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ELIZABETHAE II REGINAE

A.D. 1960

No. 69 of 1960

An Act relating to the form and content of hire-purchase agreements, the rights and duties of parties to such agreements, and for other purposes.

[Assented to 1st December, 1960.]

BE IT ENACTED by the Governor of the State of South Australia with the advice and consent of the Parliament thereof as follows :

PART I.

PART I.

PRELIMINARY.

Short title,
commence-
ment, repeal
and division
into Parts.

1. (1) This Act may be cited as the "Hire-Purchase Agreements Act, 1960".

(2) This Act shall come into operation on a day to be fixed by proclamation.

(3) (a) The Hire-Purchase Agreements Act, 1931 and Part IV of the Money-lenders Act, 1940, are repealed.

(b) Notwithstanding such repeal the said enactments shall continue to have the same operation and effect in relation to hire-purchase agreements entered into before the commencement of this Act as if this Act had not been enacted.

Arrangement
of Act.

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

PART I.—Preliminary.

PART II.—Formation and contents of hire-purchase agreements.

PART III.—Protection of hirers.

DIVISION I.—Warranties and conditions.

DIVISION II.—Statutory rights of hirers.

DIVISION III.—Early completion of agreements.

DIVISION IV.—Voluntary return of goods.

DIVISION V.—Repossessions.

PART IV.—Guarantees.

PART V.—Insurance.

PART VI.—Miscellaneous.

PART VII.—Minimum Deposits.

2. (1) In this Act unless inconsistent with the context or Interpreta-
tion. subject-matter—

“court” means a local court of full jurisdiction.

“dealer” means a person not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged.

“goods” includes all chattels personal other than money or things in action.

“guarantor” means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement, but does not include the dealer or a person engaged, at the time of the giving of the guarantee, in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement.

“hire-purchase agreement” includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether such agreement describes such instalments as rent or hire or otherwise), but does not include any agreement—

(a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or

(b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling

s. 2. SCHILLING v. TILL (1931) S.A.S.R. 31; 10 Austn. Digest 240. Where there was an oral agreement for the sale of a vehicle, followed by the execution of a hire-purchase agreement, held that the transaction was a concluded agreement for sale and purchase on credit.

SHEPARD AND ANOTHER v. BROWN BROTHERS LIMITED (1935) S.A.S.R. 177. Held that a document purporting to be a hire-purchase agreement was an assurance and licence as security, and therefore a bill of sale.

PART I.

goods of the same nature or description as the goods comprised in the agreement.

“hirer” means the person to whom goods are let, hired, or agreed to be sold, under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“owner” means the person letting, hiring, or agreeing to sell, goods under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“period of agreement” means the period between the commencement of the hiring and the time provided by the the agreement for the payment of the last instalment.

“schedule” means Schedule to this Act.

“statutory rebate”—

(a) in relation to terms charges—

(i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

(ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month means the amount of interest attributable to the period of complete months still to go under the agreement;

(b) in relation to insurance, means the sum of—

(i) the total amount of premium paid in respect of any annual period not yet commenced; and

(ii) ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months ; and

(c) in relation to maintenance, means the amount derived by multiplying the amount charged for maintenance by the number of complete months in the period of the agreement still to go and by dividing the product so obtained by the number of complete months in the period of the agreement.

“third party insurance” means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by the law of the place where the vehicle is registered or is being registered, as the case requires.

“total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the hirer under a hire-purchase agreement.

“vehicle registration fees” means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under the law of a State or Territory of the Commonwealth of Australia in connection with the registration and use of a motor vehicle, including any amount payable for third party insurance.

(2) Any reference in this Act to taking possession by the owner of goods comprised in a hire-purchase agreement does not include a reference to taking possession by the owner as a result of the voluntary return of such goods by the hirer, but does include a taking of possession by the owner of such goods pursuant to an order of any court and a return of goods after a notice has been served on the hirer pursuant to the provisions of subsection one of section thirteen of this Act.

(3) 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 in the goods will or may pass to the bailee, the agreement shall, for the purposes of this Act, be treated as a single hire-purchase agreement made at the time when the last agreement was made.

PART II.

PART II.

FORMATION AND CONTENTS OF HIRE-PURCHASE
AGREEMENTS.

Summary of
proposed
hire-
purchase
transaction
to be given to
prospective
hirer.

3. (1) Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer, shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the First Schedule :

Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed. Provided further that if there be more than one prospective hirer it shall be sufficient if the written statement be given to one of such prospective hirers.

Form and
contents of
hire-
purchase
agreements.

