

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 23 September, 1941.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, October, 1941.

New South Wales.



ANNO QUINTO

GEORGII VI REGIS.

Act No. , 1941.

An Act to amend the law relating to hire-purchase agreements; to amend the Usury, Bills of Lading, and Written Memoranda Act, 1902, and certain other Acts in certain respects; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-purchase Agreements Act, 1941."

79229

25—A

(2)

Short title
and division
into Parts.

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

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(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE AGREEMENTS.

5 PART III.—PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS MADE AFTER THE COMMENCEMENT OF THIS ACT.

2. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

10 “Goods” include all chattels personal other than money or things in action.

Inter-pretation.
cf. Act No.
14, 1939
(N.Z.), s. 2.

15 The expression “goods” also includes any fixture which is comprised in a hire-purchase agreement where any party to the hire-purchase agreement has authority to sever such fixture from the realty.

20 “Guarantor” means a person who guarantees the performance by a purchaser of all or any of his obligations under a hire-purchase agreement; but does not include any person engaged, at the time of giving the guarantee, in the trade or business of selling goods of the same nature or description as the goods referred to in the hire-purchase agreement.

25 “Hire-purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and where, by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall for the purpose of this Act be treated as a single agreement made at the time when the last agreement was made.

cf. 1 & 2
Geo. VI,
c. 53, s. 21.

30 The expression “hire-purchase agreement” also includes an agreement for the purchase of

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- 5 of goods by instalments (whether the agree-
ment describes the instalments as rent or hire
or otherwise); but does not include any agree-
ment under which the property in the goods
comprised therein passes absolutely at the time
of the agreement to the person who agrees to
purchase them or under which the purchaser is
a person who is engaged in the trade or business
of selling goods of the same nature or descrip-
10 tion as the goods referred to in the agreement.
- 15 "Purchaser" means the person who takes or has
taken goods from a vendor under a hire-purchase
agreement and includes a person to whom the
purchaser's rights or liabilities under the agree-
ment have passed by assignment or by opera-
tion of law. cf. 1 and 2
Geo. VI,
c. 56, s. 21.
- 20 "Vendor" means the person who lets or has let or
sells or has sold goods to a purchaser under a
hire-purchase agreement, and includes a person
to whom the vendor's property in the goods or
any of the vendor's rights or liabilities under
the agreement have passed by assignment or by
operation of law. cf. Ibid.
- 25 (2) A reference in this Act to the taking of pos-
session by the vendor of goods comprised in a hire-
purchase agreement does not include a reference to the
taking of possession by the vendor as a result of the
voluntary return of the goods by the purchaser.
- 30 (3) For the purposes of this Act the purchase-price
of any goods shall be deemed to be the total amount of
the moneys paid or payable and the value of any other
consideration provided or to be provided by the purchaser
to complete the purchase of the goods pursuant to the
hire-purchase agreement: Ascertain-
ment of
purchase-
price.
- 35 Provided that in the application of this subsection to
a case in which—
- (a) possession of the goods has been taken by the
vendor; or
- (b)

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(b) the hire-purchase agreement is determined by the purchaser pursuant to section ~~twenty-three~~ **twenty-four** of this Act,

where the purchase-price as so defined includes any
5 amount which is in fact added in respect of interest
(whether expressed to be so added or not) there shall be
deducted therefrom all interest in respect of any period
subsequent to the date on which the vendor takes pos-
session of the goods or the agreement is so determined
10 hiring charges (whether expressed to be so added or not)
there shall be deducted therefrom a sum equivalent to that
part of that amount (exclusive of insurance premiums) which
is applicable in respect of any period subsequent to the date
on which the vendor takes possession of the goods or the
15 agreement is so determined; and for the purposes of this
provision the expression "hiring charges" means the amount
by which the purchase price as so defined exceeds the price at
which the goods comprised in the agreement might be
purchased for cash.

20 Where any insurance premium has been included in the
purchase-price as so defined there shall also be deducted there-
from the amount of any refund made in consequence of the
termination of the agreement.

(4) For the purposes of this Act, unless the con-
25 text otherwise requires, the value of any goods at the
time when the vendor takes possession thereof or at the
time when the hire-purchase agreement is determined by
the purchaser pursuant to section ~~twenty-three~~ **twenty-four**
of this Act, shall be deemed to be their actual value at that
30 time, less the reasonable costs, charges, and expenses of
the vendor in respect of taking possession thereof and
(whether or not the goods have subsequently been sold or
disposed of by the vendor) the reasonable expenses of
selling or otherwise disposing of them.

35 Evidence as to the price realised upon sale of the
goods so taken or of goods similar in quality and other
respects to the goods so taken, shall be deemed not to be
relevant to the question of the actual value of the goods
so taken unless the court determining such question is
40 satisfied that the value reflected by such sale is fair and
reasonable.

Ascertain-
ment of
value of
goods.

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PART II.

PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE
AGREEMENTS.

3. (1) This Part shall be deemed to have commenced
5 on the first day of August, one thousand nine hundred
and forty-one. Commence-
ment and
application
of Part II.

(2) This Part shall apply to all hire-purchase
agreements whether entered into before or after the
commencement of this Part, and in the case of hire-
10 purchase agreements entered into before such commence-
ment, shall apply whether or not any option of purchase
or right to have the property vested in the purchaser,
which is expressed in the hire-purchase agreement, is
still subsisting at such commencement.

15 (3) The provisions contained in this Part shall
have effect notwithstanding any stipulation to the con-
trary.

4. (1) Where a vendor takes possession of any goods
comprised in a hire-purchase agreement, the purchaser
20 shall be entitled to recover from that vendor as a debt
due and payable by him to the purchaser the total
amount of the moneys paid and the value of any other
consideration provided by the purchaser under the agree-
ment in respect of the goods, less the difference between
25 the purchase-price of the goods and the value of the
goods at the time when the vendor so takes possession
thereof. Right of
purchaser
to recover
certain
amount
where
vendor
repossesses
goods.
cf. Act No.
14, 1939
(N.Z.), s. 3.

(2) No amount shall be recoverable under this
section unless—

30 (a) the purchaser, after the vendor takes possession
of any goods but not later than twenty-eight
days after service of the statement and
notice referred to in section six of this Act,
serves on the vendor a notice in writing, signed
35 by the purchaser or by his solicitor or agent,
setting out the amount claimed under the pro-
visions of this section and the amount which
the purchaser estimates to be the actual value
of the goods at the time when the vendor so took
40 possession thereof; and

(b)

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(b) proceedings for the recovery of the amount so claimed are commenced not earlier than seven days nor later than three months after the service of that notice:

5 Provided that the time prescribed by this subsection for serving the notice or for commencing the proceedings may, on an application made either before or after the expiry of that time to the court in which it is proposed to take the proceedings, be extended by the court
10 for such further period and upon or subject to such conditions as the court thinks fit.

(3) If, before any such proceedings are commenced by the purchaser, the vendor serves on the purchaser an offer in writing to pay any amount to the purchaser in
15 satisfaction of his claim under this section, then, unless the purchaser before commencing the proceedings notifies the vendor in writing of the acceptance of the amount so offered, the vendor shall be entitled to pay into court the amount so offered and upon so doing shall
20 be entitled to the same rights as if the amount had been tendered to the purchaser before the proceedings were commenced.

5. Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall not be
25 entitled to recover under the provisions of the agreement any sum which, together with the value of the goods at the time when the vendor so takes possession thereof and the moneys paid and other consideration provided under the agreement by the purchaser and by any other
30 person on his behalf, would amount to more than the purchase-price of the goods.

Restriction of amount recoverable by vendor.
cf. Act No. 14, 1939 (N.Z.), s. 4.

6. (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall, within twenty-eight days thereafter, serve on the purchaser and
35 on every guarantor of the purchaser a statement showing the following particulars:—

Vendor to deliver statement and notice.
cf. *Ibid.* s. 5.

(a) The name of the vendor so taking possession of the goods and an address at which any notice under this Act may be served on such vendor;

40 (b) (i) The purchase-price of the goods;

(ii)

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- (ii) The total amount of the moneys paid and the value of any other consideration provided by the purchaser and by any other person on behalf of the purchaser;
- 5 (iii) The amount which the vendor estimates to be the value of the goods at the time when he so took possession thereof, showing separately the actual value of the goods and the costs, charges and expenses referred to in
- 10 subsection four of section two of this Act; and
- (iv) The balance estimated to be due to the vendor or to the purchaser and any guarantor of the purchaser, as the case may be;
- 15 (c) (i) The amounts (if any) or the mode of ascertaining the amounts which, pursuant to paragraph (a) of subsection three of section seven of this Act, will be payable by the purchaser as a condition of redelivering the
- 20 goods of which possession has been taken by the vendor;
- (ii) The breach or breaches of the agreement which the vendor alleges have been committed by the purchaser, and, where the
- 25 vendor has actually incurred any costs and expenses in remedying such breach or breaches, the amount of the costs and expenses so incurred;
- (iii) The costs and expenses incurred by the
- 30 vendor in respect of his taking possession of the goods and an estimate of the costs and expenses of redelivering the same to the purchaser if required so to do:

35 Provided that, in any case where, after the commencement of this Part and before the date (hereinafter called the "date of assent") upon which the assent of His Majesty to this Act is signified, a vendor takes possession of any goods comprised in a hire-purchase agreement the period of twenty-eight days referred to in the foregoing provisions

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provisions of this subsection shall be calculated from the date of assent instead of from the date upon which possession is so taken.

(2) The vendor shall, with the statement, serve on
5 the purchaser and on every guarantor of the purchaser a notice containing a summary of the rights and privileges conferred by this Act on purchasers. Every notice under this subsection shall be in the form contained in the Schedule to this Act and shall be printed in type not
10 smaller than ten-point face:

Provided that the Governor may from time to time by proclamation published in the Gazette, amend the form contained in the Schedule or substitute another form therefor, and may from time to time in like manner vary
15 the size of the type to be used in the notice.

(3) A vendor who takes possession of any goods comprised in a hire-purchase agreement and makes default in complying with the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds.
20

7. (1) Where a vendor after the date upon which the assent of His Majesty to this Act is signified takes possession of any goods comprised in a hire-purchase agreement he shall not, without the consent of the purchaser (which
25 consent shall be in writing and shall be witnessed by some person other than the vendor or the solicitor for or agent or employee of the vendor), sell or dispose of the goods or part with possession thereof until after the expiration of a period of twenty-one days from the date of service
30 of the statement and notice referred to in section six of this Act, or of the period referred to in subsection three of this section, whichever period last expires.

Vendor to retain possession of repossessed goods for twenty-one days.

cf. Act No. 14, 1939 (N.Z.), s. 6.

(2) The purchaser may, within the period of twenty-one days referred to in subsection one of this section,
35 serve on the vendor a notice in writing signed by the purchaser or by his solicitor or agent requiring the vendor to redeliver the goods to the purchaser.

Purchaser's right to redelivery of goods.

(3) If within seven days after the service of any notice as aforesaid the purchaser—

40 (a) pays or tenders to the vendor such moneys (if any) as are due by the purchaser under the hire-purchase

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hire-purchase agreement up to the date of the payment or tender (and for the purposes of this paragraph the agreement shall be deemed to have continued in full force and effect up to that date and any stipulation accelerating the due date of any moneys in the event of a breach of the agreement shall not be taken into account);

5 (b) remedies any breach of the agreement or, where he is unable to remedy the breach by reason of the fact that the vendor has possession of the goods, pays or tenders to the vendor the costs and expenses reasonably and actually incurred by the vendor in doing any act, matter, or thing necessary to remedy the breach; and

10 (c) pays or tenders to the vendor the ~~reasonable costs and expenses, not exceeding ten pounds in all, of the vendor in respect of his taking possession of the goods and~~ **costs and expenses actually and reasonably incurred by the vendor in respect of his taking possession of the goods and the reasonable costs and expenses of** redelivering them to the purchaser,

20 the vendor shall forthwith redeliver the goods to the purchaser and the goods shall be received and held by

25 the purchaser pursuant to the terms of the hire-purchase agreement as if a breach had not occurred and the vendor had not taken possession of the goods.

(4) Where the goods are redelivered to the purchaser as aforesaid and any breach has not been remedied

30 the vendor shall not have any right arising out of that breach to take possession of the goods unless at the time of the redelivery he serves a notice in writing on the purchaser specifying the breach and requiring it to be remedied and the purchaser fails to remedy the breach

35 within fourteen days after the service of the notice.

8. (1) Except as provided in this Act, a guarantor shall not by reason of the operation of this Act be discharged from liability under his guarantee.

(2) The liability of a guarantor shall continue, notwithstanding that the vendor, pursuant to the provisions of a hire-purchase agreement, takes possession of the goods

Provisions
as to
guarantors.
cf. Act No.
14, 1939
(N.Z.), s. 7.

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goods comprised therein (and whether or not the goods are redelivered to the purchaser pursuant to this Act), but nothing in this subsection shall operate to preserve the liability of a guarantor where the vendor and the
 5 purchaser enter into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor shall be liable to any further or other extent than the purchaser the performance of whose obligations he guarantees, but nothing in this Act shall
 10 affect any agreement by the guarantor binding him to the performance of any obligation which is not one of the obligations imposed on the purchaser under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where a vendor takes possession of any goods comprised in a hire-purchase agreement any guarantor who has paid any moneys to the vendor in accordance with his guarantee shall have the like right in like
 15 manner to recover those moneys as he would have had if he were the purchaser of the goods, but for the purpose of calculating the amount received by the vendor all
 20 moneys paid and the value of any other consideration provided by the purchaser shall be deemed to have been paid by the guarantor:

25 Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him:

Provided also that for the purpose of calculating the aggregate of the amounts which two or more guarantors are entitled to recover under the provisions of this sub-
 30 section the moneys paid to the vendor by the guarantors shall be deemed to have been paid by one guarantor.

9. (1) In any proceedings taken under section four of this Act, or taken in any court in respect of any matter arising out of a hire-purchase agreement, or in
 35 any proceedings instituted under subsection four of this section, if it appears to the court that the interest directly or indirectly charged or included in the amounts payable under the provisions of the agreement is excessive, or that the amounts charged for expenses,
 40 inquiries, fines, bonuses, premiums, renewals, or any other charges are excessive, or that the transaction is harsh and

Reopening
 of hire-
 purchase
 transactions.
 cf. Act No.
 14, 1939
 (N.Z.), s. 8.

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and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction and take an account between the parties thereto.

(2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between the parties, and relieve the purchaser and any guarantor from payment of any sum in excess of such sum in respect of purchase-money, interest, and charges as the court, having regard to the risk and all the other circumstances, adjudges to be fairly and reasonably payable, and may set aside, either wholly or in part, or revise, or alter any agreement made or security given in connection with the transaction, and may give judgment for any party for such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to that party under the agreement and may, if it thinks fit, give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the vendor has shared in the profits of or has any beneficial interest, prospectively or otherwise, in the transaction which the court holds to be harsh and unconscionable, the court may add that person as a party to the case, and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession, and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted under this subsection by the purchaser or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

In any such proceedings the court shall have and may exercise all or any of the powers conferred by subsections one to three, both inclusive, of this section, notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived:

Provided

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Provided that no proceedings under this subsection shall be instituted after the expiry of four months from the time when the vendor, after taking possession of the goods, has served the statement and notice referred to in section six of this Act, or (where he has not taken possession thereof) from the time when the transaction is closed.

- 10 **10.** (1) Where the liability of the purchaser, as ascertained under section five or section nine or section ~~twenty-three~~ **twenty-four** or section ~~twenty-four~~ **twenty-five** of this Act, is less than that part of the purchase price of goods comprised in a hire-purchase agreement which is outstanding at the date upon which such liability is so ascertained, and bills of exchange or promissory notes have been given by the purchaser or any guarantor in respect of amounts payable under the hire-purchase agreement, and the payment in due course of the bills of exchange or promissory notes would result in payment of an amount in excess of the liability of the purchaser as so ascertained, the vendor shall be liable to indemnify the purchaser and any guarantor in respect of such excess.

Vendor to indemnify purchaser in certain events.

- (2) This section shall apply to a case in which bills of exchange or promissory notes have been given before as well as to a case in which they are given after the commencement of this Part.

- 30 **11.** (1) At any time before the final payment has been made under a hire-purchase agreement any person entitled to enforce the agreement against the purchaser shall, within four days after he has received a request in writing from the purchaser and the purchaser has paid or tendered to him the sum of one shilling for expenses, supply to the purchaser a copy of the agreement or of any memorandum or note of the agreement, together with a statement signed by the said person or his agent showing—

Duty of vendors to supply documents and information. cf. 1 & 2 Geo. VI, c. 53, s. 6.

- 35 (a) the amount paid by or on behalf of the purchaser;
 (b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and
 40 (c)

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(c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(2) In the event of a failure without reasonable cause to comply with the requirements of subsection one of this section, then, while the default continues—

(a) no person shall be entitled to enforce the agreement against the purchaser or to enforce any contract of guarantee relating to the agreement, and the vendor shall not be entitled to enforce any right to recover the goods from the purchaser; and

(b) no security given by the purchaser in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the purchaser or the guarantor by any holder thereof,

and, if the default continues for a period of one month, the defaulter shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

12. A purchaser who is liable to make payments in respect of two or more hire purchase agreements to the same vendor shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and if he fails to make any such appropriation as aforesaid, the payment shall, by virtue of this section, be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the proportions which those sums bear to one another.

Appropriation of payments in respect of hire-purchase agreements.

cf. 1 & 2 Geo. VI, c. 53, s. 9.

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13. Where a worker does work upon any goods comprised in a hire-purchase agreement in such circumstances that if the goods were the property of the purchaser the worker would be entitled to a lien thereon for the amount or value of the work, he shall be entitled to a lien accordingly notwithstanding that the goods are not the property of the purchaser:

Lien for work done on goods under hire-purchase agreement. cf. Act No. 14, 1939 (N.Z.), s. 10.

Provided that the lien shall not be valid and enforceable against the vendor if the hire-purchase agreement contains a provision prohibiting the creation of a lien by the purchaser and the worker before commencing the work has actual notice of that provision.

