



D R A F T

FOR

BILL - PURCHASE

Submitted
to the
Department of Legislation

20th. December

1 9 2 3

GENERAL REMARKS

The Committee of Redaction call the attention upon the following points:

1. - Very few foreign legislations have up to now made provisions of law concerning hire-purchase. In France and England, decisions come from jurisprudence only (except a French law concerning sale by instalments of debentures in the Stock-Exchange March 1900). In Germany there has been a Law 16th. May 1894 which concern really sales with payment by instalments and, though intended to protect buyers who have to pay during many months for a property delivered to them at once, is quite different from the idea of hire-purchase as admitted in English, French and Siamese laws.⁽¹⁾

2. - It is noticeable that finally the English and French laws have come to the same policy in matter of hire-purchase: they take

(1) The German Law takes the contract as one of sale with payment by instalments where the contract can be determined. Determination of sale by the parties would be contrary to our Civil Code.

it as a hire; with option of sale for the hirer at a certain time.

This policy is also that of the Siamese jurisprudence in the Dika No. 212/2457 and has certainly the preferences of the market in Siam as shown by the contracts agreed here (Singer Sewing Machine Co. Siam Electricity Co.)

3. - The draft submitted follows consequently the present French, English and Siamese policy in the matter. They take hire-purchase as a hire with option of sale."

4. - It is noticeable that if civil law abroad has, up to now, be rather reluctant to enact provisions concerning Hire-Purchase, it is not only because this kind of business is pretty recent, but also because the matter has been singularly difficult to make a satisfactory explanation of in law. Besides, combinations of the hire-purchasers have been so numerous and different that it was long to realize exactly their real nature from a legal point of view.

5. - Since Siam will, in this matter, be a kind of a pioneer when introducing the matter of Hire-Purchase in her Civil and Commercial Code, it is commendable to be prudent and to not to upset the local practices. The present draft has been made accordingly and intends only, in the present conditions, to give a clear guidance to the Courts as to the

nature of the contract and also to protect the hire-purchaser against drastic and abusive claims by the lessor as was, though by a very different way, the purpose of the German legislation.

20th. December 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 promisee is entitled to complete the purchase or not.

From that time, a notification made by the promisee of his intention to complete the purchase, or any transfer or disposal of the movable property 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.

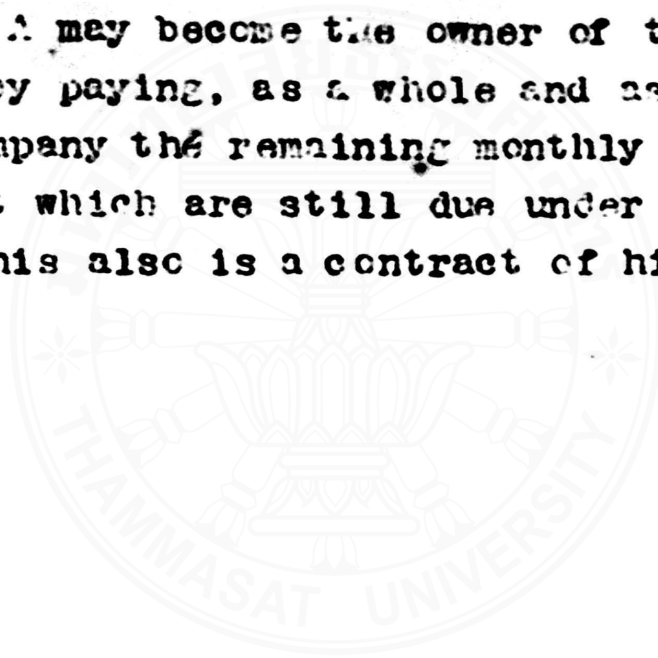
c) as soon as the eleventh month has elapsed, that is to say from the 1st. December 2468, A has an option to buy or not the fan by payment of 10 baht; as a promisee (Draft Book III s. 226 to 299), he can do it or not; he does it if he notifies his intention to buy (s. 397) or if he pays the price of 10 baht 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⁾

II. - The Eastern Co. and A could
 likewise agree that, at any time during

(1) From the illustrations, it appears that the third person has no good title when A has disposed of the thing for him during the time when A was a lessee; we have to admit that A then commits a criminal offence on account of the Siamese law on criminal mis-appropriation (Penal Code); and that the transfer made by A has no effect on account of the general 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 however 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 for transfers of this kind and is conform to the jurisprudence of the Dika Court in matter of pledge of things obtained through a criminal offence of the transferor of which had no right (what is the case of the hire-purchaser during 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 promisee, 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. Cf. section 447 (4) of the Sale, where a similar provision is already found since in case of property sold by sample or on approval, the property is delivered to the would be buyer who, having really an option, is deemed to complete ipso facto, the sale if he disposes of the property or uses it otherwise than for the purpose of examining it (for instance by pledging or re-selling it).

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 if any, 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.

. 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~~ 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 promisee is entitled to complete the purchase, the latter has not completed it.

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 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 promisee 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 promisee may exercise his option (by notification or otherwise). This delay is fixed so that the Company cannot take advantage at once of the promisee 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 purchase and after two months there is a determination of the contract by the Company who shall then be in the position described by paragraph 3.

