

NOTE
ON THE ACTIVITIES OF THE EAST ASIATIC COMPANY.

The Krisdika (Sub-Committee No. III) have examined the file submitted to them concerning the activities of the East Asiatic Company in connection with the farmers and have come to the following opinion.

1. The question submitted to the Krisdika concerns the activities of the East Asiatic Co. since B. E. 2474 in its relations with the farmers.

2. The question submitted to the Krisdika concerns exclusively the mortgage of land as security for loan of money. Other questions such as the buying in advance the paddy crop from the farmer, the influence of such a business on the trade-rice in this country, or the prejudice which may be caused thereby to Cooperative Societies (and which is not taken as serious by the Ministry of Commerce, letter 8th. September B. E. 2475, item 5), are not to be considered by the Krisdika in the present consultation.

3. The activities of the Company are of two kinds, namely:

a) to lend money to farmers (say for working), and taking security by the deposit of title deeds with an obligation to mortgage the land to the Company;^๑

b) to buy paddy from the farmers before the crop is harvested, and the Company contends that this is their essential purpose; money is given in advance to the farmer; as a counter-part, the farmer agrees to pay a low interest, to sell his paddy to the Company exclusively, to bring the rice to any place requested by the Company, etc.

4. The activity (a) is exactly the business of Credit Foncier.^๒ It appears from the file that this opinion has been suppressed unanimously by the advisers and other competent persons consulted by the Government, and the Committee concur with them.^๓

^๑ See drafts contracts annexed to the letter of the Governor of Chiengsi dated 26th. September 1931

^๒ See the definition of a Credit Foncier in the Conditions for authorization to carry on the business of Credit Foncier issued by the Ministry of Finance B. E. 2472: "to make a business of lending money on mortgage, repayable either at long or short term, in one or more instalments or by periodical authorization payments".

^๓ See opinion of M. Burnay dated 29th. February 1932; opinion of Mr. Stevens dated 15th. October 1932; opinion of the meeting held on the 6th. December 1932 at the Financial Adviser's Office.

5 . As far as the activity (b) is concerned, it may be taken as usual business practiced by commercial companies. The conditions of the contract of sale are a matter of agreement between the parties, as far as they are not contrary to law. Should the activity (b) limited to a contract of sale, no legal objection could be made. But in that case and if the intention of the Company were really to buy paddy, and nothing else, the sum paid in advance for such sale should never exceed the probable value of the future crop; in that case, the crop delivered to the Company should be exactly the counterpart of the price given by the seller. This should be unobjectionable, and we should not have to consider that activity any longer. But when the money paid by the Company and guaranteed by the mortgage is obviously disproportionate with the value of the crop, then we come again to the activity (a), even if it is concealed behind the purchase of paddy, and it is again a Credit Foncier's business.

This discrimination is necessary in order to remove some confusion which seems to have arisen from the fact that the mortgages obtained by the Company looks as connected to a certain extent with a mere commercial operation (purchases of paddy), a confusion which is far from making clear the position of the Company as buyer of goods or as lender of money.

6 . The conclusion is that the Company acts as a fact as a Credit Foncier, and, as such, should have obtained authorization, and comply with the provisions of the Law for the control of Commercial Undertakings B. E. 2471, and the conditions imposed by the Competent State Councillor thereunder.

7. The company does not rely upon the contracts of mortgage as upon a theoretical security. They purpose to enforce the mortgage and to acquire the mortgaged land. They have approached the Ministry of Interior, requesting that orders shall be given to the local authorities in order that they concur in the transfer of the land to the Company. It is a matter of course that many transfers could deprive many farmers of their land, to the benefit of a foreign concern, the activity of which could be imitated by others in the future.

8. The sanctions of the B. E. 2475 could apply to the Company, and in any case the Company should proceed on his business of loan (either in the case of their activity) (a) or in the case of their activity (b) extended to loan of money) only after having been made into a Credit Foncier, upon authorization obtained therefore, As to the actual sanctions, it belongs to the Government to take in consideration the intentions or the Company, and some help which may have been actually given by them to the farmers in time of crisis.

9. As to the contracts of mortgage now existing, it is assumed that they have all been made after the enforcement of the Law B. E. 2471 on the Control of Commercial Undertakings. Section 7 says expressly that "no person may carry on in Siam a commercial undertaking of Credit Foncier unless an authorization has been obtained etc. Nothing is said in the Act of what shall happen of Juristic acts (especially contracts) made by a person contrary to that provision. The point must be decided by a-person-contrary-to-that-provision, referring to the general

principles of law. Section 113 C.C.C. reads that: "An Act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals" It is impossible, or is contrary to public order or good morals." It is assumed that the object of the act is void as being contrary to public order: in effect the Law B. E. 2471 is essentially a law affecting the public order and made for the purpose to protect it, and the provisions of that law are disregarded not only as to the capacity of the lender (private person undertaking business of Credit Foncier without having and authorization) but also as to the subject-matter of the contract (business of Credit Foncier in conditions which are prohibited by law.)

15th September 1935.