

# THE ENGLISH HIRE-PURCHASE ACT, 1938

A Measure to Regulate Instalment Selling

*By*

JOHN E. HAMM

Assistant Director, Department  
of Consumer Credit Studies



*New York*

RUSSELL SAGE FOUNDATION

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## FOREWORD

**S**Ocial policy toward instalment selling has been expressed in a wide variety of legislation. At times this legislation has consisted of little more than a requirement that the parties to an instalment contract conform to the rules and regulations which society has applied to all commercial transactions—i. e., the vast body of statutory and common laws relating to sales, negotiable instruments, frauds, etc. Usually, however, regulation has proceeded somewhat beyond this preliminary stage and one finds that the specific instruments employed in credit merchandising (conditional sales contracts, chattel mortgages, wage assignments, etc.) have been made the subject of special legislation designed to eliminate certain practices and encourage others. Much of the latter legislation was quite properly enacted for the protection of the credit merchant and it has applied to all instalment transactions, irrespective of the amounts involved, the status of buyers, or the types of goods purchased.

In recent years legislative emphasis throughout the United States has been slowly shifting toward the further protection of at least certain classes of instalment buyers. This changing emphasis is reflected both in our laws and in the ever-increasing number of bills which, for one reason or another, never emerge from legislative committees. In all of this surge to protect the instalment buyer there is little agreement as to precisely what is to be accomplished, and the proponents of change often indicate a sharp cleavage with respect to procedure.

One group proposes adjustments in our existing laws. Reacting with varying degrees of tolerance to-

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ward specific abuses, members of this group propose the deletion of a paragraph in a certain law, a revision of the phrasing in another, or the introduction of an entirely new section in a third. The other group strikes directly at a premise inherent in most of our present statutes—i. e., the premise that the consumer will enforce his rights by litigation in the established courts. Members of this group argue that a vast number of instalment buyers are in no position to litigate an injustice imposed upon them; even when the injustice is in defiance of both the letter and spirit of the statutes. Although these latter reformers may differ concerning the scope and nature of the rights which should accrue to an instalment buyer, they are usually in agreement that the enforcement of these rights, whatever they may be, should be entrusted to an administrative agency rather than the courts. By creating such an agency within the structure of an existing governmental department and by giving it a measure of direct control over instalment merchants, it is contemplated that efficient and orderly protection will be afforded to those classes of consumers who cannot be counted upon to protect themselves.

England has experienced a comparable swing in legislative emphasis toward the protection of instalment buyers rather than instalment sellers. The English approach to the problem, however, introduces a technique which is only rarely suggested in this country. They have defined a social policy but instead of looking to an administrative agency for enforcement they have revised the process of litigation so as to make it conform more realistically with the needs of instalment buyers.

Despite a superficial similarity, the English legal instruments and institutions are different from our own in a number of fundamental respects. The abuses which characterized instalment selling in England prior to enforcement of the Hire-Purchase Act are, however, almost

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identical with those found in this country. As a matter of fact, with only rare substitutions of our own equivalents for peculiar English phrases, a large portion of the debates on the Hire-Purchase Bill in the committees and on the floors of Parliament might have taken place in almost any of our state legislatures.

The English solution of the problems involved in present-day instalment selling need not and probably cannot serve as a solution for the related problems as they exist in this country. The attitude and logic which the English applied in attacking their problems may nevertheless serve to clarify and bring into focus the issues here. It is with the latter purpose in mind that the following analysis of the English Hire-Purchase Act was prepared.

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**T**HE English Hire-Purchase Act which was enacted on July 29, 1938, and became effective on January 1, 1939, is divided into twenty-two sections and a schedule.<sup>1</sup> Many sections are interrelated and the substance of this legislation may conveniently be discussed in terms of four general topics: (1) restrictions on repossession; (2) provisions making possible the termination of agreements; (3) requirements with respect to the form and content of legal instruments; and (4) the particular contracts to which the Act is applicable. The provisions of the law with respect to each of these topics will be considered in turn in the ensuing pages. Before turning to the substance of the Act, however, a brief reference will be made to (1) the unusual manner in which this legislation came to be enacted; and (2) the principal legal instruments which the English have employed in consummating instalment sales.

### *Introduction and Passage of the Act*

In recent years relatively few private members' bills have been enacted by the English Parliament and those which did advance far enough through that body to receive the Royal Assent were almost invariably of local rather than national interest.<sup>2</sup> When a private mem-

<sup>1</sup> The complete text of the Act is presented in the Appendix, together with a table showing the chronological progress of the bill through the houses of Parliament.

