right of land ownership. Ten years later, he needed cash again. This time he adopt the transaction form of mortgaging the rent to the original tenant Chen, using the 2 *dan* of harvest for the subsequent two years as interest payment. Pu received a loan of 7 *yuan* of silver. Because the creditor was the original tenant, Pu in reality gave a rent discount of 2 *dan* for the next 2 years in order to get the cash he desperately needed.

In the 16<sup>th</sup> year of the Daoguang reign, Dayu Ganjin mortgaged his land for 100 *yuan* of silver. Three years later, his son prolonged the period of this mortgage. At the end of the original contract, it was additionally noted, "In the 10<sup>th</sup> month of the 19<sup>th</sup> year of the Daoguang reign, Amei Ganjin implored the original creditor Li Hongguan for an additional mortgage of 2 *yuan* of silver. The mortgage sum was 102 *yuan* of silver in total. The land was to be cultivated by Li from the spring of 1840 to the winter of 1842."

The periods of these two mortgages were both 2 years. The first mortgage resulted

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<sup>33</sup> Liu Zemin, 119, 135, 173.

in a loan of 100 *yuan*, yet for the second mortgage, it was only 2 *yuan*. Obviously these mortgages were almost the sale of the land. However, unless without any other choice, the landlord always wanted to have the last opportunity of keeping land right. The continual of the mortgage offered him this opportunity, which was equal to the price bargaining in cases of not-finalized sale. However, while the price bargaining was the compensation after the lost of property right, the continual of mortgage was the final debt financing before the ultimate lost of property rights. These diverse trading ways provided all kinds of transaction choices.

### Case 3. The resale, partnership, and mortgage of tenancy rights

In a contract collected at Fu Sinian Library of Academia Sinica, 4 transactions were conducted in a period of 90 years (1729-1812). In a contract of initiated in the 7<sup>th</sup> year of the Yongzheng reign, additional terms had been added in the 10<sup>th</sup> year of the Yongzheng reign, the 2<sup>nd</sup> year of the Qianlong reign, and the 16<sup>th</sup> year of the Jiaqing reign:<sup>34</sup>

The ones who drew this resale contract are Qiu Ruozhuan and Qiu Ruodou. The landlord was Yang Huangda from Xishi village, Taloushekou. Previously, the Qiu brothers purchased the tenancy of 2 *jia* and 8 *fen* of land, along with one and half houses, half of the bull fence, some domestic belongs behind the house, and half of the vegetable garden. Since the brothers cannot cultivate the land are now in need of silver cash, they are willing to resell the tenancy to Yang Gui and Yang Shan through a middleman. The three parties agreed on a sale price of 620 *liang* of silver. The land was given to the buyers for cultivation and the resellers should not protest. Any unpaid rent was the responsibility of the resellers. The resellers and the buyers were all willing to conduct this transaction. For the fear of no evidence left, a contract is drawn.

The 7<sup>th</sup> year of the Yongzheng reign, reseller: Qiu Ruozhuan.

Contract constructor, Yang Shan and his lineage uncle Yang Gui, together bought a land of 2 *jia* and 8 *fen*. Now because they live separately, the land should be divided and the uncle received 1 *jia* and 2 *fen* which was given to another lineage uncle for farming. If he does not intend to farm, the tenancy could be sold to others. No one should intervene or protest. The term is now added to the original contract as record.

Witnesses: Qiu Yuzhang, Bu Rishang, Gu Guiyuan

Middleman: Chen Fuxing, Yang Youfa, recorded of the oral statement: Qiu Yixian

In the 12<sup>th</sup> month of the 10<sup>th</sup> year of the Yongzheng reign, Yunzhang got a divided land of 1 *jia* and 4 *fen* and gave it to Uncle Bao to cultivate, as recorded.

In the 12<sup>th</sup> month of the second year of the Qianlong reign, it is recorded that Yunzhang redeemed the land from Uncle Bao, and gave it to Guisheng to manage and receive rent. Yunzhang shall never attempt to redeem or make trouble.

Representative: Huang Xiuying.

In the 6<sup>th</sup> month of the 16<sup>th</sup> year of the Jiaqing reign, 1 *jia* and 2 *fen* of the land are drawn and the tenancy of this land was mortgaged to Wang Fusheng, as

<sup>34</sup> Wang Shiqing, FSN05-01-004; Long Denggao, 2005..

recorded.

