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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1926.

A BILL

To make provision for the rights of sureties in certain cases ; to enable the reopening of hire purchase transactions in certain cases ; to amend the Usury, Bills of Lading, and Written Memoranda Act, 1902 ; 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 the same, as follows :—

1. This Act may be cited as the "Usury, Bills of Short title. Lading, and Written Memoranda (Amendment) Act, 1926."

2. The Usury, Bills of Lading, and Written Memoranda Act, 1902, is amended by inserting next after section eight the following new subheading and section:—

Amendment
of Act No. 43,
1902.
New section
8A.

Satisfied securities.

8A. Every person who being surety for the debt or duty of another or being liable with another for any debt or duty shall pay such debt or perform such duty shall be entitled to have assigned to him or to a trustee for him every judgment specialty or other security which shall be held by the creditor in respect of such debt or duty whether such judgment specialty or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty: and such person shall be entitled to stand in the place of the creditor and to use all the remedies and if need be and upon a proper indemnity to use the name of the creditor in any action or other proceeding at law or in equity in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him:

A surety who discharges the liability to be entitled to assignment of all securities held by the creditor.
Q. 31 Vic.
No. 36, s. 4.
Vict. No.
2,733, s. 67.

Provided always that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor by the means aforesaid more than the just proportion to which as between those parties themselves such lastmentioned person shall be justly liable.

3. The Usury, Bills of Lading, and Written Memoranda Act, 1902, is further amended—

Further amend-
ment of
Act No. 43, 1902.

- (a) by omitting from section twelve the words "ten or eleven" and by inserting in lieu thereof the words "or ten";

Sec. 12.

(b)

- (b) by inserting after section twelve the following New sec. 13.
new subheading and section :—

Hire purchase agreements.

13. (1) When by any instrument it is expressed that any person lets any chattels to any other person at a rent to be paid by instalments upon the terms that the property in the chattels shall pass to the other person upon payment of the instalments but not otherwise, and proceedings are taken in any court in respect of any matter arising out of the transaction, the court, if satisfied by evidence that—

Reopening
hire purchase
transactions.
Qld. 7 Geo. V,
No. 13, s. 5.
S.A. 15
Geo. V,
No. 1,617,
s. 5.

- (a) the amount charged by the instalments (and in especial whether directly or indirectly in respect of interest on the purchase money outstanding) is excessive; or
- (b) the amounts charged for expenses, inquiries, fines, bonus, premium, or any other charges are excessive; or
- (c) the transaction is harsh and unconscionable, or is such that a court of equity would give relief,

may—

- (i) reopen the transaction and take an account between the parties thereto; and
- (ii) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account in connection with the transaction; and
- (iii) relieve the lessee from payment of any sum in excess of the sum adjudged by the court to be fairly payable in respect of purchase money, interest, and charges as the court, having regard to the risk, the value of the chattels, the time of payment, and all the other circumstances, may adjudge to be reasonable; and

(iv)

- (iv) if any such excess has been paid or allowed in account by the lessee, order the lessor to repay it; and
- (v) set aside either wholly or in part, or revise or alter, any agreement made in connection with the transaction.

(2) The court shall have power, notwithstanding any provision or agreement to the contrary, to entertain an application by the lessee for relief, notwithstanding that the time for payment of any instalment has not arrived.

(3) When it appears to the court that any person other than the lessor has shared in the profits of or has any beneficial interest, prospectively or otherwise, in the transaction, the court may cite such person as a party to the proceedings and may make such order in respect to such person as it deems fit.

(4) No proceeding to obtain any relief under this section shall be taken after twelve months from the time when the transaction in respect of or in connection with which relief is sought was finally closed.

(5) For the purposes of effectually carrying out this section, all such orders may be made and directions given by the court as it deems necessary or proper.