(2) Every hire-purchase agreement—

(a) shall be in writing ;

(b) shall be signed by or on behalf of the hirer and all other parties to the agreement provided that where a hirer is a married person the agreement shall be signed by that person and where any of the goods comprised in the agreement are goods of a household or domestic character and are for household or domestic use, shall contain the written consent to the agreement of the spouse of that person if both are living together in the same residence ;

(c) shall—

(i) specify a date on which the hiring shall be deemed to have commenced ;

(ii) specify the number of instalments to be paid under the agreement by the hirer ;

(iii) specify the amounts of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made ;

(iv) specify the time for the payment of each instalment ; and

(v) contain a description of the goods sufficient to identify them ;

(d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration ; and

(e) shall set out in tabular form—

- (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as “cash price”);
- (ii) Any amount included in the total amount payable for maintenance of the goods (in this Act called and in the agreement to be described as “maintenance”);
- (iii) Any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in the agreement to be described as “freight”);
- (iv) any amount included in the total amount payable to cover vehicle registration fees (in the agreement to be called “vehicle registration fees”);
- (v) any amount included in the total amount payable for insurance other than third party insurance (in this Act called and in the agreement to be described as “insurance”);
- (vi) the total of the amounts referred to in subparagraphs (i) to (v) inclusive of this paragraph;
- (vii) the amount paid or provided by way of deposit (in this Act called and in the agreement to be described as “deposit”) showing separately the amount paid in money and the amount provided by a consideration other than money;
- (viii) the difference between the amount referred to in subparagraphs (vi) and (vii);
- (ix) the amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as “terms charges”);
- (x) the total of the amounts referred to in subparagraphs (viii) and (ix).

and shall set out separately the cash price, the amount paid or provided by way of deposit and the difference between such amounts.

PART II.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection (2) of this section shall be guilty of an offence against this Act.

(4) Without affecting the liability of any person to be convicted of an offence against this section, where a provision of this section has not been complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection (2) of this section), the liability of the hirer shall be reduced by the amount included in the hire-purchase agreement for terms charges and that amount may be set off by the hirer against the amount that would otherwise be due or which becomes due to the owner under the agreement.

(5) A hire-purchase agreement shall not be deemed not to comply with the said subsection (2) if the court before which any proceedings are brought is satisfied that any omission incorrect or insufficient description or misdescription therein was accidental or due to inadvertence or was not of such a nature as to mislead or deceive any person to his prejudice or disadvantage.

(6) A hire-purchase agreement that is not in writing shall not be enforceable by the owner.

Certain copy
documents
to be served
on hirer.

4. The owner shall serve or cause to be served on the hirer contemporaneously with or within twenty-one days after the making of a hire-purchase agreement—

- (a) a copy in writing of the agreement ;
- (b) a notice in writing in or to the effect of the Second Schedule, which notice may be endorsed on the copy of the agreement ; and
- (c) where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance (not being a policy of third party insurance), a copy of the policy or a statement in writing of the terms, conditions, and exclusions of the policy which affect or concern the rights of the hirer,

but failure to comply with the provisions of this section shall not avoid the agreement. A copy of an agreement shall be deemed sufficient for the purposes of paragraph (a) of this section notwithstanding that any of the signatures of the parties do not appear therein.

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implied if the goods are second-hand goods and the agreement contains a statement to the effect—

- (a) that the goods are second-hand ; and
- (b) that all conditions and warranties of fitness and suitability are expressly negatived,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(4) Without prejudice to any other rights or remedies to which an owner may be entitled, where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, an owner shall be entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of subsection three of this section.

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

As to the liability of the owner and the dealer for misrepresentation.

6. (1) Every representation, warranty, or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or dealer or any person acting on behalf of the owner or dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

- (a) as against the owner—the same right to rescind the agreement as the hirer would have had if the representation, warranty, or statement had been made by an agent of the owner ; and
- (b) as against the person who made the representation, warranty, or statement, and any person on whose behalf such person was acting in making it—the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from such first-mentioned person or the person on whose behalf he was acting (as the case requires) as a result of the negotiations.

(2) Every covenant, condition, or term in any hire-purchase agreement or other document purporting to exclude, limit, or modify the operation of this section or to preclude any right of action or any defence based on or arising out of any such representation, warranty, or statement shall be void and of no effect.

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(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner shall be entitled to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf the representation, warranty, or statement was made, against any damage suffered by the owner through the operation of the foregoing provisions of this section.

DIVISION II.—STATUTORY RIGHTS OF HIRERS.

DIVISION II.

7. (1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, give to the hirer a statement in writing signed by the owner or his agent showing—

Hirer to be entitled to copy of agreement and statement of his present position.

- (a) the amount paid to the owner by or on behalf of the hirer ;
- (b) the amount which has become due under the agreement but remains unpaid ; and
- (c) the amount which is to become payable under the agreement,

but an owner shall not be obliged to comply with such a request if he has sent the hirer a statement within the period of three months immediately preceding the receipt of the request.

(2) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer together with the sum of five shillings, give to the hirer a copy of the agreement.

(3) If an owner contravenes subsections (1) or (2) of this section by failing to comply with a request made pursuant to those subsections he shall be guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds and, until the default is remedied—

- (a) the owner shall not be entitled to enforce—
 - (i) the agreement against the hirer ;
 - (ii) any right to recover the goods from the hirer ;
or
 - (iii) any contract of guarantee relating to the agreement ; and

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(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor shall not be enforceable against the hirer or the guarantor by any holder thereof.

As to appropriation of payments when more than one agreement.

8. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner 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 require the owner 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 in or towards the satisfaction of the sums due under the respective agreements in the order in which the agreements were entered into.

