

41/72

CIVIL AND COMMERCIAL CODE

SPECIFIC CONTRACTS

Alterations made in the text printed 1919
as finally agreed between Dr. James and
the Commission
(second instalment: sections 491 to 765 inclusive).

Submitted
to the Revising Committee
August 1933.

491. - The final settlement of the question raised by Dr. James for this section exceeds the competency of the Commission of Codification and entails in a question of policy which can only be submitted to the Revising Committee and may need the consideration of H. R. H. the Minister for Foreign Affairs.

The purpose of present section 491 is to prohibit perpetual leases in Siam, leases up to twenty years duration only being admitted. This was adopted by the Commission after the Japanese (s. 804: 20 years), and German Code (s. 567: 30 years) and French laws (99 years), being understood that perpetual leases looks rather contrary to the facilities of trade and to the transfer of properties.

The objection submitted by Dr. James is as follows:

"The objection which I brought forward to the prohibition of perpetual leases was largely based upon the provisions of the American Treaty. Under the provisions of this Treaty, as it is now interpreted, Americans while permitted to lease are not entitled to own lands under certain circumstances. They may, accordingly, as the law now stands, by means of perpetual leaseholds acquire rights in land very nearly the same in extent as though they had the right to own. As the

Protocol to the Treaty provides that the Codes must be submitted to the American Government. I have no doubt a protest will be made in view of the fact that in many American States there is no discrimination against alien ownership of land, and in many others, aliens may own land upon a basis of reciprocity. As Siamese subjects in the United States, therefore, enjoy in the very great majority of American States, rights of ownership in land substantially the same as that enjoyed by native citizens, it might be regarded as a hardship upon Americans to deprive them in Siam of the privilege of taking perpetual leaseholds. If the Treaty should be construed so as to allow Americans to own land upon a most favored nation basis, and this, I think, can be done, I have no objection to the proposal of the Code Commission, but unless this is done there is danger of a protest."

The Commission of Codification have a preference in law for non-perpetual leases, as hereabove explained. But it belongs to the Government to consider the arguments submitted by the Adviser of the Ministry of Foreign Affairs, and to finally decide in this question of policy.

497. - The lesser is bound to deliver the property hired in ~~such~~ a condition ~~as renders~~

~~it~~ fit for ordinary purposes or for the special purposes provided for ~~appearing~~ ~~from~~ in the contract.

498. -

In case of houses or other buildings, this includes at least the repairing of the roofs, ~~lamps~~ posts, walls and floors and the repainting of the inside and outside at reasonable intervals.

499. - The lessor is bound to reimburse to the lessee any necessary and reasonable expenses incurred by him for the preservation of the property hired, except expenses for ordinary maintenance and petty repairs.

501. - In case of a defect ~~existing~~ in the property hired ~~and~~ which impairs ~~appearing~~ its fitness for ordinary purposes or for the special purposes ~~appearing from~~ provided for in the lease, the lessee may determine the contract, etc. etc.

502. - The lessor is not liable in the following cases:

- 1) ~~Whenever~~ If etc.,
- 2) ~~Whenever~~ If etc.,

505. - The liability for a defect is extinguished by prescription two years after the discovery of the defect, ~~provided~~ and in all cases that it shall always be extinguished six months after the extinction or determination of the lease.

508. - In any case of disturbance ~~which~~ with regard to which an action ~~arises~~ between the lessee and a third person has been brought, the lessee ~~is entitled~~ may summon the lessor to appear in the action ~~as~~ as joint defendant or joint plaintiff with the lessee.

517. - The lessee cannot use the property hired for purposes other than those which are ordinary purposes and usual or purposes which have been provided for in appearing ~~from~~ the contract.

521. - The lessee of a paddy field who has not paid the rent in advance must begin work on

that field at the same customary time, as is customary.

523. - The lessee is bound to allow the lessor to do whatever is necessary for keeping the property in good order and repair. If the lessee should be deprived thereby of the use or benefits of the property hired, he is entitled to a decrease of rent proportionate to the time and extent of deprivation and if such deprivation is substantial both with regard to time and extent, the lessee may determine the lease.

524. -
.....

If the lessee fails to inform the lessor, unless the lessor already has knowledge of the occurrence, the lessee is liable to the lessor for any injury resulting from the delay occasioned by such failure.