14. (1) Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds or attempts to defraud the vendor, shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds or to imprisonment for a period not exceeding three months.

Attempt to defraud. *Ibid.* s. 11.

(2) Where by virtue of a hire-purchase agreement a purchaser is under a duty to keep the goods comprised in the agreement in his possession or control, the purchaser shall, on receipt of a request in writing from the vendor, inform the vendor where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

Duty of purchaser to give information as to whereabouts of goods. cf. 1 & 2 Geo. VI, c. 53, s. 7.

(3) Where the vendor under a hire-purchase agreement has reasonable grounds for believing that the goods comprised in the agreement are in the possession or control of some person other than the purchaser, he may serve upon such person a request in writing that such person shall give information as to whether or not the goods are in his possession or control and, if they are, then as to where the goods are at the time when the information is given or, if sent by post, at the time of posting.

(4) If a purchaser or a person upon whom a request has been served under subsection three of this section fails without reasonable cause to give the said information

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information within fourteen days of the receipt or service as the case may be service of the notice, he shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

- 5 Without prejudice to the generality of the expression "reasonable cause" a purchaser or person upon whom any notice under this section has been served otherwise than by delivery of the notice to him personally, shall be deemed to have reasonable cause for failing to give the information
10 required if he proves that he did not in fact receive the notice and that he was not aware of the fact that the notice had been served.

- 15 15. (1) No term of any hire-purchase agreement shall prevent a purchaser from claiming or being awarded damages or any other relief for fraud or misrepresentation of the vendor or any person acting or purporting to act on behalf of the vendor in connection with any transaction of hire-purchase.

Liability for fraud, etc.
cf. Act No. 2049 of 1931 (S.A.), s. 7.

- 20 (2) Any provision in a hire-purchase agreement whereby the vendor or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in a hire-purchase agreement, or is relieved from liability for any such entry shall, as from the date upon which the assent
25 of His Majesty to this Act is signified, be void.

Entry provision void.
cf. 1 & 2 Geo. VI, c. 53, s. 5 (a).

- 30 16. (1) If in connection with the sale of any goods the person by whom or on whose behalf the sale is negotiated (hereinafter called the "owner") arranges that some other person (hereinafter called "the lender") shall enter into a hire-purchase agreement in relation to those goods with a purchaser, the lender shall be in the same position as regards the hire-purchase agreement as if it had been made between the owner as vendor and the purchaser, and had been duly assigned to the lender by
35 the owner.

Provisions as to financiers entering into agreements as owners.
cf. Act No. 2049 of 1931 (S.A.), s. 12.

(2) Nothing in this section shall affect any right of the purchaser against the owner or against the lender, either under the terms of the hire-purchase agreement, the provisions of this Act, or otherwise.

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17. Any notice or other document required or authorised by this Act to be served shall be in writing and shall be sufficiently served—

Service of
notices.
cf. Act No.
14, 1939
(N.Z.),
s. 12.

- (a) if delivered personally; or
- 5 (b) if left at the usual or last known place of abode or business in or out of New South Wales of the person to be served, or at an address specified for that purpose in the hire-purchase agreement or at the address specified for that purpose
- 10 in the statement referred to in section six of this Act; or
- (c) if sent by post in a registered letter addressed to him by name at that place of abode or business or address; and such service shall be deemed to
- 15 be made at the time at which the registered letter would be delivered in the ordinary course of post.

18. Where in respect of the insurance of goods comprised in a hire-purchase agreement any no-claim rebate or any rebate of the like nature is allowed by the insurer, the purchaser shall be entitled to the benefit of that rebate.

No-claim
rebates.

~~18.~~ **19.** (1) The Usury, Bills of Lading, and Written Memoranda Act, 1902, as amended by subsequent Acts, is amended by omitting section thirteen.

Amendment
of Act No.
43, 1902.
(Conse-
quential.)

(2) The Interest Reduction Act, 1931, is amended by omitting section fifteen.

Amendment
of Act No.
44, 1931.
(Revision.)

~~19.~~ **20.** (1) Proceedings by the vendor under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in a hire-purchase agreement, may be taken under section

30 thirty-two of the Police Offences Act, 1901-1936, as amended by subsequent Acts, and by subsection two of this section.

Proceedings
for recovery
of possession
of goods
comprised
in hire-
purchase
agreement.

(2) The Police Offences Act, 1901-1936, is amended by inserting at the end of section thirty-two the

35 following new subsection:—

(6) (a) This section shall extend to proceedings for the recovery of the possession of goods comprised in a hire-purchase agreement without restriction as to the value of such goods.

(b)

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(b) For the purpose only of the application of this section to proceedings for the recovery of the possession of goods comprised in a hire-purchase agreement—

- 5 (i) subsection one of this section shall have effect as if the words “the value of which is not greater than twenty pounds, and not being deeds, muniments, or papers relating to any property of greater value than fifty pounds” were omitted;
- 10 (ii) subsection three of this section shall have effect as if the words “not being greater than twenty pounds” were omitted.

- 15 (c) In any proceedings under this section for the recovery of the possession of goods comprised in a hire-purchase agreement, the complaint may be made to and the summons may be issued by any Justice, but, subject to this exception, the jurisdiction in respect of such proceedings conferred on a Justice
- 20 by this section shall be exercisable only by a stipendiary magistrate or a police magistrate sitting alone.

~~20.~~ 21. (1) No proceedings relating to a hire-purchase agreement shall be brought or taken in any court of petty sessions other than a court of petty sessions holden before

25 a stipendiary magistrate or police magistrate sitting alone.

Jurisdiction
of court of
petty
sessions.

- (2) A court of petty sessions holden before a stipendiary magistrate or police magistrate sitting alone shall, in addition to the jurisdiction which might be exercised by it if this section had not been enacted, have jurisdiction in respect of proceedings relating to a hire-purchase agreement in all cases in which the purchase price of the goods comprised in the agreement does not exceed two hundred and fifty pounds.
- 30

- 40 (3) The costs of any proceedings relating to a hire-purchase agreement which are brought or taken in a court of petty sessions shall be in the discretion of the court, and the court, when allowing any costs to any party in such proceedings, may assess the amount thereof.

Hire-purchase Agreements.

Any order made under the authority of this Act for the payment of money or of costs by a court of petty sessions shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, and be enforceable as such under the provisions of that Act.

This subsection shall not be construed so as to affect in any way the jurisdiction of any other court in relation to costs.

PART III.

10 PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS
MADE AFTER THE COMMENCEMENT OF THIS ACT.

~~24.~~ 22. (1) This Part shall except where express provision is made to the contrary in this Act apply to all hire-purchase agreements made on or after the first day of August, one thousand nine hundred and forty-one.

Application
of Part III.

(2) The provisions contained in this Part shall have effect notwithstanding any stipulation to the contrary.

~~22.~~ 23. (1) It shall be the duty of every vendor under a hire-purchase agreement which is entered into after the expiration of one month after the commencement of this Act to have the agreement reduced into writing and to deliver a copy of the agreement to the purchaser within twenty-eight days after the agreement has been entered into, and also to deliver to the purchaser a notice in writing containing a summary of the rights and privileges conferred by this Act on purchasers, which summary shall be in the form for the time being contained in the Schedule to this Act, and the word "writing" in this subsection shall be deemed to include such printing only as is in type not smaller than eight-point face.

Hire-purchase agreements to be in writing.
cf. Act No. 22, 1931 (W.A.), s. 3.

(2) Every hire-purchase agreement shall specify—

(a) the price at which the goods the subject of the agreement might be purchased for cash (in this subsection referred to as the "cash price");

(b)

Hire-purchase Agreements.

5 (b) the difference between the purchase-price of the goods as defined in this Act, together with all charges and other sums which under the hire-purchase agreement are payable by the purchaser, and such cash price.

(3) Any vendor who neglects or fails to comply with any of the requirements of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty pounds.

10 (4) Non-compliance with this section shall not invalidate any hire-purchase agreement.

23. 24. (1) A purchaser shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving
15 notice of termination in writing to any person entitled or authorised to receive the amounts payable under the agreement.

Right of purchaser to determine hire-purchase agreement. cf. 1 & 2 Geo. VI, c. 53, s. 4.

20 (2) Where a hire-purchase agreement is determined under this section the following provisions shall have effect:—

25 (a) If the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined exceeds the purchase price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section, the purchaser may recover such excess from the
30 vendor as a debt due and payable by him to the purchaser.

35 (b) If the purchase-price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section exceeds the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined, the vendor may recover such excess from
40 the

Hire-purchase Agreements.

5 the purchaser as a debt due and payable by him to the vendor, but shall not be entitled to recover any additional sum whether as penalty or compensation or otherwise in consequence of the determination of the agreement.

(3) Where a hire-purchase agreement has been determined under this section, the purchaser shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

10 (4) Where a purchaser, having determined a hire-purchase agreement under this section, wrongfully retains possession of the goods, then, in any action brought by the vendor to recover possession of the goods from the purchaser, the court shall order the goods to
15 be delivered to the vendor.

(5) Nothing in this section shall prejudice any right of a purchaser to determine a hire-purchase agreement otherwise than by virtue of this section.

24. **25.** In every hire-purchase agreement there shall
20 be implied a provision that if the purchaser gives notice in writing to any person entitled or authorised to receive the amounts payable under the hire-purchase agreement that he desires to complete the purchase of the goods comprised in the hire-purchase agreement before the time
25 when, in accordance with the hire-purchase agreement, the property will or may pass, and if, in such notice or in a subsequent notice, he appoints a day for completion of the purchase, the purchase may be completed on the day so appointed, by payment of that part of the purchase-price which is then outstanding.
30

Right to complete at any time.

For the purpose of ascertaining the part of the purchase-price which is outstanding under a hire-purchase agreement on the day so appointed, where the purchase-price includes any amount which is in fact added in
35 respect of interest (whether expressed to be so added or not), interest shall be deemed not to accrue and shall not be payable in respect of any period subsequent to the day so appointed **hiring charges (whether expressed to be so added or not) there shall be deducted therefrom a sum**
40 **equivalent to that part of that amount (exclusive of insurance premiums)**

Hire-purchase Agreements.

premiums) which is applicable in respect of any period subsequent to the day so appointed, and for the purposes of this provision the expression "hiring charges" means the amount by which the purchase price as defined in subsection three of section two of this Act exceeds the price at which the goods comprised in the agreement might be purchased for cash.

~~25.~~ 26. (1) In every hire-purchase agreement there shall be—

- 10 (a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the vendor that he shall have a right to sell the goods at the time when the property is to pass;
- 15 (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass;
- 20 (d) except where the goods are let or sold as second-hand goods, and the hire-purchase agreement contains a statement to that effect, an implied condition that the goods shall be of merchantable quality, so, however, that no such condition shall be implied by virtue of this paragraph as regards defects of which the vendor could not reasonably have been aware at the time when the agreement was made, or, if the purchaser has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed.

25 30 (2) Where the purchaser expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.

35 (3) The warranties and conditions set out in subsection one of this section shall be implied notwithstanding any agreement to the contrary, and the vendor shall not be entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection two of this section unless he proves that before
40 the agreement was made the provision was brought to the notice of the purchaser and its effects made clear to him.

(4)

Conditions and warranties to be implied in hire-purchase agreements. cf. 1 and 2 Geo. VI, c. 53, s. 8.

Hire-purchase Agreements.

(4) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

5 ~~26.~~ 27. (1) No hire-purchase agreement which relates to household furniture or effects used or intended to be used by the purchaser in his home and which is made with a purchaser who is married shall be enforceable unless—

Regulation
of hire-
purchase
agreements
with
married
persons.

10 (a) (i) the hire-purchase agreement contains a statement in writing signed by the spouse of the purchaser signifying the consent of such spouse to the hire-purchase agreement; and

cf. S.A. Act,
No. 59,
1940, s. 24.

15 (ii) such statement is so signed by the spouse at or before the time when the hire-purchase agreement was made; or

(b) the purchaser, at or before the time when the hire-purchase agreement was made, has produced and delivered to the vendor an authority, signed by the spouse of the purchaser, to pledge the credit of the purchaser and the spouse or of either of them up to a specified limit which is not more than thirty pounds, and the purchase price of the goods comprised in the hire-purchase agreement, together with all other moneys owing or payable by the purchaser and the spouse or either of them to the vendor, does not exceed the limit so specified; or

30 (c) the purchaser, at or before the time when the hire-purchase agreement was made, has produced and delivered to the vendor a statutory declaration made by the purchaser to the effect that the spouse of the purchaser was under such a legal incapacity as to render such spouse unable to sign such statement as aforesaid:

35 Provided that this subsection shall not apply if the vendor had reasonable grounds for believing and did in fact believe, at the time the hire-purchase agreement was made, that—

40 (i) the purchaser was living separate and apart from the spouse of the purchaser; or

(ii)

Hire-purchase Agreements.

(ii) the spouse of the purchaser was outside New South Wales:

Provided further that this subsection shall not apply if, at or before the time when the hire-purchase agreement was made, the purchaser has produced and delivered to the vendor a statutory declaration made by the purchaser stating that the purchaser was not married at the time of the delivery of such in a case where the residence of the purchaser is situated more than five miles from the nearest telegraph office and the hire-purchase agreement was made at such residence, an instrument in writing signed by the purchaser, or, in any other case, a statutory declaration made by the purchaser, in which instrument or statutory declaration the purchaser states that he was not married at the time of the delivery of such instrument or statutory declaration to the vendor, unless the vendor had reasonable grounds for believing that such statement was false.

Any purchaser who makes a false statement in any such instrument shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

(2) (a) This subsection shall apply to and in respect of a hire-purchase agreement of the nature referred to in subsection one of this section where the purchase price of the goods comprised in the agreement does not exceed ten pounds.

(b) Where the vendor, under any such hire-purchase agreement, serves (by personal delivery) on the spouse of the purchaser, within seven days after the making of the agreement, a notice in writing that such agreement has been made, and the spouse of the purchaser does not, within seven days after service of such notice, serve on the vendor a notice in writing that he objects to the making of the hire-purchase agreement, the agreement shall not, by reason only of subsection one of this section, be unenforceable.

(c) Where the spouse of the purchaser serves such notice of objection the hire-purchase agreement shall cease to be binding on the parties thereto; and thereupon the vendor shall refund all moneys paid and the value of any consideration provided by the purchaser and shall be entitled to recover possession of the goods comprised in the agreement.

(2) (3)

Hire-purchase Agreements.

~~(2)~~ (3) If any vendor to whom any such authority or statutory declaration **or instrument** as is referred to in this section has been delivered, fails to preserve the same until the expiration of twelve months after the transaction in respect of which it was given is finally closed, he shall be guilty of an offence against this Act, and shall be liable—

- (a) if a company—to a penalty of not less than twenty pounds and not exceeding two hundred pounds;
- (b) if any other person—to a penalty of not less than ten pounds and not exceeding one hundred pounds or to imprisonment for a term of not more than two months, or to both such penalty and imprisonment.

~~(3)~~ (4) This section shall apply to all hire-purchase agreements made after the commencement of this Act.

27. 28. Any provision in a hire-purchase agreement—

- (a) whereby the right conferred on a purchaser by this Act to determine the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a purchaser by reason of the termination of the hire-purchase agreement by him under this Act; or
- (b) whereby a purchaser, after the determination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under this Act; or
- (c) whereby the right conferred on a purchaser by section ~~twenty-four~~ **twenty-five** of this Act is excluded or restricted; or
- (d) whereby any person acting on behalf of the vendor in connection with the formation or conclusion of a hire-purchase agreement is treated as or deemed to be the agent of the purchaser; or
- (e)

Avoidance
of certain
provisions.
cf. 1 & 2
Geo. VI,
c. 53, s. 5.

Hire-purchase Agreements.

(e) whereby the vendor is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase agreement,

5 shall be void.

29. (1) Goods which are comprised in a hire-purchase agreement shall, whilst the agreement is in force, be incapable of becoming fixtures to realty.

Goods comprised in hire-purchase agreements not to be fixtures.

(2) This section shall apply to all hire-purchase agreements made after the commencement of this Act.

cf. Act No. 2049 of 1931 (S.A.), s. 10.

SCHEDULE.

Sec. 6, 22 **23.**

Form of Notice to be delivered to Purchasers and Guarantors.

NOTICE.

To (Name of Purchaser or Guarantor).

15 THE following summary of certain rights which the law gives to a purchaser when the vendor of goods under a hire-purchase agreement takes possession of them is given as required by the Hire-purchase Agreements Act, 1941.

20

(Signature of Vendor.)

Summary.

1. (1) If the value of the goods at the time when the vendor takes possession of them, together with the total moneys actually paid (including the value of goods traded in), is greater than the price of the goods, then the purchaser is entitled to recover from the vendor the amount of the difference.

(2) The value for this purpose is the net value—that is to say, the actual value less the vendor's costs, charges, and expenses in respect of taking possession and reselling or disposing of the goods (whether or not they have actually been sold or disposed of).

In estimating such value evidence of the sale of the goods or of goods similar in quality is to be disregarded unless the value reflected by such sale is fair and reasonable.

(3) If the price comprises any amount in fact added for interest, hiring charges even though not so expressed, all interest for that part of the hiring charges applicable in respect of the time subsequent to the taking of possession is to be deducted in calculating the price.

If the price includes any insurance premium any refund in consequence of the termination of the agreement is also to be deducted in calculating the price.

40

Hire-purchase Agreements.

2. Before taking action to recover the amount of this difference the purchaser must first serve on the vendor a written notice setting out the amount claimed and also the amount which the purchaser estimates to be the actual value of the goods at the time the vendor took possession. This notice must be signed by the purchaser
5 or his solicitor or agent and served on the vendor after the vendor has taken possession of the goods but not later than twenty-eight days after service of the statement required to be served when possession is so taken. Court proceedings for the recovery of the amount
10 claimed must be commenced not earlier than seven days and not later than three months after the service of the notice. The purchaser will lose any right to recover the amount claimed if he fails to serve the notice and commence the proceedings within the times mentioned in this paragraph. The times may be extended, but this is in the
15 discretion of the Court.