<sup>2</sup> Sessions of Parliament are devoted almost exclusively to matters of finance—providing for the collection of revenue and spending it. Under these circumstances the limited time available for the consideration of other matters is jealously controlled to advance the particular legislative

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ber's bill presumes to effect drastic changes in any segment of the economy approaching the importance of retail trade and when, moreover, this ambitious proposal is advanced by a left-wing member of the Labour Party at a time when the Government is predominately Conservative, it is almost a foregone conclusion that the progress of the bill will be checked at an early stage in the legislative process. And yet, the Hire-Purchase Act, which requires fundamental readjustments in the technique of instalment selling, began its existence in the House of Commons under precisely these circumstances.

A major portion of the credit for achieving this unique legislative phenomenon belongs to the sponsor of the bill, the Hon. Member for Jarrow, Miss Ellen Wilkinson. Miss Wilkinson's good fortune in being privileged to introduce a bill might have come to a much less happy end if her keen discrimination in selecting an outlet for her reformist tendencies had not been matched by her skillfulness in piloting the measure through the treacherous legislative currents in the House of Commons. When her bill had been read for the third time before that body (tantamount to final enactment), cheers arose from both sides of the Chamber and a "feast of eulogy" was spread before her not only by her many friends but by her erstwhile opponents as well.

program of the party with a majority in the House of Commons (i. e. "the Government"). Only ten Fridays out of the legislative year are set aside for the consideration of private members' (hence, unofficial) bills. Since no more than three such bills could possibly be debated in a single day, a maximum of 33 out of the 615 members of the House of Commons are thus permitted to advance their pet projects. The selection of these 33 fortunate members is, in complete fairness, left to the impersonal judgment of chance. Being successful in the legislative lottery, however, offers practically no assurance that the private member's bill will receive even cursory consideration in view of the fact that there are innumerable legislative devices which the Government may employ to pigeon-hole an embarrassing or otherwise unattractive proposal. For a most entertaining account of the progress of a private member's bill through the English Parliament see Herbert, A. P., *The Ayes Have It*, Doubleday, Doran and Company, Inc., New York, 1938.

### *Introduction and Passage of Act*

However great Miss Wilkinson's personal triumph was, it could hardly have been achieved without a benevolent neutrality on the part of the Government. Perhaps the position of the Government should be described as something more than merely neutral despite the fact that the progress of the bill was never facilitated by granting it official sponsorship or approval. The privilege of using the bill-drafting facilities of the Government was, however, extended to Miss Wilkinson (an unusually courteous gesture toward a private member's bill) and it became such a familiar sight to find the Labour-Party sponsor and the Conservative Attorney-General fighting shoulder to shoulder for or against a particular amendment to the bill that there were several facetious references to England's "Popular Front."

Comparable in importance to the neutrality of the Government in making possible the enactment of Miss Wilkinson's bill was a general recognition throughout the House of Commons that something had to be done about instalment selling.<sup>1</sup> Little time needed to be consumed in convincing members of that body that there was an unfortunate inequality of bargaining power between the parties to instalment contracts. Moreover, the restrictions which the bill placed on the British citizen's freedom of contract were never seriously challenged as an unjustifiable violation of his inalienable rights. That instalment selling should be more drastically regulated was accepted as inevitable and differ-

<sup>1</sup> The attitude of the House of Commons toward the subject under consideration may be traced in part to the fact that Scotland had already enacted legislation in this field (*Hire Purchase and Small Debt Act, 1932. 22 & 23 Geo. 5. Ch. 38*). It is also possible that the long series of letters to the *London Times* complaining of instalment abuses had a great deal to do with the reception that Miss Wilkinson's bill received. Furthermore, just in case individual members of Parliament had failed to grasp the significance of these pathetic letters-to-the-editor, there was ample evidence in the debates that the members' constituents had kept them uncomfortably aware of precisely what was being done by the most unscrupulous instalment merchants.



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ences of opinion concerning the bill were confined almost exclusively to the form rather than the desirability of specific regulations. On the other hand, it was universally acknowledged that instalment selling constituted a social and economic institution which should be preserved. Even the most violent critics did not feel that the limitations of the instalment plan outweighed its usefulness and they were inclined, therefore, to acquiesce to practical considerations which were essential to the maintenance of this type of retailing. Shortcomings which could be traced to weaknesses inherent in the character of a certain type of instalment buyer were acknowledged to be unfortunate but they were always sharply differentiated from the unconscionable practices of a minority group of instalment traders. The intent of Parliament in passing the Hire-Purchase Act was not to render instalment buying foolproof, which would have been impossible, but merely to eliminate the most scandalous abuses with a minimum amount of inconvenience to the legitimate users of this form of retail trade.