526. - If the lessor has granted permission to the lessee to make alterations or additions, the lessee is entitled, at the extinction or determination of the lease, to reimbursement

of for his expenses, ~~up to~~ not exceeding the amount of the increase in value ~~which~~ to the property at the time of such extinction or determination of the lease. ~~Arising~~ arising from ~~the~~ such additions or alterations.

527. - If the lessee makes additions or alterations without the permission of the lessor, he is not entitled to reimbursement therefor, but ~~he may be allowed to remove,~~ he may be allowed to remove, at the extinction or determination of the lease, ~~to~~ what- ever he may have added to the property, ~~and~~ provided that this can be done without damage to the property, and he must restore the property ~~to~~ to its former condition.

If it is impossible to ~~the~~ restore the property ~~to~~ to its former condition or if the property would be damaged thereby, the property must be surrendered ~~restored~~ with ~~the~~ such alterations or additions and no compensation therefor shall be due to the lessee.

529. - In case of non payment of rent, the lessor may determine the ~~contract~~ lease.

But, if the rent ~~is~~ is payable at monthly or ~~at~~ longer intervals, the lessor must first

notify the lessee to pay it that payment is required within a period of not less than fifteen days.

536. - If no period is agreed upon or presumed, either party ~~shall~~ may determine the lease at the end of each period ~~of~~ for the payment of rent, provided that ~~such party gives notice to the other~~ ^{notice} of at least one rent period is given.

In ~~no~~ such case ~~shall~~ no more than two months' notice need be given.

541. - A lease may be determined ~~at~~ upon the death of the lessee by either the lessor or the heirs of the lessee giving notice as provided in section 536, provided that such notice must be ~~not~~ given ~~later than~~ within two months after the death of the lessee.

545. - If a lessee sublets or transfers his rights in the whole or part of the property hired contrary to the provisions of the foregoing section, the lessor may determine the ~~contract~~ lease.

547. - A contract of hire of services is a contract whereby a person called the employee agrees to render services to another person, called the employer, and the employer agreed to pay therefor a remuneration, ~~proportionate~~ for the duration of the services.
548. - The promise to pay a remuneration is implied if ~~the services are~~ under the circumstances of the case, it cannot be expected that the services are to be rendered gratuitously.
556. - In the case of workmen paid by the day ~~and~~ or of domestic servants, the employer ~~can~~ may determine the contract at any time without previous notice. The ~~workman~~ or domestic servant has the same right subject to the provision of section 335, No. 20 of the Penal Code.
558. - On the expiration, determination or extinction of the contract.....
..... etc.

559. -

If the employee has been brought from elsewhere at the expense of the employer, the employer is bound, on the expiration, determination or extinction of the contract, unless it is otherwise provided in the contract, to pay the cost of the return journey, provided that; etc.

592. -

1) The matters contained in section 591, paragraphs 1, 2, and 3.

.....

623. - The carrier of passengers is liable ~~for delay or for any other injury suffered by~~ any to a passenger for personal injuries and for the damages immediately resulting from a delay, suffered by reason of the transportation, unless the injury delay or delay injury is caused by force majeure or by the fault of ~~that~~ such passenger.

631. - Costs of the contract, costs of delivery of the property lent and costs of return ~~must~~ are borne by the borrower.

636. - If the borrower acts ^ontrary to any of the provisions of sections 633 ~~or~~ and 634, he ~~is~~ is liable for any loss or damage ~~even caused by force majeure~~ to the property lent whether caused by force majeure or otherwise, unless he proves that the property would have been lost or damaged in the same way ~~even~~ if he had not acted contrary to such provisions.
637. - If the borrower acts contrary to any of the provisions of sections 633, 634 ~~or~~ and 636, the lender ~~may~~ may determine the contract.
638. - If the parties have fixed no time for the return, the borrower must return the property after he has had the use of it for the purposes appearing from the contract, provided that the lender may ~~may~~ claim the return as soon as a time reasonably sufficient for such use has elapsed.
640. - If the parties have fixed no time for the return and the purposes of the loan do not appear from the contract, the lender ~~may~~ may claim return at any time.