3. The vendor is required by law (where this notice is served after taking possession of the goods) to serve on the purchaser, together with this present notice, a statement showing the name and address of the vendor, particulars of the price of the goods, the moneys
20 paid and the value of any goods traded in, the amount which he estimates to be the net value of the goods at the time of taking possession, and the balance estimated to be due to him or to the purchaser and any guarantor, as the case may be, and particulars as to the amount which must be paid as a condition of redelivering
25 the goods, the breaches of the agreement alleged to have been committed by the purchaser, the costs and expenses (if any) incurred by the vendor in remedying the breaches, the costs and expenses of taking possession, and an estimate of the costs and expenses of redelivering the goods.

30 4. The vendor, after taking possession of goods comprised in a hire-purchase agreement, cannot in any circumstances recover an amount which, together with the then net value of the goods and the money already paid, exceeds the price of the goods.

For the method of ascertaining the net value see subparagraph two
35 of paragraph one above.

5. The purchaser has a right on certain conditions to have the goods returned and the hiring and purchase continued as if it had not been interrupted. If he desires this he must within twenty-one days after the vendor serves the statement mentioned in paragraph
40 three above serve on the vendor a written notice, signed by himself or his solicitor or agent, requiring the vendor to redeliver the goods, and within seven days after the service of the notice the purchaser must—

(a) pay or tender to the vendor such moneys as are then due
45 under the agreement (excluding such sums as become payable before due date by reason of any breach of the agreement);

(b)

Hire-purchase Agreements.

- (b) remedy any breach of the agreement or, if this is impossible because the vendor now has the goods, pay or tender to the vendor the expenses reasonably and actually incurred by him to remedy the breach; and
- 5 (c) pay or tender the reasonable costs and expenses not (exceeding £10 in all) of the vendor in respect of his taking possession of the goods and **costs and expenses actually and reasonably incurred by the vendor in respect of his taking possession of the goods and the reasonable costs and expenses of** redelivering them.
- 10
6. If any charge made, for interest or otherwise, is excessive or any provision of the agreement so unfair or oppressive as to be harsh and unconscionable or if the transaction is otherwise such that a court of equity would grant relief the transaction may be reopened
- 15 by the court provided application is made within four months after the vendor takes possession of the goods.
7. A guarantor is entitled to the same benefits as the purchaser whom he has guaranteed.
8. If bills of exchange or promissory notes have been given by the
- 20 purchaser in respect of amounts payable under the hire-purchase agreement, the vendor will, in the circumstances set out in section ten of the Act, be liable to indemnify the purchaser.

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This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 23 September, 1941.*

New South Wales.



ANNO QUINTO

GEORGII VI REGIS.

Act No. , 1941.

An Act to amend the law relating to hire-purchase agreements; to amend the Usury, Bills of Lading, and Written Memoranda Act, 1902, and certain other Acts in certain respects; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of
5 the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-purchase Agreements Act, 1941."

Short title
and division
into Parts.

79229

25—A

(2)

Hire-purchase Agreements.

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE AGREEMENTS.

5 PART III.—PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS MADE AFTER THE COMMENCEMENT OF THIS ACT.

2. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

10 “Goods” include all chattels personal other than money or things in action.

Inter-pretation.
cf. Act No.
14, 1939
(N.Z.), s. 2.

15 The expression “goods” also includes any fixture which is comprised in a hire-purchase agreement where any party to the hire-purchase agreement has authority to sever such fixture from the realty.

20 “Guarantor” means a person who guarantees the performance by a purchaser of all or any of his obligations under a hire-purchase agreement; but does not include any person engaged, at the time of giving the guarantee, in the trade or business of selling goods of the same nature or description as the goods referred to in the hire-purchase agreement.

25 “Hire-purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and where, by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall for the purpose of this Act be treated as a single agreement made at
30
35 the time when the last agreement was made.

cf. 1 & 2
Geo. VI,
c. 53, s. 21.

The expression “hire-purchase agreement” also includes an agreement for the purchase of

Hire-purchase Agreements.

- 5 of goods by instalments (whether the agree-
ment describes the instalments as rent or hire
or otherwise); but does not include any agree-
ment under which the property in the goods
comprised therein passes absolutely at the time
of the agreement to the person who agrees to
purchase them or under which the purchaser is
a person who is engaged in the trade or business
of selling goods of the same nature or descrip-
10 tion as the goods referred to in the agreement.
- 15 “Purchaser” means the person who takes or has
taken goods from a vendor under a hire-purchase
agreement and includes a person to whom the
purchaser’s rights or liabilities under the agree-
ment have passed by assignment or by opera-
tion of law. cf. 1 and 2
Geo. VI,
c. 56, s. 21.
- 20 “Vendor” means the person who lets or has let or
sells or has sold goods to a purchaser under a
hire-purchase agreement, and includes a person
to whom the vendor’s property in the goods or
any of the vendor’s rights or liabilities under
the agreement have passed by assignment or by
operation of law. cf. Ibid.
- 25 (2) A reference in this Act to the taking of pos-
session by the vendor of goods comprised in a hire-
purchase agreement does not include a reference to the
taking of possession by the vendor as a result of the
voluntary return of the goods by the purchaser.
- 30 (3) For the purposes of this Act the purchase-price
of any goods shall be deemed to be the total amount of
the moneys paid or payable and the value of any other
consideration provided or to be provided by the purchaser
to complete the purchase of the goods pursuant to the
hire-purchase agreement: Ascertain-
ment of
purchase-
price.
- 35 Provided that in the application of this subsection to
a case in which—
(a) possession of the goods has been taken by the
vendor; or
(b)

Hire-purchase Agreements.

(b) the hire-purchase agreement is determined by the purchaser pursuant to section twenty-three of this Act,
 where the purchase-price as so defined includes any
 5 amount which is in fact added in respect of interest
 (whether expressed to be so added or not) there shall
 be deducted therefrom all interest in respect of any
 period subsequent to the date on which the vendor
 takes possession of the goods or the agreement is so
 10 determined.

(4) For the purposes of this Act, unless the context otherwise requires, the value of any goods at the time when the vendor takes possession thereof or at the time when the hire-purchase agreement is determined by
 15 the purchaser pursuant to section twenty-three of this Act, shall be deemed to be their actual value at that time, less the reasonable costs, charges, and expenses of the vendor in respect of taking possession thereof and (whether or not the goods have subsequently been sold or disposed of
 20 by the vendor) the reasonable expenses of selling or otherwise disposing of them.

Ascertain-
 ment of
 value of
 goods.

Evidence as to the price realised upon sale of the goods so taken or of goods similar in quality and other
 25 respects to the goods so taken, shall be deemed not to be relevant to the question of the actual value of the goods so taken unless the court determining such question is satisfied that the value reflected by such sale is fair and reasonable.

PART II.

30 PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE
 AGREEMENTS.

3. (1) This Part shall be deemed to have commenced
 on the first day of August, one thousand nine hundred
 and forty-one.
 35 (2) This Part shall apply to all hire-purchase
 agreements whether entered into before or after the
 commencement

Commence-
 ment and
 application
 of Part II.

Hire-purchase Agreements.

commencement of this Part, and in the case of hire-purchase agreements entered into before such commencement, shall apply whether or not any option of purchase or right to have the property vested in the purchaser, 5 which is expressed in the hire-purchase agreement, is still subsisting at such commencement.

(3) The provisions contained in this Part shall have effect notwithstanding any stipulation to the contrary.

- 10 **4.** (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement, the purchaser shall be entitled to recover from that vendor as a debt due and payable by him to the purchaser the total amount of the moneys paid and the value of any other 15 consideration provided by the purchaser under the agreement in respect of the goods, less the difference between the purchase-price of the goods and the value of the goods at the time when the vendor so takes possession thereof.

Right of purchaser to recover certain amount where vendor repossesses goods.
cf. Act No. 14, 1939 (N.Z.), s. 3.

- 20 (2) No amount shall be recoverable under this section unless—

- (a) the purchaser, after the vendor takes possession of any goods but not later than twenty-eight days after service of the statement and 25 notice referred to in section six of this Act, serves on the vendor a notice in writing, signed by the purchaser or by his solicitor or agent, setting out the amount claimed under the provisions of this section and the amount which 30 the purchaser estimates to be the actual value of the goods at the time when the vendor so took possession thereof; and
- (b) proceedings for the recovery of the amount so claimed are commenced not earlier than seven 35 days nor later than three months after the service of that notice:

Provided that the time prescribed by this subsection for serving the notice or for commencing the proceedings may, on an application made either before or after the

Hire-purchase Agreements.

the expiry of that time to the court in which it is proposed to take the proceedings, be extended by the court for such further period and upon or subject to such conditions as the court thinks fit.

- 5 (3) If, before any such proceedings are commenced by the purchaser, the vendor serves on the purchaser an offer in writing to pay any amount to the purchaser in satisfaction of his claim under this section, then, unless the purchaser before commencing the proceedings
10 notifies the vendor in writing of the acceptance of the amount so offered, the vendor shall be entitled to pay into court the amount so offered and upon so doing shall be entitled to the same rights as if the amount had been
15 tendered to the purchaser before the proceedings were commenced.

5. Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall not be entitled to recover under the provisions of the agreement any sum which, together with the value of the goods
20 at the time when the vendor so takes possession thereof and the moneys paid and other consideration provided under the agreement by the purchaser and by any other person on his behalf, would amount to more than the purchase-price of the goods.

Restriction
of amount
recoverable
by vendor.
cf. Act No.
14, 1939
(N.Z.), s. 4.

- 25 6. (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall, within twenty-eight days thereafter, serve on the purchaser and on every guarantor of the purchaser a statement showing
the following particulars:—

Vendor to
deliver
statement
and notice.
cf. *Ibid.* s. 5.

- 30 (a) The name of the vendor so taking possession of the goods and an address at which any notice under this Act may be served on such vendor;
(b) (i) The purchase-price of the goods;
35 (ii) The total amount of the moneys paid and the value of any other consideration provided by the purchaser and by any other person on behalf of the purchaser;
(iii) The amount which the vendor estimates to be the value of the goods at the time when he

Hire-purchase Agreements.

- 5 so took possession thereof, showing separately the actual value of the goods and the costs, charges and expenses referred to in subsection four of section two of this Act; and
- (iv) The balance estimated to be due to the vendor or to the purchaser and any guarantor of the purchaser, as the case may be;
- 10 (c) (i) The amounts (if any) or the mode of ascertaining the amounts which, pursuant to paragraph (a) of subsection three of section seven of this Act, will be payable by the purchaser as a condition of redelivering the goods of which possession has been taken by the vendor;
- 15 (ii) The breach or breaches of the agreement which the vendor alleges have been committed by the purchaser, and, where the vendor has actually incurred any costs and expenses in remedying such breach or breaches, the amount of the costs and expenses so incurred;
- 20 (iii) The costs and expenses incurred by the vendor in respect of his taking possession of the goods and an estimate of the costs and expenses of redelivering the same to the purchaser if required so to do:
- 25

Provided that, in any case where, after the commencement of this Part and before the date (hereinafter called
30 the "date of assent") upon which the assent of His Majesty to this Act is signified, a vendor takes possession of any goods comprised in a hire-purchase agreement the period of twenty-eight days referred to in the foregoing provisions of this subsection shall be calculated from the
35 date of assent instead of from the date upon which possession is so taken.

(2) The vendor shall, with the statement, serve on the purchaser and on every guarantor of the purchaser a notice containing a summary of the rights and privileges
40 conferred by this Act on purchasers. Every notice under

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under this subsection shall be in the form contained in the Schedule to this Act and shall be printed in type not smaller than ten-point face:

5 Provided that the Governor may from time to time by proclamation published in the Gazette, amend the form contained in the Schedule or substitute another form therefor, and may from time to time in like manner vary the size of the type to be used in the notice.

10 (3) A vendor who takes possession of any goods comprised in a hire-purchase agreement and makes default in complying with the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds.

15 7. (1) Where a vendor after the date upon which the assent of His Majesty to this Act is signified takes possession of any goods comprised in a hire-purchase agreement he shall not, without the consent of the purchaser (which consent shall be in writing and shall be witnessed by some person other than the vendor or the solicitor for or agent
20 or employee of the vendor), sell or dispose of the goods or part with possession thereof until after the expiration of a period of twenty-one days from the date of service of the statement and notice referred to in section six of this Act, or of the period referred to in subsection three
25 of this section, whichever period last expires.

Vendor to retain possession of repossessed goods for twenty-one days.

cf. Act No. 14, 1939 (N.Z.), s. 6.

(2) The purchaser may, within the period of twenty-one days referred to in subsection one of this section, serve on the vendor a notice in writing signed by the purchaser or by his solicitor or agent requiring the vendor
30 to redeliver the goods to the purchaser.

Purchaser's right to redelivery of goods.

(3) If within seven days after the service of any notice as aforesaid the purchaser—

35 (a) pays or tenders to the vendor such moneys (if any) as are due by the purchaser under the hire-purchase agreement up to the date of the payment or tender (and for the purposes of this paragraph the agreement shall be deemed to have continued in full force and effect up to that date and any stipulation accelerating the due
40 date of any moneys in the event of a breach of the agreement shall not be taken into account);

(b)

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- (b) remedies any breach of the agreement or, where he is unable to remedy the breach by reason of the fact that the vendor has possession of the goods, pays or tenders to the vendor the costs and expenses reasonably and actually incurred by the vendor in doing any act, matter, or thing necessary to remedy the breach; and
- (c) pays or tenders to the vendor the reasonable costs and expenses, not exceeding ten pounds in all, of the vendor in respect of his taking possession of the goods and redelivering them to the purchaser,

the vendor shall forthwith redeliver the goods to the purchaser and the goods shall be received and held by the purchaser pursuant to the terms of the hire-purchase agreement as if a breach had not occurred and the vendor had not taken possession of the goods.

- (4) Where the goods are redelivered to the purchaser as aforesaid and any breach has not been remedied the vendor shall not have any right arising out of that breach to take possession of the goods unless at the time of the redelivery he serves a notice in writing on the purchaser specifying the breach and requiring it to be remedied and the purchaser fails to remedy the breach within fourteen days after the service of the notice.

8. (1) Except as provided in this Act, a guarantor shall not by reason of the operation of this Act be discharged from liability under his guarantee.

Provisions
as to
guarantors.
cf. Act No.
14, 1939
(N.Z.), s. 7.

- (2) The liability of a guarantor shall continue, notwithstanding that the vendor, pursuant to the provisions of a hire-purchase agreement, takes possession of the goods comprised therein (and whether or not the goods are redelivered to the purchaser pursuant to this Act), but nothing in this subsection shall operate to preserve the liability of a guarantor where the vendor and the purchaser enter into a new agreement in respect of the goods comprised in any hire-purchase agreement.

- (3) No guarantor shall be liable to any further or other extent than the purchaser the performance of whose obligations he guarantees, but nothing in this Act shall affect any agreement by the guarantor binding him to

the

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the performance of any obligation which is not one of the obligations imposed on the purchaser under the hire-purchase agreement in respect of which the guarantee is given.

5 (4) Where a vendor takes possession of any goods comprised in a hire-purchase agreement any guarantor who has paid any moneys to the vendor in accordance with his guarantee shall have the like right in like manner to recover those moneys as he would have had if
10 he were the purchaser of the goods, but for the purpose of calculating the amount received by the vendor all moneys paid and the value of any other consideration provided by the purchaser shall be deemed to have been paid by the guarantor:

15 Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him:

Provided also that for the purpose of calculating the aggregate of the amounts which two or more guarantors are entitled to recover under the provisions of this sub-
20 section the moneys paid to the vendor by the guarantors shall be deemed to have been paid by one guarantor.

9. (1) In any proceedings taken under section four of this Act, or taken in any court in respect of any matter arising out of a hire-purchase agreement, or in
25 any proceedings instituted under subsection four of this section, if it appears to the court that the interest directly or indirectly charged or included in the amounts payable under the provisions of the agreement is excessive, or that the amounts charged for expenses,
30 inquiries, fines, bonuses, premiums, renewals, or any other charges are excessive, or that the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction and take an account between the parties thereto.

35 (2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between the parties, and
40 relieve the purchaser and any guarantor from payment of

Reopening
of hire-
purchase
transactions.
cf. Act No.
14, 1939
(N.Z.), s. 8.

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of any sum in excess of such sum in respect of purchase-money, interest, and charges as the court, having regard to the risk and all the other circumstances, adjudges to be fairly and reasonably payable, and may set aside, either
5 wholly or in part, or revise, or alter any agreement made or security given in connection with the transaction, and may give judgment for any party for such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to that party under the agree-
10 ment and may, if it thinks fit, give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the vendor has shared in the profits of or has
15 any beneficial interest, prospectively or otherwise, in the transaction which the court holds to be harsh and unconscionable, the court may add that person as a party to the case, and may give judgment against that person for such amount as it thinks fit or for the delivery of
20 the goods if they are in his possession, and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted under this subsection by the purchaser or any guarantor under a hire-
25 purchase agreement for the purpose of obtaining relief under this section.

In any such proceedings the court shall have and may exercise all or any of the powers conferred by subsections one to three, both inclusive, of this section, notwithstanding that the time for the payment of any of the
30 amounts payable under the agreement may not have arrived:

Provided that no proceedings under this subsection shall be instituted after the expiry of four months from
35 the time when the vendor, after taking possession of the goods, has served the statement and notice referred to in section six of this Act, or (where he has not taken possession thereof) from the time when the transaction is closed.

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10. (1) Where the liability of the purchaser, as ascertained under section five or section nine or section twenty-three or section twenty-four of this Act, is less than that part of the purchase price of goods comprised in
5 a hire-purchase agreement which is outstanding at the date upon which such liability is so ascertained, and bills of exchange or promissory notes have been given by the purchaser or any guarantor in respect of amounts payable under the hire-purchase agreement, and the
10 payment in due course of the bills of exchange or promissory notes would result in payment of an amount in excess of the liability of the purchaser as so ascertained, the vendor shall be liable to indemnify the purchaser and any guarantor in respect of such excess.