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 328 Civil Code..

A N N E X

(A sample of agreements of hire-purchase
in Siam)

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 re-
main 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 the 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

.....

HIRE - PURCHASE

(procès-verbaux des séances du
Comité de Rédaction)

1er. Décembre

1923

Le Comité estime que vu les habitudes locales il n'est pas nécessaire de faire porter la définition du hire-purchase sur les immeubles.

Le droit siamois ignore les real chattels qui en droit anglais pourraient faire l'objet d'un hire-purchase.

Sur la proposition à laisser au bailleur.

M. Guyon voudrait qu'elle soit des 2/3;

M. Cazeau propose la 1/2 et a résumé ses arguments dans une note annexée au présent procès-verbal;

M. Romy de Planterose se rallie au dernier système qui obtenant ainsi la majorité est adopté dans le texte (nouvel article 2)

L'article 1er. est modifié de façon à y faire apparaître l'idée de la promesse de vente annexée à la location, conformément au droit anglais et aux plus récentes décisions de la jurisprudence française (Civ. 22 février 1887; D. 87, 1, 500; Crim. 19 Juin 1903 ; D. 1905, 1, 483)

3 Décembre 1923

Le Comité décide de suivre le système anglais en ce

qui concerne le cas où le "hirer-purchaser" vend ou met en gage l'objet du contrat.

(Laws of England 1er. Vol. Vo. Bailment No. 1124 "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")

Cependant dans le système siamois le "hirer" devenant propriétaire par la levée de l'option (en cas de disposition de l'objet), il n'y aura pas lieu de se préoccuper de savoir si le sous acquéreur avait "notice of the rights of the original owner".

TITLE VI

HIRE - PURCHASE

(Counterdraft submitted
by

.Phya Manava Raja Sevi
in the meeting 21st. January 1924)

Section 1

The contract of hire-purchase is one under which the owner of a movable property lets it out on hire and promise to sell it to the hirer, conditionally on his making a certain number of payments as agreed upon.

The contract of hire-purchase is void unless made in writing.

Section 2

The hirer may at any time determine the contract by redelivering such movable at his own expense to the owner.

The owner may also determine the contract in case of default of any instalment, or breach of any material part of the contract in which case all previous payments are forfeited to the owner who is entitled to resume possession of the properties.

Section 3

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.

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.

TITLE V
HIRE - PURCHASE

Section 1

The contract of hire-purchase is ~~the~~ ^{a contract} under which the owner of a ~~movable~~ property lets it out on hire and promises to sell it to the hirer, ~~on condition~~ on his making a certain number of payments. ~~the contract is void unless made in writing.~~

The contract of hire-purchase is void unless made in writing.

Section 2

The hirer may at any time determine the contract by redelivering ~~such movable~~ ^{the property} at his own expense to the owner.

The owner may also determine the contract in case of default of ~~any instalment~~ ^{two successive payments}, or breach of any material part of the contract in which case all previous payments are forfeited to the owner who is entitled to resume possession of the property.

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.

annul
 If ~~it appears from the circumstances of the case~~
~~the ownership of the property has been transferred~~
 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. ~~under the law of the place where the~~

~~parties may have been in~~
 If it appears from the circumstances
 of the case that the

Upon such redelivery, the owner
 shall return one third of the sum
 paid by the hire or any other sum
 as agreed by the parties being not less
 than one third.

TITLE V
HIRE - PURCHASE

Section 1

The contract of hire-purchase is a contract under which the owner of a property lets it out on hire and promises to sell it to the hirer on his making a certain number of payments.

The contract of hire-purchase is void unless made in writing.

C. C. C. 109.

Section 2

The hirer may at any time determine the contract by redelivering the property at his own expense to the owner.

Upon such redelivery, the owner shall return one third of the sum paid by the hirer or any other sum as agreed by the parties being not less than one third.

Section 3.

The owner may also determine the contract in case of default of two successive payments, or breach of any material part of the contract

in which case all previous payments are forfeited to the owner who is entitled to resume possession of the property.

In case of default of the last payment, such right to forfeit and to resume possession of the property can be exercised only after one month from the default.

24 Janvier 1924

(texte finalment
adopté par le
Comité législatif).

1.
Accepte' par
le Revising Committee
le 24 Janvier 1924

TITLE V
HIRE - - PURCHASE

Section 1

The contract of hire-purchase is a contract under which the owner of a property lets it out on hire and promises to sell it to the hirer on his making a certain number of payments.

The contract of hire-purchase is void unless made in writing.

C. C. C. 109.

Section 2

The hirer may at any time determine the contract by redelivering the property at his own expense to the owner.

Upon such redelivery, the owner shall return one third of the sum paid by the hirer or any other sum as agreed by the parties being not less than one third.

Section 3

The owner may also determine the contract in case of default of two successive payments, or breach of any material part of the contract

in which case all previous payments are forfeited to the owner who is entitled to resume possession of the property.

In case of default of the last payment, such right to forfeit and to resume possession of the property can be exercised only after one month from the default.