II

QUESTION OF HIRE - PURCHASE AND DRAFTING

THAMMASAT UNIVERSITY

Hire-purchase.—

283

Le Prince de Nakon Sawan a demandé l'étude du Hire-Purchase pour l'introduction éventuelle dans le Code de principes sur ce contrat

18 Novembre 1923

Note.— Il y a des lois allemandes (16 mai 1894) et autrichienne ots

On se garde de donner une définition de la "location-vente" en dt allemand.

~~[illegible]~~ Louage ou promesse de vente ou vente à terme ? Il appartient au juge de se prononcer — Sinon, on tournerait (c'est l'art. allemand qui assimile ces ventes analogues.)

Les hypothèses à ne pas [illegible] ([illegible]). mais à réglementer l'ensemble.

On peut appeler "Hire-purchase" aux caractéristiques que l'objet est remis de l'acheteur (même à titre de locataire comme le dit le dt allemand, ou tte autre de même)

Solution de Sieur Elect : 11 mois location + 1 mois à 13 fois.

Loi fse 12 mars 1900 sur la vente par essai.

22 Novembre 1923

— Pour le tiers acquéreur se rapporter au dt commun.

Suivant le dt anglais : hire d'abord avec les règles gales du hire ; ensuite de la vente avec les règles gales de la vente ; — question des acomptes et de la façon dont les acomptes sont répartis (50 % [illegible]) ; — déchéance si il y a élimination de mauvaise foi.

A prévoir : vous êtes tenus pour la totalité des versements à faire encore, à moins qu'on ne soit en retard de 2 mois ou 1/10 du prix de vente de la chose livrée (dt allemand).

Plan de Note.

Nouveauté de ce contrat : ses effets. Avantages et inconvénients, ces derniers ayant conduit à la réglementation allemande.

But de cette réglementation :

a) ne pas ~~faire~~ du H. P. soit une vente, soit un louage, mais un contrat sui generis;
b) en créer les caractéristiques; (meubles);
c) prohiber les clauses abusives.

La Cie pourra retenir pardevers elle la moitié du nombre des versements échus.
ou des [redacted] deux ans.

42 / 154/1

THAMMASAT UNIVERSITY

Type de contrat Hire-Purchase
par la Siam Electricity C°

AN AGREEMENT made this ....day of...
.........19... at Bangkok between THE SIAM ELECTRICITY CO., LTD. hereinafter called the proprietors of the one part and .... house No........ situated in............Road, Bangkok, hereinafter called the hirer of the other part.

1. In consideration of the hirer having paid to the proprietors the sum of Ticals...... the proprietors herewith agrees to let the hirer have the following materials for hire and the hirer herewith acknowledges receipt of same, viz:-

Ceiling
..................Fan No.................
Desk
..........Electric Motor No.............

....

The above materials are hired on the following conditions which are hereby agreed to, viz:-

2. The rent shall be Ticals....... per month payable on the 1st of each month for a period of 11 months.

3. The materials enumerated above remain the proprietors' property during the period of hire hereinabove mentioned. At the expiration of this period and when all payments of rent shall have been duly made the hirer shall have the right to purchase the said materials from the proprietors for the purchase price of Ticals........

4. In case the hirer should at any time fail to pay the rent hereinabove provided on due date, the proprietors shall have the right to terminate the present agreement without notice and to resume possession of the materials hereinabove mentioned without prejudice to the proprietors' right to sue the hirer for any sum which he may be owing to the proprietors under the present agreement.

5. The hirer shall have the right to terminate the present agreement at any time without previous notice by handing over to the proprietors the materials herein mentioned and by paying to the proprietors all sums due for the hire thereof.

Upon receipt of the materials and all rent due the proprietors shall hand back to the hirer the amount paid as per clause 1 hereof.

6. The materials being the proprietors' property all repairs caused by ordinary wear and tear are undertaken by the proprietors, but all damage due to careless or unskilled handling (coils or bearings burnt out, fan blades or guards broken, etc.) must be paid for by the hirer.

The proprietors' representative shall be allowed to inspect the materials within office hours on ordinary working days.

7. The hirer agrees to use the materials

in his own residence or office only and is not allowed to remove the materials from the place to which they are originally delivered or installed without the proprietors' consent.

8. The hirer will inform the proprietors at once when the materials are not in proper working order or when they for any reason are lost.

9. As long as the materials herein enumerated shall not have become the property of the hirer as aforesaid the hirer shall hold them in trust for the proprietors; and it is expressly understood that all risks of fire, theft, etc. shall be covered by the hirer.

As witness our hands this..........of..........19...

Signed by the proprietors
in the presence of

....

Signed by the hirer
in the presence of

....

No. 213/2457. Plaintiffs' Dika.

The Singer Sewing Machine Co.
(American subject)
vs.
Chin Teng.

In this case the Plaintiffs brought an action in the Bangkok Foreign Causes Court against the Defendant for the return of a sewing machine, alleged to be their property, or for its value, Tics.115/00, on the ground that they had let out the said machine to one Chin Lee who wrongfully transferred it to the Defendant.

The Defendant stated that he bought this machine from one Chin Chon for Tics. 85/00 in good faith and believing that Chin Chon was the true owner thereof.

The evidence for the Plaintiffs shows that on the 7th. of August 2456 Chin Lee took the sewing machine in question from the Plaintiffs under a signed contract on the following terms:

1. He agreed to pay the Plaintiffs a rent of Tcs. 10 per month to use the machine in his own house or room and not to remove it from his custody.

2. He was entitled at any time to return the machine in good order and condition on paying all rent up to that time.

3. He might purchase the machine by paying its price valued Tics. 115/00 and in that case all rent paid by him should be deducted from that price.

Chin Lee made a first payment under this contract on the day he took out the machine, and disappeared.

On the 9th. of September 2456 when the Plaintiffs' manager went to collect the rent for the second month, he found the machine in the Defendant's shop: and on the latter refusing to hand it back, the present action was entered.

Then according to the Defendant's story, this machine, under circumstances which have not been cleared up, went in the possession of one Nai San an ex-officer in the Navy, who sold it to one Chin Chon, a tailor; and on the 23rd. of August 2456 the Defendant bought it from Chin Chon for Tcs. 85/00 in presence of Chin Lin and Chin Fat.

The Foreign Causes Court found that the Defendant actually purchased the machine openly, for a fair price, from a person whom he had every reason to believe to be the true owner, and with no knowledge of the Plaintiffs' right upon it. They therefore dismissed the claim with costs and Tics. 15/00 as counsel's fee for the Defendant.

The Plaintiffs appealed.

The Bangkok Appeal Court confirmed the judgment of the first Court on the ground th the contract between the Plaintiffs and Chin Lee was in fact a contract of sale by instalments. The property in the machine had therefore passed to Chin Lee: and the Plaintiffs had no right to recover it from the Defendant!

The Plaintiffs now present Dika; one of the Judges of the Bangkok Appeal Court being of opinion that the matters decided in the case were of sufficient importance to justify their submission to this Court.

The Committee of the Dika Court has gone through the record.

With regard to the nature of the original contract between the Plaintiffs and Chin Lee, we do not share the view expressed by the Bangkok Appeal Court that that was a contract of sale at a price payable by instalments; because there was no obligation or agreement to purchase on the part of Chin Lee The contract was one of hiring only, with an option to Chin Lee either to terminate it and return the machine at any time or to purchase. We hold therefore that under this contract the property in the machine remained with the Plaintiffs.

As to the facts of the case, we do not agree with the findings arrived at by the Foreign Causes Court that the Defendant acted in good faith, because:

1) It appears from the statement of Captain Ivancich, the Plaintiffs' manager that both the Defendant and Chin Lee actually lived in the same "rong thao".

2) According to the evidence on behalf of the Defendant, from the 7th. to the 23rd. of August i. e., within 16 days only, the machine changed hands four times and successively passed to Chin Lee, Nai San, Chin Chon and the Défendant. This is a matter of grave suspicion more especially as Nai San, whose evidence would have been of greatest interest to the Defendant was never called as witness.

3) The story given by the Defendant's witnesses at the Police Station inquiry differs from their story in Court. Chin Chon for instance said to the police authorities that he sold the machine to one Amdeng Krib. Who Amdeng Krib is and why her name was dropped later on, is not clear from the evidence adduced before the Court. In the same way Chin Chon stated to the police that he knew that Nai San obtained the machine from a

shop situated at the entrance of Chieng Kong lane; which looks as if there was a fifth person connected with the machine since Chin Lee's disappearance.

For all these reasons of fact and of Law, we are of opinion that it cannot be held that Chin Teng purchased this machine in good faith from a person whom he had every reason to believe to be the true owner, and therefore he cannot retain the machine as against the true owner. The judgments of the two lower Courts are therefore reversed; the Defendant shall return the machine in dispute to the Plaintiffs or in default shall pay Tics. 115/00 its value. All costs and Tics. 100/00 as counsel's fees before the three Courts to be borne by the Defendant.

Signé par

Prince Svasti
C. Kiel
[redacted]
Skinner Turner
(Phya Kritika).

M. Cazeau

Vous serait-il possible de remettre au porteur votre note sur le Hire-Purchase que vous comptiez terminer hier ?

23 Novembre 1923

Je suis précisément en train de l'achever et pour ne pas faire attendre votre porteur, je vous la porterai moi même ce matin.

René Cazeau

Location-Vente en Droit Français

En droit français, il n'existe aucune disposition légale spéciale aux conventions communément appelées dans la pratique "Locations-ventes."

Dalloz dans les "additions" (1922) au Dictionnaire Pratique de Droit les définit ainsi : "Convention par laquelle le propriétaire d'un objet met celui-ci à la disposition d'une personne et stipule que cette dernière en acquerra la propriété lorsqu'elle en aura payé le loyer pendant un temps déterminé". ~~[illegible]~~

En principe, ~~[illegible]~~ observe Dalloz, la doctrine et la jurisprudence considèrent ces contrats comme des baux avec promesse de vente et non comme des ventes à terme (V. Cass. civ. 22 fév. 1887. D. 87. 1. 400 ; Bordeaux 26 juillet 1899 D. 1901. 2. 152 ; Req. 29 janvier 1902 D. 1902. 1. 96 ; Bourges 17 fév. 1902 D. 1902. 2. 448).