As to assignments of rights under hire-purchase agreements.

9. (1) The right, title, and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner or, subject to subsection (3) of this section, if his consent is unreasonably withheld, without his consent.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in subsection (1) of this section, and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, on a request for his consent thereto being made by a hirer, the owner fails or refuses to give his consent to such an assignment as is mentioned in subsection (1) of this section within fourteen days from the date of such request, the hirer may apply to the court for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

(4) As a condition of granting such consent the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and assignee—

(a) to execute and deliver to the owner an assignment agreement in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in such respects the assignee agrees with the owner to be personally

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liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities; and

(b) to pay the reasonable costs (if any) incurred by the owner in stamping the assignment agreement or counterparts.

(5) The right, title and interest of a hirer under a hire-purchase agreement shall be capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same rights under the agreement as the company, but nothing in this subsection shall relieve any such personal representative or liquidator from compliance with the provisions of the agreement.

10. Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court may, on the application of the hirer, and subject to such terms and conditions as it shall deem just, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the firstmentioned place.

Power to court to allow goods to be removed.

DIVISION III.—EARLY COMPLETION OF AGREEMENTS.

DIVISION III.

11. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention so to do, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.

Hirer to be entitled to finalise agreement at any time.

(2) For the purposes of this section the net balance due shall be the balance payable under the agreement after deducting any amounts (other than the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, and less—

- (a) the statutory rebate for terms charges;
- (b) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance; and

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(c) if the hirer requires any contract for maintenance to be cancelled, the statutory rebate for maintenance.

(3) The rights conferred on the hirer by this section may be exercised by him—

(a) at any time during the continuance of the agreement ;
or

(b) where the owner has taken possession of the goods, on paying or tendering to the owner (before or within twenty-one days after the owner has served a notice in the form of the Fourth Schedule on the hirer) in addition to the net balance due—

(i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods ; and

(ii) any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

DIVISION IV.

DIVISION IV.—VOLUNTARY RETURN OF GOODS.

Power to
hirer to
determine
hiring.

12. (1) The hirer of any goods comprised in a hire purchase agreement may terminate the hiring by returning the goods to the owner during ordinary business hours at a place at which the owner ordinarily carries on business or to the place specified for that purpose in the agreement and such a return of the goods shall terminate the hiring.

(2) Where the nature of the goods comprised in a hire-purchase agreement is, or the facilities available at the place or places of business of the owner or at the place specified in the agreement are, such that it would be impracticable to return the goods to any such place, the hirer may terminate the hiring by returning the goods—

(a) to any place agreed to by the parties to the agreement ;
or

(b) if the parties fail to agree, to a place that is reasonable, having regard to all the circumstances surrounding the transaction.

(3) A hirer who proposes to return goods to the owner under this section may apply to the court for an order fixing the place to which the goods may be returned under paragraph (b) of subsection (2) of this section.

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(4) The court may in any order made pursuant to this section order that, subject to the goods being returned to the owner, the hiring shall be determined on such date as is specified in the order not being a date before the hirer required the owner to nominate a reasonable place for the return of the goods.

(5) Notice of any application under this section shall be given to the owner by the hirer.

(6) Where the hiring under a hire-purchase agreement is terminated pursuant to this section the owner shall be entitled to recover from the hirer—

(a) the amount (if any) required to be paid in such circumstances under the agreement ; or

(b) the amount (if any) which the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring,

whichever is the less.

DIVISION V.—REPOSSESSIONS.

DIVISION V.

13. (1) An owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments until he has served on the hirer a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than seven days after the service of the notice) has expired.

Notice to
be given to
hirer when
goods
re-possessed.

(2) An owner shall not be required to comply with subsection (1) of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be or have been removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of such grounds shall lie upon the owner.

(3) Within twenty-one days of the owner having taken possession of goods which were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form of the Fourth Schedule.

(4) If the notice required by subsection (3) of this section is not served, the rights of the owner under the hire-purchase agreement shall thereupon cease and determine, but, if the hirer exercises his rights under this Act to recover the goods of which possession has been so taken, the agreement shall have the same force and effect in relation to the rights and

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DIVISION V.

liabilities of the owner and the hirer as it would have had if the notice had been duly given.

Owner to retain possession of goods re-possessed for twenty-one days.

14. Where an owner has taken possession of any goods he shall not, without the consent in writing of the hirer, sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days from the date of the service on the hirer of a notice in the form of the Fourth Schedule or, if notice under subparagraph (i) of paragraph (a) of subsection (1) of section 15 of this Act has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

As to hirer's rights and immunities when goods repossessed.