Vendor to indemnify purchaser in certain events.

15 (2) This section shall apply to a case in which bills of exchange or promissory notes have been given before as well as to a case in which they are given after the commencement of this Part.

11. (1) At any time before the final payment has been
20 made under a hire-purchase agreement any person entitled to enforce the agreement against the purchaser shall, within four days after he has received a request in writing from the purchaser and the purchaser has paid or tendered to him the sum of one shilling for expenses,
25 supply to the purchaser a copy of the agreement or of any memorandum or note of the agreement, together with a statement signed by the said person or his agent showing—

Duty of vendors to supply documents and information.
cf. 1 & 2 Geo. VI, c. 53, s. 6.

- 30 (a) the amount paid by or on behalf of the purchaser;
- (b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and
- 35 (c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(2)

Hire-purchase Agreements.

(2) In the event of a failure without reasonable cause to comply with the requirements of subsection one of this section, then, while the default continues—

- 5 (a) no person shall be entitled to enforce the agreement against the purchaser or to enforce any contract of guarantee relating to the agreement, and the vendor shall not be entitled to enforce any right to recover the goods from the purchaser; and
- 10 (b) no security given by the purchaser in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the purchaser
- 15 or the guarantor by any holder thereof,

and, if the default continues for a period of one month, the defaulter shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

- 20 **12.** A purchaser who is liable to make payments in respect of two or more hire-purchase agreements to the same vendor shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge
- 25 the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such
- 30 proportions as he thinks fit, and if he fails to make any such appropriation as aforesaid, the payment shall, by virtue of this section, be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the proportions which those sums bear
- 35 to one another.

Appropriation of payments in respect of hire-purchase agreements.
cf. 1 & 2 Geo. VI. c. 53, s. 9.

- 13.** Where a worker does work upon any goods comprised in a hire-purchase agreement in such circumstances that if the goods were the property of the purchaser the worker would be entitled to a lien thereon for
- 40 the amount or value of the work, he shall be entitled

Lien for work done on goods under hire-purchase agreement.
cf. Act No. 14, 1939 (N.Z.), s. 10.

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to a lien accordingly notwithstanding that the goods are not the property of the purchaser:

Provided that the lien shall not be valid and enforceable against the vendor if the hire-purchase agreement
5 contains a provision prohibiting the creation of a lien by the purchaser and the worker before commencing the work has actual notice of that provision.

14. (1) Every person who, by the disposal or sale of
any goods comprised in a hire-purchase agreement, or by
10 the removal of the goods, or by any other means defrauds
or attempts to defraud the vendor, shall be guilty of an
offence and shall be liable on summary conviction to a
penalty not exceeding fifty pounds or to imprisonment
for a period not exceeding three months.

Attempt to
defraud.
cf. Act No.
14, 1939
(N.Z.), s. 11.

15 (2) Where by virtue of a hire-purchase agreement
a purchaser is under a duty to keep the goods comprised
in the agreement in his possession or control, the pur-
chaser shall, on receipt of a request in writing from the
vendor, inform the vendor where the goods are at the
20 time when the information is given or, if it is sent by
post, at the time of posting.

Duty of pur-
chaser to
give infor-
mation as to
whereabouts
of goods.
cf. 1 & 2
Geo. VI,
c. 53, s. 7.

(3) Where the vendor under a hire-purchase
agreement has reasonable grounds for believing that
the goods comprised in the agreement are in the
25 possession or control of some person other than the
purchaser, he may serve upon such person a request in
writing that such person shall give information as to
whether or not the goods are in his possession or control
and, if they are, then as to where the goods are at the
30 time when the information is given or, if sent by post,
at the time of posting.

(4) If a purchaser or a person upon whom a
request has been served under subsection three of this
section fails without reasonable cause to give the said
35 information within fourteen days of the receipt or service
as the case may be of the notice, he shall be guilty of an
offence and shall be liable on summary conviction to a
penalty not exceeding ten pounds.

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15. (1) No term of any hire-purchase agreement shall prevent a purchaser from claiming or being awarded damages or any other relief for fraud or misrepresentation of the vendor or any person acting or purporting to act on behalf of the vendor in connection with any transaction of hire-purchase.

Liability
for fraud,
etc.
cf. Act No.
2049 of
1931 (S.A.),
s. 7.

(2) Any provision in a hire-purchase agreement whereby the vendor or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in a hire-purchase agreement, or is relieved from liability for any such entry shall, as from the date upon which the assent of His Majesty to this Act is signified, be void.

Entry pro-
vision void.
cf. 1 & 2
Geo. VI, c.
53, s. 5 (a).

16. (1) If in connection with the sale of any goods the person by whom or on whose behalf the sale is negotiated (hereinafter called the "owner") arranges that some other person (hereinafter called "the lender") shall enter into a hire-purchase agreement in relation to those goods with a purchaser, the lender shall be in the same position as regards the hire-purchase agreement as if it had been made between the owner as vendor and the purchaser, and had been duly assigned to the lender by the owner.

Provisions
as to finan-
ciers enter-
ing into
agreements
as owners.
cf. Act No.
2049 of
1931 (S.A.),
s. 12.

(2) Nothing in this section shall affect any right of the purchaser against the owner or against the lender, either under the terms of the hire-purchase agreement, the provisions of this Act, or otherwise.

17. Any notice or other document required or authorised by this Act to be served shall be in writing and shall be sufficiently served—

Service of
notices.
cf. Act No.
14, 1939
(N.Z.),
s. 12.

(a) if delivered personally; or

(b) if left at the usual or last known place of abode or business in or out of New South Wales of the person to be served, or at an address specified for that purpose in the hire-purchase agreement or at the address specified for that purpose in the statement referred to in section six of this Act; or

(c)

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- (c) if sent by post in a registered letter addressed to him by name at that place of abode or business or address; and such service shall be deemed to be made at the time at which the registered letter would be delivered in the ordinary course of post.

18. (1) The Usury, Bills of Lading, and Written Memoranda Act, 1902, as amended by subsequent Acts, is amended by omitting section thirteen.

Amendment
of Act No.
43, 1902.
(Conse-
quential.)

- (2) The Interest Reduction Act, 1931, is amended
10 by omitting section fifteen.

Amendment
of Act No.
44, 1931.
(Revision.)

- 19.** (1) Proceedings by the vendor under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in a hire-purchase agreement, may be taken under section
15 thirty-two of the Police Offences Act, 1901-1936, as amended by subsequent Acts, and by subsection two of this section.

Proceedings
for recovery
of possession
of goods
comprised
in hire-
purchase
agreement.

- (2) The Police Offences Act, 1901-1936, is amended by inserting at the end of section thirty-two the
20 following new subsection:—

(6) (a) This section shall extend to proceedings for the recovery of the possession of goods comprised in a hire-purchase agreement without restriction as to the value of such goods.

- 25 (b) For the purpose only of the application of this section to proceedings for the recovery of the possession of goods comprised in a hire-purchase agreement—

- 30 (i) subsection one of this section shall have effect as if the words “the value of which is not greater than twenty pounds, and not being deeds, muniments, or papers relating to any property of greater value than fifty pounds” were omitted;

- 35 (ii) subsection three of this section shall have effect as if the words “not being greater than twenty pounds” were omitted.

(c)

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5 (c) In any proceedings under this section for the recovery of the possession of goods comprised in a hire-purchase agreement, the complaint may be made to and the summons may be issued by any Justice, but, subject to this exception, the jurisdiction in respect of such proceedings conferred on a Justice by this section shall be exercisable only by a stipendiary magistrate or a police magistrate sitting alone.

20. (1) No proceedings relating to a hire-purchase agreement shall be brought or taken in any court of petty sessions other than a court of petty sessions holden before a stipendiary magistrate or police magistrate sitting alone.

Jurisdiction
of court of
petty
sessions.

15 (2) A court of petty sessions holden before a stipendiary magistrate or police magistrate sitting alone shall, in addition to the jurisdiction which might be exercised by it if this section had not been enacted, have jurisdiction in respect of proceedings relating to a hire-purchase agreement in all cases in which the purchase price of the goods comprised in the agreement does not exceed two hundred and fifty pounds.

25 (3) The costs of any proceedings relating to a hire-purchase agreement which are brought or taken in a court of petty sessions shall be in the discretion of the court, and the court, when allowing any costs to any party in such proceedings, may assess the amount thereof.

30 Any order made under the authority of this Act for the payment of money or of costs by a court of petty sessions shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, and be enforceable as such under the provisions of that Act.

This subsection shall not be construed so as to affect in any way the jurisdiction of any other court in relation to costs.

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PART III.

PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS
MADE AFTER THE COMMENCEMENT OF THIS ACT.

21. (1) This Part shall except where express pro- Application
5 vision is made to the contrary in this Act apply to all of Part III.
hire-purchase agreements made on or after the first day
of August, one thousand nine hundred and forty-one.

(2) The provisions contained in this Part shall
have effect notwithstanding any stipulation to the con-
10 trary.

22. (1) It shall be the duty of every vendor under a Hire-pur-
hire-purchase agreement which is entered into after the chase agree-
expiration of one month after the commencement of this ments to be
Act to have the agreement reduced into writing and to in writing.
15 deliver a copy of the agreement to the purchaser within cf. Act No.
twenty-eight days after the agreement has been entered 22, 1931
into, and also to deliver to the purchaser a notice in (W.A.), s. 3.
writing containing a summary of the rights and privi-
20 leges conferred by this Act on purchasers, which sum-
mary shall be in the form for the time being contained
in the Schedule to this Act, and the word "writing" in
this subsection shall be deemed to include such printing
only as is in type not smaller than eight-point face.

(2) Every hire-purchase agreement shall
25 specify—

- (a) the price at which the goods the subject of the
agreement might be purchased for cash (in this
subsection referred to as the "cash price");
- 30 (b) the difference between the purchase-price of
the goods as defined in this Act, together with all
charges and other sums which under the hire-
purchase agreement are payable by the pur-
chaser, and such cash price.

(3) Any vendor who neglects or fails to comply
35 with any of the requirements of this section shall be
guilty of an offence and shall be liable on summary con-
viction to a penalty not exceeding twenty pounds.

(4) Non-compliance with this section shall not
invalidate any hire-purchase agreement.

Hire-purchase Agreements.

23. (1) A purchaser shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive the amounts payable under the agreement.

Right of purchaser to determine hire-purchase agreement.
cf. 1 & 2 Geo. VI, c. 53, s. 4.

(2) Where a hire-purchase agreement is determined under this section the following provisions shall have effect:—

10 (a) If the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined exceeds
15 the purchase price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section, the purchaser may recover such excess from the vendor as a debt due and payable by him to the
20 purchaser.

(b) If the purchase-price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section exceeds the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined, the vendor may recover such excess from
25 the purchaser as a debt due and payable by him to the vendor, but shall not be entitled to recover any additional sum whether as penalty or compensation or otherwise in consequence of the determination of the agreement.
30

35 (3) Where a hire-purchase agreement has been determined under this section, the purchaser shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

(4)

Hire-purchase Agreements.

(4) Where a purchaser, having determined a hire-purchase agreement under this section, wrongfully retains possession of the goods, then, in any action brought by the vendor to recover possession of the goods from the purchaser, the court shall order the goods to be delivered to the vendor.

(5) Nothing in this section shall prejudice any right of a purchaser to determine a hire-purchase agreement otherwise than by virtue of this section.

- 10 **24.** In every hire-purchase agreement there shall be implied a provision that if the purchaser gives notice in writing to any person entitled or authorised to receive the amounts payable under the hire-purchase agreement that he desires to complete the purchase of the goods comprised in the hire-purchase agreement before the time when, in accordance with the hire-purchase agreement, the property will or may pass, and if, in such notice or in a subsequent notice, he appoints a day for completion of the purchase, the purchase may be completed on the day so appointed, by payment of that part of the purchase-price which is then outstanding.

Right to complete at any time.

For the purpose of ascertaining the part of the purchase-price which is outstanding under a hire-purchase agreement on the day so appointed, where the purchase-price includes any amount which is in fact added in respect of interest (whether expressed to be so added or not), interest shall be deemed not to accrue and shall not be payable in respect of any period subsequent to the day so appointed.

- 30 **25.** (1) In every hire-purchase agreement there shall be—

- (a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods;
- 35 (b) an implied condition on the part of the vendor that he shall have a right to sell the goods at the time when the property is to pass;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass;
- 40

Conditions and warranties to be implied in hire-purchase agreements. cf. 1 and 2 Geo. VI, c. 53, s. 8.

(d)

Hire-purchase Agreements.

(d) except where the goods are let or sold as second-hand goods, and the hire-purchase agreement contains a statement to that effect, an implied condition that the goods shall be of merchantable quality, so, however, that no such condition shall be implied by virtue of this paragraph as regards defects of which the vendor could not reasonably have been aware at the time when the agreement was made, or, if the purchaser has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed.

(2) Where the purchaser expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(3) The warranties and conditions set out in subsection one of this section shall be implied notwithstanding any agreement to the contrary, and the vendor shall not be entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection two of this section unless he proves that before the agreement was made the provision was brought to the notice of the purchaser and its effects made clear to him.

(4) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

26. (1) No hire-purchase agreement which relates to household furniture or effects used or intended to be used by the purchaser in his home and which is made with a purchaser who is married shall be enforceable unless—

Regulation
of hire-
purchase
agreements
with
married
persons.

(a) (i) the hire-purchase agreement contains a statement in writing signed by the spouse of the purchaser signifying the consent of such spouse to the hire-purchase agreement; and

cf. S.A. Act,
No. 59,
1940, s. 24.

(ii) such statement is so signed by the spouse at or before the time when the hire-purchase agreement was made; or

(b)

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- 5 (b) the purchaser, at or before the time when the hire-purchase agreement was made, has produced and delivered to the vendor an authority, signed by the spouse of the purchaser, to pledge the credit of the purchaser and the spouse or of either of them up to a specified limit which is not more than thirty pounds, and the purchase price of the goods comprised in the hire-purchase agreement, together with all other
10 moneys owing or payable by the purchaser and the spouse or either of them to the vendor, does not exceed the limit so specified; or
- 15 (c) the purchaser, at or before the time when the hire-purchase agreement was made, has produced and delivered to the vendor a statutory declaration made by the purchaser to the effect that the spouse of the purchaser was under such a legal incapacity as to render such spouse unable to sign such statement as aforesaid:
- 20 Provided that this subsection shall not apply if the vendor had reasonable grounds for believing and did in fact believe, at the time the hire-purchase agreement was made, that—
- 25 (i) the purchaser was living separate and apart from the spouse of the purchaser; or
- (ii) the spouse of the purchaser was outside New South Wales:

Provided further that this subsection shall not apply if, at or before the time when the hire-purchase agreement was made, the purchaser has produced and delivered
30 to the vendor a statutory declaration made by the purchaser stating that the purchaser was not married at the time of the delivery of such statutory declaration to the vendor, unless the vendor had reasonable grounds for
35 believing that such statement was false.

(2) If any vendor to whom any such authority or statutory declaration as is referred to in this section has been delivered, fails to preserve the same until the expiration of twelve months after the transaction in
40 respect of which it was given is finally closed, he shall
be

Hire-purchase Agreements.

be guilty of an offence against this Act, and shall be liable—

- 5 (a) if a company—to a penalty of not less than twenty pounds and not exceeding two hundred pounds;
- 10 (b) if any other person—to a penalty of not less than ten pounds and not exceeding one hundred pounds or to imprisonment for a term of not more than two months, or to both such penalty and imprisonment.

(3) This section shall apply to all hire-purchase agreements made after the commencement of this Act.

27. Any provision in a hire-purchase agreement—

- 15 (a) whereby the right conferred on a purchaser by this Act to determine the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a purchaser by reason of the termination of the hire-purchase agreement by him under this Act; or
- 20 (b) whereby a purchaser, after the determination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under this Act; or
- 25 (c) whereby the right conferred on a purchaser by section twenty-four of this Act is excluded or restricted; or
- 30 (d) whereby any person acting on behalf of the vendor in connection with the formation or conclusion of a hire-purchase agreement is treated as or deemed to be the agent of the purchaser; or
- 35 (e) whereby the vendor is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase agreement,

shall be void.

Avoidance
of certain
provisions.

cf. 1 & 2
Geo. VI,
c. 53, s. 5.

SCHEDULE.

Hire-purchase Agreements.

SCHEDULE.

Secs. 6, 22.

Form of Notice to be delivered to Purchasers and Guarantors.

NOTICE.

To (Name of Purchaser or Guarantor).

5 THE following summary of certain rights which the law gives to a purchaser when the vendor of goods under a hire-purchase agreement takes possession of them is given as required by the Hire-purchase Agreements Act, 1941.

10 (Signature of Vendor.)

Summary.

1. (1) If the value of the goods at the time when the vendor takes possession of them, together with the total moneys actually paid (including the value of goods traded in), is greater than the price
15 of the goods, then the purchaser is entitled to recover from the vendor the amount of the difference.

(2) The value for this purpose is the net value—that is to say, the actual value less the vendor's costs, charges, and expenses in respect of taking possession and reselling or disposing of the goods
20 (whether or not they have actually been sold or disposed of).

In estimating such value evidence of the sale of the goods or of goods similar in quality is to be disregarded unless the value reflected by such sale is fair and reasonable.

(3) If the price comprises any amount in fact added for interest,
25 even though not so expressed, all interest for the time subsequent to the taking of possession is to be deducted in calculating the price.

2. Before taking action to recover the amount of this difference the purchaser must first serve on the vendor a written notice setting out the amount claimed and also the amount which the purchaser estimates to be the actual value of the goods at the time the
30 vendor took possession. This notice must be signed by the purchaser or his solicitor or agent and served on the vendor after the vendor has taken possession of the goods but not later than twenty-eight days after service of the statement required to be served when possession is so taken. Court proceedings for the recovery of the amount
35 claimed must be commenced not earlier than seven days and not later than three months after the service of the notice. The purchaser will lose any right to recover the amount claimed if he fails to serve the notice and commence the proceedings within the times mentioned
40 in this paragraph. The times may be extended, but this is in the discretion of the Court.