Mais, conclut Dalloz, la véritable nature du contrat dépend dans chaque espèce de la volonté des parties et c'est aux juges du fond qu'il appartient de se prononcer sur ce point en faisant état de toutes les circonstances de la cause (Conf. Req. 29 janvier 1902 précité).

~~Je~~ Je me rallie complètement à cette conclusion qui est conforme au point de vue que j'ai exposé en séance.

Cf. dans le même sens Capitant Traité II p. 428 et 429

Il ne faut pas oublier qu'en droit français la location-vente est une combinaison qui, chronologiquement, a succédé à la vente à tempérament ou à crédi

Dans cette vente le prix était stipulé pay par ~~[illegible]~~ fractions égales et à ~~[illegible]~~ intervall réguliers durant un espace de temps détermi

son l'objet le plus ordinaire de ces ventes ~~étaient~~ consistaient objets d'ameublement ou des valeurs à lots.

A l'heure actuelle on peut ~~[illegible]~~ constat un nouvel essor de cette forme de vente p les automobiles, aussi bien en France qu'en p étranger.

En pratique et suivant que ce genre de ventions portait sur des objets mobiliers ou valeurs ~~et à lots~~ de Bourse, ~~la~~ ~~[illegible]~~ ~~détention~~ ~~[illegible]~~ ~~la~~ ~~[illegible]~~ c'était l'acheteur (dans le 1er cas) soit le vendeur (dans le 2e cas) qui était mis en possession.

Dans le 1er cas ~~[illegible]~~ le vendeur ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ pouvait subir les inconvénients suivants 1) insolvabilité de l'acheteur; impossibilit d'exercer le droit de suite au cas où l'acheteur revendait et livrait l'objet mobilier en (art 2102-4°); nécessité d'une stipulation p pour éviter que l'objet ne devienne ~~pas~~ la propriété l'acheteur ~~[illegible]~~ attendu que la vente est parfaite par consentement (art 1138) alors même que le prix n pas encore payé; ~~nécessité de prévenir le pr~~ ~~en cas~~ ~~de l'immeuble où [illegible] [illegible] ou l'acheteur~~ nécessité de prévenir le propriétaire de l'imm ~~2~~ pour éviter que l'objet mobilier ainsi vendu locataire ne ~~[illegible]~~ ~~[illegible]~~ soit frappé par le privilège du b impossibilité de revendiquer en cas de faillite de l'a ~~art~~ ~~[illegible]~~ (art 576 C. Com) etc etc

Dans le 2e cas ~~[illegible]~~ (cas les de bourse) comme ~~le~~ les vendeurs restait en po

~~[illegible]~~ ~~certain~~ le danger existait pour l'acheteur. Trop souvent en effet le vendeur ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ vendait la même valeur de Bourse à plusieurs acheteurs différents ; parfois même il ne ~~la~~ l'avait pas et ~~[illegible]~~ ne l'achetait en Bourse que suivant les nécessités du moment (par exemple au moment de la livraison) ; d'autres fois il ~~[illegible]~~ avait bien en mains la valeur en question mais il s'était réservé par le contrat lui-même le droit de la mettre en gage chez un autre banquier (ou courtier) ~~[illegible]~~ ~~[illegible]~~ en garantie ~~gage~~ d'une avance de fonds ; c'était la ~~[illegible]~~ clause dite de nantissement. Que restait-il alors de la vente ? La convention entière devenait une sorte de contrat anormal dont ~~que~~ la jurisprudence avait été cependant forcée d'admettre la validité (Cass. 14 mars 1894 D 94. 1.477).

Dans le premier cas la pratique a abouti à la combinaison de la location-vente afin de sauvegarder les intérêts du vendeur.

Dans le second cas (et vente à tempérament ou à crédit) une loi du 12 mars 1900 est venue protéger les intérêts de l'acheteur sans que d'ailleurs elle se soit exactement prononcée sur la nature du contrat ainsi formé. Il semble ~~[illegible]~~ bien cependant que dans ce cas la vente est parfaite et la propriété transmise à l'acheteur dès le consentement des parties puisque le vendeur est tenu de conserver le titre sous des sanctions pénales ~~[illegible]~~ (peines de l'art 406) ~~[illegible]~~ ~~[illegible]~~ et ~~[illegible]~~ de représenter le titre à toute réquisition de l'acheteur. Toute stipulation contraire est nulle (art 4).

Enfin l'art 2 exige toutes les précautions nécessaires

pour déjouer la fraude aucune (indicatio
du cours coté en Bourse ; numéros de chacu
des valeurs vendues ; prix total y compris tou
frais accessoires de chaque valeur ; taux d'inté
et conditions de remboursement). La période d
payements échelonnés ne peut dépasser deux
sans crainte que le vendeur ne fasse payer t
cher un crédit trop prolongé etc etc.

Pour la location vente ~~la jurisprudence~~
~~déjà donnée~~ ~~et~~ ou mieux en ce qui conc
a ~~laquelle~~ [illegible] la jurisprudence y a été fav
depuis l'arrêt de Cass ~~[illegible]~~ daté du 21
1887. Mais tous les arrêts ne sont pas un
(Voir en effet Cass. 16 juin 1885 D 86.1.13
Bourges 1888 S. 88.2.p.416)
Dans le dernier état du droit la Cour d
Cassation (année 1922) ~~est~~ revenue à sa ~~sévérité~~ antérieure
au grand désespoir notamment des marchands de
~~et~~ ~~[illegible]~~ etc. Il n'est pas possible mal
heureusement de retrouver cet arrêt dans
livres figurant actuellement dans la bi
thèque de la Commission de Codification

Quoi qu'il en soit ce qui ressort de l'e
du droit français c'est la quasi impossibilité
donner une définition de la location vente.
Celle-là même que donne Dalloz et qu
~~[illegible]~~ citée au début de la présente note n
pas à l'abri de toute critique.
Qu'est-ce en effet que ce contrat spécial
~~lequel~~ dans lequel on acquiert la propriété d
objet moyennant le paiement d'un loyer ?

Les conventions des parties même si elles étaient formelles à cet égard ne sauraient aller contre la nature des choses.

Les parties peuvent elles, par un détour, convenir qu'une fois les loyers payés ceux-ci seront rétroactivement considérés comme des fractions ~~[illegible]~~ du prix de vente. Cela ~~[illegible]~~ n'apparaît pratiquement impossible et ~~[illegible]~~ nous [illegible] à cet égard de l'avis d'Aubry et Rau (t. 5 § 353 et s.) contre Baudry Lacantinerie et Wahl (T 1er n. 12)

n'apparaît pas définition
y.

~~En eff~~ Pour qu'il y ait vente, il faut qu'il y ait un prix, si minime soit-il. Aussi comprend-on [illegible] bien mieux la combinaison prévue par exemple dans les contrats de la Siam Electricity. Aussi, lorsque cette Sté fait une location vente en portant sur des ventilateurs il est convenu que les 11 premiers versements auront le caractère de loyers et que le 12e et dernier aura le caractère d'un prix de vente. La convention s'analyse alors facilement sous le caractère d'une location avec promesse de vente. A l'expiration de la période de location (11 mois) le preneur a le droit d'exiger la réalisation de cette promesse de vente moyennant le paiement de son ultime versement.

Conclusion — Le droit français s'est abstenu de définir ~~[illegible]~~ expressément la vente à tempérament sous comme la location vente. Le silence de la loi du 12 mars 1900 ~~[illegible]~~ dans le premier cas, l'essai infructueux de Pelley dans le second cas, sont significatifs à cet égard.

Lorsque le législateur s'occupe de ce genre de conventions c'est moins pour les définir que pour

ดาวน์โหลดจากระบบ TUDC โดย [illegible] 14/02/2563

édicter des dispositions impératives ou pr
afin d'éviter la fraude et en général
un intérêt public.

~~[illegible]~~ C'est une attitude qu
'il y aurait avantage ~~[illegible]~~ à ~~[illegible]~~ imiter

René Lageau

22 novembre 1923

Section IV 2

Trop dure contre le locataire

Soit 1 ventilateur objet d'un hire purchase de 12 mois
Si le locataire retourne le ventilateur au bout du 3e mois
il ~~devra~~ d'après l'article

1/ payer les 3 mois de loyer échus
2/ le mois en cours
3/ et payer encore une indemnité de 3 mois

sans compter les "expenses".

Ainsi un locataire forcé de "déterminer" le contrat [illegible] raisons de santé, retour en Europe etc/ aura payé au moins la moitié de la valeur du ventilateur ~~sans quoi lui reste~~ et subira cette perte sèche ! Sans compter que les paiements effectués chaque mois tiennent compte de l'intérêt de l'argent au profit de la Cie locatrice, ex : 1 fan est vendu 100 tcs au comptant + 110 par hire purchase)

Je préfère le système de "la poire en deux".
~~Si~~ Dans l'hypothèse actuelle, la Cie locatrice ne devrait garder que la moitié (+) des paiements effectués et en outre les "expenses". Sa part est déjà assez belle ainsi. En effet
1) elle touche plus que le prix de la location : la Cie sait bien qu'elle ne pourrait pas demander un prix de loyer tel qu'en 2 ans le fan serait payé (amorti) tout en restant la propriété de la Cie
2) elle touche en outre les expenses s'il y en a ; ~~et~~ au bout de 3 mois le fan est encore pratiquement neuf.
Ajoutons enfin que si le ~~locataire~~ contrat est "déterminé" le 9e ou 10e mois, le locataire aura ~~plus~~ [illegible] valeur entière

(+) ~~[illegible] on pourrait aller jusqu'aux 2/3~~.
~~[illegible] les [illegible] ou administrateurs seront [illegible]~~
~~[illegible] publié ! J'espère que c'est suffisant.~~

30-11-23 René Cazeau

en même [illegible] la valeur entière du [illegible] et il ne lui restera rien.

Enfin avec le système de l'indemnité égale à la moitié des versements effectués, on fait au locataire une situation encore meilleure que celle que ce bailleur a exigée jusqu'à aujourd'hui dans la pratique.

Et le jour où ce système sera incorporé au texte légal, on peut être sûr que toutes ceux faisant de la location vente insèreront ce maximum dans leurs contrats.