643. - If the lender has granted permission to the borrower to make alterations or additions, the borrower is entitled, at the extinction of the loan, to reimbursement of his expenses up to not exceeding the amount of the increase in value which to the property is still deriving from such additions or alterations, existing at the time of such extinction.
etc., . etc.,
650. - Costs of the contract, costs of delivery of the property lent and costs of return ~~may~~ are borne by the borrower.
655. - Interest shall not bear interest. ~~But~~ The parties to a loan for money, however, may at the end of each ~~periodic~~ year, agree that the interest due shall be added to the capital and that the whole shall bear interest, ~~provided but that~~ any such agreement must be made in writing.
661. - The depositary who acts contrary to any of the provisions of section 660 ~~is~~ is liable for any loss or damage ~~caused even by~~ caused by force majeure or otherwise unless he proves that the property would have been

lost or damaged ~~even~~ if he had not acted contrary to such provisions.

662. - If ~~a~~ any property is the subject of litigation, the parties to the case ~~can~~ may agree, or the Court may order that such property shall be deposited with one of the parties or with a third person.

The depositary of such property ~~can~~ may ~~only~~ return it only to ~~a~~ the person appointed for that purpose by the parties or by the Court.

667. - If the property ~~is~~ has been deposited in the name of a third person, the depositary ~~can~~ may ~~only~~ return it only to ~~that~~ such third person.

668. - Costs of returning the property deposited ~~must be~~ are borne by the depositor.

679. - If the deposit is one of money, it is presumed that the depositary ~~shall~~ is not to return the same specie, but only the same amount.

The depositary ~~can~~ may use the money deposited and is only bound to return an equivalent amount. He is bound to return

such amount ^e even though ~~should~~ the money deposited ~~has~~ has been lost by force majeure.

680. - If when the depositary is ~~only~~ bound only to return the same amount of money, the depositor ~~can~~ may not demand the return of the money before the agreed time, nor ~~can~~ may the depositary return it before such time.
686. - If the remuneration is not paid, the proprietor ~~can~~ may exercise over the luggage or other property of the traveller or guest which is in the inn, hotel or other such place, the rights described in sections 673, 674 and 675.
692. - A person ~~can~~ may agree to be surety for another surety.
698. - The surety is entitled to summon the debtor to appear in the action in order that the Court ~~judgment~~ may decide on his liability to the creditor and on the liability of the debtor to him.

711. - Suretyship given for ~~transactions~~ of a registered partnership, etc.

713. - The surety ~~is entitled to~~ may tender performance, etc. etc.

714. - *
.....

The mortgagee is entitled to be paid out of the mortgaged property in preference to ordinary creditors ~~and even though~~ regardless as to whether or not the ownership of the property has been transferred to a third person.

715. *
.....

1) Ships or vessels having displacements of ~~and over~~ six tons and over, steam launches or motor boats having displacements of ~~and over~~ five tons and over

.....
.....

4) Any other movables ~~for~~ with regard to which the law ~~shall~~ may provide registration ~~is for~~ that ~~purpose~~ purpose.

712. - A person whose right of ownership over a property is subject to a condition ~~that~~ may mortgage ~~the~~ such property but only subject to ~~the same~~ such condition.

724. - The performance of one and the same obligation may be secured by the mortgage of several properties belonging either to ~~either~~ one or to several owners etc.

726. - Notwithstanding any clause in the contract of the contrary, a property mortgaged to ~~a~~ one person may ~~also~~ be mortgaged to another person during the continuance of the previous contract, etc.

729. -
.....

3) Costs of enforcement of the mort-
gage right ~~of mortgaged~~.

730. - The mortgage right, ~~of mortgaged~~ even
after part performance, extends to all the
properties mortgaged and to the whole of each
of them ~~even after part performance~~.

731. - ~~When~~ If the mortgaged property is divided into parcels, the mortgage rights of ~~mortgagee~~ continue notwithstanding, to extend to each and all of ~~them~~ such parcels. However, ~~any~~ any parcel may be transferred, free of ~~any mortgage right of mortgagee~~ any mortgage right with the consent of the mortgagee. Such consent ~~cannot~~ may not be set up against a ~~a~~ buyer of the mortgagee's right unless it has been registered.
732. - The mortgage right ~~of mortgagee~~ extends to all things which are so connected with the mortgaged property as to form one thing with it, subject, however, to the restrictions contained in ~~provided by~~ the ~~three~~ following sections.
733. - ~~That~~ A mortgage right ~~of mortgagee~~ on land does not extend to the buildings erected by the mortgagor upon such land or after the date of the mortgage unless there is in the contract a special clause to that effect, etc.