3. The vendor is required by law (where this notice is served after taking possession of the goods) to serve on the purchaser, together with this present notice, a statement showing the name and address
45 of the vendor, particulars of the price of the goods, the moneys paid and the value of any goods traded in, the amount which

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Hire-purchase Agreements.

he estimates to be the net value of the goods at the time of taking possession, and the balance estimated to be due to him or to the purchaser and any guarantor, as the case may be, and particulars as to the amount which must be paid as a condition of redelivering
5 the goods, the breaches of the agreement alleged to have been committed by the purchaser, the costs and expenses (if any) incurred by the vendor in remedying the breaches, the costs and expenses of taking possession, and an estimate of the costs and expenses of redelivering the goods.

- 10 4. The vendor, after taking possession of goods comprised in a hire-purchase agreement, cannot in any circumstances recover an amount which, together with the then net value of the goods and the money already paid, exceeds the price of the goods.

For the method of ascertaining the net value see subparagraph two
15 of paragraph one above.

5. The purchaser has a right on certain conditions to have the goods returned and the hiring and purchase continued as if it had not been interrupted. If he desires this he must within twenty-one days after the vendor serves the statement mentioned in paragraph
20 three above serve on the vendor a written notice, signed by himself or his solicitor or agent, requiring the vendor to redeliver the goods, and within seven days after the service of the notice the purchaser must—

- (a) pay or tender to the vendor such moneys as are then due
25 under the agreement (excluding such sums as become payable before due date by reason of any breach of the agreement);
(b) remedy any breach of the agreement or, if this is impossible because the vendor now has the goods, pay or tender to the
30 vendor the expenses reasonably and actually incurred by him to remedy the breach; and
(c) pay or tender the reasonable costs and expenses (not exceeding £10 in all) of the vendor in respect of his taking possession of the goods and redelivering them.

- 35 6. If any charge made, for interest or otherwise, is excessive or any provision of the agreement so unfair or oppressive as to be harsh and unconscionable or if the transaction is otherwise such that a court of equity would grant relief the transaction may be reopened by the court provided application is made within four months after
40 the vendor takes possession of the goods.

7. A guarantor is entitled to the same benefits as the purchaser whom he has guaranteed.

8. If bills of exchange or promissory notes have been given by the purchaser in respect of amounts payable under the hire-purchase
45 agreement, the vendor will, in the circumstances set out in section ten of the Act, be liable to indemnify the purchaser.

Sydney: Alfred Henry Pettifer, Acting Government Printer—1941.

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No. , 1941.

A BILL

To amend the law relating to hire-purchase agreements; to amend the Usury, Bills of Lading, and Written Memoranda Act, 1902, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. CLARENCE MARTIN;—3 *September*, 1941.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-purchase Agreements Act, 1941."

Short title
and division
into Parts.

Hire-purchase Agreements.

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE AGREEMENTS.

5 PART III.—PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS MADE AFTER THE COMMENCEMENT OF THIS ACT.

2. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

10 “Goods” include all chattels personal other than money or things in action.

Interpretation.
cf. Act No. 14, 1939 (N.Z.), s. 2.

15 The expression “goods” also includes any fixture which is comprised in a hire-purchase agreement where any party to the hire-purchase agreement has authority to sever such fixture from the realty.

20 “Guarantor” means a person who guarantees the performance by a purchaser of all or any of his obligations under a hire-purchase agreement; but does not include any person engaged, at the time of giving the guarantee, in the trade or business of selling goods of the same nature or description as the goods referred to in the hire-purchase agreement.

25 “Hire-purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and where, by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall for the purpose of this Act be treated as a single agreement made at the time when the last agreement was made.

cf. 1 & 2 Geo. VI, c. 53, s. 21.

35 The expression “hire-purchase agreement” also includes an agreement for the purchase of

Hire-purchase Agreements.

- 5 of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise); but does not include any agreement under which the property in the goods comprised therein passes absolutely at the time of the agreement to the person who agrees to purchase them or under which the purchaser is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement.
- 10 “Purchaser” means the person who takes or has taken goods from a vendor under a hire-purchase agreement and includes a person to whom the purchaser’s rights or liabilities under the agreement have passed by assignment or by operation of law. cf. 1 and 2 Geo. VI, c. 56, s. 21.
- 15 “Vendor” means the person who lets or has let or sells or has sold goods to a purchaser under a hire-purchase agreement, and includes a person to whom the vendor’s property in the goods or any of the vendor’s rights or liabilities under the agreement have passed by assignment or by operation of law. cf. Ibid.
- 20 (2) A reference in this Act to the taking of possession by the vendor of goods comprised in a hire-purchase agreement does not include a reference to the taking of possession by the vendor as a result of the voluntary return of the goods by the purchaser.
- 25 (3) For the purposes of this Act the purchase-price of any goods shall be deemed to be the total amount of the moneys paid or payable and the value of any other consideration provided or to be provided by the purchaser to complete the purchase of the goods pursuant to the hire-purchase agreement: Ascertainment of purchase-price.
- 30 Provided that in the application of this subsection to a case in which—
- 35 (a) possession of the goods has been taken by the vendor; or
- (b)

Hire-purchase Agreements.

(b) the hire-purchase agreement is determined by the purchaser pursuant to section twenty-one of this Act,
 where the purchase-price as so defined includes any
 5 amount which is in fact added in respect of interest
 (whether expressed to be so added or not) there shall
 be deducted therefrom all interest in respect of any
 period subsequent to the date on which the vendor
 takes possession of the goods or the agreement is so
 10 determined.

(4) For the purposes of this Act, unless the con-
 text otherwise requires, the value of any goods at the
 time when the vendor takes possession thereof or at the
 time when the hire-purchase agreement is determined by
 15 the purchaser pursuant to section twenty-one of this Act,
 shall be deemed to be their actual value at that time, less
 the reasonable costs, charges, and expenses of the vendor
 in respect of taking possession thereof and (whether or
 not the goods have subsequently been sold or disposed of
 20 by the vendor) the reasonable expenses of selling or
 otherwise disposing of them.

Ascertain-
 ment of
 value of
 goods.

Evidence as to the price realised upon sale of the
 goods so taken or of goods similar in quality and other
 respects to the goods so taken, shall be deemed not to be
 25 relevant to the question of the actual value of the goods
 so taken unless the court determining such question is
 satisfied that the value reflected by such sale is fair and
 reasonable.

PART II.

30 PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE
 AGREEMENTS.

3. (1) This Part shall be deemed to have commenced
 on the first day of August, one thousand nine hundred
 and forty-one.
 35 (2) This Part shall apply to all hire-purchase
 agreements whether entered into before or after the
 commencement

Commence-
 ment and
 application
 of Part II.

Hire-purchase Agreements.

commencement of this Part, and in the case of hire-purchase agreements entered into before such commencement, shall apply whether or not any option of purchase or right to have the property vested in the purchaser, which is expressed in the hire-purchase agreement, is still subsisting at such commencement.

(3) The provisions contained in this Part shall have effect notwithstanding any stipulation to the contrary.

- 10 4. (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement, the purchaser shall be entitled to recover from that vendor as a debt due and payable by him to the purchaser the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods, less the difference between the purchase-price of the goods and the value of the goods at the time when the vendor so takes possession thereof.

Right of purchaser to recover certain amount where vendor repossesses goods.
cf. Act No. 14, 1939 (N.Z.), s. 3.

- 20 (2) No amount shall be recoverable under this section unless—

- (a) the purchaser, after the vendor takes possession of any goods but not later than twenty-eight days after service of the statement and notice referred to in section six of this Act, serves on the vendor a notice in writing, signed by the purchaser or by his solicitor or agent, setting out the amount claimed under the provisions of this section and the amount which the purchaser estimates to be the actual value of the goods at the time when the vendor so took possession thereof; and
- (b) proceedings for the recovery of the amount so claimed are commenced not earlier than seven days nor later than three months after the service of that notice:

Provided that the time prescribed by this subsection for serving the notice or for commencing the proceedings may, on an application made either before or after the

Hire-purchase Agreements.

the expiry of that time to the court in which it is proposed to take the proceedings, be extended by the court for such further period and upon or subject to such conditions as the court thinks fit.

- 5 (3) If, before any such proceedings are commenced by the purchaser, the vendor serves on the purchaser an offer in writing to pay any amount to the purchaser in satisfaction of his claim under this section, then, unless the purchaser before commencing the proceedings
10 notifies the vendor in writing of the acceptance of the amount so offered, the vendor shall be entitled to pay into court the amount so offered and upon so doing shall be entitled to the same rights as if the amount had been
15 commenced.

5. Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall not be entitled to recover under the provisions of the agreement any sum which, together with the value of the goods
20 at the time when the vendor so takes possession thereof and the moneys paid and other consideration provided under the agreement by the purchaser and by any other person on his behalf, would amount to more than the purchase-price of the goods.

Restriction of amount recoverable by vendor.
cf. Act No. 14, 1939 (N.Z.), s. 4.

- 25 6. (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall, within fourteen days thereafter, serve on the purchaser and on every guarantor of the purchaser a statement showing the following particulars:—

Vendor to deliver statement and notice.
cf. *Ibid.* s. 5.

- 30 (a) The name of the vendor so taking possession of the goods and an address at which any notice under this Act may be served on such vendor;
(b) (i) The purchase-price of the goods;
35 (ii) The total amount of the moneys paid and the value of any other consideration provided by the purchaser and by any other person on behalf of the purchaser;
(iii) The amount which the vendor estimates to be the value of the goods at the time when he

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- 5 so took possession thereof, showing separately the actual value of the goods and the costs, charges and expenses referred to in subsection four of section two of this Act; and
- (iv) The balance estimated to be due to the vendor or to the purchaser and any guarantor of the purchaser, as the case may be;
- 10 (c) (i) The amounts (if any) or the mode of ascertaining the amounts which, pursuant to paragraph (a) of subsection three of section seven of this Act, will be payable by the purchaser as a condition of redelivering the goods of which possession has been taken by the vendor;
- 15 (ii) The breach or breaches of the agreement which the vendor alleges have been committed by the purchaser, and, where the vendor has actually incurred any costs and expenses in remedying such breach or breaches, the amount of the costs and expenses so incurred;
- 20 (iii) The costs and expenses incurred by the vendor in respect of his taking possession of the goods and an estimate of the costs and expenses of redelivering the same to the purchaser if required so to do:
- 25

Provided that, in any case where, after the commencement of this Part and before the date (hereinafter called
30 the "date of assent") upon which the assent of His Majesty to this Act is signified, a vendor takes possession of any goods comprised in a hire-purchase agreement the period of fourteen days referred to in the foregoing provisions of this subsection shall be calculated from the
35 date of assent instead of from the date upon which possession is so taken.

(2) The vendor shall, with the statement, serve on the purchaser and on every guarantor of the purchaser a notice containing a summary of the rights and privileges
40 conferred by this Act on purchasers. Every notice under

Hire-purchase Agreements.

under this subsection shall be in the form contained in the Schedule to this Act and shall be printed in type not smaller than ten-point face:

5 Provided that the Governor may from time to time by proclamation published in the Gazette, amend the form contained in the Schedule or substitute another form therefor, and may from time to time in like manner vary the size of the type to be used in the notice.

10 (3) A vendor who takes possession of any goods comprised in a hire-purchase agreement and makes default in complying with the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds.

15 7. (1) Where a vendor after the date upon which the assent of His Majesty to this Act is signified takes possession of any goods comprised in a hire-purchase agreement he shall not, without the consent of the purchaser, sell or dispose of the goods or part with possession thereof until after the expiration of a period of twenty-one days from
20 the date of service of the statement and notice referred to in section six of this Act, or of the period referred to in subsection three of this section, whichever period last expires.

Vendor to retain possession of repossessed goods for twenty-one days.

cf. Act No. 14, 1939 (N.Z.), s. 6.

25 (2) The purchaser may, within the period of twenty-one days referred to in subsection one of this section, serve on the vendor a notice in writing signed by the purchaser or by his solicitor or agent requiring the vendor to redeliver the goods to the purchaser.

Purchaser's right to redelivery of goods.

30 (3) If within seven days after the service of any notice as aforesaid the purchaser—

35 (a) pays or tenders to the vendor such moneys (if any) as are due by the purchaser under the hire-purchase agreement up to the date of the payment or tender (and for the purposes of this paragraph the agreement shall be deemed to have continued in full force and effect up to that date and any stipulation accelerating the due date of any moneys in the event of a breach of the agreement shall not be taken into account);

(b)

Hire-purchase Agreements.

- (b) remedies any breach of the agreement or, where he is unable to remedy the breach by reason of the fact that the vendor has possession of the goods, pays or tenders to the vendor the costs and expenses reasonably and actually incurred by the vendor in doing any act, matter, or thing necessary to remedy the breach; and
- (c) pays or tenders to the vendor the reasonable costs and expenses, not exceeding ten pounds in all, of the vendor in respect of his taking possession of the goods and redelivering them to the purchaser,

the vendor shall forthwith redeliver the goods to the purchaser and the goods shall be received and held by the purchaser pursuant to the terms of the hire-purchase agreement as if a breach had not occurred and the vendor had not taken possession of the goods.

- (4) Where the goods are redelivered to the purchaser as aforesaid and any breach has not been remedied the vendor shall not have any right arising out of that breach to take possession of the goods unless at the time of the redelivery he serves a notice in writing on the purchaser specifying the breach and requiring it to be remedied and the purchaser fails to remedy the breach within fourteen days after the service of the notice.

8. (1) Except as provided in this Act, a guarantor shall not by reason of the operation of this Act be discharged from liability under his guarantee.

Provisions
as to
guarantors.
cf. Act No.
14, 1939
(N.Z.), s. 7.

- (2) The liability of a guarantor shall continue, notwithstanding that the vendor, pursuant to the provisions of a hire-purchase agreement, takes possession of the goods comprised therein (and whether or not the goods are redelivered to the purchaser pursuant to this Act), but nothing in this subsection shall operate to preserve the liability of a guarantor where the vendor and the purchaser enter into a new agreement in respect of the goods comprised in any hire-purchase agreement.

- (3) No guarantor shall be liable to any further or other extent than the purchaser the performance of whose obligations he guarantees, but nothing in this Act shall affect any agreement by the guarantor binding him to the

Hire-purchase Agreements.

the performance of any obligation which is not one of the obligations imposed on the purchaser under the hire-purchase agreement in respect of which the guarantee is given.

- 5 (4) Where a vendor takes possession of any goods comprised in a hire-purchase agreement any guarantor who has paid any moneys to the vendor in accordance with his guarantee shall have the like right in like manner to recover those moneys as he would have had if
 10 he were the purchaser of the goods, but for the purpose of calculating the amount received by the vendor all moneys paid and the value of any other consideration provided by the purchaser shall be deemed to have been paid by the guarantor:

- 15 Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him:

- Provided also that for the purpose of calculating the aggregate of the amounts which two or more guarantors are entitled to recover under the provisions of this sub-
 20 section the moneys paid to the vendor by the guarantors shall be deemed to have been paid by one guarantor.

9. (1) In any proceedings taken under section four of this Act, or taken in any court in respect of any matter arising out of a hire-purchase agreement, or in
 25 any proceedings instituted under subsection four of this section, if it appears to the court that the interest directly or indirectly charged or included in the amounts payable under the provisions of the agreement is excessive, or that the amounts charged for expenses,
 30 inquiries, fines, bonuses, premiums, renewals, or any other charges are excessive, or that the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction and take an account between the parties thereto.

- 35 (2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between the parties, and
 40 relieve the purchaser and any guarantor from payment of

Reopening
of hire-
purchase
transactions.
cf. Act No.
14, 1939
(N.Z.), s. 8.

Hire-purchase Agreements.

of any sum in excess of such sum in respect of purchase-money, interest, and charges as the court, having regard to the risk and all the other circumstances, adjudges to be fairly and reasonably payable, and may set aside, either
5 wholly or in part, or revise, or alter any agreement made or security given in connection with the transaction, and may give judgment for any party for such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to that party under the agree-
10 ment and may, if it thinks fit, give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the vendor has shared in the profits of or has
15 any beneficial interest, prospectively or otherwise, in the transaction which the court holds to be harsh and unconscionable, the court may add that person as a party to the case, and may give judgment against that person for such amount as it thinks fit or for the delivery of
20 the goods if they are in his possession, and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted under this subsection by the purchaser or any guarantor under a hire-
25 purchase agreement for the purpose of obtaining relief under this section.

In any such proceedings the court shall have and may exercise all or any of the powers conferred by subsections one to three, both inclusive, of this section, notwithstanding that the time for the payment of any of the
30 amounts payable under the agreement may not have arrived:

Provided that no proceedings under this subsection shall be instituted after the expiry of four months from
35 the time when the vendor, after taking possession of the goods, has served the statement and notice referred to in section six of this Act, or (where he has not taken possession thereof) from the time when the transaction is closed.

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- 10.** (1) Where the liability of the purchaser, as ascertained under section five or section nine or section twenty-one or section twenty-two of this Act, is less than that part of the purchase price of goods comprised in a hire-purchase agreement which is outstanding at the date upon which such liability is so ascertained, and bills of exchange or promissory notes have been given by the purchaser or any guarantor in respect of amounts payable under the hire-purchase agreement, and the payment in due course of the bills of exchange or promissory notes would result in payment of an amount in excess of the liability of the purchaser as so ascertained, the vendor shall be liable to indemnify the purchaser and any guarantor in respect of such excess.
- 15** (2) This section shall apply to a case in which bills of exchange or promissory notes have been given before as well as to a case in which they are given after the commencement of this Part.
- 11.** (1) At any time before the final payment has been made under a hire-purchase agreement any person entitled to enforce the agreement against the purchaser shall, within four days after he has received a request in writing from the purchaser and the purchaser has paid or tendered to him the sum of one shilling for expenses, supply to the purchaser a copy of the agreement or of any memorandum or note of the agreement, together with a statement signed by the said person or his agent showing—
- 20** (a) the amount paid by or on behalf of the purchaser;
- 30** (b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and
- 35** (c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

Vendor to indemnify purchaser in certain events.