Note supplémentaire
sur le Hire-Purchase

~~[illegible]~~ Au sujet de la solution à adopter pour le cas où le ~~[illegible]~~ preneur, ou mieux le promissee, vend ou met en gage la chose faisant l'objet du "Hire Purchase".

Le droit anglais, rappelons-le, décide que ~~le~~ ~~pr~~ l'acquéreur a un "good title" pourvu qu'il ait été de bonne foi et qu'il n'ait pas eu "notice of the rights of the original owner". Laws of England. I. V° Bailment p. 554 no 1124)

N'oublions pas que ~~[illegible]~~ la solution anglaise doit être admise ~~au~~ et surtout interprétée avec prudence.

En effet ~~[illegible]~~ si clairs que paraissent les termes employés par les Laws of England, la solution est assez délicate. Voici ces termes
"And even where the property has not passed, the so called hirer being really a purchaser, can give a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the original owner."

A première vue on est tenté de croire que cette solution s'applique au Hire-Purchase. On peut en douter cependant si l'on s'arrête aux observations suivantes

A) Cette phrase est annotée d'un renvoi en fin de page où ~~[illegible]~~ il s'agit d'une acquisition "by instalments" ~~et~~ f ~~[illegible]~~, ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ opération en outre valable "au sens du Factors Act" 1889. En réalité donc il s'agirait ~~et~~/ d'une vente à tempéraments 2/ tout au moins d'une de ces opérations que par une disposition formelle et dans l'intérêt

general des transactions effectuées par "Factor
la loi anglaise declare valables (Factors
1889 art 9) C'est la solution que l'on retrouve
dans le Sale of Goods Act art 25 (2)
Lorsqu'une personne ayant acheté ou conven
d'acheter des marchandises entre avec le
consentement du vendeur en possession des
chandises ou des titres representatifs" et qu
transfère ensuite lesdites marchandises ou
titres "à une personne qui les reçoit de bonne
foi et dans l'ignorance d'aucun privilège
le sous-acheteur ou gagiste de bonne foi
un titre valable, quoique cette transf
ait été fait par une personne n'ayant
(Factors Act 1889 art 2) aucun droit
vendre ou mettre en gage. (Stevens El
de droit commercial anglais p. 132)

Le Sale of Goods Act art 25 (1) et le
Factors Act art 8 appliquent la meme
~~au vendeur et la pr~~ au cas où une personne
après ~~avo~~ une premiere vente reste cepend
en possession des marchandises ou des tit
representatifs. Là aussi il suffit que
dernier acquereur mis en possession soit
foi et ignore l'existence de la vente ant
— Mais pour en revenir aux solutions vi
par la phrase precitée des Laws of Engla
il importe de remarquer, que, nonobstan
leur place dans le Hire Purchase, ces
~~[illegible]~~ semblent plutôt viser soit les ven
à tempérament soit les ventes tombant
le coup du Factors Act. ~~Et~~ On s'expli
dès lors les mots du texte " The so called hirer,
really a purchaser" et la note "The

between the original purchaser (by instalments) and the person to whom he disposes a chattel being a valid one within the meaning of the Factors Act 1889.

Dans cette hypothèse une personne a acheté ou convenu d'acheter : ce sont là des situations nettes celle d'un "acheteur" ferme ; ~~ou celle~~ ou bien encore celle de celui qui a nettement "convenu" ~~[illegible]~~ ou promis d'acheter. C'est bien en ce dernier cas qu'on peut dire la promesse vaut vente car le consentement est parfait sur la chose et le prix ; le terme seul est retardé.

Mais le droit anglais distingue ~~bien~~ soigneusement le cas de ~~celui~~ revente par celui qui ~~a~~ aussi "convenu" d'acheter ~~et~~ du ~~[illegible]~~ du cas ~~[illegible]~~ fait de revente par celui possédait simplement avec "faculté" d'acheter " l'achat à ~~qui~~ [celui] qui possède avec simple faculté d'acheter ne peut pas conférer de titre à l'acheteur en vertu de cet article [du Sale of Goods act 25(1) ~~[illegible]~~ ~~et~~ ou du Factors Act 1889 art 9] donc celui qui détient des marchandises en vertu d'une convention de location avec faculté d'achat ne peut donner ~~à~~ un titre valable à un sous-acheteur ou gagiste (pledgee) Helby v/ Matthews 1905 A.C. 471. (Lehr ibidem p. 131).

Or qu'est ce que ce case Helby v/ Matthews. C'est le case d'après lequel les "Laws of England" ont construit leur définition du Hire-Purchase.

On voit donc qu'à le serrer de près, le droit anglais n'apporte pas + ~~une~~ la dérogation qu'on s'imagine à première vue

...chere ~~promesse~~ du
Purchase - ,
il y a ~~[illegible]~~
~~[illegible]~~
...t a un
-acquereur

9 decembre 1923

Deuxième note supplémentaire sur le Hire Purchase.

Nous pensons avoir montré, dans une première note, que le droit anglais ne paraissait pas en réalité permettre de considérer comme valable, au profit du sous-acquéreur, la vente ou la mise en gage d'un objet ~~[illegible]~~ par une personne qui détenait cet objet en vertu d'un "hire-purchase". Cela parce qu'une simple "faculté" d'achat n'est pas une "convention" d'achat. Et de fait "l'option" implique bien cette idée de faculté ; le bénéficiaire d'un "hire-purchase" peut, s'il le veut, et sous telles conditions déterminées par la loi ou le contrat, ne pas acquérir. On dit en ce cas qu'il ne "lève" pas l'option.

que cet acte
position
option

Les solutions protectrices du droit anglais ~~—~~ protectrices pour le sous acquéreur — ne paraissent donc pas pouvoir intervenir dans la matière toute spéciale du "hire-purchase".

quelles
indiquées
la Laws of
England ~~[illegible]~~
à propos
hire Purchase

Sans doute dans ~~[illegible]~~ de la jurisprudence anglaise, un effort semble bien avoir été fait pour valider ~~l'opération à laquelle~~ se au profit du sous acquéreur l'opération du "hirer" : c'est le case Whiteley v/ Hilt [1918] 2 K.B. 808 : dans cette espèce récente le juge a estimé que "une vente faite par le locataire avant que la propriété lui ait été acquise peut être traitée (à moins de ~~[illegible]~~ ~~clause~~ stipulation contraire dans le contrat) comme un "transfert de droits contractuels". (Jenk's Digest II p. 950). Voir aussi Laws of England Bailment p. 556 no 1127

Mais dans cette solution la question de propriété (droit réel) reste entière ; et elle est

reglée au profit du vendeur originaire
sur la tête de qui ~~dans~~ ~~le [illegible]~~ la propriété continue à re
(genuine transaction under which the propert
in the goods remains in the vendor)

Nous avons proposé l'idée de la v
valant "levée" de l'option" pour differ
motifs développés ailleurs.

Il semble que le droit siamois, tel
qu'il ressort du projet actuel, pourrai
accepter facilement cette idée si l'on
évoque une analogie : celle créée p
l'art. 447 du Projet de 1919 en
matière de vente à l'essai (sale on app

Dans cette vente, ~~l'acquéreur aura~~
il n'y a pas seulement la condition que
~~n'a pas seulement le droit d'examiner~~
~~la propriété~~ l'acheteur devra être mis a
de l'examiner la chose avant de don
son acceptation (art 444). L'acheteur event
a le droit ~~de~~, après cet examen,
d'accepter ou refuser le marché ; a
à défaut de délai exprès dans le cont
le vendeur doit mettre en demeure
~~en tout~~ dans un délai raisonnable
l'acheteur éventuel de déclarer "s'il
accepte la chose ou non" (art 445).
en cas de refus de la chose "the cont
is extinguished" (446). Il y a donc bi
là une option véritable.

Or dans cette vente avec option
il y a entre autres façons tacites de lever
l'option celle qui consiste "à disp
de la chose soumise à l'examen"
(art 447 parag 4).

Cette solution de la sale on approv

est, nous le savons, ~~sans doute~~ inspirée du Sale of Goods Act s. 18 rule 4. (Voir Jenks II p. 945)

Ce serait donc revenir au droit anglais ; sans doute mais en ne passant point par les voies indiquées par les Laws on England I à propos du Hire Purchase v° Bailment p. 554 n° 1124 note g.

Conclusion. – Ce qu'il faut retenir de ce qui précède c'est non pas une ressemblance forcée entre la "sale on approval" et le "hire-purchase" (les différences ~~sautent aux yeux~~ sont évidentes) ; mais cette constatation que dans les deux cas il y a option, que dans les deux cas ~~le procédé~~ il y a levée d'option, ~~par le procédé~~ tacitement, par un procédé identique et que dans les deux cas cette levée d'option tacite implique transfert de la propriété et non pas simplement de droits personnels ou contractuels

René Guyon

10 décembre 1923

Hire-Purchase

Note Générale sur l'Avant Projet ci-joint

La loi allemande de 1894 admet le système suivant : vente, avec un droit de résiliation ultérieur par le vendeur si l'acheteur n'exécute pas les paiements successifs du prix, sous certaines garanties de protection pour cet acheteur.

Ce système, assez séduisant, paraît contraire :

au droit anglais du Hire-Purchase tel qu'il est exposé dans les "Laws of England", v° Bailment, et qui se ramène au contraire à un louage initial et persistant jusqu'à l'heure où le paiement d'un prix transforme la transaction en vente ;

au contrat-type de la Siam-Electricity qui a suivi, semble-t-il, exactement le droit anglais, tendance et situation de fait dont il faut tenir compte ici ;

aux principes du Code Civil siamois, art. 388, qui n'admet en réalité la résiliation (determination) que si la loi l'a expressément autorisé ; on peut dire, il est vrai, que l'art. 7 de la loi allemande est justement le texte légal qui autorise ce cas de détermination ; il semble cependant qu'il y ait une nuance, et ce texte dépasse assurément notre système quand il admet que "le vendeur s'est réservé le droit de résilier le contrat".

Nous sommes certainement conduits par ces considérations à nous rapprocher plutôt du droit anglais que de la loi allemande.