In this contract, neither the landlord Yang Huangda, nor the original tenant Qiu Ruozhuan and Qiu Ruodou, is the protagonist, but the several generations of the Yang lineage, the new tenant.

In the 7<sup>th</sup> year of the Yongzheng reign, the Qiu brothers transferred (*tui*, sell) the tenancy to Yang Sheng and Yang Gui, and the two of them bought the 2 *jia* 8 *fen* of land with 629 *liang* of silver. The contract also indicated that the Qiu brothers reserved the right to redeem the sold tenancy.

In the 10<sup>th</sup> year of the Yongzheng reign, the uncle and nephew's business of partnership encountered difficulties because they lived separately. Consequently, the land was divided and Yunzhang gave 1 *jia* and 4 *fen*s of the land to Uncle Bao for farming. This arrangement should be a relinquishment of tenancy by Yunzhang to Uncle Bao.

In the 2<sup>nd</sup> year of the Qianlong reign, Yunzhang redeemed the tenancy and transferred it to Guisheng for management. He should not attempt to redeem the tenancy later. This arrangement seemed to be the relinquishment of right of land usage.

In the 16<sup>th</sup> year of the Jiaqing reign, *dian*: the tenancy of the main part of the land, 1 *jia* and 2 *fen*, were mortgaged to Wang Fusheng.

These confusing transactions of tenancy transfer, redemption, mortgage, partnership administration, and property division, were not all clearly reflected in details of contracts. However, what was confirmed was that productive elements were in a state of flowing. Through rearrangements of all kinds of transactions, peasants' need of debt financing was satisfied, and the reallocation of resources approached its most effective result.

## 5 Conclusion

In an agricultural society where the harvest had strong seasonal qualities, the peasants' need of debt financing in life and production was an inevitable truth. However, due to the lack of financial tool, such a need could only be satisfied by using land right and its profit for financing. The complicated diversified forms of transactions, either relying in land rights, using the land as a medium tool, or directly processing transfer of land rights, explained the strength of the function of transactions in lands. One was the transaction of debt rights in the land itself. One was the transaction of property right of land. Occasionally, there were also trading of share and partnership. It can be observed that many modern finance methods already emerged in land right transactions in the Qing dynasty, reflecting the continuity of history. In other words, the continued usages of these financial tools and terms presented the strong power of these grassroots means of debt financing.

Concretely speaking, distinctions between all forms of debt financing are the following: "an," loans with land as the guaranty; "ya," mortgaged with land as the guaranty and land rent as the payment for interests; "dian," to return the dept by temporary relinquish the usage right of land or land profit with a an agreed time period; "dang," all forms of loan by pawning the land; "di," division of land rights, which was used to repay the debts.

Land right was the life of peasants, and they usually make utmost attempts to keep land rights. In the Qing dynasty, forms of transaction that involve the transfer of land right and the compensation of profits included not-finalized sale, finalized sale, sell and purchase of tenancy right, price bargaining, etc. Their purpose was to protect the

owners of land rights. There also emerged transactions like partnership or share of rights, and contracting which was a kind of entrusted commission of management not including employment and tenancy. By examining original documents, this article discusses, clarifies, and investigates these forms of debt financing in order to construct more thorough knowledge about the diverse forms of transactions of land right. These diversified forms of land right transactions were substitutes of financing tools when such tools were scarce. By applying these substitutes, peasants were able to withstand hardship and continued the family economy and production. Meanwhile, the transfer of land is stimulated, rendering arrangements of production elements such as labor, land, and capital. The reallocation of resources also promoted the realization of a fluid market of land right and furthered increased the productive efficiency and economic profit. This is one of the ignored basic factors of the economic development in the Qing dynasty.<sup>35</sup>

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<sup>35</sup> Many Chinese scholars may question that: since the financial tools in the Qing Dynasty was so developed, why there was no industrial revolution or modern economic transformation happened? It is probably a logical misunderstanding incurred by emotions. I once argued, and this article verifies my viewpoint from the land right's angle, that it is exactly because the functions and transaction forms of the land ownership was highly developed, and many farmers' circulate needs could be fulfilled, that the financial tools or transaction methods could not grow easily. In fact, a creative innovation in a system is usually not the emergence of contradictory alien elements in a mature economic body, but the phenomenon that such elements break down the relatively weak confines of the old system in trembling revolutions. In other words, the genuine logically correct and examinable fact is that, if the traditional economy centering on land ownership is more mature, it becomes more difficult for the opposite factors, i.e. the modern economy centering on capital, to occur originally and internally.

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