

Hon. Mr. Mason.

HIRE-PURCHASE AGREEMENTS.

ANALYSIS.

Title.	6. Vendor to retain possession of repossessed goods for twenty-one days. Purchaser's right to redelivery of goods.
1. Short Title.	7. Provisions as to guarantors.
2. Interpretation. Ascertainment of purchase-price. Ascertainment of value of goods at time of repossession.	8. Reopening of hire-purchase transactions.
3. Right of purchaser to recover certain amount where vendor repossesses goods.	9. Copy of hire-purchase agreement to be supplied on request.
4. Restriction of amount recoverable by vendor.	10. Lien for work done on goods under hire-purchase agreement.
5. Vendor to deliver statement and notice.	11. Service of notices.
	12. No contracting-out. Schedule.

A BILL INTITULED

AN ACT relating to Hire-purchase Agreements. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Hire-purchase Agreements Act, 1939. Short Title.

2. (1) In this Act, unless the context otherwise requires,— Interpretation.

10 “ Goods ” includes all chattels personal other than money or things in action:

“ Guarantor ” means a person who guarantees the performance by a purchaser of all or any of his obligations under a hire-purchase agreement:

15

No. 15—1.

“ Hire-purchase agreement ” means a deed or agreement whereby goods are let or hired with an option of purchase, and includes an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise); but does not include any agreement whereby the property in the goods comprised therein passes absolutely at the time of the agreement to the person who agrees to purchase them: 5 10

“ Purchaser ” means the person to whom goods are let, hired, or agreed to be sold under a hire-purchase agreement, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights: 15

“ Vendor ” means the person letting, hiring, or agreeing to sell goods under a hire-purchase agreement, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights. 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

Ascertainment
of purchase-
price.

(3) For the purposes of this Act the purchase-price of any goods of which possession is taken by the vendor shall be deemed to be the total amount of the moneys required to be paid and the value of any other consideration provided or required to be provided by the purchaser to purchase the goods pursuant to the hire-purchase agreement: 30

Provided that where the purchase-price as so defined includes any 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. 35 40

Ascertainment
of value of
goods at time
of repossession.

(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 shall be deemed to be their actual value at that time, less the 45

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
5 otherwise disposing of them.

3. (1) Where a vendor takes possession of any goods comprised in a hire-purchase agreement, the purchaser shall be entitled to recover from the vendor as a debt due and payable by him to the purchaser
10 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
15 takes possession thereof.

Right of purchaser to recover certain amount where vendor repossesses goods.

Cf. Hire-purchase Agreements Act, 1936 (Vic.), s. 3

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

(a) The purchaser, within *twenty-eight* days after the vendor takes possession of any goods,
20 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
25 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
30 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
35 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
40 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. 5

Restriction of amount recoverable by vendor.
Cf. Hire-purchase Agreements Act, 1936 (Vic.), s. 4

4. 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. 10 15

Vendor to deliver statement and notice.

5. (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:— 20

- (a) The purchase-price of the goods;
- (b) 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; 25
- (c) 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 30
- (d) The balance estimated to be due to the vendor or to the purchaser and any guarantor of the purchaser, as the case may be. 35

(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: 40

Provided that the Governor-General may from time to time, by Order in Council, 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.

(3) In the event of a failure to comply with the provisions of this section within the time prescribed in that behalf in subsection *one* hereof, the period of *twenty-eight* days referred to in paragraph (*a*) of subsection *two* of section *three* of this Act shall be calculated from the date when the provisions of this section are complied with and not from the date when the vendor takes possession of the goods.

(4) 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 commits an offence and is liable on summary conviction to a fine of *fifty* pounds.

6. (1) Where a vendor 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 *twenty-one* days from the date of his so taking possession.

(2) The purchaser may, within the period referred to in the *last preceding* subsection, 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 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);

Vendor to retain possession of repossessed goods for twenty-one days.
Cf. Hire-purchase Agreements Act, 1936 (Vic.), s. 5
Purchaser's right to redelivery of goods.

(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 5

(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— 10

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. 15

(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. 25

Provisions as to guarantors.
Cf. Hire-purchase Agreements Act, 1936 (Vic.), s. 7

7. (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. 30

(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. 35 40

(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
5 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
10 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
15 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
20 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.

8. (1) In any proceedings taken under section *three*
25 of this Act, or taken in any Court in respect of any matter arising out of a hire-purchase agreement, 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
30 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
35 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
40 close previous dealings and create a new obligation, reopen any account already taken between the parties, and relieve the purchaser and any guarantor from

Reopening of hire-purchase transactions.
Cf. 1908, No. 121, s. 3; see Reprint of Statutes, Vol. VI, p. 6

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.

(3) Any Court in which proceedings may be taken under section *three* of this Act may, in proceedings commenced by the purchaser or any guarantor for the purpose of obtaining relief under this section, exercise the like powers as may be exercised under this section where proceedings are taken under section *three* of this Act, notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived:

Provided that no proceeding under this subsection shall be taken after the expiry of *four* months from the time when the vendor takes possession of the goods or (where he has not taken possession thereof) from the time when the transaction is closed.

(4) 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.

9. (1) A vendor under a hire-purchase agreement shall, on being required so to do by the purchaser or any guarantor, send to him a copy of the hire-purchase agreement subject to the payment of two shillings and sixpence or such smaller sum as the vendor may demand.

(2) Any vendor who makes default in complying with this section commits an offence and is liable on summary conviction to a fine of *twenty* pounds.

Copy of
hire-purchase
agreement to
be supplied
on request.

10. 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 5 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.

Provided that the lien shall not be valid and enforceable against the vendor if the hire-purchase 10 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.

11. (1) Any notice or other document required or 15 authorized by this Act to be served on any person shall be in writing and shall be sufficiently served if it is delivered to that person or if it is left at his usual or last known place of abode or business or at an address specified for that purpose in the hire-purchase agree- 20 ment, or if it is posted in a letter addressed to him by name at that place of abode or business or address.

Service of notices.

(2) If any such notice or other document is sent 25 to any person by registered letter it shall be deemed to have been delivered to him when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

12. The provisions of this Act shall have effect 30 notwithstanding any provision to the contrary in any agreement, and shall extend to all hire-purchase agreements, whether entered into before or after the passing of this Act.

No contracting-out.

Schedule.

SCHEDULE.

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 section *five* of the Hire-purchase Agreements Act, 1939.

.....
[*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).

(3) If the price comprises any amount in fact added for interest, 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 vendor took possession. This notice must be signed by the purchaser or his solicitor or agent and served on the vendor within *twenty-eight* days from his taking possession of the goods. 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 to serve on the purchaser, together with this present notice, a statement showing 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.

4. If this notice and the statement mentioned in the last paragraph are not served on the purchaser within *fourteen* days after the vendor takes possession of the goods, then the period of *twenty-eight* days mentioned in paragraph 2 above is calculated from the date when this notice and the statement are served, and not from the date of taking possession.

5. 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.

6. 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 takes the goods 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) 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.

7. If any charge made, for interest or otherwise, is excessive, or any provision of the agreement so unfair and 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.

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