L'avant-projet ci-après n'envisage, en fin de compte, que deux hypothèses possibles :

a) ou bien il y a, lors de la remise du meuble, transfert de propriété, — mais en ce cas il y a vente, et si le prix doit être payé par acomptes successifs sale ne change rien au caractère du contrat, qui reste vente;

b) ou bien il n'y a pas eu, lors de la remise du meuble, transfert de propriété; il n'y a donc pas vente en droit siamois; il y a, comme le dit le Droit anglais, un "louage avec promesse de vente" que le paiement du prix transformera en vente à l'heure voulue et qui est précisément le Hire-Purchase; mais alors les situations semblent faciles à régler soit par les principes du [illegible] soit par ceux de la vente, successivement; il suffit de dispositions spéciales (art. 2 et 3) pour protéger les parties.

Enfin, il semble y avoir intérêt, si l'on suit ce système, à ramener impitoyablement les parties dans son cadre, c'est à dire à faire de leur contrat, (quelque nom qu'elles lui donnent, quelques modalités accessoires qu'il comporte,) soit un Hire-Purchase soit une Vente avec paiement par acomptes; c'est le but de l'art. 4.

Preliminary Draft
November 1923

42/180

Note. – On correction [illegible] Commi[illegible] & Redaction.

Title VI

Hire-Purchase

=

Section 1

A contract of hire-purchase ~~is a contract~~ whereby a person agrees to let [illegible] a movable ~~[illegible]~~ property ~~[illegible] the use of a movable~~ for a specified ~~[illegible]~~ period of time ~~of time and upon rent being paid by the latter~~ the other person [illegible] ~~to have [illegible] it [illegible] sold to the latter if, after the said period has elapsed [illegible] such price [illegible] as agreed between the parties at the time of the contract to paid by the lessee.~~

promises to sell it for the price specified in the contract to the lessee after the said period has elapsed.

Hire-purchase is governed by the provisions of ~~law~~ this Code concerning hire ~~during the~~ up to the time when ~~the movable is sold & hence~~ the promisee is entitled to complete the sale or not.

Note.

J'admets volontiers qu'il est presque impossible et peu désirable de donner une définition du "hire-purchase". Aussi la section 1 n'a-t-elle pas la prétention d'être une définition. Mais quand on rédige on se heurte à cette nécessité de [illegible] l'on parle, comme nous l'avons fait dans les autres contrats. D'où l'explication de la section 1. Si on suit la conception anglaise du Hire-Purchase d'ailleurs, ce qui semble bien nécessaire au Siam [illegible] apparaît nettement dans la coutume locale (confirmée de la S.E.O.), il semble moins difficile de donner l'explication ci-dessus.

Le système du louage lié à une promesse de vente (ci-dessus) est celui du D.t anglais, et auquel a abouti la jurisprudence française en son dernier état.

Anciennes Illustrations

I.- The Eastern Company agrees to hire to A an electric fan for eleven months at a monthly rent of 10 baht, being agreed besides that, upon a twelfth payment of 10 baht the electric fan will become the property of A. For eleven months, A is a lessee, but as soon as he has paid ~~10 baht for~~ the price of 10 baht on the twelfth time he becomes the owner of the electric fan.

Consequences are as follows :

if A, as long as he is a lessee, sells the electric fan to another person, he commits the offence of criminal misappropriation (Penal Code s. 314); besides the Company is entitled to ~~claim the cancellation of~~ determine this contract with A ~~[illegible]~~ (Draft Book III s. 517, 520) ~~[illegible]~~ ~~[illegible] compensation since A is in default having A has not performed his obligation of lessee by using the~~ he used the property hired for purposes other than ~~[illegible]~~ purposes appearing from the contract (Draft Book III s. 517); A will be liable to the Company for the return of the electric fan or if impossible for any ~~compensation~~ value of it;

if A, as long as he is a lessee, pledges the electric fan to another person, the contract is voidable under section 789;

dit. [illegible]

[illegible] requisition a l'ancien [illegible] [illegible] n° 1128.

[illegible] 789 - 2e par. [illegible]

[illegible] misappropriation [illegible]

[illegible] Code

as soon as A has paid the twelfth sum of 10 baht to the Company, ~~the owner~~ he becomes ipso facto the owner of the electric fan, his payment of the price having the same effect as the ratification buyer in case of promise of sale (sections 396, 397)

II. - The Eastern Company and A could likewise agree that, at any time during the year, A may become the owner of the electric fan by paying as a whole to the Company the remaining monthly ~~[illegible]~~ sums of 10 baht which are still due under the contract either as rent or as price. This is also a contract of a hire-purchase.

ดิจิทัลไฟล์ TU-DOC โดย Shiori Tamura ทดลอง 14/02/2563

Section 2

~~During the time when~~

As long as the ~~[illegible]~~ person who has been delivered the movable property i.e. lessee, he may ~~[illegible]~~ determine the contract by returning such movable ~~[illegible] property to his owner provided he pays to~~ at his own expense to the owner. He shall pay to such owner ~~such amount of compensation not exceeding two months of the rent agreed between the parties in addition to the [illegible]~~ the rent due for the ~~[illegible]~~ period ~~[illegible]~~ running at the time of the return ~~[illegible]~~ and a compensation not exceeding ~~two of the period the [illegible] for two periods of rent [illegible] the~~ an amount ~~fixed for~~ equivalent to those periods of rent ~~[illegible]~~ and ~~he~~ shall reimburse to the owner all expenses ~~[illegible] the compensation [illegible] of [illegible]~~ made by the letter for the delivery of the movable.

Any contrary agreement for ~~a~~ compensation exceeding the amount due under the foregoing paragraph is void.

Cf. German law 16 th. May 1894 art. 2, 4.

odifié e
ommission
ibe majorit.

On such determination and ~~[illegible]~~ with the reservation of ~~[illegible]~~ liabilities which may have been ~~[illegible]~~ incurred by the lessee, ~~In exchange,~~ the owner shall ~~[illegible]~~ return to him ~~to the lessee~~ a sum not exceeding one half of the total amount ~~of the rent paid to~~ paid ~~to him~~ in execution of the contract. Any contrary agreement ~~for compensation exceeding such amount~~ is void.

(1st Draft)

Illustrations

~~[illegible]~~ Suppose that since the 1st January 2467, A has paid say six times the monthly rent agreed, he is allowed, in the course of the seventh month to determine the contract. In this case he shall return the electric fan to the Company and is of course liable for any loss or damages caused by his fault to the thing hired if any (Draft. Book III, s. 171). Besides A will have to pay to the ~~Besides. A will [illegible] pay to the~~ ~~prepaid 60 baht as rent for the [illegible]~~ Company ~~[illegible] baht for the seventh month which [illegible]~~ ~~[illegible] 30 baht to A and [illegible] 30 baht~~ ~~[illegible] and 30 baht compensation which the Com-~~ ~~[illegible] of the Co would [illegible]~~ ~~[illegible] to grant to the Company which~~ could really rely upon a promise of purchase by ~~[illegible]~~ A, and say 3 baht for the packing and transportation of the fan if any such expense has been made.

It must be understood that if A is so exceptionally entitled to determine the contract of hire-purchase without any fault being committed by the Company, it is because the law intends to protect private persons against the excess of hire-purchase when they are sometimes induced by merchants to agree to contracts which are more delusive than serious and engage persons ~~[illegible]~~ of small means to excessive obligations (~~cf~~ German Law 16th May 1894.) ~~Section 2 forbids the contracts where it is said that~~

Section 3

As long as the person who has been delivered the movable ^property is a lessee, the lessor may determine the contract in case of non payment of the rent but only if two ~~[illegible]~~ rents ^at least have not been paid. ~~In case of determination, the lessee shall be entitled to compensation in addition to the rent due to him, to compensation as specified in the foregoing section~~.

If the non-payment by the person who has been delivered the movable is for the price ~~which he~~ agreed for the sale ~~of~~ of it, the lessor may determine the contract only when two months have elapsed since the date where the price ~~should~~ have ~~to be~~ been paid.

In ~~such~~ case of determination under the present section, the lessor shall be entitled, in addition to ~~the~~ any rent due to him, to compensation as specified in the foregoing section.

The owner ~~may~~ ~~[illegible]~~ is entitled also to determine the contract if ~~[illegible]~~ the ~~non payment~~ price specified ~~in the contract~~ for the sale of the movable is not paid within ~~one~~ two months from the date when ~~such price is due for becoming due~~ the promisee is entitled to complete the sale.

On such determination, in addition to ~~[illegible]~~ compensation for the liabilities which may have been incurred by the buyer ^if any, the owner shall be entitled to ~~the~~ have ~~return of~~ the movable ^property ~~[illegible] returned to him~~ and ~~[illegible] of the promisee to the [illegible] of the [illegible] [illegible] if any paid [illegible] to the [illegible]~~ in a sum not exceeding the total [illegible] ~~[illegible]~~ ^agreed to him for full settlement and ~~[illegible]~~ compensation. Any contrary agreement is void."

Illustrations

I.- If A has paid say six times the monthly rent agreed, but does not pay further, the Company can~~[illegible]~~ determine the contract ~~above~~ as soon as A has not paid the seventh and eighth rent. In such case, the Company shall be entitled to ~~[illegible]~~ the return of the ~~[illegible]~~ electric fan and to compensation for any loss or damages caused by the fault of A to the thing hired if any; plus 20 baht for the seventh and eighth rent unpaid, 10 baht for the ninth month ~~[illegible]~~ running at the time of the determination of the contract, and 30 baht compensation, and say 3 baht for the packing and transportation of the fan if such expenses have been made.

It must be noted that in case of ordinary hire the lessor may determine the contract ~~upon~~ after one non-payment and upon notification to pay within fifteen days (section 529 Draft - Book III); but in case of hire-purchase it is admitted that the non-payment by the lessee must cover a longer period in order not to allow a Company to take advantage from some ~~[illegible]~~ pecuniary difficulty of the other party which may be temporary (cf. German Law 16th May 1894, a.4) Section 3 forbids also the clause by which the so called seller wants to take advantage of the buyer failing to ~~pay~~ make one payment for claiming back the thing and claiming that the buyer shall however be bound to pay all the remaining sums due.