15. (1) If the owner takes possession of any goods comprised in a hire-purchase agreement—

(a) the hirer may, before or within twenty-one days of the service on him of a notice in the form of the Fourth Schedule, by giving to the owner a notice in writing signed by the hirer or his agent—

(i) require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section 16 of this Act) the goods which have been re-possessed ; or

(ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods set out in the notice in the form of the Fourth Schedule served upon the hirer ;

(b) the hirer may recover from the owner the amount by which the value of the goods at the time of the owner so taking possession thereof exceeds the net balance due and the owner shall be entitled to recover from the hirer the amount by which the said value of the goods is less than the net balance due. In this subsection "net balance due" means the net amount payable less the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement ;

(c) the owner shall not be entitled to recover any sum (whether under a judgment or order or otherwise) which would together with—

- (i) the value of the goods at the time of the owner so taking possession thereof; and
- (ii) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement,
- amount to more than the net amount payable in respect of the goods.
- (2) For the purposes of this section—
- (a) the net amount payable shall be the total amount payable less the statutory rebates for terms charges, insurance and maintenance as at the time of the owner taking possession of the goods; and
- (b) the value of any goods at the time of the owner taking possession thereof shall be—
- (i) the best price which could be reasonably obtained by the owner at that time; or
- (ii) if the hirer has introduced a person who has purchased the goods for cash, the amount paid by such person,
- less—
- (iii) the reasonable costs including legal costs incurred by the owner of and incidental to his taking possession of the goods;
- (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
- (v) (whether or not the goods have subsequently been sold or disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods.
- (3) Where the owner has sold goods of which he has taken possession, the onus of proving that the price obtained by him for the goods was the best price which could be reasonably obtained by him at the time when he took possession of the goods shall be on the owner.
- (4) Except where the owner has failed to serve on the hirer a notice as required by subsection (3) of section 13, no amount shall be recoverable by the hirer under this section unless—
- (a) the hirer, within twenty-one days after the owner has served such a notice, gives to the owner notice in writing—

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- (i) setting out the amount claimed under the provisions of this section and the amount which is claimed by the hirer to be the value of such goods at the time of the owner taking possession thereof; and
- (ii) signed by the hirer or his solicitor or agent; and

(b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

(5) If, before any such proceedings are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any amount in satisfaction of the claim by the hirer under this section, the owner in any such proceedings shall be entitled to pay into court the amount so offered and, upon so doing, shall be entitled to the same rights as if that amount had been tendered to the hirer before the proceedings were commenced:

Provided that no such right shall be available to the owner in any proceedings by the hirer to recover the amount so offered or any lesser amount, if the hirer, before commencing the proceedings, notifies the owner in writing of the acceptance by the hirer of the amount so offered.

Power to
hirer to
regain
possession
of goods
in certain
circum-
stances.

16. If, within fourteen days after giving notice as aforesaid pursuant to the provisions of subparagraph (i) of paragraph (a) of subsection (1) of section 15 of this Act, the hirer—

- (a) pays or tenders to the owner all amounts due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of such payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to such date); and
- (b) remedies every breach of the agreement (and where he is unable to remedy any breach by reason of the fact that the owner has taken possession of the goods pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy that breach); and

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- (c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to or to the order of the hirer,

the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if no breach had occurred and the owner had not taken possession thereof: Provided that where the goods are returned to the hirer as aforesaid and any breach has not been remedied, the owner shall not have any right arising out of that breach to take possession of such goods unless—

- (i) by notice in writing given to the hirer at the time of return as aforesaid he specifies the breach and requires it to be remedied ; and
- (ii) the hirer fails within fourteen days or within the time specified in the notice (whichever is the longer) after receiving such notice to remedy the breach.

17. In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which such proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give effect to the provisions of section 15 of this Act.

Power to
court to
vary
existing
judgments or
orders when
goods are
re-possessed.

PART IV.

PART IV.

GUARANTEES.

Provisions
as to
guarantors.

18. (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 owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to or to the order of the hirer pursuant to this Act); but nothing in this subsection shall operate to preserve the liability of a guarantor where the owner and the hirer have entered 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 hirer the performance of whose obligations he has guaranteed; but, subject to section 19 of this Act, 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 hirer under the hire-purchase agreement in respect of which the guarantee is given;

(4) Where goods have been delivered to or to the order of the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee shall have the like right in like manner to recover such moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration (not already allowed for in cash) provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor: Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

Guarantor
not to be
bound in
certain
cases unless
independently
advised.

19. (1) Where a guarantor enters into an agreement binding the guarantor—

- (a) to pay to the owner under a hire-purchase agreement an aggregate sum which is larger than the balance originally payable under the hire-purchase agreement;
- (b) to perform an obligation in respect of goods other than the goods comprised in a hire-purchase agreement;

- (c) to permit the owner under a hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods subject to the hire-purchase agreement ; or
- (d) to relieve the owner under a hire-purchase agreement or any person acting on behalf of the owner from liability for any such entry,

the agreement so entered into by the guarantor shall be void (and the owner under the hire-purchase agreement concerned shall be guilty of an offence against this Act) unless the agreement is executed by the guarantor in the presence of the clerk of a court or a legal practitioner instructed and employed independently of the owner and the clerk or the legal practitioner, as the case may be, certifies in writing upon the agreement—

- (e) that he is satisfied that the guarantor understands the true purport and effect of the agreement ; and
- (f) that the guarantor has executed the agreement in his presence.

