1903.
July 1 and 6.

THE ANGLO-ORIENTAL FURNISHING COMPANY *v.* SAMARASINHA.

C.R., Colombo, 22,920.

Purchase-hire system of agreement—Furniture hired by tenant—Non-payment of hire of furniture—Arrears of house rent—Landlord's lien on furniture —Right of landlord to secure the furniture by removing it to another house.

Where furniture was given on hire by the plaintiff to O on the purchase-hire system, and O, being a tenant of the defendant, went into arrears of rent and the defendant removed the hired furniture from O's house to another house for greater security,—

Held, in an action for delivery of the furniture, that defendant was entitled to retain it until the rent due to him was paid, unless it could be shown that it was brought into the house not for permanent use, but for a temporary purpose.

The removal of the furniture by the landlord from O's house to another house for greater security did not terminate the right of detention.

ACTION for delivery of possession of two pieces of furniture hired by one Osthmuller from the plaintiffs, and wrongfully detained by the defendant on the pretext that defendant had a lien over them for arrears of house rent due to him by Osthmuller.

The following was the agreement between the plaintiffs and Osthmuller:—

"This agreement made between the Anglo-Oriental Furnishing Company, hereinafter referred to as the owners, of the one part, and

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D. L. Osthmuller of Colombo, hereinafter called the hirer, of the other part. The owners agree, at request of the hirer, to let on hire to the hirer, D. L. Osthmuller, furniture as per annexed list, and in consideration thereof the hirer agrees as follows:—

" (1) To pay the owners, on the 6th day of October, 1902, a rent or hire instalment of Rs. 14.16, and Rs. 12 on the 6th day of each succeeding month for eleven months.

" (2') To keep and preserve the said furniture from injury (damage by fire included).

" (3) To keep the said furniture in the hirer's own custody at the above-named address, and not to remove the same or permit or suffer the same to be removed without the owner's previous consent in writing.

" (4) That if the hirer do not duly perform this agreement the owners may (without prejudice to their rights under this agreement) terminate the hiring and retake possession of the said furniture. And for that purpose leave and license is hereby given to the owners (or any agent or servant or any other person employed by the owners) to enter any premises occupied by the hirer, or of which the hirer is tenant, to take possession of the said furniture without being liable to any suit, action, indictment, or other proceeding by the hirer or any one claiming under the said hirer, D. L. Osthmuller.

" (5) That if the hiring should be terminated by the hirer (under clause (*a*) below) and the said furniture be returned to the owners, the hirer shall remain liable to the owners for arrears of hire up to the date of such return, and shall not, on any ground whatever, be entitled to any allowance, credit, return, or set-off in respect of payments previously made.

" (6) That unless and until the full sum of Rs. 146.16 be paid the said furniture shall be and continue to be the sole property of the owners.

" The owners agree—

" (*a*) That the hirer may terminate the hiring by delivering up to the owners the said furniture.

" (*b*) If the hirer shall punctually pay the full sum of Rs. 146.16 by the payment of Rs. 14.16 at date of signing, and by the further payment of eleven monthly instalments of Rs. 12 in advance, as aforesaid, the said furniture shall become the sole and absolute property of the hirer ".

The issues agreed to were: (1) Has the defendant a lien over the articles of furniture claimed, though they were brought into the defendant's house subject to the agreement that, if the said Osthmuller did not duly pay to the plaintiff the amount of hire on-

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certain days the plaintiff was to resume possession of the furniture? (2) Did defendant lose his lien by taking the articles to another house?

The Commissioner (Mr. A. Seneviratne) dismissed the plaintiffs' action in these terms:—

"The case reported in *3 Browne, 213*, shows that the landlord's tacit hypothec does attach to furniture hired by the tenant. On the first issue I hold that the defendant has a lien over the almirah and sideboard, although they were hired under the agreement set out in the plaint. So long as the defendant has the goods under his control, his lien is good. He has for greater security removed the goods to another house. I think this makes no difference.

"On the second issue, I hold that the defendant did not lose his lien by taking the articles to another house".

The plaintiff appealed.

The case was argued on 1st July, 1903.

E. W. Jayawardene, for appellant.—The purchase of the goods claimed had not been completed. They were therefore hired goods, and could not have been brought into the house of Osthmuller which belonged to the defendant with the intention of being left their permanently. The landlord's lien does not attach in such a case. (Voet, *20, 2, 5;* Berwick's *Translation, p. 311;* Van Leeuwen, Kotze's *Translation, vol. II., pp. 96, 97;* and *Cave v. Clay, 4 N. L. R. 30.*)

The lien was not perfected by a judicial decree and seizure on execution. *Râmanâthan, 1877, p. 62; Grenier, 1874, pt. 3, p. 33; Vanderstraaten, p. 103; 3* Burge, *600;* Grotius, *2, 48, 36, and 41.* By the landlord removing the goods from the house in respect of which the rent was due to another house he has lost the lien.

H. A. Jayawardene, for respondent.—The purchase-hire system means really an intention to sell on the part of the owner of the goods. The goods brought into the house were for the constant use of Osthmuller, and were intended to be with him permanently. The defendant has a lien over such goods, being *invecta et illata*. The removal of the furniture to another house does not terminate the lien, which means the right to hold or have the goods as security for the debt. A judicial decree is necessary only to enable the landlord to sell the *invecta et illata*. But he is free to have his hands on the furniture till the arrears of rent are paid.

Cur. adv. vult

6th July, 1903. GRENIER, A.J.— 1903. *July 4 and 6.*

The point involved in this appeal is a very simple one, and much of the argument that was addressed to me applied to a state of facts which is not present in this case. The plaintiff says that he gave certain articles of furniture to the defendant's tenant on what is known as the purchase-hire system. This furniture was in the defendant's house which the tenant had rented out. The tenant admittedly failed to pay rent for the months of December, 1902, and January and February, 1903, and there is now due from him to the defendant the sum of Rs. 45. The plaintiff's action is to recover from the defendant only two of the articles of furniture, namely, a jakwood almirah and a jakwood sideboard, and he prays that the defendant be decreed to deliver possession of the same to him or to pay their value, Rs. 39. To this claim the defendant answered that as his tenant was in default of payment of rent he, as the landlord, is entitled to retain the property which is now in his possession until the rent due to him is paid. In other words, he claims a right of lien over the property, and there can be no question that the law is on his side; he is entitled to retain it, unless it can be shown that the property was brought into the house not for permanent use, but for a temporary purpose. Now, looking to the character of the articles, there can be no doubt that they are such as are of permanent use, and the law, I think, is perfectly plain that the landlord's tacit hypothec does attach to this property.

It was contended that the removal by the defendant of the furniture from one house to another terminated the right of retention, and the lien not having been perfected by a judicial decree and seizure, lapsed. No authorities were cited to me in support of this proposition, which seems to me to be the result of a misapprehension of the law relating to a landlord's lien and the extent of its operation. The landlord cannot sell property, subject to his lien, without a decree of Court, but that is quite different from the right which the lanndlord has, in the case where the tenant has quitted the house leaving arrears of rent unpaid, to retain the property, and if need be to sell it under a judicial decree and thus render his lien effectual; and for this purpose it does not matter where the property is, so long as it is in the possession of the landlord, as in this case.

The judgment of the Court below will be affirmed.