II.- If A has paid eleventh times the monthly rent, the twelfth payment of 10 baht is a price which shall transfer to A the ownership of the electric fan. Suppose A ~~did not pay~~ has to make this twelfth payment at the end, say on the 31 st. March, of the year and does not make it, ~~the Company~~ or does not return the electric fan. A is in default and in ~~the~~ other ~~ordinary~~ cases the Company could claim the ~~[illegible]~~ cancellation of the contract. Under the above section the Company shall not be entitled to do so ~~unless~~ until the 31 st. May following, also because in case of hire-purchase the lessee or would-be purchaser shall be protected against temporary difficulties. From 31 st. March up to 31 st. May, A shall be taken as a lessee, but shall have at any time an opportunity to pay the price and to become the owner of the thing. If he does not so, after the 31 st. May, the Company shall be entitled to determine the contract, to claim the return of the electric fan and ~~compensation~~ ~~for~~ all rent due or compensation calculated as under the foregoing illustration.

III. ~~If~~ Suppose the movables of A be seized by the landlord of A's house because A has failed to pay the house-rent, ~~the~~ such landlord has a preferential right ~~upon~~ over A's movables. The preferential right of the landlord shall not extend to the electric fan hired by the Company, ~~if~~ if the landlord knew or ought to have known that it was not the property of A (section 384 Civil Code).

Section 4

Contracts made in the conditions specified in section 1 are contracts of hire-purchase, notwithstanding any other denomination which may be used by the parties in their agreement.

If the parties agree that the ownership of the movable is transferred at the time when the contract is made or the movable delivered, they shall be deemed to have made a contract of sale where the payment of the price is by ~~in~~ successive instalments.

Illustrations. – I. ~~If~~ Suppose it is specified in the contract between A and the Eastern Co that this is not a contract of hire-purchase under this Title but that "this is a contract of hire with a special clause of promise of sale". By this denomination, the Company would try to escape the provisions of the present Title ~~mainly~~ and especially the delays for determining the contracts or the calculation of the compensation due to them which then could be higher and excessive. Section 4 forbids such a combination and the Court shall take the contract as hire-purchase under the present Title.

II. – It may be agreed that A becomes the owner of the electric fan when the contract is made ~~completely agreed between the parties~~ or when the electric fan is delivered to him. But in such case the transfer of ownership make the contract quite different from a contract of hire-purchase as specified in section 1. This becomes a contract of sale with payment of the price is made by successive instalments. There are no special rules for such a contract because it comes under the general rules of sale. A becomes the owner of the property; he can no longee return it; if he fails to pay the price (by instalments) the Company shall claim the cancellation of the contract under section 328 Civil Code.

TITLE VI

HIRE - PURCHASE

Section 1

A contract of hire-purchase is a contract whereby a person agrees to let a movable property for a specified period of time to another person and promises to sell it to the latter for the price specified in the contract after the said period has elapsed.

Hire-purchase is governed by the provisions of this Code concerning hire up to the time when the promissee is entitled to complete the sale or not.

ILLUSTRATION. - I. - On the 1st. January 2467, the Eastern Co. agrees to hire to A an electric fan for eleven months at a monthly rent of 10 baht, being agreed besides that the Company agree to sell the fan to A if he makes a twelfth peyment of 10 baht as a price for it.

a) for eleven months, A is a lessee and incurs all the liabilities of a lessee if he damages the fan, etc.

b) as soon as the eleventh months has elapsed, that is to say from the 1st. December 2468, A has an option to buy or not the fan by payment of 10 baht; as a promissee (Draft Book III s. 358 to 398), he can do it or not; if he pays the price of 10 baht, he becomes the owner of the fan;

c). if A, as long as he is a lessee, sells, the fan to another person, he commits the offence of criminal misappropriation (Penal Code s. 314); besides, the Company is entitled to determine the contract (Draft Book III s. 517, 520) since A has used the property hire for other purposes than those of the contract and A will be liable to the Company for the return of the fan or its value; if A would have pledged the fan to another person, the contract would be void under section 789 second paragraph;

d) as soon as A has paid the eleventh rent (or, if agreed that rents are paid in advance, as soon as the eleventh month of hire has elapsed), A is no longer a lessee; he becomes a possessor of the fan, with the benefit of a promise of sale Toption); in this condition, he has notwithstanding no right to sell or pledge a thing which has not been delivered to him for the purpose of ownership; if he does so, he commits

criminal misappropriation under Penal Code s. 314; besides, the Company would be entitled to claim cancellation of the contract.

M. Rémy et M. Cazeau. - Si l'on n'ajoute pas quelque chose aux textes, c'est la seule chose que puisse faire la Compagnie, car les droits de termination sont limités par la loi. Mais cancellation veut dire que les parties sont remises en l'état où elles étaient lors de la signature du contrat (j'entends de ce contrat unique et indivisible de Hire-Purchase qui est le seul entre les parties; la Compagnie reprendra le fan et A se verra restituer tous ses versements. La Compagnie sera frostuée!

Je ne vois pas qu'en l'état actuel des textes on puisse échapper à cette conséquence! Le droit sur la "promesse de vente" 396 - 398 n'avaient probablement pas envisagé à l'hypothèse où la chose est entre les mains du "promissee", d'ailleurs. Ici, c'est notre cas normal. D'où cette possibilité fréquente de l'aliénation de l'objet par ce "promissee" pendant cette période courte, mais suffisante, où il n'encourt plus les responsabilités du locataire et n'est qu'un simple optionnaire-détenteur. Il vend la chose. La Compagnie n'a pas d'autre arme que de demander la cancellation du contrat (avec les conséquences ci-dessus indiquées). Que ferait-elle d'autre ?

Je ne vois que deux solutions:

a) admettre, comme on l'a dit l'autre jour, que l'aliénation de la chose vaut levée de l'option; mais

ต้นฉบับไม่มีหน้านี้

NO THIS PAGE IN ORIGINAL

delivered the movable property is a lessee, he may determine the contract by returning such movable at his own expense to the owner.

Cf. German law 16th. May 1894, art. 2,4.

On such determination, and with the reservation of liabilities which may have been incurred by the lessee, the owner shall return to him a sum not exceeding one half of the total amount in execution of the contract. Any contrary agreement is void.

ILLUSTRATION. - Suppose that, since the 1st. January 2467, A has paid say six times the monthly rent agreed, he is allowed, in the course of the seventh month, to determine the contract. If he does so, he shall return the fan to the Company and is of course liable for any loss or damages caused by his fault to the thing hired if any (Draft Book III s. 191).

The Company, who has received 60 baht; as rent from the beginning, will have to return 30 baht to A and can keep only 30 baht; no contrary agreement is valid (unless if the Company would agree that they shall d keep less than 30 baht). In this calculation, it is admitted that the amount for the monthly rent as agreed between the parties understood to cover as a fact more than a rent and was increased in view of the contemplated sale of the thing.

Section 3

As long as the person who has been delivered the movable property is a lessee, the lessor may determine the contract in case of non payment of the rent but only if two rents at least have not been paid.

The owner is entitled also to determine the contract if the price specified for the sale of the movable is not paid within two months from the date when the promissee is entitled to complete the sale.

On such determination, in addition to compensation for the liabilities which may have been incurred by the lessee if any, if the owner shall be entitled to have the movable property returned to him and to receive for full settlement and compensation a sum not exceeding the total amount paid to him. Any contrary agreement is void.

ILLUSTRATION. - I. - Suppose that, since the 1st. January 2467, A has paid say six times the monthly rent agreed, but does not pay further: the Company can determine the contract as soon as A has not paid the

seventh and eight rents. If they do so, the Company shall be entitled to the return of the fan, to compensation for loss or damages caused by the fault of A as a lessee to the thing hired if any, and they will keep the whole sum paid to them, say 60 baht, without any further claim for expenses of delivery, transportation, etc., No other agreement is valid (unless if the Company would agree that they shall keep less than 60 baht). - It is noteworthy that section 8 forbids the clause by which the so-called seller uses to take advantage of the buyer failing only to make one payment for claiming the return of the thing and besides that the buyer is bound to pay all remaining instalments due under the contract.

II. - Suppose that, since the 1st. January 2467, A has paid eleven times the monthly rent agreed. On the 1st. of December he is no longer a lessee, but a promissee who is at the same time the possessor of the thing. According to the ordinary rules of the promise of sale (Draft Book III, s. 396 to 398) such a promissee would have to notify the promissor (Company) of his intention to complete the sale. This seems too long and unuseful in the case of Hire-Purchase. Section 3 fixes in any case to two months the delay during which the promissee may exercise his option. The delay is fixed so that the Company cannot take advantage at once of the promissee failing to pay the price (twelfth instalment) to claim back the thing drastically.

Section 4

Contracts made in the conditions specified in section 1 are contracts of hire-purchase, notwithstanding any other denomination which may be used by the parties in their agreement.

If the parties agree that the ownership of the movable is transfered at the time when the contract is made or the movable delivered, they shall be deemed to have made a contract of sale where the payment of the price is by successive instalments.

ILLUSTRATION. - I. - Suppose it is specified in the contract between A and the Eastern Company that this is not a contract of hire-purchase under this Title but that "this is a contract of hire with a special clause of promise of sale". By this denomination, the Company would try to escape the provisions of the present Title and especially

the delays for determining the contracts or the calculation of the compensation due to them, which then could be higher and excessive. Section 4 forbids such a combination and the Courts shall take the contract as hire-purchase under the present Title.

II. -, It may be agreed that A becomes the owner of the electric fan when the contract is made or when the electric fan is delivered to him. But in such case the transfer of ownership makes the contract, quite different from a contract of hire-purchase as specified in section 1. This becomes a contract of sale with payment of the price is made by successive instalments. There are no special rules for such a contract because it comes under the general rules for such a contract because it comes under the general rules of sale. A becomes the owner of the property; he can no longer return it; if he fails to pay the price (by instalments) the Company shall claim the cancellation of the contract under section 328 Civil Code.

3rd. December 1923.

1er tirage
3 Xbre 1923

(Texte examiné en Comité de Rédaction le 6 Xbre 1923)

TITLE VI

HIRE - PURCHASE

Section 1

A contract of hire-purchase is a contract whereby a person agrees to let a movable property for a specified period of time to another person and promises to sell it to the latter for the price specified in the contract after the said period has elapsed.

Hire-purchase is governed by the provisions of this Code concerning hire up to the time when the promissee is entitled to complete the sale or not.

