

HIRE-PURCHASE AGREEMENTS.

22° GEO. V., No. XXII.

No. 22 of 1931

(as amended by No. 24 of 1937)*.

AN ACT to amend the law relating to Hire-Purchase Agreements and for other incidental purposes.

[Assented to 18th August, 1931.]

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

1. This Act may be cited as the *Hire-Purchase Agreements Act, 1931-1937*.

Short title.
Cf. No. 24
of 1937, S. 3.

2. In this Act, subject to the context—

Interpretation.

“Chattel” means any chattel personal.

“Hire-Purchase Agreement” means a hire-purchase agreement in respect of a chattel, and includes any agreement whereby it is stipulated or appears that any person lets any chattel to another person at a rent to be paid by instalments and that the property in the chattel is to pass to the other person upon payment of all the stipulated rent, but not otherwise, whether any additional sum has to be paid or any other condition has to be fulfilled or not.

“Purchaser” means the person to whom a chattel is let under a hire-purchase agreement.

“Vendor” means the person letting a chattel to another under a hire-purchase agreement.

*Assented to 18th January, 1938.

Hire-purchase agreements to be in writing.

3. (1.) It shall be the duty of every vendor under a hire-purchase agreement to have the agreement forthwith reduced into writing and to hand a copy of such agreement to the purchaser, and the word "writing" in this section shall be deemed to include such printing only as is in type not smaller than eight point face.

Penalty: Twenty pounds.

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

Responsibility for agents' statements not to be negatived.

4. Any statement contained in a hire-purchase agreement, to the effect that the vendor is not responsible for any representations, promises, or terms made or held out by any agent, representative, or servant of the vendor shall be void and of no effect.

Proceedings on vendor repossessing chattel.

Amended by No. 24 of 1937, s. 2.

5. (1.) Whenever the vendor (except by the request or at the instance of the purchaser) shall take possession of any chattel the subject of a hire-purchase agreement the vendor shall within twenty-one days thereafter prepare and serve on the purchaser an account under this section as between the vendor and the purchaser.

Inserted by No. 24 of 1937, s. 2.

(1a.) If a vendor takes possession of a chattel, except by the request or at the instance of the purchaser, he shall serve a copy of the provisions of this section on the purchaser within seven days after taking possession of the chattel.

Penalty: Twenty pounds.

(2.) If a vendor shall take possession of the chattel for some temporary purpose by the request, or at the instance of the purchaser, and shall afterwards refuse to re-deliver the chattel to the purchaser he shall be deemed, as at the date of such refusal, to have taken possession of the chattel otherwise than at the request or at the instance of the purchaser.

(3.) In such account the vendor shall credit the purchaser with the value of the chattel at the place where and the time when seized or taken possession of, and he may debit the purchaser with any instalments of rent overdue and unpaid (together with interest thereon at the rate of eight per centum per annum, calculated from

the due date) and with ninety per centum of the instalments of rent, the stipulated time for the payment whereof has not arrived and with such additional sum (if any) as it may be necessary to pay under the agreement in order to complete the purchase, and also with the amount of any damages (not otherwise allowed for in the account) suffered by the vendor by reason of any breach of agreement on the part of the purchaser. The balance shown on such account shall be a debt due by the vendor to the purchaser or the purchaser to the vendor, as the case may be.

(4.) If the vendor or any person acting in his behalf shall refuse or neglect to serve such account, or shall wilfully and fraudulently insert in such account any statement or figures which is or are false, or omit any statement or figures which ought to be inserted therein, he shall be guilty of an offence and punishable on summary conviction by a fine not exceeding fifty pounds.

(5.) If the purchaser is dissatisfied with the account, and has failed to arrive at an amicable agreement thereon with the vendor, he may, within twenty-one days from the date of service, lodge the same in the local court held nearest to the place where the chattel was taken possession of, together with a request to have such account reviewed by the magistrate. The clerk of the court shall thereupon summon the parties to appear before the magistrate, at a time and place stated in the summons, with a view to having all questions in issue between them in relation to the hire-purchase agreement settled and decided by the magistrate:

Provided that the date fixed for appearance before the magistrate shall be not less than one month after the date on which the chattel was taken possession of by the vendor.