(2) A clerk or a legal practitioner shall not give a certificate in respect of an agreement under subsection (1) of this section unless—

- (a) he has read over and explained the agreement to the guarantor or has caused the agreement to be read over and explained to the guarantor in his presence ;
- (b) he has examined the guarantor touching his knowledge of the agreement ;
- (c) he is satisfied that the guarantor understands the true purport and effect of the agreement ; and
- (d) the guarantor has freely and voluntarily executed the agreement in his presence.

(3) Failure by a clerk or by a legal practitioner to comply with subsection (2) of this section in respect of a certificate shall not invalidate the certificate.

PART V.

PART V.

INSURANCE.

As to
insurance
of goods
comprised in
hire-purchase
agreements.

20. (1) An owner may require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

(2) An owner shall not require a hirer to insure any such risk with any particular insurer.

(3) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such reasonable terms, conditions, and exceptions as are required by the owner in the names of the owner and the hirer with a reputable insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

(4) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions, and exceptions which the owner does not require if he arranges the insurance.

Hirer to be
entitled to
insurance
rebates.

(5) Where, in respect of the insurance of goods comprised in a hire-purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the hirer under the agreement shall be entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner shall be guilty of an offence against this Act.

Powers of
court in
relation to
insurance
contracts
associated
with hire-
purchase
agreements.

21. (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance, if it appears to the court that a failure by the insured or the hirer to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection (2) of this section, order that the failure be excused.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer or any guarantor in respect of the hire-purchase agreement to which the contract of insurance relates may, unless an order excusing the failure concerned has already been made under subsection (1) of this section, apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the insurer

was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections (1) and (2) of this section has been made under either of those subsections, the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

22. (1) Every contract of insurance (not being a contract of third party insurance) and statement served upon a hirer pursuant to section 4 of this Act shall—

As to contents
of contracts of
insurance.

- (a) identify the goods or the part of the goods to be insured ;
and
- (b) contain a statement of the amount and period for which the goods are insured or are to be insured ;
and
- (c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying amounts.

(2) Subject to subsection (3) of this section, any provision in any agreement or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration ;
- (b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration, or an award pursuant to arbitration proceedings has been first obtained ;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract ;
or
- (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

shall not bind the hirer or the owner.

(3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to

PART V.

arbitration shall have effect as if subsection (2) of this section had not been enacted.

**Application
of Part V.**

23. (1) The provisions of sections 21 and 22 of this Act shall apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

(2) The provisions of this Part shall have effect notwithstanding anything contained in any other Act.

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PART VI.

MISCELLANEOUS.

24. (1) In any proceedings under this Act or arising out of a hire-purchase agreement or instituted pursuant to subsection (4) of this section, where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that a Court of Equity would give relief, the court may re-open the transaction and take an account between the parties thereto.

Power to court to re-open certain hire-purchase transactions.

(2) The court re-opening 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—

- (a) re-open any account already taken between the parties ;
- (b) relieve the hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges, as the court adjudges to be fairly and reasonably payable ;
- (c) set aside either wholly or in part or revise or alter any agreement made or security given in connection with the transaction ;
- (d) 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
- (e) 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 owner 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 proceedings 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 in any court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court shall have and may exercise all or any of the powers conferred by subsections (1) (2), and (3) of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

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(6) A hirer or guarantor under a hire-purchase agreement shall not be entitled to institute proceedings under this section—

(a) in a case where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months from the time when the owner serves the notice in the form of the Fourth Schedule ; or

(b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

Power of court to restrain re-possession of certain goods from farmer.

25. (1) Where—

(a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in a hire-purchase agreement ; and

(b) the hirer is a farmer and described as such in the agreement,

the period fixed by any notice of intention to take possession of the goods served under subsection (1) of section 13 of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

(2) The farmer may, within the period fixed by the notice, apply to a court for an order restraining the owner from taking possession of the goods.

(3) If the court is satisfied that, within twelve months from the date of the application, the farmer will have a reasonable prospect of being able to pay all instalments due and owing on the date of the application, the court may make an order restraining the owner from taking possession of the goods for such period not exceeding twelve months as the court fixes.

(4) An order under subsection (3) of this section may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(5) In this section “farmer” means any person engaged in agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, or any other business consisting of the cultivation of soil, the gathering in of crops or the rearing of livestock.

Liens.

26. (1) Subject to subsection (2) of this section, where a worker does work upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the property of the hirer, the worker would be entitled to a lien on the goods for the value of his work, he is entitled to a lien notwithstanding that the goods are not the property of the hirer.

PART VI.

(2) The lien is not enforceable against the owner if the hire-purchase agreement contains a provision prohibiting the creation of a lien by the hirer and the worker had notice of that provision before doing the work upon the goods.

(3) The provisions of section 41 of the Workmen's Liens Act, 1893-1936, shall not apply to any lien acquired by a worker pursuant to this section.

27. (1) Goods comprised in a hire-purchase agreement which, at the time of the making of the agreement, were not fixtures to land, shall not in respect of the period during which the agreement remains in force be treated as fixtures to land.