ILLUSTRATION. - I. - On the 1st. January 2467, the Eastern Co. agrees to hire to A an electric fan for eleven months at a monthly rent of 10 baht, being agreed besides that the Company ~~agree to~~ shall sell the fan to A if he makes a twelfth payment of 10 baht as a price for it.

a) for eleven months, A is a lessee and incurs all the liabilities of a lessee if he damages the fan, etc.

b) as soon as the eleventh month~~s~~ has elapsed, that is to say from the 1st. December 2468, A has an option to buy or not the fan by payment of 10 baht; as a promissee (Draft Book III s. 397 to 398), he can do it or not; if he pays the price of 10 baht, he becomes the owner of the fan;

c) if A, as long as he is a lessee, sells the fan to another person, he commits the offence of criminal misappropriation (Penal Code s. 314); besides, the Company is entitled to determine the contract (Draft Book III s. 517, 520) since A has used the property hired for other purpose than those of the contract and A will be liable to the Company for the return of the fan or its value; if A would have pledged the fan to another person, the contract would be void under section 789 second paragraph;

d) as soon as A has paid the eleventh rent (or, if agreed that rents are paid in advance, as soon as the eleventh month of hire has elapsed), A is no longer a lessee; he becomes a possessor of the fan, with the benefit of a promise of sale (option); in this condition, he has notwithstanding no right to sell or pledge a thing which has not been delivered to him for the purpose of ownership; if he does so, he commits

criminal misappropriation under Penal Code [illegible] ; besides, the Company would be entitled to claim cancellation of the contract.

M. Péay et M. Caseau. - Si l'on n'ajoute pas quelque chose aux textes, c'est la seule chose que puisse faire la Compagnie, car les droits de détermination sont limités par la loi. Mais cancellation veut dire que les parties sont remises en l'état où elles étaient lors de la signature du contrat (j'entends du contrat unique et indivisible de Hire-Purchase qui est le seul entre les parties); la Compagnie reprendra le fan et A se verra restituer tous ses versements. La Compagnie sera frustrée!

Je ne vois pas qu'en l'état actuel des textes on puisse échapper à cette conséquence! Le droit sur la "promesse de vente" n'y change rien. Les articles 396 - 398 n'avaient probablement pas envisagé l'hypothèse où la chose est entre les mains du "promissee", d'ailleurs. Ici, c'est notre cas normal. D'où cette possibilité fréquente de l'aliénation de l'objet par ce "pormissee" pendant cette période courte, mais suffisante, où il n'encourt plus les responsabilités du locataire et n'est qu'un simple optionnaire-détenteur. Il vend la chose. La Compagnie n'a pas d'autre arme que de demander la cancellation du contrat (avec les conséquences ci-dessus indiquées). Que ferait-elle d'autre ?

Je ne vois que deux solutions:

a) admettre, comme on l'a dit l'autre jour, que l'aliénation de la chose vaut levée de l'option; mais

Il me semble qu'il faudrait le dire quelque part, d'autant que nos articles sur la promesse de vente, avec leur système de notification, ne conduisent nullement à cette conclusion;

b) ou admettre que la vente de la chose d'autrui est nulle; mais c'est encore un principe qui n'apparaît pas dans notre Code, encore que les articles 284, et 285 Code Civil y conduisent peut-être. C'est donc invoquer pour donner la réponse une théorie mal précise.

J'aimerais mieux la 1ère. solution; mais il serait tout à fait hasardeux de la laisser à la jurisprudence et de ne pas l'exprimer.

e) as soon as A has paid the twelfth instalment, which is a price, he has at his discretion completed the purchase as he was entitled to do; and he becomes an owner of it.

II. - The Eastern Co. and A could likewise agree that, at any time during the year, A may become the owner of the electric fan by paying, as a whole and as a price, to the Company the remaining monthly payment of 10 baht which are still due under the contract. This also is a contract of hire-purchase.

Section 2

As long as the person who has been

delivered the movable property to a lessee, he may determine the contract by returning such movable at his own expense to the owner.

Cf. German law 16th. May 1894, art. 2,4.

On such determination, and with the reservation of liabilities which may have been incurred by the lessee, the owner shall return to him a sum not exceeding one half of the total amount paid in execution of the contract. Any contrary agreement is void.

ILLUSTRATION. - Suppose that, since the 1st. January 2467, A has paid say six times the monthly rent agreed, he is allowed, in the course of the seventh month, to determine the contract. If he does so, he shall return the fan to the Company and is of course liable for any loss or damages caused by his fault to the thing hired if any ~~(Draft Book III s. 101)~~.

The Company, who has received 60 baht as rent from the beginning, will have to return 30 baht to A and can keep only 30 baht; no contrary agreement is valid (unless if the Company would agree that they shall keep less than 30 baht). In this calculation, it is admitted that the amount for the monthly rent as agreed between the parties understood to cover as a fact more than a rent and was increased in view of the contemplated sale of the thing.

Section 3

As long as the person who has been delivared the movable property is a lessee, the lessor may determine the contract in case of non payment of the rent but only if two rents at least have not been paid.

The owner is entitled also to determine the contract if the price specified for the sale of the movable property is not paid within two months from the date when the promissee is entitled to complete the sale.

In such determination, in addition to compensation for the liabilities which may have been incurred by the lessee if any, the owner shall be entitled to have the movable property returned to him and to receive for full settlement and compensation a sum not exceeding the total amount paid to him. Any contrary agreement is void.

ILLUSTRATION. - I. - Suppose that, since the 1st. January 2487, A has paid say six times the monthly rent agreed, but does not pay further: the Company can determine the contract as soon as A has not paid the

seventh and eight rents. If they do so, the Company shall be entitled to the return of the fan, to compensation for loss or damages caused by the fault of A as a lessee to the thing hired if any, and they will keep the whole sum paid to them, say 60 baht, without any further claim for expenses of delivery, transportation, etc., No other agreement is valid (unless if the Company would agree that they shall keep less than 60 baht). - It is noteworthy that section 3 forbids the clause by which the so-called seller uses to take advantage of the buyer failing only to make one payment for claiming the return of the thing and besides that the buyer is bound to pay all remaining instalments due under the contract.

II. - Suppose that, since the 1st. January 2467, A has paid eleven times the monthly rent agreed. On the 1st. of December he is no longer a lessee, but a promissee who is at the same time the possessor of the thing. According to the ordinary rules of the promise of sale (Draft Book III, s. 396 to 398) such a promissee would have to notify the promissor (Company) of his intention to complete the sale. This seems too long and unuseful in the case of Hire-Purchase. Section 3 fixes in any case to two months tho delay during which the promissee may exercise his option. The delay is fixed so that the Company cannot take advantage at once of the promissee failing to pay the price (twelfth instalment) to claim back the thing drastically.

Section 4

Contracts made in the conditions specified in section 1 are contracts of hire-purchase, notwithstanding any other denomination which may be used by the parties in their agreement.

If the parties agree that the ownership of the movable property is transfered at the time when the contract is made or the movable property delivered, they shall be deemed to have made a contract of sale where the payment of the price is by successive instalments.

ILLUSTRATION. - I. - Suppose it is specified in the contract between A and the Eastern Company that this is not a contract of hire-purchase under this Title but that "this is a contract of hire with a special clause of promise of sale". By this denomination, the Company would try to escape the provisions of the present Title and especially

the delays for determining the contracts or the calculation of the compensation due to them, which then could be higher and excessive. Section 4 forbids such a combination and the Courts shall take the contract as hire-purchase under the present Title.

II. -, It may be agreed that A becomes the owner of the electric fan when the contract is made or when the electric fan is delivered to him. But in such case the transfer of ownership makes the contract quite different from a contract of hire-purchase as specified in section 1. This becomes a contract of sale with payment of the price made by successive instalments. There are no special rules for such a contract because it comes under the general rules ~~for such a contract because it comes under the general rules~~ of sale. A becomes the owner of the property; he can no longer return it; if he fails to pay the price (by instalments) the Company shall claim the cancellation of the contract under section 326 Civil Code.

3rd. December 1923.

Examen

en Comité de Rédaction

de la rédaction du 3 décembre 1923

═

6 décembre 1923

(comme ~~[illegible]~~ de la note française du 3 décembre 1923

made by the promissor of his intention

that being notification to complete the sale ~~made by the [illegible] promisee to the promissor under articles 389 and 390~~ or any transfer or disposal of the movable thing made by ~~the promisee~~ him has the effect of a contract of sale.

N. B. Cette 1ère rédaction avait été jugée très satisfaisante. Mais peut-être pas assez souple. Elle abandonne toute idée de "abus de confiance" dans la période d'option, ce qui est conforme à l'idée anglaise. Mais l'idée anglaise totale et souple est exprimée par cette formule (Laws of England p. 554) : "And even where the property has not passed, the so-called hirer, being really a purchaser, can give a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the original owner".

Tant que la personne est lessee, selon notre droit siamois, elle ne peut aliéner ; en dépit du texte ci-dessus, il semble bien en être de même en droit anglais par le système du bailee qu'est le lessee et qui n'a pas droit d'aliéner. En tt cas il n'y a pas lieu de changer notre politique.

Pour la période suivante (optionnaire-détenteur), nous adoptons le dt anglais c-à-d. la possibilité de transférer ses droits, sans commettre d'abus de confiance, et valablement. D'où une ~~cette~~ 2de rédaction projetée.

Mais, en dernière analyse, les 2 systèmes reviennent au même :

car dans l'un comme ds l'autre, c'est l'optionnaire qui restera tenu v. à v. de la Cie du paiement du prix ;

car dans l'un comme dans l'autre, le transferee aura good title (expressément dit dans le système anglais; par le fait même que son transferor devenait bien propriétaire et pouvait transférer valablement, s'il levait l'option).

On en reste donc finalement au système ci-dessus; on a introduit "disposal" pour faire qu'un pledge dans cette période vaut levée de l'option.

6 Décembre 1923

Section 3

2d paragraph

~~From the time when the promisee is entitled to complete the sale, if such sale is not completed within two months the owner is entitled also to determine the contract.~~

The owner is entitled also to determine the contract if, within two months from the date when the promisee is entitled to complete the ~~[illegible]~~ purchase ~~[illegible]~~ the latter has ~~[illegible]~~ not completed it neither paid the price fixed in the contract.