### *Hire-Purchase Agreements*

The chief legal instrument used in connection with instalment sales through the British Isles is the hire-purchase agreement. By means of this kind of agreement a person who is unable or unwilling to buy for cash may acquire durable and semi-durable goods by hiring them on a weekly or a monthly basis with the understanding that he may purchase them for a nominal sum after he has paid the hiring charges for a specified period of time. By presenting the eventual purchase as an option which the hirer may exercise and not as an obligation which he assumes upon signing the agreement, the instalment merchant retains title to the goods and is

### *Hire-Purchase Agreements*

otherwise protected to a greater extent than he would be had the intended sale been more directly acknowledged.

In reviewing these agreements from time to time the courts came to recognize the essentially fictitious character of the arrangements, since an ultimate sale and purchase was invariably contemplated despite the emphasis on hiring. The courts accordingly sought to preserve the rights of an instalment buyer by construing the agreement as a contract of sale unless the so-called "hirer" was permitted to terminate his obligation by returning the "hired" goods. Nevertheless, they permitted this right to be almost completely nullified by sanctioning a wide variety of clauses calling for the payment of "penalties," "depreciation allowances" and "liquidated damages" whenever the hirer attempted to return the goods and thus free himself from the drain upon his income which their hire entailed. Subject to the terms of the agreement, however, the hirer enjoys possession of the goods during the period of hire, even to the exclusion of the owner, but he may not pawn or sell the hired property until he acquires title to it. When the hirer defaults, the merchant may repossess all the goods covered by the agreement and, under such circumstances, he is not required to make any restitution of the sums advanced by the hirer despite the fact that all but a very small portion of the total purchase price may have been paid.

An alternative but much less widely used device employed by instalment merchants is the credit-sales agreement, sometimes referred to as a "deferred-payment contract." Ownership of the goods covered by these agreements passes immediately to the instalment purchaser. In case of default the creditor of an instalment buyer generally has no right to enforce return of the goods and his only remedy is to sue for the unpaid balance of the purchase price.

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The Hire-Purchase Act, as its name implies, is concerned almost exclusively with hire-purchase agreements. The justification for this legislative emphasis lies in the fact that the abuses connected with hire-purchase were more widespread and considerably less excusable than those that could be traced to credit-sales agreements. Certain sections of the Act are, however, applicable to the latter type of instalment contracts and they were inserted for two reasons. First, it was intended that they should eliminate certain conspicuous shortcomings in the use of these instruments. Second, and more significant, a review of the Scottish experience indicated that, unless restrictions were placed upon the use of credit-sales agreements, instalment merchants could with little inconvenience continue the practices which the legislation was intended to eliminate by substituting this type of contract. On the whole, however, hire-purchase agreements occupy so dominant a position in the Act that the discussion which follows relates, unless otherwise noted, exclusively to this particular type of contract.<sup>1</sup>

### *Restrictions on Repossession*

The most drastic innovations brought about by the Hire-Purchase Act may be traced to an assumption by Parliament that whenever an instalment buyer has paid as much as one-third of the purchase price he has thereby acquired a substantial interest in the goods. As

<sup>1</sup> Comparison of the English credit instruments with their American equivalents is beset with difficulties if only because the laws regulating our instruments may vary materially from one state to another. There is, of course, a close relationship between our bailment lease and the English hire-purchase agreement but the former is only rarely used in this country except in Pennsylvania. Hasty generalizations based upon the analogous function of our conditional sales contracts and hire-purchase agreements are to be avoided owing to the fact that the fiction of hiring which permeates the hire-purchase agreement creates an entirely different legal atmosphere for the interpretation of the rights of buyers and sellers.

### *Restrictions on Repossession*

a corollary to this assumption it was acknowledged as inequitable that an instalment buyer should unwillingly be deprived of this substantial interest until an objective and impersonal effort had been made to evaluate the rights of both buyer and seller in the light of the peculiar circumstances in each case. This assumption and its corollary materially modify the legal fiction of hiring and, although instalment merchants are not deprived of their title to the goods, definite restrictions are placed upon the privilege of exercising rights which they previously enjoyed as absolute owners of the property.