(2) Notwithstanding anything contained in subsection (1) of this section, the owner shall not be entitled to re-possess goods which have been affixed to a dwelling-house or residence if, after the goods have become so affixed, any person other than the hirer has *bona fide* acquired for valuable consideration an interest in the land as purchaser in fee simple or as mortgagee or encumbrancee, without notice of the rights of the owner of the goods.

28. (1) Any provision in any agreement or other document whereby—

Avoidance
of certain
provisions.

- (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted ;
- (b) any liability beyond the liability imposed by this Act is imposed on the hirer under a hire-purchase agreement by reason of the determination of the hire-purchase agreement in accordance with this Act ;
- (c) the hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Act ;
- (d) the hirer under a hire-purchase agreement is required to pay any sum (whether or not it is described in the agreement as interest) in respect of any amount due under the hire-purchase agreement but not paid exceeding a sum equal to the simple interest on that amount calculated at the rate of eight per centum per annum on a daily basis for the period for which it is due and not paid ;
- (e) any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering

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into the hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer ;

- (f) the owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement ;
- (g) the owner under a hire-purchase agreement or any person acting on his behalf is authorized to enter upon any premises for the purpose of taking possession of goods comprised in the hire-purchase agreement or is relieved from liability for any such entry ;
- (h) the operation of a hire-purchase agreement is determined or modified or any person is authorized to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of these events are named) ; or
- (i) except as expressly provided by this Act the operation of any provision of this Act is excluded, modified, or restricted,

shall be void.

(2) Where any agreement or other document contains a provision that is void under subsection (1) of this section, the owner under the hire-purchase agreement concerned shall be guilty of an offence against this Act.

Restrictions
on payments
to owners
of goods by
financiers.

29. If in connection with any goods any person (in this section referred to as the "dealer") arranges that some other person (in this section referred to as the "financier") shall—

- (a) enter into a hire-purchase agreement in relation to those goods with a hirer ;
- (b) accept any assignment of the dealer's property in the goods comprised in, or of the dealer's rights under, a hire-purchase agreement ; or
- (c) advance or pay money to the dealer or to some person on his behalf in respect of a hire-purchase agreement in relation to such goods,

3. 29. SHEPARD AND ANOTHER V. BROWN BROTHERS LIMITED (1935) S.A.S.R. 177. Section 12 of the Hire-Purchase Agreements Act, 1931, applies to the case where the financier nominally acts as owner without anything more between him and the hirer than the hire-purchase agreement itself; the "money lending" contemplated is a loan to the owner who desires to let out his goods on hire, and the security of "hire-purchase agreements" is a security given by such owner for money lent to him.

such dealer shall not seek, accept, demand, or receive from the financier and such financier shall not pay, offer, or grant to the dealer, directly or indirectly, any money or other valuable consideration which, together with the money (if any) paid or payable by or on behalf of the hirer to the dealer and the value of any other consideration (if any) furnished or to be furnished by or on behalf of the hirer to the dealer would exceed the cash price of the goods : Provided that—

- (a) where the dealer has entered into a contract guaranteeing the performance of the hire-purchase agreement by the hirer, a commission not exceeding one-tenth of the total terms charges payable under the hire-purchase agreement may be paid by the financier to the dealer ; and
- (b) where the dealer has agreed with the hirer to maintain or to provide any service for the goods during the currency of the hire-purchase agreement any amount payable under the agreement in respect of the maintenance or service may be paid by the financier to the dealer.

30. Any person (in this section referred to as the "owner") who knowingly—

Certain transactions prohibited.

- (a) enters into an agreement for the bailment of goods to any person (in this section referred to as the "hirer") which agreement does not by itself constitute a hire-purchase agreement ; or
- (b) takes from any person (in this section referred to as the "hirer") an offer in writing that, if accepted, would constitute an agreement for the bailment of goods but will not by itself constitute a hire-purchase agreement,

in association, directly or indirectly, with the making, by the hirer to the owner or to any person associated, directly or indirectly, in business with the owner, of an offer in writing to purchase the goods the subject of the agreement referred to in paragraph (a) or of the offer referred to in paragraph (b) of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement, shall be guilty of an offence against this Act.

31. Where—

- (a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase

As to securities collateral to hire-purchase agreements.

PART VI.

agreement to the owner in respect of an amount payable under the agreement ; and

- (b) the payment in due course of the bill of exchange or promissory note would, by virtue of the operation of any provision of this Act or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement,

the owner shall be liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

False statement by dealers in proposals.

32. Any person who prepares or causes to be prepared any hire-purchase agreement or offer in writing which, if accepted, would constitute a hire-purchase agreement, with the intention of bringing about a contractual relationship between an owner and a hirer and which agreement or offer contains to the knowledge of that person any false statement or representation that is false in any material particular, shall be guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding twelve months : Provided however that nothing in this section shall affect any civil rights of the hirer.

Hirer may be required to state where goods are.

33. The owner of any goods comprised in a hire-purchase agreement may at any time by notice in writing served on the hirer thereof require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods, or the circumstances under which he lost possession of them and any hirer who does not within fourteen days after the receipt of any such notice give to the owner such a statement or who gives a statement containing any information which is to the knowledge of the hirer false shall be guilty of an offence against this Act.