Section 4 – 2nd para.

If it appears from the contract that there ~~[illegible]~~ is to be a transfer of ownership ~~of the movable property has taken place~~ at the time when the contract was made, the parties shall be deemed to have made...

42/210/1.

For the copy :

Title VI

Hire-Purchase

Section 1. — As it is in Number I

Illustration. — As it is in Number II
including the note in French
made by pencil.

Section 2. — As it is Number I

Illustration. — As it is in Number II

Section 3. — As it is in Number I

Illustration — As it is in Number II

Section 4. — As it is in Number I

Illustration — As it is in Number I

3 X^{br} 1923

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura เมื่อวันที่ 14/02/2563

5 copies

TITLE VI

HIRE - PURCHASE

Section 1

A contract of hire-purchase is a contract whereby a person agrees to let a movable property for a specified period of time to another person and promises to sell it to the latter for the price specified in the contract after the said period has elapsed.

Hire-purchase is governed by the provisions of this Code concerning hire up to the time when the promissee is entitled to complete the purchase or not.

From that time, a notification made by the
...ice of his
...tion to complete the purchase, or
...transfer or
...al of the mo-
...thing made
...him has the
...t of a contract
...sal.

ILLUSTRATIONS. - I. - On the 1st. January 2467, the Eastern Co. agrees to hire to A an electric fan for eleven months at a monthly rent of 10 baht, being agreed besides that the Company ~~agree to~~ shall sell the fan to A if he makes a twelfth payment of 10 baht as a price for it.

a) for eleven months, A is a lessee and incurs all the liabilities of a lessee if he damages the fan, etc.

~~c)~~ as soon as the eleventh month has elapsed, that is to say from the 1st. December 2468, A has an option to buy or not the fan by payment of 10 baht; as a promissee (Draft Book III s. 396 to 398), he can do it or not; he does it if he notifies his intention to buy (s. 397) or if he pays the price of 10 baht ~~[illegible]~~ becomes the owner of the fan;

specific performance); sells the fan ~~[illegible]~~ person* or pledges third person, sect. not take it as al offence, but such a transfer has the same as an option: that A can be sued in all these for the payment of twelfth instal- (price); the third having acquired (or received) has a title. (1)

~~b)~~ if A, as long as he is a lessee, sells the fan to another person, he commits the offence of criminal misappropriation (Penal Code s. 314); besides, the Company is entitled to determine the contract (Draft Book III s. 517, 520) since A has used the property hire for other purposes than those of the contract and A will be liable to the Company for the return of the fan or its values. If A would have pledged the fan to another person, the contract would be void under section 789 second paragraph. ~~and~~ The third person who acquires or received the fan ~~[illegible]~~ would have no good title but would receive compensation if he was acting in good faith.

~~a) as soon as A has paid the eleventh rent (or, if agreed that rents are paid in advance, as soon as the eleventh month of hire has elapsed), A is no longer a lessee; he becomes a possessor of the fan, with the benefit of a promise of sale (option); in this condition, he has notwithstanding no right to sell or pledge a thing which has not been delivered to him for the purpose of ownership; if he does so, he commits~~

(1) ~~In~~ After the English jurisprudence, "even where the property has not passed A], the so-called hirer, being really a purchaser, can give a good title to a purr or pledgee dealing with him in good faith and without notice of the rights original owner". From the illustrations above it appears that this will not happen A has disposed of the thing for a third person during the time when A was a lessee; we are to admit ~~[illegible]~~ that A then commits a criminal offence on account of the law on criminal misappropriation (Penal Code) and that the transfer made by A has no

d of
otnote

effect on account of ~~[illegible]~~ the Siamese provisions concerning sale or pledge by a person who is not the owner of the thing sold, pledged, etc. since we use to say that such transfers are void but that the ~~[illegible]~~ transferee in good faith shall receive compensation (~~[illegible] Pledge~~ Civil Code s. 284, 285; Pledge s. 789; draft Book on Things s. 116, 117, 118.) ~~[illegible]~~ I remind that this position has been taken previously in this question, and is conform to the jurisprudence of the Dika Court in matter of pledges of ~~[illegible]~~ things obtained through a criminal offence or the transferor of which had no right (what is the case of the hire-purchaser, during the time when he is only a lessee).– ~~When there is~~ As to any transfer or disposal of the thing during the time when A is ~~[illegible]~~ no longer a lessee, but a possessor and promisee, ~~the~~ his transferee shall have a good title ~~by the effect of~~, as a consequence of the option for purchase being made ipso facto by A disposing of the thing.

22/213/1

il me semble qu'il faudrait le dire quelque part, d'autant que nos articles sur la promesse de vente, avec leur système de notification, ne conduisent nullement à cette conclusion;

b) ou admettre que la vente de la chose d'autrui est nulle; mais c'est encore un principe qui n'apparaît pas dans notre Code, encore que les articles 284, et 285 Code Civil y conduisent peut-être. C'est donc invoquer pour donner la réponse une théorie mal précise.

J'aimerais mieux la 1ère. solution; mais il serait tout à fait hasardeux de la laisser à la jurisprudence et de ne pas l'exprimer.

c) as soon as A has paid the twelfth instalment, which is a price, he has at his discretion completed the purchase as he was entitled to do; and he becomes an owner of it.

II. - The Eastern Co. and A could likewise agree that, at any time during the year, A may become the owner of the electric fan by paying, as a whole and as a price, to the Company the remaining monthly payment of 10 baht which are still due under the contract. This also is a contract of hire-purchase.

another page

Section 2

As long as the person who has been

delivered the movable property is a lessee, he may determine the contract by returning such movable at his own expense to the owner.

Cf. German law 16th. May 1894, art. 2,4.

On such determination, and with the reservation of liabilities which may have been incurred by the lessee, the owner shall return to him a sum not exceeding one half of the total amount paid in execution of the contract. Any contrary agreement is void.

ILLUSTRATION. - Suppose that, since the 1st. January 2467, A has paid say six times the monthly rent agreed, he is allowed, in the course of the seventh month, to determine the contract. If he does so, he shall return the fan to the Company and is of course liable for any loss or damages caused by his fault to the thing hired, if any. ~~(Draft Book III s. 101).~~

The Company, who has received 60 baht as rent from the beginning, will have to return 30 baht to A and can keep only 30 baht; no contrary agreement is valid (unless if the Company would agree that they shall d keep less than 30 baht). In this calculation, it is admitted that the amount for the monthly rent as agreed between the parties understood to cover as a fact more than a rent and was increased in view of the contemplated sale of the thing.

II. - Suppose that A has paid eleven times the monthly rent agreed. A is now a possessor with a right of option. A may return the thing to the Company and this would is [illegible] mean that he does not complete the sale. The Company would have been paid [illegible] the rent due for eleven month hire (probably a higher rent than in case of a real hire). and is not frustrated. [illegible] ower, as a fact, it would never be the interest of A not to complete the sale, since by the payment of a small sum of money (twelfth instalment) he will become definitively the owner of the thing.

another page

~~and was increased in view of the contemplated sale of the thing.~~

Section 3

As long as the person who has been delivered the movable property is a lessee, the lessor may determine the contract in case of non payment of the rent but only if two rents at least have not been paid.

The owner is entitled also to determine the contract, ~~if the price specified for the sale of the movable property is not paid~~ within two months from the date when the promissee is entitled to complete the ~~[illegible]~~ purchase the latter has not completed it neither has paid the price fixed in the contract. On such determination, in addition to compensation for the liabilities which may have been incurred by the lessee if any, the owner shall be entitled to have the movable property returned to him and ~~to receive~~ shall be satisfied for full settlement and compensation with a sum not exceeding the total amount paid to him. Any contrary agreement is void.

ILLUSTRATION. - I. - Suppose that, since the 1st. January 2467, A has paid say six times the monthly rent agreed, but does not pay further: the Company can determine the contract as soon as A has not paid the

seventh and eight rents. If they do so, the Company shall be entitled to the return of the fan, to compensation for loss or damages caused by the fault of A as a lessee to the thing hired if any, and they will keep the whole sum paid to them, say 60 baht, without any further claim for expenses of delivery, transportation, etc., No other agreement is valid (unless if the Company would agree that they shall keep less than 60 baht). - It is noteworthy that section 3 forbids the clause by which the so-called seller uses to take advantage of the buyer failing only to make one payment for claiming the return of the thing and besides that the buyer is bound to pay all remaining instalments due under the contract.

II. - Suppose that, since the 1st. January 2467, A has paid eleven times the monthly rent agreed. On the 1st. of December he is no longer a lessee, but a promissee who is at the same time the possessor of the thing. ~~According to the ordinary rules of the promise of sale (Draft Book III, s. 386 to 388) such a promissee would have to notify the promissor (Company) of his intention to complete the sale. This seems too long and unuseful in the case of Hire Purchase. See~~ Section 3 2) paragraph fixes in any case to two months ~~the~~

the delay during which the promissee may exercise his option (by notification or otherwise). The delay is fixed so that the Company cannot take advantage at once of the promissee failing to pay the price (twelfth instalment) to claim back the thing from him drastically. Suppose A has notified the Company that he intends to complete the purchase, this has the effect of the sale and the Company, if A does not pay the price (twelfth instalment) may sue him as any purchaser who fails to pay the price of purchase.

A makes no payment, no
...tion, etc., but keeps
...ing in his hands: he
...completed the
...se and after two
...s there is a deter-
...tion of the contract
... Co who shall
... be in the position
...d by paragraph 3.

Section 4

another page

Contracts made in the conditions specified in section 1 are contracts of hire-purchase, notwithstanding any other denomination which may be used by the parties in their agreement.

If ~~the parties agree that the ownership of the movable is transferred~~ it appears from the contract that there has been a transfer of ownership at the time when the contract ~~is~~ was made, ~~or the movable delivered, they~~ the parties shall be deemed to have made a contract of sale where the payment of the price is by successive instalments.

ILLUSTRATION. - I. - Suppose it is specified in the contract between A and the Eastern Company that this is not a contract of hire-purchase under this Title but that "this is a contract of hire with a special clause of promise of sale". By this denomination, the Company would try to escape the provisions of the present Title and especially

the delays for determining the contracts or the calculation of the compensation due to them, which then could be higher and excessive. Section 4 forbids such a combination and the Courts shall take the contract as hire-purchase under the present Title.

