

Mr. W. Nash.

HIRE-PURCHASE AGREEMENTS.

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A BILL INTITULED

AN ACT to amend the Law relating to Customary Hire-purchase Agreements and for other Purposes. 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, 1934. Short Title.

2. In this Act, unless the context otherwise requires :— Interpretation.

10 “ Hire-purchase agreement ” means a customary hire-purchase agreement to which section fifty-seven of the Chattels Transfer Act, 1924, applies :

15 “ Hirer ” means the purchaser or bailee of chattels the subject of a customary hire-purchase agreement :

“ Owner ” means the person letting or selling any goods or chattels to a hirer under a hire-purchase agreement:

“ The Court ” means the Supreme Court or, in relation to an application made to a Magistrate, or to a specified Magistrate having jurisdiction according to this Act, means any Magistrate or the Magistrate specified, as the case may be. 5

Application of this Act.

3. Subject to this Act, the provisions of this Act shall, notwithstanding any law to the contrary, be read and construed as granting an equitable right to the hirer in or in respect of the goods and chattels or the value thereof comprised in the hire-purchase agreements based on the payments made by the hirer thereunder, and a right of relief to the hirer in accordance with this Act. 10 15

Notice to given by owner to hirer.

4. (1) Except as may be otherwise expressly provided by this Act, an owner before proceeding to do any act or exercise any power conferred on him in a hire-purchase agreement shall give to the hirer notice in writing of his intention to do such act or exercise such power. 20

(2) Such notice shall contain an address for service and shall be signed by the owner or by some duly authorized attorney or agent of the owner, and shall be deemed to be duly given if delivered to the hirer personally or if posted by registered letter addressed to the hirer at his last known place of abode in New Zealand. A notice so posted shall be deemed to have been given at the time when the registered letter would in the ordinary course be delivered. 25 30

(3) If the hirer does not within fourteen days after the giving of any such notice of intention to exercise any power or issue any process in execution in respect of chattels referred to in the hire-purchase agreement make an application to the Court for relief as hereinafter provided, the owner may, subject to the following provisions of this Act, proceed on the expiration of the said fourteen days to do such act or exercise such power as aforesaid. 35

Application for relief.

5. When served with the notice in accordance with the *last preceding* section the hirer may in his own handwriting, or by a duly appointed agent acting on his behalf, make application to the Court for relief; and in 40

determining whether relief shall be granted to the hirer the Court may take into consideration—

- 5 (a) The condition of the goods subject to the hire-purchase agreement and the security afforded by them to the owner :
- (b) The inability of the hirer to carry out the covenants contained in the hire-purchase agreement :
- 10 (c) The conduct of the hirer in respect of any breaches by him of the covenants of the hire-purchase agreement :
- (d) Any hardship that would be inflicted on the owner by the non-compliance with the covenants of the hire-purchase agreement, or upon the hirer by the enforcement thereof :
- 15 (e) The extent to which any default of the hirer has been due to his own acts or has been caused by any economic or financial conditions affecting trade or industry in New Zealand.

20 **6.** (1) If, having regard to the considerations mentioned in the *last preceding* section and to all other relevant considerations, the Court, upon any application for relief under this Act, is of opinion that it is equitable so to do, it may, in its discretion, subject to such terms and conditions (if any) as it thinks fit to impose, do all

25 or any of the following things, namely :—

- (a) It may order that the owner shall at his discretion exercise all the powers conferred on him by the hire-purchase agreement :
- 30 (b) It may order that the goods or chattels subject to the hire-purchase agreement shall be sold by public auction or otherwise and the proceeds of the sale divided as the Court thinks fit :
- (c) In determining the allocation of the proceeds in accordance with paragraph (b) hereof the Court may determine the rate of interest (if any) to be charged and the total amount thereof to be included in the sum due to the owner :
- 35 (d) It may vary the terms of the hire-purchase agreement :
- 40 (e) It may extend the period in which the amount due under the agreement may be paid :
- (f) It may determine the rate of interest (if any) to be charged per annum on the unpaid balance of the purchase-moneys provided for in the hire-purchase agreement :

Nature of relief which may be granted by Court.

- (g) It may determine that the owner may repossess certain of the articles (if more than one) under the hire - purchase agreement and that the balance of such articles shall become the property of the hirer : 5
- (h) In determining the distribution of the articles referred to in the *last preceding* paragraph the Court shall take into account the amount paid by the hirer, the amount still due to the owner, and the condition and saleable value of the articles. 10

(2) The relief under this section shall only apply to hire-purchase agreements under which the hirer has paid at least twenty-five per centum of the original purchase price. 15

(3) "Original purchase price" in this section means the amount which would be charged to a purchaser of the goods referred to in the hire-purchase agreement for cash less any and all discounts which would be allowed to such purchaser for cash. 20

Jurisdiction of
Supreme Court
and Magistrates
respectively.