Fraudulent sale or disposal of goods by hirer.

34. 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 owner, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding twelve months.

Power to court to extend times.

35. Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to the court (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement) be extended by the court for such further period, and upon such conditions, as the court thinks fit.

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36. (1) Upon application to the court by an owner who is entitled to take possession of any goods comprised in a hire purchase agreement or by any person acting on behalf of an owner, if the court is satisfied that the hirer or any person acting on behalf of the hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorized in that behalf, and if it appears to the court that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time and at a place to be specified in the order.

Power to court to order delivery of goods unlawfully detained.

(2) Any person who neglects or refuses to comply with any order made under this section shall be guilty of an offence against this Act, and the court making the said order may issue a warrant to the bailiff of the court who, by such warrant, shall be empowered to enforce the said order.

(3) All constables and other peace officers shall aid in the execution of every such warrant.

37. (1) Notwithstanding the provisions of the Acts Interpretation Act, 1915-1917 any notice or document required or authorized to be served on or given to any person under this Act shall be deemed duly served or given if it has been—

As to service of notices.
2049, 1931,
s. 14.

(a) given to such person personally ; or

(b) left at his usual or last known place of abode ; or

(c) sent by post by registered letter to his usual or last known place of abode or an address for service mentioned in any notice given by him. Provided that it shall be a sufficient compliance with this paragraph if a notice under section 4 of this Act has been sent by ordinary post.

(2) The affidavit or oral evidence of an owner or his servant or agent as to the delivery or posting of any notice or document required to be served by this Act shall be admissible as *prima facie* evidence of the due service of the notice or document if the deponent swears to the facts necessary to prove due service either from his own knowledge or to his information and belief based on and verified by the records of the owner.

Proof of service.

38. (1) Any prescribed document or part thereof—

(a) that is in handwriting that is not clear and legible ;
or

(b) that is printed in type of a size smaller than the type known as ten-point Times,

shall be deemed not to be in writing.

(2) In this section "prescribed document" means—

(a) any hire-purchase agreement ;

Size, etc., of type, etc., required in certain documents.

PART VI.

- (b) any statement under subsection (1) of section (3).
- (c) any copy of an agreement, notice, or statement required by section 4 to be served on a hirer ;
- (d) any statement required by subsection (1) of section 7 to be sent to a hirer ; and
- (e) any notice under subsection (1) or subsection (3) of section 13.

Penalty.

39. Any person who contravenes or fails to comply with any provision of this Act shall for every such contravention or failure be guilty of an offence, and every person guilty of an offence against this Act where no other penalty is expressly provided shall be liable to a penalty of not more than two hundred pounds, or to imprisonment for a period not exceeding three months.

Time for commencement of prosecution.

40. Any prosecution for an offence against this Act may be commenced at any time within one year after the commission of the offence.

Costs.

41. The costs of any proceedings or application in relation to any matter arising under this Act shall be in the discretion of the court.

Summary proceedings.

42. Proceedings for offences against this Act shall be disposed of summarily.

Exemption from distress.

43. Goods comprised in a hire-purchase agreement shall be exempt from distress for rent.

Regulations 2049, 1931, s. 13.

44. The Governor may make any regulations necessary or convenient for carrying this Act into effect, including regulations altering or adding to any of the forms in any of the schedules to this Act and may by regulation determine what court or courts shall have jurisdiction in any matter arising under this Act and may impose penalties recoverable summarily and not exceeding fifty pounds for breach of any regulation.

Construction of Act.

45. This Act shall bind the Crown.

Offer of allowance on purchase of goods.

46. Notwithstanding anything contained in the Trading Stamp Act, 1924-1935, or any other Act, it shall not be unlawful for a person, on the sale of or in connection with the sale or advertisement of any goods, to promise, offer, or give to any person who hires those goods, as a condition of the purchase of the goods at any time during the hiring, an allowance based upon the amount of any rent, hire or instalments paid as rent or hire.

PART VII.

PART VII.

MINIMUM DEPOSITS.

47. Where an owner enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods or partly in cash and partly in goods to a value equal to at least one-tenth of the cash price of the goods comprised in the agreement, the agreement shall be void.

Minimum deposits.

48. (1) No deposit—

(a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—

Certain payments, etc., not to be treated as deposits for the purposes of this Part.

(i) from or through the owner (if the owner is not a banker) ;

(ii) through the dealer ; or

(iii) from or through any person whose business or part of whose business it is by agreement with the owner or dealer or any person acting on behalf of the owner or dealer to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner ;

(b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value ;

(c) to the extent that it is made out of an amount allowed or credited in respect of or by reference to amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods ; or

(d) to the extent that it is provided by goods that were to the knowledge of the owner or dealer acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section 47 of this Act have been complied with.

(2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer.

PART VII.

(3) Where a dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

(a) the goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit ;
and

(b) the price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be deemed to be the amount allowed by the dealer in respect of the goods.

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement, certify in writing—

(a) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash ;

(b) where the deposit was provided solely in goods—the nature and description of, and the amount allowed by the dealer in respect of, the goods ;

(c) where the deposit was paid or provided partly in cash and partly in goods—the amount of the deposit that was paid or provided in cash and the nature and description of, and the amount allowed by the dealer in respect of, the goods.

