

statement that faithfully giving notice of the process of changes of property rights is also an important purpose of the registration system, it denied the right to claim intermediate omission registration. This judgment followed previous case law (refer to page 1560 and after of the Supreme Court's September 21, 1965, MINSHU Vol. 19, No. 6), and in particular it is noteworthy because it is a Supreme Court judgment given after the Real Property Registration Act was completely revised in 2004 because inheritance is intervening as grounds for transfer of ownership rights of the object and because it refers particularly to whether or not there was agreement of the intermediary in relation to such things.

(on 15 November 2012)

6. Introduction of Important Case Law

Supreme Court judgment of September 7, 2012, Criminal Case Law Vol. 66, No. 9 (Code of Criminal Procedure)

Taketaka Nakagawa
(Professor, Faculty of Law)

Matters of legal findings

1. Admissibility of evidence when evidence from a prior conviction is used to prove that a defendant and a perpetrator are the same person
2. Example of a case in which it was deemed that it is not permissible to use evidence from a prior conviction to prove that a defendant and a perpetrator are the same person

Explanation

1. The defendant was indicted for crimes, such as illegally entering an apartment by breaking a window, etc., stealing JPY 1,000 in cash and a cup of instant noodles, and then splashing kerosene from inside a kerosene heater around the room and setting the apartment on fire.
2. The defendant admitted to the theft, but contested the arson as not perpetrated by the defendant.

3. The prosecutor presented evidence that the defendant had prior convictions for the same type of charges and tried to use those prior convictions to show that the defendant was the perpetrator of the arson in this case. Those prior convictions consisted of 15 cases of theft and 11 cases of arson, for which the defendant had been sentenced to a total of 15 years and 8 months in prison. Hereinafter, the evidence presented for those prior convictions is referred to as the “Prior Conviction Evidence.” All of the facts of the previous convictions for arson had involved the defendant attempting to commit theft, but being unable to obtain sufficient money and goods, and therefore becoming motivated to release pent-up frustration by taking kerosene from inside a kerosene heater in the room and splashing it around the room.
4. This case was deliberated in a saiban-in trial. The Tokyo District Court did not allow the Prior Conviction Evidence, saying that it was not relevant as evidence to prove the arson. However, it allowed it as information for sentencing.
5. *In response to an appeal by the prosecutor, the Tokyo High Court judged that the Tokyo District Court judgment was incorrect, and it reversed that decision and sent the case back to the Tokyo District Court. The Tokyo High Court’s reason was that the defendant had a strongly entrenched disposition to commit arson with the motive, means, and method similar to the Prior Conviction Evidence, and because there were characteristic similarities in the motive, means, and method of the arson in this case, there was relevance as evidence to prove that the defendant was the perpetrator of the arson in this case.*
6. The Second Petty Bench of the Supreme Court found that it could not affirm the Tokyo High Court judgment, and it reversed that decision and sent the case back to the Tokyo High Court.

The reasons for this were as follows:

- 1) In general, even if the Prior Conviction Evidence has *logical* relevancy to the fact that an indictment was made, it is possible that an error will be made in determining facts by making a character assessment of the defendant’s criminal inclination, and it is possible that, by going into the details of past convictions, the points in dispute will spread due to the parties’ offense and defense.

Therefore, in this kind of case, it is not possible to recognize *legal* relevancy.

- 2) Accordingly, in a case in which the Prior Conviction Evidence is used to prove that the defendant and the perpetrator are the same person, as in this case in which the Prior Conviction Evidence is allowed as evidence only when there is no possibility of leading to the incorrect determination of facts through character assessment, the facts of crimes in previous convictions have notable characteristics, and they are suitably similar to the facts of crime for which an indictment was made; therefore, it is limited to cases in which that itself leads to the inference that both perpetrators are the same person.
- 3) The Prior Conviction Evidence in this case and the fact of the crime for which an indictment was made do not fall under the aforementioned criteria, and in the end, the Tokyo District judgment was correct.
7. This was the first time that a high court in Japan made a direct judgment on *evidence of bad character*, which originated in Anglo-American law. It is understood that a judgment faithful to the principle of common law, which as a rule prohibits evidence of bad character, was adopted. However, because extremely rigid criteria were indicated, in that “it is possible to reasonably infer from the Prior Conviction Evidence and the very fact that the defendant was indicted that both perpetrators are the same person,” it is thought that this may be inconceivable in cases in which the Prior Conviction Evidence is allowed in the future. Although, recently, there is an increasing tendency to relax prohibition of evidence of bad character in England and the United States, the countries where the law originated, it is possible to assess that this judgment did not take that tendency into consideration and instead adhered to a classic principle.

(on 15 December 2012)