(6.) Such summons shall be deemed to be a summons in a personal action within the meaning of the Local Courts Act, 1904-1930, and the purchaser shall be deemed to be the plaintiff and the vendor the defendant, and the relative provisions of the said Act and the rules of court made thereunder shall apply to the proceedings accordingly, subject to any necessary modification, and the magistrate shall have power to review the said account in favour of or against either party, and to decide the

questions at issue and to give judgment for either party for such amount as shall be just.

(7.) The local court may extend the time for lodging the account for a period not exceeding two months; and, notwithstanding that he has not brought the account before the local court, the purchaser shall be at liberty, if sued for a balance shown against him, to prove that, by reason of the incorrectness of the account, such balance is not justly due; but subject to this section and to the next succeeding section, the account shall be deemed, in the absence of fraud, to be an account stated between the parties.

Re-opening
hire-purchase
agreements.
Cf. S.A. 15
Geo. V.,
No. 1817, s. 5.

6. (1.) In any proceedings taken under the last preceding section, or taken in any court in respect of any matter arising out of a hire-purchase agreement, or for the purpose of obtaining relief under this section, if it is shown that—

- (a) the interest directly or indirectly charged or included in the instalments is excessive; or
- (b) any amounts charged for expenses, inquiries, fines, bonus, premium or any other charges are excessive or unreasonable; or
- (c) the agreement contains terms or provisions inserted with a view to evade any provision of this Act, or to deprive the purchaser of the benefit thereof; or
- (d) the transaction is harsh and unconscionable or is such that a court of equity would give relief against it;

then the court may—

- (i) re-open the transaction and any account stated between the parties;
- (ii) relieve the purchaser from payment of any sum in excess of what the court, having regard to the risk, the value of the chattel and all the other circumstances, adjudges to be fairly payable in respect of purchase money, interest, and charges;
- (iii) set aside, review or vary any agreement made between the parties in connection with the transaction; and

(iv) give judgment for either party for such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to such party under the agreement or by reason of the breach of any term thereof.

(2.) For the purposes of this section the court may take any accounts and make any inquiries and give any directions which it deems necessary.

(3.) No proceeding or application to obtain any relief under this section shall be taken or made after the expiry of twelve months from the time when the chattel has been taken possession of by the vendor under the agreement or the transaction has been finally closed, and no account stated between the parties shall be re-opened more than twelve months after it has been so stated.

(4.) The word "court" in this section includes a local court, and the jurisdiction of any local court hereunder shall not be excluded by reason of the amount involved or the value of the subject-matter; but the rules relating to the choice of a court in which to commence an action or to the removal of actions from one court to another contained in the Local Courts Act, 1904-1930, shall apply to proceedings for relief taken under this section.

7. Any hire-purchase agreement exempt from registration under the provisions of section fifty-four of the Bills of Sale Act, 1899, shall, notwithstanding the fact that it is unregistered, be deemed subject to the provisions of section twenty-nine of that Act.

Exemption of agreements.

8. Subject to rules of court, any court exercising jurisdiction under this Act may make such order as to the costs of any proceeding as it shall deem to be just; but no party taking any proceeding in the Supreme Court which might have been taken in a local court shall be allowed any costs over and above what he might have been awarded if the proceeding had been taken in a local court, unless the Supreme Court or a judge shall certify that there were good and sufficient reasons for not taking the proceeding in a local court.

Costs.

9. The jurisdiction and authority of any court under this Act may be exercised in such manner as may be pre-

Rules of court.

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scribed by rules of court, and it shall be lawful for any court to demand and receive such fees in connection with proceedings under this Act as may be specified in such rules.

No contracting
out.

10. The provisions of this Act shall have effect notwithstanding any agreement to the contrary, and shall extend to any hire-purchase agreement made and in operation at or before the commencement of this Act.