Duty of vendors to supply documents and information.
cf. 1 & 2 Geo. VI, c. 53, s. 6.

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(2) In the event of a failure without reasonable cause to comply with the requirements of subsection one of this section, then, while the default continues—

- 5 (a) no person shall be entitled to enforce the agreement against the purchaser or to enforce any contract of guarantee relating to the agreement, and the vendor shall not be entitled to enforce any right to recover the goods from the purchaser; and
- 10 (b) no security given by the purchaser in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as afore-
- 15 said shall be enforceable against the purchaser or the guarantor by any holder thereof,

and, if the default continues for a period of one month, the defaulter shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

- 20 **12.** Where a worker does work upon any goods comprised in a hire-purchase agreement in such circumstances that if the goods were the property of the purchaser the worker would be entitled to a lien thereon for the amount or value of the work, he shall be entitled
- 25 to a lien accordingly notwithstanding that the goods are not the property of the purchaser:

Lien for work done on goods under hire-purchase agreement. cf. Act No. 14, 1939 (N.Z.), s. 10.

- Provided that the lien shall not be valid and enforceable against the vendor if the hire-purchase agreement contains a provision prohibiting the creation of a lien
- 30 by the purchaser and the worker before commencing the work has actual notice of that provision.

- 13.** (1) Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds
- 35 or attempts to defraud the vendor, shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds or to imprisonment for a period not exceeding three months.

Attempt to defraud. cf. *Ibid.* s. 11.

(2)

Hire-purchase Agreements.

(2) Where by virtue of a hire-purchase agreement a purchaser is under a duty to keep the goods comprised in the agreement in his possession or control, the purchaser shall, on receipt of a request in writing from the
 5 vendor, inform the vendor where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

Duty of purchaser to give information as to whereabouts of goods.
 cf. 1 & 2 Geo. VI, c. 53, s. 7.

(3) If a purchaser fails without reasonable cause to give the said information within fourteen days of the
 10 receipt of the notice, he shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

14. No term of any hire-purchase agreement shall prevent a purchaser from claiming or being awarded
 15 damages or any other relief for fraud or misrepresentation of the vendor or any person acting or purporting to act on behalf of the vendor in connection with any transaction of hire-purchase.

Liability for fraud, etc.
 cf. Act No. 2049 of 1931 (S.A.), s. 7.

15. (1) If in connection with the sale of any goods the
 20 person selling the same (hereinafter called the "owner") arranges that some other person (hereinafter called "the lender") shall enter into a hire-purchase agreement in relation to those goods with a purchaser, the lender shall be in the same position as regards the hire-purchase
 25 agreement as if it had been made between the owner as vendor and the purchaser, and had been duly assigned to the lender by the owner.

Provisions as to financiers entering into agreements as owners.
 cf. *Ibid.* s. 12.

(2) Nothing in this section shall affect any right of the purchaser against the owner or against the lender,
 30 either under the terms of the hire-purchase agreement, the provisions of this Act, or otherwise.

16. Any notice or other document required or authorised by this Act to be served shall be in writing and shall be sufficiently served—

Service of notices.
 cf. Act No. 14, 1939 (N.Z.), s. 12.

- 35 (a) if delivered personally; or
 (b) if left at the usual or last known place of abode or business in or out of New South Wales of the person to be served, or at an address specified for

Hire-purchase Agreements.

for that purpose in the hire-purchase agreement or at the address specified for that purpose in the statement referred to in section six of this Act; or

- 5 (c) if sent by post in a registered letter addressed to him by name at that place of abode or business or address; and such service shall be deemed to be made at the time at which the registered letter would be delivered in the ordinary course of post.

- 10 **17.** (1) The Usury, Bills of Lading, and Written Memoranda Act, 1902, as amended by subsequent Acts, is amended by omitting section thirteen.

Amendment
of Act No.
43, 1902.
(Conse-
quential.)

- (2) The Interest Reduction Act, 1931, is amended by omitting section fifteen.

Amendment
of Act No.
44, 1931.
(Revision.)

- 15 **18.** (1) No proceedings relating to a hire-purchase agreement shall be brought or taken in any court of petty sessions other than a court of petty sessions holden before a stipendiary magistrate or police magistrate sitting alone.

Jurisdiction
of court of
petty
sessions.

- 20 (2) A court of petty sessions holden before a stipendiary magistrate or police magistrate sitting alone shall, in addition to the jurisdiction which might be exercised by it if this section had not been enacted, have jurisdiction in respect of proceedings relating to a hire-
25 purchase agreement in all cases in which the purchase price of the goods comprised in the agreement does not exceed two hundred and fifty pounds.

- (3) The costs of any proceedings relating to a hire-purchase agreement which are brought or taken in a
30 court of petty sessions shall be in the discretion of the court, and the court, when allowing any costs to any party in such proceedings, may assess the amount thereof.

- Any order made under the authority of this Act for the payment of money or of costs by a court of petty sessions
35 shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, and be enforceable as such under the provisions of that Act.

- This subsection shall not be construed so as to affect in any way the jurisdiction of any other court in relation
40 to costs.

PART

Hire-purchase Agreements.

PART III.

PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS
MADE AFTER THE COMMENCEMENT OF THIS ACT.

19. (1) This Part shall apply to all hire-purchase
5 agreements made after the commencement of this Act. Application of Part III.

(2) The provisions contained in this Part shall have effect notwithstanding any stipulation to the contrary.

20. (1) It shall be the duty of every vendor under a
10 hire-purchase agreement which is entered into after the expiration of one month after the commencement of this Act to have the agreement forthwith reduced into writing and to hand a copy of the agreement to the purchaser, and also to hand to the purchaser a notice in writing
15 containing a summary of the rights and privileges conferred by this Act on purchasers, which summary shall be in the form for the time being contained in the Schedule to this Act, and the word "writing" in this subsection shall be deemed to include such printing only as is in type
20 not smaller than eight-point face.

Hire-purchase agreements to be in writing. cf. Act No. 22, 1931 (W.A.), s. 3.

(2) Every hire-purchase agreement shall specify—

(a) the price at which the goods the subject of the agreement might be purchased for cash (in this
25 subsection referred to as the "cash price");

(b) the difference between the purchase-price of the goods as defined in this Act, together with all charges and other sums which under the hire-purchase agreement are payable by the purchaser, and such cash price,
30

and shall also show such difference in terms of a rate per centum per annum on the cash price.

(3) Any vendor who neglects or fails to comply with any of the requirements of this section shall be
35 guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty pounds.

(4) Non-compliance with this section shall not invalidate any hire-purchase agreement.

21.

Hire-purchase Agreements.

21. (1) A purchaser shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled **5** or authorised to receive the amounts payable under the agreement.

Right of purchaser to determine hire-purchase agreement.
cf. 1 & 2
Geo. VI,
c. 53, s. 4.

(2) Where a hire-purchase agreement is determined under this section the following provisions shall have effect:—

10 (a) If the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined exceeds **15** the purchase price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section, the purchaser may recover such excess from the vendor as a debt due and payable by him to the **20** purchaser.

(b) If the purchase-price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section exceeds the total amount of the moneys paid and the value of any other consideration **25** provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined, the vendor may recover such excess from the purchaser as a debt due and payable by him **30** to the vendor, but shall not be entitled to recover any additional sum whether as penalty or compensation or otherwise in consequence of the determination of the agreement.

35 (3) Where a hire-purchase agreement has been determined under this section, the purchaser shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

Hire-purchase Agreements.

(4) Where a purchaser, having determined a hire-purchase agreement under this section, wrongfully retains possession of the goods, then, in any action brought by the vendor to recover possession of the goods from the purchaser, the court shall order the goods to be delivered to the vendor.

(5) Nothing in this section shall prejudice any right of a purchaser to determine a hire-purchase agreement otherwise than by virtue of this section.

- 10 **22.** In every hire-purchase agreement there shall be implied a provision that if the purchaser gives notice in writing to any person entitled or authorised to receive the amounts payable under the hire-purchase agreement that he desires to complete the purchase of the goods comprised in the hire-purchase agreement before the time when, in accordance with the hire-purchase agreement, the property will or may pass, and if, in such notice or in a subsequent notice, he appoints a day for completion of the purchase, the purchase may be completed on the day so appointed, by payment of that part of the purchase-price which is then outstanding.
- 15
20

Right to complete at any time.

For the purpose of ascertaining the part of the purchase-price which is outstanding under a hire-purchase agreement on the day so appointed, where the purchase-price includes any amount which is in fact added in respect of interest (whether expressed to be so added or not), interest shall be deemed not to accrue and shall not be payable in respect of any period subsequent to the day so appointed.

25

- 30 **23.** (1) In every hire-purchase agreement there shall be—

- (a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the vendor that he shall have a right to sell the goods at the time when the property is to pass;
- 35 (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass;
- 40

Conditions and warranties to be implied in hire-purchase agreements. cf. 1 and 2 Geo. VI, c. 53, s. 8.

(d)

Hire-purchase Agreements.

(d) except where the goods are let or sold as second-hand goods, and the hire-purchase agreement contains a statement to that effect, an implied condition that the goods shall be of merchantable quality, so, however, that no such condition shall be implied by virtue of this paragraph as regards defects of which the vendor could not reasonably have been aware at the time when the agreement was made, or, if the purchaser has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed.

(2) Where the purchaser expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(3) The warranties and conditions set out in subsection one of this section shall be implied notwithstanding any agreement to the contrary, and the vendor shall not be entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection two of this section unless he proves that before the agreement was made the provision was brought to the notice of the purchaser and its effects made clear to him.

(4) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

24. (1) No hire-purchase agreement which relates to household furniture or effects used or intended to be used by the purchaser in his home and which is made with a purchaser who is married shall be enforceable unless—

Regulation
of hire-
purchase
agreements
with
married
persons.

(a) (i) the hire-purchase agreement contains a statement in writing signed by the spouse of the purchaser signifying the consent of such spouse to the hire-purchase agreement; and

cf. S.A. Act,
No. 59,
1940, s. 23.

(ii) such statement is so signed by the spouse at or before the time when the hire-purchase agreement was made; or

(b)

Hire-purchase Agreements.

- 5 (b) the purchaser, at or before the time when the hire-purchase agreement was made, has produced and delivered to the vendor a statutory declaration made by the purchaser to the effect that the spouse of the purchaser was under such a legal incapacity as to render such spouse unable to sign such statement as aforesaid:

10 Provided that this subsection shall not apply if the vendor had reasonable grounds for believing and did in fact believe, at the time the hire-purchase agreement was made, that—

- (i) the purchaser was living separate and apart from the spouse of the purchaser; or
- 15 (ii) the spouse of the purchaser was outside New South Wales:

20 Provided further that this subsection shall not apply if, at or before the time when the hire-purchase agreement was made, the purchaser has produced and delivered to the vendor a statutory declaration made by the purchaser stating that the purchaser was not married at the time of the delivery of such statutory declaration to the vendor, unless the vendor had reasonable grounds for believing that such statement was false.

25 (2) If any vendor to whom any such statutory declaration as is referred to in this section has been delivered, fails to preserve the same until the expiration of twelve months after the transaction in respect of which it was given is finally closed, he shall be guilty of an offence against this Act, and shall be liable—

- 30 (a) if a company—to a penalty of not less than twenty pounds and not exceeding two hundred pounds;
- 35 (b) if any other person—to a penalty of not less than ten pounds and not exceeding one hundred pounds or to imprisonment for a term of not more than two months, or to both such penalty and imprisonment.

Hire-purchase Agreements.

- 25.** Any provision in any hire-purchase agreement—
- (a) whereby the vendor or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in a hire-purchase agreement, or is relieved from liability for any such entry; or
- (b) whereby the right conferred on a purchaser by this Act to determine the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a purchaser by reason of the termination of the hire-purchase agreement by him under this Act; or
- (c) whereby a purchaser, after the determination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under this Act; or
- (d) whereby the right conferred on a purchaser by section twenty-two of this Act is excluded or restricted; or
- (e) whereby any person acting on behalf of the vendor in connection with the formation or conclusion of a hire-purchase agreement is treated as or deemed to be the agent of the purchaser; or
- (f) whereby the vendor is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase agreement,
- shall be void.

Avoidance
of certain
provisions.
cf. 1 & 2
Geo. VI,
c. 53, s. 5.

Hire-purchase Agreements.

SCHEDULE.

Secs. 6, 20.

Form of Notice to be delivered to Purchasers and Guarantors.

NOTICE.

To (Name of Purchaser or Guarantor).

5 THE following summary of certain rights which the law gives to a purchaser when the vendor of goods under a hire-purchase agreement takes possession of them is given as required by the Hire-purchase Agreements Act, 1941.

10 (Signature of Vendor.)

Summary.

1. (1) If the value of the goods at the time when the vendor takes possession of them, together with the total moneys actually paid (including the value of goods traded in), is greater than the price
15 of the goods, then the purchaser is entitled to recover from the vendor the amount of the difference.

(2) The value for this purpose is the net value—that is to say, the actual value less the vendor's costs, charges, and expenses in respect of taking possession and reselling or disposing of the goods
20 (whether or not they have actually been sold or disposed of).

In estimating such value evidence of the sale of the goods or of goods similar in quality is to be disregarded unless the value reflected by such sale is fair and reasonable.

(3) If the price comprises any amount in fact added for interest,
25 even though not so expressed, all interest for the time subsequent to the taking of possession is to be deducted in calculating the price.

2. Before taking action to recover the amount of this difference the purchaser must first serve on the vendor a written notice setting out the amount claimed and also the amount which the purchaser estimates to be the actual value of the goods at the time the
30 vendor took possession. This notice must be signed by the purchaser or his solicitor or agent and served on the vendor after the vendor has taken possession of the goods but not later than twenty-eight days after service of the statement required to be served when possession is so taken. Court proceedings for the recovery of the amount
35 claimed must be commenced not earlier than seven days and not later than three months after the service of the notice. The purchaser will lose any right to recover the amount claimed if he fails to serve the notice and commence the proceedings within the times mentioned
40 in this paragraph. The times may be extended, but this is in the discretion of the Court.

3. The vendor is required by law (where this notice is served after taking possession of the goods) to serve on the purchaser, together with this present notice, a statement showing the name and address
45 of the vendor, particulars of the price of the goods, the moneys paid and the value of any goods traded in, the amount which he

Hire-purchase Agreements.

he estimates to be the net value of the goods at the time of taking possession, and the balance estimated to be due to him or to the purchaser and any guarantor, as the case may be, and particulars as to the amount which must be paid as a condition of redelivering
5 the goods, the breaches of the agreement alleged to have been committed by the purchaser, the costs and expenses (if any) incurred by the vendor in remedying the breaches, the costs and expenses of taking possession, and an estimate of the costs and expenses of redelivering the goods.

- 10 4. The vendor, after taking possession of goods comprised in a hire-purchase agreement, cannot in any circumstances recover an amount which, together with the then net value of the goods and the money already paid, exceeds the price of the goods.

For the method of ascertaining the net value see subparagraph two
15 of paragraph one above.

5. The purchaser has a right on certain conditions to have the goods returned and the hiring and purchase continued as if it had not been interrupted. If he desires this he must within twenty-one days after the vendor serves the statement mentioned in paragraph
20 three above serve on the vendor a written notice, signed by himself or his solicitor or agent, requiring the vendor to redeliver the goods, and within seven days after the service of the notice the purchaser must—

- (a) pay or tender to the vendor such moneys as are then due
25 under the agreement (excluding such sums as become payable before due date by reason of any breach of the agreement);
(b) remedy any breach of the agreement or, if this is impossible because the vendor now has the goods, pay or tender to the
30 vendor the expenses reasonably and actually incurred by him to remedy the breach; and
(c) pay or tender the reasonable costs and expenses (not exceeding £10 in all) of the vendor in respect of his taking possession of the goods and redelivering them.

- 35 6. If any charge made, for interest or otherwise, is excessive or any provision of the agreement so unfair or oppressive as to be harsh and unconscionable or if the transaction is otherwise such that a court of equity would grant relief the transaction may be reopened by the court provided application is made within four months after
40 the vendor takes possession of the goods.

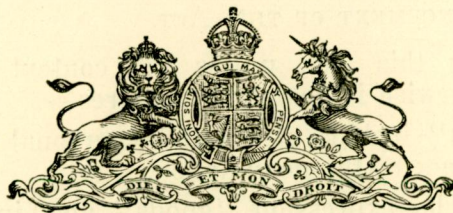
7. A guarantor is entitled to the same benefits as the purchaser whom he has guaranteed.

8. If bills of exchange or promissory notes have been given by the purchaser in respect of amounts payable under the hire-purchase
45 agreement, the vendor will, in the circumstances set out in section ten of the Act, be liable to indemnify the purchaser.

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 6 November, 1941.

New South Wales.



ANNO QUINTO

GEORGII VI REGIS.

Act No. 56, 1941.

An Act to amend the law relating to hire-purchase agreements; to amend the Usury, Bills of Lading, and Written Memoranda Act, 1902, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 17th November, 1941.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-purchase Agreements Act, 1941."

Short title
and division
into Parts.

(2)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

Hire-purchase Agreements.

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE AGREEMENTS.

PART III.—PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS MADE AFTER THE COMMENCEMENT OF THIS ACT.

Inter-
pretation.
cf. Act No.
14, 1939
(N.Z.), s. 2.

2. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

“Goods” include all chattels personal other than money or things in action.

The expression “goods” also includes any fixture which is comprised in a hire-purchase agreement where any party to the hire-purchase agreement has authority to sever such fixture from the realty.

“Guarantor” means a person who guarantees the performance by a purchaser of all or any of his obligations under a hire-purchase agreement; but does not include any person engaged, at the time of giving the guarantee, in the trade or business of selling goods of the same nature or description as the goods referred to in the hire-purchase agreement.

cf. 1 & 2
Geo. VI,
c. 53, s. 21.