7. The jurisdiction conferred on the Court by this Act may in every case be exercised by the Supreme Court ; and, subject to the provisions of this section, may also be exercised by a Magistrate in the following cases :— 25

- (a) Where application for relief is made under a hire-purchase agreement under which the balance of the moneys due do not exceed two hundred and fifty pounds :
- (b) Where application for relief is made in respect of any other case and the parties agree in writing that a Magistrate or any specified Magistrate shall have jurisdiction to hear and determine the application. 30

Procedure.

8. (1) Any application to the Court for relief under this Act may be made by motion with notice to the owner and to such other persons as the Court considers entitled thereto. Unless the parties otherwise agree, every such application shall be made and heard in the office of the Court nearest to the place of residence of the hirer. 35 40

(2) Any application under this Act may be disposed of in Chambers.

(3) There shall be no appeal from any order under this Act whether made by the Supreme Court or by a Magistrate.

5 **9.** Where with respect to any hire-purchase agreement to which this Act applies an owner has since the first day of August, nineteen hundred and thirty-four, exercised against the hirer such powers and done such acts, which if this Act were in operation as from such date would be contrary to its provisions, the hirer may apply to the
10 Court for an order setting aside the exercise of such powers or the doing of such acts and reinstating the parties as nearly as may be in their former positions and the granting to the hirer the relief under this Act as if the exercise of the power or the doing of such act had
15 not been exercised or done :

Special cases before commencement of operation of this Act.

Provided that no application to the Court under this section shall be heard by the Court unless the application is made within two months of the passing of this Act.

20 **10.** Every hire-purchase agreement or term of a hire-purchase agreement entered into after the commencement of this Act whereby any person agrees that this Act or any provision hereof shall not apply to any transaction shall be void for all purposes.

Contracting out.

25 **11.** In respect to any legal proceedings taken within twelve months of the date of entering into a hire-purchase agreement any statement contained in such agreement (whether entered into before or after the passing of this Act) to the effect that the owner is not responsible for any representations, promises, or terms
30 made or held out by any agent, representative, or servant of the owner shall be void and of no effect.

Responsibility of owner for agent's statements.

35 **12.** No term of any hire-purchase agreement (whether entered into before or after the commencement of this Act) shall prevent a hirer from claiming or being awarded damages or any other relief for fraud or misrepresentation of the owner or any person acting or purporting to be acting on behalf of the owner in connection with any transaction of a hire-purchase agreement.

Liability for fraud, &c.

40 **13.** (1) It shall be the duty of every owner under a hire-purchase agreement made subsequent to the passing of this Act to have such agreement forthwith reduced into writing and to hand a copy of such agreement to the hirer ; and the word " writing " in this section shall be deemed to include such printing or typewriting only
45 as is in type not smaller than ten points face.

Hire-purchase agreement to be in writing.

(2) Every hire-purchase agreement referred to in the *last preceding* subsection shall contain a provision that the owner and the hirer has read this Act, and a copy of same shall be typed or printed on every such agreement in the form referred to in that subsection. 5

Effect of order.

14. In any case where the hirer to whom an order has been granted by the Court under the provisions of this Act neglects or contravenes or fails to comply with the provisions of such order, it shall be competent for the owner to apply to the Court for the cancellation or review thereof, and the Court, on such application, may make such further order as it deems fit and proper. 10

Costs.

15. The costs of any application under this Act shall be at the absolute discretion of the Court.

Regulations.

16. (1) The Governor-General may from time to time, by Order in Council, make regulations for giving full effect to the provisions of this Act and for the due administration thereof, and, where there may be in this Act no provision or no sufficient provision in respect of any matter or thing adequate, necessary, or expedient to give effect to this Act, providing for and supplying such omission or insufficiency. 15

(2) Such regulations as may be made in accordance with the *last preceding* subsection shall be published in the *Gazette*, and forthwith upon such publication shall be read and construed as one with this Act, and shall be judicially noticed and shall not be questioned in any proceedings whatsoever. 25

(3) All such regulations shall be laid before Parliament within fourteen days after such publication if Parliament is then in session, or if not, then within fourteen days after the commencement of the next session thereof. 30