Present : Garvin J.

1925.

SINGER SEWING MACHINE COMPANY *v.* HANIFFA.

190—C. R. Colombo, 18,657.

Landlord and tenant—Exercise of lien—Goods bought by the tenant on the hire-purchase system—Sale in execution.

A landlord is entitled to exercise his lien for non-payment of rent over property obtained by the tenant under the hire-purchase system.

Where such property was purchased by the landlord under sale in execution against the tenant his title is not limited to the interest of the tenant in the property.

ACTION by the plaintiffs to be declared entitled to a Singer sewing machine as against the defendant. The plaintiffs, who were the owners of the machine, delivered it to one O. F. de Zilva on the hire-purchase system. Zilva paid the instalments for three months and then made default. Meanwhile the defendant, who had sued Zilva for arrears of rent, seized the machine in execution of his writ, caused it to be sold by the Fiscal and purchased it. The learned Commissioner of Requests dismissed the plaintiffs' action.

H. V. Perera, for plaintiffs, appellant.

Croos Da Brera, for defendant, respondent.

November 3, 1925. GARVIN J.—

The facts material to this appeal are not in dispute. The plaintiffs delivered a Singer sewing machine to one O. F. de Zilva on what is known as the hire-purchase system. Zilva paid the instalments due for three months and then made default. In the meantime his landlord, the defendant, who had sued Zilva for arrears of rent, seized the machine in execution of his writ, caused it to be sold by the Fiscal, and purchased it himself. In this action the plaintiffs are seeking, as against the defendant, a declaration that the machine is their property. There can be no doubt that the plaintiffs were the owners of the machine, and that Zilva had not at the time of the seizure and sale by the defendant acquired a title to the machine. The defendant, however, contends that the machine was subject to the lien for rent which he as landlord was entitled to exercise, that he did exercise his rights by causing the same to be seized and sold and that any defect of title in Zilva has thus been cured. It has been strongly urged that the sewing machine was not subject to

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the landlord's lien. The terms of the agreement were carefully analysed, and counsel endeavoured to draw a distinction between this agreement and certain other agreements, in the case of which it has been held that the property delivered under those agreements was subject to the lien. The lien of a landlord ordinarily applies only to the property of his tenant, but it extends to the property of third persons where the property has been taken into the hired premises with the consent of their owner with a view to being kept there permanently for the use of the tenant (see *Voet 20, title 2, s. 5*). The foundation of this rule in so far as it affects the property of third persons is said to be that, if an owner allows his property to be on such premises, he is taken to have tacitly consented that it should be subject to the landlord's lien for unpaid rent (*vide Wille, Landlord and Tenant 378*).

This presumption may, of course, be rebutted by proof of an express declaration by the owner of the goods to the landlord that he had not consented to his property being subject to the landlord's lien, but there is no evidence in this case of any such declaration. It remains, therefore, to consider whether the circumstances of this case justify the conclusion that this machine was brought on to the premises of the tenant with the consent of the owner to remain there " permanently " and for the use of the tenant. That the machine had been taken on to these premises with the consent of the owner and for the use of the tenant is beyond question. The contention on behalf of the plaintiffs would seem to be that having regard to the terms of this agreement it cannot fairly be said that it was intended that it should remain permanently on the premises. In the case of the *Anglo-Oriental Furnishing Co. v. Samarasinghe*[1] a very similar question was considered, and it was held that furniture delivered to the tenant on the hire purchase system was subject to the landlord's lien. As has been observed, counsel has endeavoured to draw a distinction between the terms of the two agreements. His principal argument was that whereas in the case above referred to the furniture automatically became the property of the owner when the last instalment was paid, in this instance the payment of all the instalments give the tenant an option of claiming a transfer of the owner's rights which he may or may not exercise. In so far as it bears on the question of whether or no there is sufficient evidence of permanency it seems to me that this is a distinction without a difference. It is unthinkable that a hirer who had fulfilled his part of the contract and had thereby become entitled to a surrender of the owner's claims without any further payment or consideration whatever will refrain from exercising that option. Under the agreement the owner clearly had no right to remove the machine so long as the instalments were regularly paid. It is evident from the terms of the agreement that its ultimate purpose

[1] *(1903) 7 N. L. R. 12.*

was that the owner should effect a sale of the machine, and that it was the intention of both parties that the machine so delivered should be used by the tenant until it eventually became his property. In addition to the local case earlier cited, there are rulings of the Courts of South Africa that property in the possession of a tenant under such circumstances must be deemed to be there sufficiently permanently to make it subject to the landlord's lien. These reports are unfortunately not available to us. But extracts of those judgments are to be found in *Wille on Landlord and Tenant* at *p. 382* and in *Nathan's Common Law of South Africa, Volume 2, s. 1008, p. 1065*. There is therefore a considerable volume of authority in support of the contention of the defendant that this machine was subject to his lien, and I hold accordingly.

A further contention urged on behalf of the appellants has to be considered. It was argued that inasmuch as this machine was seized and sold in execution of an ordinary judgment for money and not in execution of a writ declaring this machine specially executable as part of the property subject to the landlord's lien, the purchaser at the execution sale—in this instance the landlord himself—cannot claim a better title than the judgment-debtor.

The Code of Civil Procedure lays down no special procedure requiring a landlord to obtain a declaration that the property on the leased premises over which he claims a lien is subject to this lien, nor is there any provision of law which debars him from establishing at any time that such property if sold in execution was subject to his lien unless he has first obtained such a special declaration.

The landlord's lien attaches to the property of his tenant immediately that tenant falls into arrears with his rent and continues so long as the rent remains unpaid.

Ordinarily the lien is lost if the property passes out of the possession of the tenant, but no such thing occurred in the case under consideration. The machine was always in the possession of the tenant; it was seized in his possession and remained in such possession till it was sold. The lien was effective throughout, and the machine was in my opinion subject to that lien at the date of seizure and sale.

It seems to me that, unless it can be shown that a lien which was effective in fact is not to be deemed to be effective in law unless it was made effective by some special legal process, this machine must be deemed to have been subject to the lien when it was sold and that a good title has passed to the purchaser at the sale.

I would therefore dismiss this appeal, with costs.

Appeal dismissed.