“Hire-purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and where, by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall for the purpose of this Act be treated as a single agreement made at the time when the last agreement was made.

The expression “hire-purchase agreement” also includes an agreement for the purchase
of

Hire-purchase Agreements.

of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise); but does not include any agreement under which the property in the goods comprised therein passes absolutely at the time of the agreement to the person who agrees to purchase them or under which the purchaser is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement.

“Purchaser” means the person who takes or has taken goods from a vendor under a hire-purchase agreement and includes a person to whom the purchaser’s rights or liabilities under the agreement have passed by assignment or by operation of law. cf. 1 and 2
Geo. VI,
c. 56, s. 21.

“Vendor” means the person who lets or has let or sells or has sold goods to a purchaser under a hire-purchase agreement, and includes a person to whom the vendor’s property in the goods or any of the vendor’s rights or liabilities under the agreement have passed by assignment or by operation of law. cf. *Ibid.*

(2) A reference in this Act to the taking of possession by the vendor of goods comprised in a hire-purchase agreement does not include a reference to the taking of possession by the vendor as a result of the voluntary return of the goods by the purchaser.

(3) For the purposes of this Act the purchase-price of any goods shall be deemed to be the total amount of the moneys paid or payable and the value of any other consideration provided or to be provided by the purchaser to complete the purchase of the goods pursuant to the hire-purchase agreement: Ascertain
ment of
purchase-
price.

Provided that in the application of this subsection to a case in which—

(a) possession of the goods has been taken by the vendor; or

(b)

Hire-purchase Agreements.

- (b) the hire-purchase agreement is determined by the purchaser pursuant to section twenty-four of this Act,

where the purchase-price as so defined includes any amount which is in fact added in respect of hiring charges (whether expressed to be so added or not) there shall be deducted therefrom a sum equivalent to that part of that amount (exclusive of insurance premiums) which is applicable in respect of any period subsequent to the date on which the vendor takes possession of the goods or the agreement is so determined; and for the purposes of this provision the expression "hiring charges" means the amount by which the purchase price as so defined exceeds the price at which the goods comprised in the agreement might be purchased for cash.

Where any insurance premium has been included in the purchase-price as so defined there shall also be deducted therefrom the amount of any refund made in consequence of the termination of the agreement.

Ascertain-
ment of
value of
goods.

(4) For the purposes of this Act, unless the context otherwise requires, the value of any goods at the time when the vendor takes possession thereof or at the time when the hire-purchase agreement is determined by the purchaser pursuant to section twenty-four of this Act, shall be deemed to be their actual value at that time, less the reasonable costs, charges, and expenses of the vendor in respect of taking possession thereof and (whether or not the goods have subsequently been sold or disposed of by the vendor) the reasonable expenses of selling or otherwise disposing of them.

Evidence as to the price realised upon sale of the goods so taken or of goods similar in quality and other respects to the goods so taken, shall be deemed not to be relevant to the question of the actual value of the goods so taken unless the court determining such question is satisfied that the value reflected by such sale is fair and reasonable.

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PART II.

PROVISIONS APPLICABLE TO ALL HIRE-PURCHASE
AGREEMENTS.

3. (1) This Part shall be deemed to have commenced on the first day of August, one thousand nine hundred and forty-one. Commence-
ment and
application
of Part II.

(2) This Part shall apply to all hire-purchase agreements whether entered into before or after the commencement of this Part, and in the case of hire-purchase agreements entered into before such commencement, shall apply whether or not any option of purchase or right to have the property vested in the purchaser, which is expressed in the hire-purchase agreement, is still subsisting at such commencement.

(3) The provisions contained in this Part shall have effect notwithstanding any stipulation to the contrary.

4. (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement, the purchaser shall be entitled to recover from that vendor as a debt due and payable by him to the purchaser the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods, less the difference between the purchase-price of the goods and the value of the goods at the time when the vendor so takes possession thereof. Right of
purchaser
to recover
certain
amount
where
vendor
repossesses
goods.
cf. Act No.
14, 1939
(N.Z.), s. 3.

(2) No amount shall be recoverable under this section unless—

(a) the purchaser, after the vendor takes possession of any goods but not later than twenty-eight days after service of the statement and notice referred to in section six of this Act, serves on the vendor a notice in writing, signed by the purchaser or by his solicitor or agent, setting out the amount claimed under the provisions of this section and the amount which the purchaser estimates to be the actual value of the goods at the time when the vendor so took possession thereof; and

(b)

Hire-purchase Agreements.

- (b) proceedings for the recovery of the amount so claimed are commenced not earlier than seven days nor later than three months after the service of that notice:

Provided that the time prescribed by this subsection for serving the notice or for commencing the proceedings may, on an application made either before or after the expiry of that time to the court in which it is proposed to take the proceedings, be extended by the court for such further period and upon or subject to such conditions as the court thinks fit.

(3) If, before any such proceedings are commenced by the purchaser, the vendor serves on the purchaser an offer in writing to pay any amount to the purchaser in satisfaction of his claim under this section, then, unless the purchaser before commencing the proceedings notifies the vendor in writing of the acceptance of the amount so offered, the vendor shall be entitled to pay into court the amount so offered and upon so doing shall be entitled to the same rights as if the amount had been tendered to the purchaser before the proceedings were commenced.

Restriction
of amount
recoverable
by vendor.
cf. Act No.
14, 1939
(N.Z.), s. 4.

5. Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall not be entitled to recover under the provisions of the agreement any sum which, together with the value of the goods at the time when the vendor so takes possession thereof and the moneys paid and other consideration provided under the agreement by the purchaser and by any other person on his behalf, would amount to more than the purchase-price of the goods.

Vendor to
deliver
statement
and notice.
cf. *Ibid.* s. 5.

6. (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement he shall, within twenty-eight days thereafter, serve on the purchaser and on every guarantor of the purchaser a statement showing the following particulars:—

- (a) The name of the vendor so taking possession of the goods and an address at which any notice under this Act may be served on such vendor;
- (b) (i) The purchase-price of the goods;
- (ii)

Hire-purchase Agreements.

- (ii) The total amount of the moneys paid and the value of any other consideration provided by the purchaser and by any other person on behalf of the purchaser;
 - (iii) The amount which the vendor estimates to be the value of the goods at the time when he so took possession thereof, showing separately the actual value of the goods and the costs, charges and expenses referred to in subsection four of section two of this Act; and
 - (iv) The balance estimated to be due to the vendor or to the purchaser and any guarantor of the purchaser, as the case may be;
- (c) (i) The amounts (if any) or the mode of ascertaining the amounts which, pursuant to paragraph (a) of subsection three of section seven of this Act, will be payable by the purchaser as a condition of redelivering the goods of which possession has been taken by the vendor;
- (ii) The breach or breaches of the agreement which the vendor alleges have been committed by the purchaser, and, where the vendor has actually incurred any costs and expenses in remedying such breach or breaches, the amount of the costs and expenses so incurred;
 - (iii) The costs and expenses incurred by the vendor in respect of his taking possession of the goods and an estimate of the costs and expenses of redelivering the same to the purchaser if required so to do:

Provided that, in any case where, after the commencement of this Part and before the date (hereinafter called the "date of assent") upon which the assent of His Majesty to this Act is signified, a vendor takes possession of any goods comprised in a hire-purchase agreement the period of twenty-eight days referred to in the foregoing provisions

Hire-purchase Agreements.

provisions of this subsection shall be calculated from the date of assent instead of from the date upon which possession is so taken.

(2) The vendor shall, with the statement, serve on the purchaser and on every guarantor of the purchaser a notice containing a summary of the rights and privileges conferred by this Act on purchasers. Every notice under this subsection shall be in the form contained in the Schedule to this Act and shall be printed in type not smaller than ten-point face:

Provided that the Governor may from time to time by proclamation published in the Gazette, amend the form contained in the Schedule or substitute another form therefor, and may from time to time in like manner vary the size of the type to be used in the notice.

(3) A vendor who takes possession of any goods comprised in a hire-purchase agreement and makes default in complying with the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds.

Vendor to
retain
possession of
repossessed
goods for
twenty-one
days.
cf. Act No.
14, 1939
(N.Z.), s. 6.

7. (1) Where a vendor after the date upon which the assent of His Majesty to this Act is signified takes possession of any goods comprised in a hire-purchase agreement he shall not, without the consent of the purchaser (which consent shall be in writing and shall be witnessed by some person other than the vendor or the solicitor for or agent or employee of the vendor), sell or dispose of the goods or part with possession thereof until after the expiration of a period of twenty-one days from the date of service of the statement and notice referred to in section six of this Act, or of the period referred to in subsection three of this section, whichever period last expires.

Purchaser's
right to
redelivery
of goods.

(2) The purchaser may, within the period of twenty-one days referred to in subsection one of this section, serve on the vendor a notice in writing signed by the purchaser or by his solicitor or agent requiring the vendor to redeliver the goods to the purchaser.

(3) If within seven days after the service of any notice as aforesaid the purchaser—

- (a) pays or tenders to the vendor such moneys (if any) as are due by the purchaser under the hire-purchase

Hire-purchase Agreements.

hire-purchase agreement up to the date of the payment or tender (and for the purposes of this paragraph the agreement shall be deemed to have continued in full force and effect up to that date and any stipulation accelerating the due date of any moneys in the event of a breach of the agreement shall not be taken into account);

- (b) remedies any breach of the agreement or, where he is unable to remedy the breach by reason of the fact that the vendor has possession of the goods, pays or tenders to the vendor the costs and expenses reasonably and actually incurred by the vendor in doing any act, matter, or thing necessary to remedy the breach; and
- (c) pays or tenders to the vendor the reasonable costs and expenses, not exceeding ten pounds in all, of the vendor in respect of his taking possession of the goods and redelivering them to the purchaser in any case where the purchase price of the goods does not exceed three hundred pounds, and in any other case pays or tenders to the vendor the costs and expenses actually and reasonably incurred by the vendor in respect of his taking possession of the goods and the reasonable costs and expenses of redelivering them to the purchaser,

the vendor shall forthwith redeliver the goods to the purchaser and the goods shall be received and held by the purchaser pursuant to the terms of the hire-purchase agreement as if a breach had not occurred and the vendor had not taken possession of the goods.

(4) Where the goods are redelivered to the purchaser as aforesaid and any breach has not been remedied the vendor shall not have any right arising out of that breach to take possession of the goods unless at the time of the redelivery he serves a notice in writing on the purchaser specifying the breach and requiring it to be remedied and the purchaser fails to remedy the breach within fourteen days after the service of the notice.

Hire-purchase Agreements.

Provisions
as to
guarantors.
cf. Act No.
14, 1939
(N.Z.), s. 7.

8. (1) Except as provided in this Act, a guarantor shall not by reason of the operation of this Act be discharged from liability under his guarantee.

(2) The liability of a guarantor shall continue, notwithstanding that the vendor, pursuant to the provisions of a hire-purchase agreement, takes possession of the goods comprised therein (and whether or not the goods are redelivered to the purchaser pursuant to this Act), but nothing in this subsection shall operate to preserve the liability of a guarantor where the vendor and the purchaser enter into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor shall be liable to any further or other extent than the purchaser the performance of whose obligations he guarantees, but nothing in this Act shall affect any agreement by the guarantor binding him to the performance of any obligation which is not one of the obligations imposed on the purchaser under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where a vendor takes possession of any goods comprised in a hire-purchase agreement any guarantor who has paid any moneys to the vendor in accordance with his guarantee shall have the like right in like manner to recover those moneys as he would have had if he were the purchaser of the goods, but for the purpose of calculating the amount received by the vendor all moneys paid and the value of any other consideration provided by the purchaser shall be deemed to have been paid by the guarantor:

Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him:

Provided also that for the purpose of calculating the aggregate of the amounts which two or more guarantors are entitled to recover under the provisions of this subsection the moneys paid to the vendor by the guarantors shall be deemed to have been paid by one guarantor.

Reopening
of hire-
purchase
transactions.
cf. *Ibid.* s. 8.

9. (1) In any proceedings taken under section four of this Act, or taken in any court in respect of any matter arising out of a hire-purchase agreement, or in any proceedings instituted under subsection four of this section

Hire-purchase Agreements.

section, if it appears to the court that the interest directly or indirectly charged or included in the amounts payable under the provisions of the agreement is excessive, or that the amounts charged for expenses, inquiries, fines, bonuses, premiums, renewals, or any other charges are excessive, or that the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction and take an account between the parties thereto.

(2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between the parties, and relieve the purchaser and any guarantor from payment of any sum in excess of such sum in respect of purchase-money, interest, and charges as the court, having regard to the risk and all the other circumstances, adjudges to be fairly and reasonably payable, and may set aside, either wholly or in part, or revise, or alter any agreement made or security given in connection with the transaction, and may give judgment for any party for such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to that party under the agreement and may, if it thinks fit, give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the vendor has shared in the profits of or has any beneficial interest, prospectively or otherwise, in the transaction which the court holds to be harsh and unconscionable, the court may add that person as a party to the case, and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession, and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted under this subsection by the purchaser or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

In

Hire-purchase Agreements.

In any such proceedings the court shall have and may exercise all or any of the powers conferred by subsections one to three, both inclusive, of this section, notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived:

Provided that no proceedings under this subsection shall be instituted after the expiry of four months from the time when the vendor, after taking possession of the goods, has served the statement and notice referred to in section six of this Act, or (where he has not taken possession thereof) from the time when the transaction is closed.

Vendor to indemnify purchaser in certain events.

10. (1) Where the liability of the purchaser, as ascertained under section five or section nine or section twenty-four or section twenty-five of this Act, is less than that part of the purchase price of goods comprised in a hire-purchase agreement which is outstanding at the date upon which such liability is so ascertained, and bills of exchange or promissory notes have been given by the purchaser or any guarantor in respect of amounts payable under the hire-purchase agreement, and the payment in due course of the bills of exchange or promissory notes would result in payment of an amount in excess of the liability of the purchaser as so ascertained, the vendor shall be liable to indemnify the purchaser and any guarantor in respect of such excess.

(2) This section shall apply to a case in which bills of exchange or promissory notes have been given before as well as to a case in which they are given after the commencement of this Part.

Duty of vendors to supply documents and information.
cf. 1 & 2
Geo. VI,
c. 53, s. 6.

11. (1) At any time before the final payment has been made under a hire-purchase agreement any person entitled to enforce the agreement against the purchaser shall, within four days after he has received a request in writing from the purchaser and the purchaser has paid or tendered to him the sum of one shilling for expenses, supply to the purchaser a copy of the agreement or of any memorandum or note of the agreement, together with

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with a statement signed by the said person or his agent showing—

- (a) the amount paid by or on behalf of the purchaser;
- (b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and
- (c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(2) In the event of a failure without reasonable cause to comply with the requirements of subsection one of this section, then, while the default continues—

- (a) no person shall be entitled to enforce the agreement against the purchaser or to enforce any contract of guarantee relating to the agreement, and the vendor shall not be entitled to enforce any right to recover the goods from the purchaser; and
- (b) no security given by the purchaser in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the purchaser or the guarantor by any holder thereof,

and, if the default continues for a period of one month, the defaulter shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

12. A purchaser who is liable to make payments in respect of two or more hire purchase agreements to the same vendor shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under

Appropriation of payments in respect of hire-purchase agreements.
cf. 1 & 2 Geo. VI, c. 53, s. 9.

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under any two or more of the agreements in such proportions as he thinks fit, and if he fails to make any such appropriation as aforesaid, the payment shall, by virtue of this section, be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the proportions which those sums bear to one another.

Lien for work done on goods under hire-purchase agreement. cf. Act No. 14, 1939 (N.Z.), s. 10.

13. Where a worker does work upon any goods comprised in a hire-purchase agreement in such circumstances that if the goods were the property of the purchaser the worker would be entitled to a lien thereon for the amount or value of the work, he shall be entitled to a lien accordingly notwithstanding that the goods are not the property of the purchaser:

Provided that the lien shall not be valid and enforceable against the vendor if the hire-purchase agreement contains a provision prohibiting the creation of a lien by the purchaser and the worker before commencing the work has actual notice of that provision.

Attempt to defraud. *Ibid.* s. 11.

14. (1) Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds or attempts to defraud the vendor, shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds or to imprisonment for a period not exceeding three months.

Duty of purchaser to give information as to whereabouts of goods. cf. 1 & 2 Geo. VI, c. 53, s. 7.

(2) Where by virtue of a hire-purchase agreement a purchaser is under a duty to keep the goods comprised in the agreement in his possession or control, the purchaser shall, on service upon him of a request in writing from the vendor, inform the vendor where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

(3) Where the vendor under a hire-purchase agreement has reasonable grounds for believing that the goods comprised in the agreement are in the possession or control of some person other than the purchaser, he may serve upon such person a request in writing that such person shall give information as to whether or not the goods are in his possession or control and,

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and, if they are, then as to where the goods are at the time when the information is given or, if sent by post, at the time of posting.

(4) If a purchaser or a person upon whom a request has been served under subsection three of this section fails without reasonable cause to give the said information within fourteen days of the service of the notice, he shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

Without prejudice to the generality of the expression "reasonable cause" a purchaser or person upon whom any notice under this section has been served otherwise than by delivery of the notice to him personally, shall be deemed to have reasonable cause for failing to give the information required if he proves that he did not in fact receive the notice and that he was not aware of the fact that the notice had been served.

15. (1) No term of any hire-purchase agreement shall prevent a purchaser from claiming or being awarded damages or any other relief for fraud or misrepresentation of the vendor or any person acting or purporting to act on behalf of the vendor in connection with any transaction of hire-purchase.

Liability
for fraud,
etc.
cf. Act No.
2049 of
1931 (S.A.),
s. 7.

(2) Any provision in a hire-purchase agreement whereby the vendor or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in a hire-purchase agreement, or is relieved from liability for any such entry shall, as from the date upon which the assent of His Majesty to this Act is signified, be void.