734. - ~~The~~ A mortgage right ~~of mortgage~~ over buildings erected or constructions made by ~~a person~~ upon or under another's land does not extend to such ~~that~~ land, and vice versa.
735. - A ~~The~~ mortgage right ~~of mortgage~~ does not extend to the fruits, interests and profits of the mortgaged property, except after ~~the time when~~ the mortgagee has notified the mortgager or the transferee of his intention to enforce the mortgage.
736. - This section is revised as follows:
 "No servitude or other real right created by agreement or will upon a mortgaged property by which the value of the property is depreciated and which is registered after the registration of the mortgage may be set up against the mortgagee unless he has agreed to it".
737. - If the mortgaged property is damaged, or if one of the mortgaged properties is lost or damaged, so that the security becomes insufficient, the mortgagee ~~can~~ may enforce ~~at once~~ the mortgage at once, unless ~~there is no fault~~ if the mortgager has not been at fault and ~~the latter~~ offers either to mortgage another property of sufficient value or to repair the damage within a reasonable time.

738. - ~~If a person~~ A mortgagor who has mortgaged a property as security for the performance of an obligation by another person and who performs the obligation on behalf of the debtor. ~~He~~ is entitled to recover from the debtor the amount of the performance.

If the mortgage is enforced, the mortgagor is entitled to recover from the debtor the amount ~~up to~~ which the mortgagee has been satisfied by such enforcement.

744. - The mortgagee must first notify the debtor by registered letter to perform his obligation within a reasonable time to be fixed in the notice. If the debtor fails to comply with such notice, the mortgagee ~~can~~ may apply to the Court for an order. either:

1) ~~the Court ordering~~ directing that the property mortgaged be seized and sold ~~by~~ at public auction; or

2) etc.

745. -
.....

1) the debtor has failed to pay interests etc.

2) the mortgager has satisfied the Court that the value of the property ~~by~~ is greater than the amount due; or
3) etc.

749. - If the estimated value of the property, in case of transfer, is, or the nett proceeds, in case of auction, are, etc.

750. - If a mortgage extends to several properties and no order has been fixed, the mortgagor ~~may~~ may, etc.

752. - The transferee of a mortgaged property may remove, provided that he ~~is~~ is not the principal debtor, a surety or an heir of either of them.

753. - The transferee may remove the mortgage at any time, ~~but if~~ but if ~~he has been notified by the mortgagee of his~~ he has been notified by the mortgagee of his the mortgagee's intention to enforce the mortgage, he must do so within one month thereafter.

755. - ~~The form of the~~ Such offer ~~may be made~~ shall contain the following particulars; etc.

A certified copy of the entries in the official register referring to the property mortgaged ~~will~~ shall be enclosed.

757. -
..... ~~by~~ at public auction etc.....

The transferee ~~can~~ may bid at the auction.

760. - If the transferee who has been notified by the mortgagee of his intention to enforce the mortgage does not either perform the obligation or remove the mortgage, the mortgage is ~~preferred~~ enforceable against him in the same manner as if it ~~were~~ was would be enforced against the mortgagor.

762. - In case of enforcement or removal of a mortgage, if the value of the mortgaged property has been reduced by the fault of the transferee, such transferee ~~is~~ is liable to pay compensation to the mortgagee ~~up to the extent~~ not exceeding the damages resulting from the injury suffered by him the mortgagee ~~thereby therefrom~~.

763. - In case of enforcement or removal of a mortgage, if the value of the mortgaged property has been increased by the transferee, he is entitled to reimbursement of his expenses therefor, out of the proceeds of the sale ~~up to~~ not exceeding the amount of ~~the~~ such increase ~~of value~~ existing at the time of the auction.

765. - The mortgagee ~~may~~ may enforce the mortgage even after the obligation has been extinguished by prescription, but ~~the~~ arrears of interest on the mortgage cannot be enforced for more than five years.