(5) A dealer who under subsection (4) of this section certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or gives a certificate that is false in any other material particular shall be guilty of an offence against this Act.

(6) Notwithstanding anything contained in this Part where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection (4) of this section by the dealer and the amount certified in the certificate as being the amount allowed in respect of the goods whose nature and description are certified therein is substantially greater than the value of those goods the agreement shall have the same effect as if the amount so certified were the value of those goods.

Nothing in this subsection shall affect the liability of any person to be convicted of an offence against this section.

(7) Any person who knowingly enters into or procures, arranges, or otherwise assists or participates in a transaction contravening this section shall be guilty of an offence against this Act.

PART VII.

49. (1) Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purposes of enabling those other persons to pay the deposits required by or under section 47 of this Act shall be guilty of an offence against this Act.

Offence to carry on business of lending deposits.

(2) Any person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection (1) of this section shall be guilty of an offence against this Act.

Deposits not to be by way of loan.

50. In this Part "cash" includes a cheque drawn on a banker.

Interpretation of "cash".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Lieutenant-Governor.

SCHEDULES.

Sec. 3 (1).

FIRST SCHEDULE.

Hire-Purchase Agreements Act, 1960. Section 3 (1).

SUMMARY OF YOUR FINANCIAL OBLIGATIONS UNDER PROPOSED HIRE-PURCHASE AGREEMENT RELATING TO

(description of goods)				
The cash price of the goods is.....	£	:	:	
You are also required to pay for—				
Maintenance.....	£	:	:	
Freight.....	£	:	:	
Vehicle registration.....	£	:	:	
Insurance for months.....	£	:	:	
Sub-total.....	£	:	:	
You may deduct from these—				
The amount paid for deposit	£	:	:	
Add allowance on trade-in of	£	:	:	
Residue	£	:	:	
To which must be added—				
Terms charges	£	:	:	
Total rent payable	£	:	:	
The full amount payable by you for the goods is the amount obtained by—				
Adding to the amount in the sub-total above namely .	£	:	:	
the terms charges above namely	£	:	:	
	£	:	:	
The difference between the cash price of the goods and the total amount you will have to pay is therefore	£	:	:	
Your rent is payable by the following instalments :— (insert number, amount, and intervals of instalments).				

Sec. 4.

SECOND SCHEDULE.

Hire-Purchase Agreements Act, 1960.

ADVICE TO HIRERS.

Under the provisions of the Hire-Purchase Agreements Act, 1960—

- (a) you are entitled to a statement of the amount that you owe if you make a written request to the owner for the same. You may not request a statement more than once in three months;
- (b) You are entitled to a copy of the agreement at any time if you make a written request and forward the sum of five shillings to the owner for the same.
- (c) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of Assignment see Hire-Purchase Agreements Act, 1960, section 9;
- (d) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire-Purchase Agreements Act, 1960, section 11;
- (e) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see Hire-Purchase Agreements Act, 1960, section 12.

THIRD SCHEDULE.

Sec. 13 (1).

Hire-Purchase Agreements Act, 1960.

NOTICE OF INTENTION TO RE-POSSESS.

TAKE NOTICE THAT.....
 the owner of *.....
 hired by you under an agreement dated the..... day
 of..... 19..... intends to retake possession of the
 goods after the expiration of †..... days from the service of this
 notice unless the arrears of instalments which now amount to £.....
 are paid to..... at..... on or
 before..... 19.....
 Total amount payable £.....
 Amount paid or provided by hirer to...../...../19..... £.....
 Arrears under agreement to...../...../19..... £.....

* Insert description of goods.

† Insert number of days, not being less than seven, or, where the hirer is a farmer
and s. 25 of the Act applies not being less than thirty.

FOURTH SCHEDULE.

Secs. 11 (3),
13 (3), 14,
15, 24 (6).

Hire-Purchase Agreements Act, 1960.

ADVICE TO HIRERS.

Now that the goods you hired have been re-possessed you will be entitled to get them
back—

- (a) if, within twenty-one days, you require the owner, by notice in writing signed
by you or your agent, to re-deliver the goods to you and if, within fourteen
days after giving the notice, you reinstate the agreement by paying the arrears
and remedy the following breaches of the agreement (or pay the owner's
expenses in remedying them):—

The owner's estimate of the amount you must pay to reinstate the agreement
is:—

Arrears of instalments	£.....
Cost of storage, repair or maintenance	£.....
Cost of re-possession	£.....
Cost of re-delivery	£.....
Total	£.....

or

- (b) if, within twenty-one days, you give notice of your intention to finalise the agree-
ment and pay the balance due under the agreement and costs of the
re-possession:

The owner's estimate of the amount required to finalise the agreement
is:—

Total amount payable under the agreement	£.....
Less deposit and instalments paid	£.....
Balance due under agreement.....	£.....
Less statutory rebates	£.....
Add costs of re-possession	£.....
Storage, repair or maintenance.....	£.....
Total	£.....