Entry pro-
vision void.
cf. 1 & 2
Geo. VI, c.
53, s. 5 (a).

16. (1) If in connection with the sale of any goods the person by whom or on whose behalf the sale is negotiated (hereinafter called the "owner") arranges that some other person (hereinafter called "the lender") shall enter into a hire-purchase agreement in relation to those goods with a purchaser, the lender shall be in the same position as regards the hire-purchase agreement as if it had been made between the owner as vendor and the purchaser, and had been duly assigned to the lender by the owner.

Provisions
as to finan-
ciers enter-
ing into
agreements
as owners.
cf. Act No.
2049 of
1931 (S.A.),
s. 12.

(2)

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(2) Nothing in this section shall affect any right of the purchaser against the owner or against the lender, either under the terms of the hire-purchase agreement, the provisions of this Act, or otherwise.

Service of
notices.
cf. Act No.
14, 1939
(N.Z.),
s. 12.

17. Any notice or other document required or authorised by this Act to be served shall be in writing and shall be sufficiently served—

- (a) if delivered personally; or
- (b) if left at the usual or last known place of abode or business in or out of New South Wales of the person to be served, or at an address specified for that purpose in the hire-purchase agreement or at the address specified for that purpose in the statement referred to in section six of this Act; or
- (c) if sent by post in a registered letter addressed to him by name at that place of abode or business or address; and such service shall be deemed to be made at the time at which the registered letter would be delivered in the ordinary course of post.

No-claim
rebates.

18. Where in respect of the insurance of goods comprised in a hire-purchase agreement any no-claim rebate or any rebate of the like nature is allowed by the insurer, the purchaser shall be entitled to the benefit of that rebate.

Amendment
of Act No.
43, 1902.
(Conse-
quential.)

19. (1) The Usury, Bills of Lading, and Written Memoranda Act, 1902, as amended by subsequent Acts, is amended by omitting section thirteen.

Amendment
of Act No.
44, 1931.
(Revision.)
Proceedings
for recovery
of possession
of goods
comprised
in hire-
purchase
agreement.

(2) The Interest Reduction Act, 1931, is amended by omitting section fifteen.

20. (1) Proceedings by the vendor under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in a hire-purchase agreement, may be taken under section thirty-two of the Police Offences Act, 1901-1936, as amended by subsequent Acts, and by subsection two of this section.

(2)

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(2) The Police Offences Act, 1901-1936, is amended by inserting at the end of section thirty-two the following new subsection:—

(6) (a) This section shall extend to proceedings for the recovery of the possession of goods comprised in a hire-purchase agreement without restriction as to the value of such goods.

(b) For the purpose only of the application of this section to proceedings for the recovery of the possession of goods comprised in a hire-purchase agreement—

(i) subsection one of this section shall have effect as if the words “the value of which is not greater than twenty pounds, and not being deeds, muniments, or papers relating to any property of greater value than fifty pounds” were omitted;

(ii) subsection three of this section shall have effect as if the words “not being greater than twenty pounds” were omitted.

(c) In any proceedings under this section for the recovery of the possession of goods comprised in a hire-purchase agreement, the complaint may be made to and the summons may be issued by any Justice, but, subject to this exception, the jurisdiction in respect of such proceedings conferred on a Justice by this section shall be exercisable only by a stipendiary magistrate or a police magistrate sitting alone.

21. (1) No proceedings relating to a hire-purchase agreement shall be brought or taken in any court of petty sessions other than a court of petty sessions holden before a stipendiary magistrate or police magistrate sitting alone.

Jurisdiction
of court of
petty
sessions.

(2) A court of petty sessions holden before a stipendiary magistrate or police magistrate sitting alone shall, in addition to the jurisdiction which might be exercised by it if this section had not been enacted, have jurisdiction in respect of proceedings relating to a hire-purchase agreement in all cases in which the purchase price of the goods comprised in the agreement does not exceed two hundred and fifty pounds.

(3)

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(3) The costs of any proceedings relating to a hire-purchase agreement which are brought or taken in a court of petty sessions shall be in the discretion of the court, and the court, when allowing any costs to any party in such proceedings, may assess the amount thereof

Any order made under the authority of this Act for the payment of money or of costs by a court of petty sessions shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, and be enforceable as such under the provisions of that Act.

This subsection shall not be construed so as to affect in any way the jurisdiction of any other court in relation to costs.

PART III.

PROVISIONS APPLICABLE TO HIRE-PURCHASE AGREEMENTS MADE AFTER THE COMMENCEMENT OF THIS ACT.

Application
of Part III.

22. (1) This Part shall except where express provision is made to the contrary in this Act apply to all hire-purchase agreements made on or after the first day of August, one thousand nine hundred and forty-one.

(2) The provisions contained in this Part shall have effect notwithstanding any stipulation to the contrary.

Hire-purchase agree-
ments to be
in writing.
cf. Act No.
22, 1931
(W.A.), s. 3.

23. (1) It shall be the duty of every vendor under a hire-purchase agreement which is entered into after the expiration of one month after the commencement of this Act to have the agreement reduced into writing and to deliver a copy of the agreement to the purchaser within twenty-eight days after the agreement has been entered into, and also to deliver to the purchaser a notice in writing containing a summary of the rights and privileges conferred by this Act on purchasers, which summary shall be in the form for the time being contained in the Schedule to this Act, and the word "writing" in this subsection shall be deemed to include such printing only as is in type not smaller than eight-point face.

(2)

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(2) Every hire-purchase agreement shall specify—

- (a) the price at which the goods the subject of the agreement might be purchased for cash (in this subsection referred to as the "cash price");
- (b) the difference between the purchase-price of the goods as defined in this Act, together with all charges and other sums which under the hire-purchase agreement are payable by the purchaser, and such cash price.

(3) Any vendor who neglects or fails to comply with any of the requirements of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty pounds.

(4) Non-compliance with this section shall not invalidate any hire-purchase agreement.

24. (1) A purchaser shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive the amounts payable under the agreement.

Right of purchaser to determine hire-purchase agreement.
cf. 1 & 2
Geo. VI,
c. 53, s. 4.

(2) Where a hire-purchase agreement is determined under this section the following provisions shall have effect:—

- (a) If the total amount of the moneys paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined exceeds the purchase price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section, the purchaser may recover such excess from the vendor as a debt due and payable by him to the purchaser.
- (b) If the purchase-price of the goods and the amount of any damages for which the purchaser may be liable under subsection three of this section exceeds the total amount of the moneys paid

Hire-purchase Agreements.

paid and the value of any other consideration provided by the purchaser under the agreement in respect of the goods and the value of the goods at the time when the agreement is determined, the vendor may recover such excess from the purchaser as a debt due and payable by him to the vendor, but shall not be entitled to recover any additional sum whether as penalty or compensation or otherwise in consequence of the determination of the agreement.

(3) Where a hire-purchase agreement has been determined under this section, the purchaser shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

(4) Where a purchaser, having determined a hire-purchase agreement under this section, wrongfully retains possession of the goods, then, in any action brought by the vendor to recover possession of the goods from the purchaser, the court shall order the goods to be delivered to the vendor.

(5) Nothing in this section shall prejudice any right of a purchaser to determine a hire-purchase agreement otherwise than by virtue of this section.

Right to
complete at
any time.

25. In every hire-purchase agreement there shall be implied a provision that if the purchaser gives notice in writing to any person entitled or authorised to receive the amounts payable under the hire-purchase agreement that he desires to complete the purchase of the goods comprised in the hire-purchase agreement before the time when, in accordance with the hire-purchase agreement, the property will or may pass, and if, in such notice or in a subsequent notice, he appoints a day for completion of the purchase, the purchase may be completed on the day so appointed, by payment of that part of the purchase-price which is then outstanding.

For the purpose of ascertaining the part of the purchase-price which is outstanding under a hire-purchase agreement on the day so appointed, where the purchase-price includes any amount which is in fact added in respect of hiring charges (whether expressed to be so added or not) there shall be deducted therefrom a sum equivalent

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equivalent to that part of that amount (exclusive of insurance premiums) which is applicable in respect of any period subsequent to the day so appointed, and for the purposes of this provision the expression "hiring charges" means the amount by which the purchase price as defined in subsection three of section two of this Act exceeds the price at which the goods comprised in the agreement might be purchased for cash.

26. (1) In every hire-purchase agreement there shall be—

- (a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the vendor that he shall have a right to sell the goods at the time when the property is to pass;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass;
- (d) except where the goods are let or sold as second-hand goods, and the hire-purchase agreement contains a statement to that effect, an implied condition that the goods shall be of merchantable quality, so, however, that no such condition shall be implied by virtue of this paragraph as regards defects of which the vendor could not reasonably have been aware at the time when the agreement was made, or, if the purchaser has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed.

Conditions and warranties to be implied in hire-purchase agreements. cf. 1 and 2 Geo. VI, c. 53, s. 8.

(2) Where the purchaser expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(3) The warranties and conditions set out in subsection one of this section shall be implied notwithstanding any agreement to the contrary, and the vendor shall not be entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection

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subsection two of this section unless he proves that before the agreement was made the provision was brought to the notice of the purchaser and its effects made clear to him.

(4) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

Regulation
of hire-
purchase
agreements
with
married
persons.
cf. S.A. Act,
No. 59,
1940, s. 24.

27. (1) No hire-purchase agreement which relates to household furniture or effects used or intended to be used by the purchaser in his home and which is made with a purchaser who is married shall be enforceable unless—

- (a) (i) the hire-purchase agreement contains a statement in writing signed by the spouse of the purchaser signifying the consent of such spouse to the hire-purchase agreement; and
- (ii) such statement is so signed by the spouse at or before the time when the hire-purchase agreement was made; or
- (b) the purchaser, at or before the time when the hire-purchase agreement was made, has produced and delivered to the vendor an authority, signed by the spouse of the purchaser, to pledge the credit of the purchaser and the spouse or of either of them up to a specified limit which is not more than thirty pounds, and the purchase price of the goods comprised in the hire-purchase agreement, together with all other moneys owing or payable by the purchaser and the spouse or either of them to the vendor, does not exceed the limit so specified; or
- (c) the purchaser, at or before the time when the hire-purchase agreement was made, has produced and delivered to the vendor a statutory declaration made by the purchaser to the effect that the spouse of the purchaser was under such a legal incapacity as to render such spouse unable to sign such statement as aforesaid:

Provided that this subsection shall not apply if the vendor had reasonable grounds for believing and did in fact

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fact believe, at the time the hire-purchase agreement was made, that—

- (i) the purchaser was living separatē and apart from the spouse of the purchaser; or
- (ii) the spouse of the purchaser was outside New South Wales:

Provided further that this subsection shall not apply if, at or before the time when the hire-purchase agreement was made, the purchaser has produced and delivered to the vendor in a case where the residence of the purchaser is situated more than five miles from the nearest telegraph office and the hire-purchase agreement was made at such residence, an instrument in writing signed by the purchaser, or, in any other case, a statutory declaration made by the purchaser, in which instrument or statutory declaration the purchaser states that he was not married at the time of the delivery of such instrument or statutory declaration to the vendor, unless the vendor had reasonable grounds for believing that such statement was false.

Any purchaser who makes a false statement in any such instrument shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

(2) (a) This subsection shall apply to and in respect of a hire-purchase agreement of the nature referred to in subsection one of this section where the purchase price of the goods comprised in the agreement does not exceed ten pounds.

(b) Where the vendor, under any such hire-purchase agreement, serves (by personal delivery) on the spouse of the purchaser, within seven days after the making of the agreement, a notice in writing that such agreement has been made, and the spouse of the purchaser does not, within seven days after service of such notice, serve on the vendor a notice in writing that he objects to the making of the hire-purchase agreement, the agreement shall not, by reason only of subsection one of this section, be unenforceable.

(c) Where the spouse of the purchaser serves such notice of objection the hire-purchase agreement shall cease to be binding on the parties thereto; and thereupon
thē

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the vendor shall refund all moneys paid and the value of any consideration provided by the purchaser and shall be entitled to recover possession of the goods comprised in the agreement.

(3) If any vendor to whom any such authority or statutory declaration or instrument as is referred to in this section has been delivered, fails to preserve the same until the expiration of twelve months after the transaction in respect of which it was given is finally closed, he shall be guilty of an offence against this Act, and shall be liable—

- (a) if a company—to a penalty of not less than twenty pounds and not exceeding two hundred pounds;
- (b) if any other person—to a penalty of not less than ten pounds and not exceeding one hundred pounds or to imprisonment for a term of not more than two months, or to both such penalty and imprisonment.

(4) This section shall apply to all hire-purchase agreements made after the commencement of this Act.

Avoidance
of certain
provisions.
cf. 1 & 2
Geo. VI,
c. 53, s. 5.

28. Any provision in a hire-purchase agreement—

- (a) whereby the right conferred on a purchaser by this Act to determine the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a purchaser by reason of the termination of the hire-purchase agreement by him under this Act; or
- (b) whereby a purchaser, after the determination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under this Act; or
- (c) whereby the right conferred on a purchaser by section twenty-five of this Act is excluded or restricted; or

(d)

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- (d) whereby any person acting on behalf of the vendor in connection with the formation or conclusion of a hire-purchase agreement is treated as or deemed to be the agent of the purchaser; or
- (e) whereby the vendor is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase agreement,
- shall be void.

29. (1) Goods which are comprised in a hire-purchase agreement shall, whilst the agreement is in force, be incapable of becoming fixtures to realty.

Goods comprised in hire-purchase agreements not to be fixtures.

(2) This section shall apply to all hire-purchase agreements made after the commencement of this Act.

cf. Act No. 2049 of 1981 (S.A.), s. 10.

SCHEDULE.

Sec. 6, 23.

Form of Notice to be delivered to Purchasers and Guarantors.

NOTICE.

To (*Name of Purchaser or Guarantor*).

THE following summary of certain rights which the law gives to a purchaser when the vendor of goods under a hire-purchase agreement takes possession of them is given as required by the Hire-purchase Agreements Act, 1941.

(Signature of Vendor.)

Summary.

1. (1) If the value of the goods at the time when the vendor takes possession of them, together with the total moneys actually paid (including the value of goods traded in), is greater than the price of the goods, then the purchaser is entitled to recover from the vendor the amount of the difference.

(2) The value for this purpose is the net value—that is to say, the actual value less the vendor's costs, charges, and expenses in respect of taking possession and reselling or disposing of the goods (whether or not they have actually been sold or disposed of).

In estimating such value evidence of the sale of the goods or of goods similar in quality is to be disregarded unless the value reflected by such sale is fair and reasonable.

(3) If the price comprises any amount in fact added for hiring charges even though not so expressed, that part of the hiring charges applicable in respect of the time subsequent to the taking of possession is to be deducted in calculating the price.

If

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If the price includes any insurance premium any refund in consequence of the termination of the agreement is also to be deducted in calculating the price.

2. Before taking action to recover the amount of this difference the purchaser must first serve on the vendor a written notice setting out the amount claimed and also the amount which the purchaser estimates to be the actual value of the goods at the time the vendor took possession. This notice must be signed by the purchaser or his solicitor or agent and served on the vendor after the vendor has taken possession of the goods but not later than twenty-eight days after service of the statement required to be served when possession is so taken. Court proceedings for the recovery of the amount claimed must be commenced not earlier than seven days and not later than three months after the service of the notice. The purchaser will lose any right to recover the amount claimed if he fails to serve the notice and commence the proceedings within the times mentioned in this paragraph. The times may be extended, but this is in the discretion of the Court.

3. The vendor is required by law (where this notice is served after taking possession of the goods) to serve on the purchaser, together with this present notice, a statement showing the name and address of the vendor, particulars of the price of the goods, the moneys paid and the value of any goods traded in, the amount which he estimates to be the net value of the goods at the time of taking possession, and the balance estimated to be due to him or to the purchaser and any guarantor, as the case may be, and particulars as to the amount which must be paid as a condition of redelivering the goods, the breaches of the agreement alleged to have been committed by the purchaser, the costs and expenses (if any) incurred by the vendor in remedying the breaches, the costs and expenses of taking possession, and an estimate of the costs and expenses of redelivering the goods.

4. The vendor, after taking possession of goods comprised in a hire-purchase agreement, cannot in any circumstances recover an amount which, together with the then net value of the goods and the money already paid, exceeds the price of the goods.

For the method of ascertaining the net value see subparagraph two of paragraph one above.

5. The purchaser has a right on certain conditions to have the goods returned and the hiring and purchase continued as if it had not been interrupted. If he desires this he must within twenty-one days after the vendor serves the statement mentioned in paragraph three above serve on the vendor a written notice, signed by himself or his solicitor or agent, requiring the vendor to redeliver the goods, and within seven days after the service of the notice the purchaser must—

- (a) pay or tender to the vendor such moneys as are then due under the agreement (excluding such sums as become payable before due date by reason of any breach of the agreement);
- (b)

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- (b) remedy any breach of the agreement or, if this is impossible because the vendor now has the goods, pay or tender to the vendor the expenses reasonably and actually incurred by him to remedy the breach; and
- (c) pay or tender the reasonable costs and expenses (not exceeding £10 in all) of the vendor in respect of his taking possession of the goods and redelivering them in any case where the purchase price of the goods does not exceed £300 and in any other case pay or tender the costs and expenses actually and reasonably incurred by the vendor in respect of his taking possession of the goods and the reasonable costs and expenses of redelivering them.

6. If any charge made, for interest or otherwise, is excessive or any provision of the agreement so unfair or oppressive as to be harsh and unconscionable or if the transaction is otherwise such that a court of equity would grant relief the transaction may be reopened by the court provided application is made within four months after the vendor takes possession of the goods.

7. A guarantor is entitled to the same benefits as the purchaser whom he has guaranteed.

8. If bills of exchange or promissory notes have been given by the purchaser in respect of amounts payable under the hire-purchase agreement, the vendor will, in the circumstances set out in section ten of the Act, be liable to indemnify the purchaser.

In the name and on behalf of His Majesty I assent to this Act.

WAKEHURST,
Governor.

*Government House,
Sydney, 17th November, 1941.*