II. -, It may be agreed that A becomes the owner of the electric fan when the contract is made or when the electric fan is delivered to him. But in such case the transfer of ownership makes the contract/ quite different from a contract of hire-purchase as specified in section 1. This becomes a contract of sale with payment of the price made by successive instalments. There are no special rules for such a contract because it comes under the general rules ~~for such a contract because it comes under the general rules~~ of sale. A becomes the owner of the property; he can no longer return it; if he fails to pay the price (by instalments) the Company shall claim the cancellation of the contract under section 328 Civil Code.

~~3rd December 1929.~~

7th December 1929

NOTE

pour M. Rémy et M. Cazeau

Prière d'examiner de nouveau le projet modifié.

J'appelle votre attention notamment sur la section 3 deuxième paragraphe, modifié dans notre dernière séance. Il me semble, en dernier examen que les mots "neither paid the price fixed in the contract" devraient disparaître. L'analyse révèle les situations suivantes, possibles au cours des deux mois de délai de grâce qui suivent le jour où le locataire s'est transformé en simple optionnaire-possesseur:

ou bien il paye le dernier acompte (prix) et tout est réglé parceque l'achat est complet suivant la voie normale (completion of the purchase by payment of price);

ou bien il fait un acte quelconque (notification, transfert, gage, etc.) valant, selon notre système, levée de l'option; alors il devient véritablement acheteur, et par la suite, s'il ne paye pas, la Compagnie créancière se trouvera vis-à-vis d'un simple acheteur défaillant quant au paiement du prix et le poursuivra selon le droit commun;

ou bien enfin il se borne à conserver la chose par divers lui sans en disposer et sans la payer, mais cette attitude passive tombe précisément et suffisamment dans les mots "the latter has not completed it (the purchase)".

En d'autres termes, dans tous les cas possibles, il semble que les mots "has not completed it" suffisant, et que faire intervenir la notion du prix impayé complique inutilement les choses. Le prix ne nous intéresse d'ailleurs que comme révélation d'une levée d'option.

7 Décembre 1923.

THAMMASAT UNIVERSITY

TITLE VI

HIRE - PURCHASE

Section 1

A contract of hire-purchase is a contract whereby a person agrees to let a movable property for a specified period of time to another person and promises to sell it to the latter for the price specified in the contract after the said period has elapsed.

Hire-purchase is governed by the provisions of this Code concerning hire up to the time when the promissee is entitled to complete the purchase or not.

From that time, a notification made by the promissee of his intention to complete the purchase, or any transfer or disposal of the movable thing made by him, has the effect of a contract of sale.

ILLUSTRATIONS. - I. - On the 1st. January 2467, the Eastern Co. agrees to hire to A an electric fan for eleven months at a monthly rent of 10 baht, being agreed besides that the Company shall sell the fan to A, if he makes a twelfth payment of 10 baht as a price for it.

a) for eleven months. A is a lessee and incurs all the liabilities of a lessee if he damages the fan, etc.

b) if A, as long as he is a lessee, sells the fan to another person, he commits the offence of criminal misappropriation (Penal Code s. 314); besides, the Company is entitled to determine the contract (Draft Book III s. 517, 520) since A has used the property hired for other purposes than those of the contract and A will be liable to the Company for the return of the fan or its value. If A would have pledged the fan to another person, the contract would be void under section 789 second paragraph. The third person who has acquired or received the fan would have no good title but would receive compensation if he was acting in good faith.

c) as soon as the eleventh month has elapsed, that is to say from the 1st. December 2468, A has an option to buy or not the fan by payment of 10 baht; as a promissee (Draft Book III s. 396 to 398), he can do it or not; he does it if he notifies his intention to buy (s. 397) or if he pays the price of 10 baht ~~becomes the owner of the fan;~~ (specific performance); if he sells the fan or pledges it to a third person, section 1 does not take it as a criminal offence, but says that such a transfer or disposal has the same effect as an option: that is to say A can be sued by the Company in all these cases for the payment of the twelfth instalment (price); the third person having acquired or received the fan has a good title.(1)

---

(1) After the English jurisprudence, "even where the property has not passed (to A), the so-called hirer, being really a purchaser, can give a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the original owner". From the illustrations above, it appears that this will not happen when A has disposed of the thing for a third person during the time when A was a pledgee; we are induced to admit that A then commits a criminal offence on account of the Siamese law up criminal misappropriation (Penal Code) and that the transfer made by A has no effect on account of the Siamese provisions concerning sale or pledge by a person who is not the owner of the thing sold, pledged, etc. Since we use to say that such transfers are void but that the transferee in good faith shall receive compensation (Civil Code s. 284, 285; Pledge s. 789; draft Book on Things s. 116, 117, 118). I remind that this position has been taken previously in this question, and is conform to the jurisprudence of the Dika Court in matter of pledges of things obtained through a criminal offence or the transferor of which had no right (what is the case of the hire-purchaser owing the time when he is only a lessee). As to any transfer or disposal of the thing during the time when A is no longer a lessee, but a possessor and promissee, his transferee shall have a good title, as a consequence of the option for purchase being made ipso facto by A disposing of the thing.

II. - The Eastern Co. and A could likewise agree that, at any time during the year, A may become the owner of the electric fan by paying, as a whole and as a price, to the Company the remaining monthly payments of 10 baht which are still due under the contract. This also is a contract of hire-purchase.

Section 2

As long as the person who has been delivered the movable property is a lessee, he may determine the contract by returning such movable at his own expense to the owner.

On such determination, and with the reservation of liabilities which may have been incurred by the lessee, the owner shall return to him a sum not exceeding one half of the total amount paid in execution of the contract. Any contrary agreement is void.

Cf. German Law 16th. May 1894, art. 2,4.

ILLUSTRATIONS. - I. - Suppose that, since the 1st. January 2467, A has paid say six times the monthly rent agreed, he is allowed, in the course of the seventh month, to determine the contract. If he does so, he shall return the fan to the Company and is of course liable for any loss or damages caused by his fault to the thing hired, if any.

The Company, who has received 60 baht as rent from the beginning, will have to return 30 baht to A and can keep only 30 baht; no contrary agreement is valid (unless if the Company would agree that they shall keep less than 30 baht). In this calculation, it is admitted that the amount for the monthly rent as agreed between the parties understood to cover as a fact more than a rent and was increased in view of the contemplated sale of the thing.

II. -. Suppose that A has paid eleven times the monthly rent agreed. A is now a possessor with a right of option. A may return the thing to the Company and this would mean that he does not complete the sale. The Company would have been paid the rent due for eleven month hire (probably a higher rent than in case of a real hire) and is not frustrated. Moreover, as a fact, it would never be the interest of A not to complete the sale, since by the payment of a small sum of money (twelfth instalment) he will become definitively the owner of the thing.

Section 3

As long as the person who has been delivered the movable property is a lessee, the lessor may determine the contract in case of non payment of the rent but only if two rents at least have not been paid.

The owner is entitled also to determine the contract, if within two months from the date when the promissee is entitled to complete the purchase, the latter has not completed it neither has paid the price fixed in the contract.

On such determination, in addition to compensation for the liabilities which may have been incurred by the lessee if any, the owner shall be entitled to have the movable property returned to him and shall be satisfied for full settlement and compensation with a sum not exceeding the total amount paid to him. Any contrary agreement is void.

ILLUSTRATION. - I. - Suppose that, since the 1st. January 2467, A has paid say six times the monthly rent agreed, but does not pay further: the Company can determine the contract as soon as A has not paid the seventh and eight rents. If they do so, the Company shall be entitled to the return of the fan, to compensation for loss or damages caused by the fault of A as a lessee to the thing hired if any, and they will keep the whole sum paid to them, say 60 baht, without any further claim for expenses of delivery, transportation, etc., No other agreement is valid (unless if the Company would agree that they shall keep less than 60 baht). - It is noteworthy that section 3 forbids the clause by which the socalled seller uses to take advantage of the buyer failing only to make one payment for claiming the return of the thing and besides that the buyer is bound to pay all remaining instalments due under the contract.

II. - Suppose that, since the 1st. January 2467, A has paid eleven times the monthly rent agreed. On the 1st. of December he is not longer a lessee, but a promissee who is at the same time the possessor of the thing. Section 3, 2nd. paragraph fixes in any case to two months the delay during which the promissee may exercise his option (by notification or otherwise). This delay is fixed so that the Company cannot take advantage at once of the promissee failing to pay the price (twelfth instalment) to claim back the thing from him drastically. Suppose A has notified the Company that he intends to complete the purchase, this has the effect of the sale and the Company, if A does not pay the price (twelfth instalment) may sue him as any purchaser who fails to pay the price of purchase.

Suppose A makes no payment, no notification, etc., but keeps the thing in his hands: he has not completed the purchaser and after two months there is a determination of the contract by the Company who shall then be in the position described by paragraph 2.

Section 4

Contracts made in the conditions specified in section 1 are contracts of hire-purchase, notwithstanding any other denomination which may be used by the parties in their agreement.

If it appears from the contract that there has been a transfer of ownership at the time when the contract was made, the parties shall be deemed to have made a contract of sale where the payment of the price is by successive instalments.

ILLUSTRATIONS.- I. - Suppose it is specified in the contract between A and the Eastern Company that this is not a contract of hire-purchase under this Title but that "this is a contract of hire with a special clause of promise of sale". By this denomination, the Company would try to escape the provisions of the present Title and especially the delays for determining the contracts or the calculation of the compensation due to them, which then could be higher and excessive. Section 4 forbids such a combination and the Courts shall take the contract as hire-purchase under the present Title.

II. - It may be agreed that A becomes the owner of the electric fan when the contract is made or when the electric fan is delivered to him. But in such case the transfer of ownership makes the contract quite different from a contract of hire-purchase as specified in section 1. This becomes a contract of sale with payment of the price made by successive instalments. There are no special rules for such a contract because it comes under the general rules of sale. A becomes the owner of the property; he can no longer return it; if he fails to pay the price (by instalments) the Company shall claim the cancellation of the contract under section 228 Civil Code.

7th. December 1928.