The Act provides that "where . . . one-third of the hire-purchase price has been paid . . . or tendered . . . the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by [legal] action." Should the owner ignore this requirement and take the law into his own hands, the hirer's liability ceases and he as well as his guarantors may sue to recover any sums which they may have paid under the agreement. This section of the Act was not intended to preclude the possibility of the owner and the hirer making an amicable arrangement for return of the goods. Use of the word "enforce" is particularly significant in this connection. As the Attorney-General pointed out, "I do not think anyone would suggest that when two people make an agreement as to the return of goods that the person to whom the goods were returned was enforcing a right to recover possession." He went on to say that members of the House were all familiar with the sort of things that went on when a truck was driven up to a hirer's door and the goods were more or less forcibly taken away. "This Clause," he said, "is intended to deal with such cases, but is not intended to interfere with a *bona fide* agreement."<sup>1</sup>

<sup>1</sup> Parliamentary Debates, House of Commons, Standing Committee B, Official Report: Hire-Purchase Bill, February 22, 1938, pp. 139-140.



### *English Hire-Purchase Act*

This particular section of the Act differs in certain material respects from the corresponding section in the original version of the bill. It was initially proposed that if a hirer failed to meet any of his obligations after one-third of the hire-purchase price had been paid, the owner should inform the hirer concerning the precise nature of his delinquency and indicate an intention to repossess the goods unless this delinquency was rectified. The hirer then was to be given seven days in which he could comply with the conditions of the agreement, return the goods to the owner, or appeal to the courts for relief. If at the expiration of the period the hirer had failed to take any action in the matter and steadfastly refused to return the goods, the owner could then apply to the courts for an order which would compel the hirer to relinquish possession. This particular procedure was abandoned in favor of the one which was finally enacted because it was recognized that the owners would in most cases eventually have to bring actions against the hirers and, therefore, that time and effort might be saved by requiring the owner rather than the hirer to appeal to the courts in the first instance.<sup>1</sup>

Parliament gave thoughtful consideration to the matter of "linked-on" contracts<sup>2</sup> which were characterized as an "indefensible scandal." It had been the practice of some instalment merchants to encourage the "purchase" of other commodities when a customer was in a position to acquire title to an article by paying the nominal sum specified in the hire-purchase agreement.

<sup>1</sup> There was, however, considerable preference for the original procedure, particularly in the House of Lords. One member of that body summed up the opposition to the revised procedure with the remark, "surely the logical thing to do is to say that the man who has not paid for what he is using should go to law and get permission to have it without payment." (Parliamentary Debates, House of Lords, Official Report [unrevised], July 5, 1938, p. 542.)

<sup>2</sup> The American equivalent is the "add-on" or "tying" contract.

### *Restrictions on Repossession*

Subsequent "purchases" would be "linked-on" to the original contract and title to all of the goods would be vested in the merchant until the customer had paid the hiring charges on the most recently acquired article for the specified period of time whereupon a nominal payment would enable him to acquire title to all of the goods covered by the agreement. This process of linking-on new commodities to an old agreement could, of course, be repeated indefinitely. Under such circumstances, should a hirer become unemployed or for any other reason find it impossible to continue payments, the merchant could (and at times did) repossess all of the articles covered by the agreement irrespective of the fact that many of them might have been completely paid for and all but a very small balance remained to be paid on the most recently acquired article.

Not only were "linked-on" contracts acknowledged to be inequitable but it was recognized that they might be used to thwart the intent of Parliament with respect to the conditions under which goods might be repossessed without judicial review. It was conceivable, for instance, that an unprincipled merchant, who was prohibited from summarily repossessing an article on which one-third of the purchase price had been paid, might trick his customer into accepting some other article in connection with the original contract and then repossess both of them without a court action on the ground that he had not received one-third of the new total price. The Act accordingly provides that as soon as one-third has been paid on the goods covered by an agreement any subsequent additions to this agreement are immediately subject to all of the requirements of the Act applicable to the goods initially acquired. It was acknowledged that this section might prohibit a merchant from summarily repossessing goods on which less than one-third of the total purchase price had been paid but it was

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pointed out that if the merchant wished to insure for himself the maximum protection afforded by the Act he had only to make out a new contract covering the subsequent purchases instead of adding them on to the original agreement.<sup>1</sup>

The procedure which an owner must follow in bringing an action to recover goods on which one-third of the hire-purchase price has been paid is carefully set forth in the Act. Such actions can only be brought in the county court for the district where the hirer resides or carries on business.<sup>2</sup> This requirement was intended to eliminate the insidious practice whereby certain firms brought their actions in courts located near their home offices or at some other point sufficiently removed from each hirer to prevent his appearance in court and thus, by the hirer's default, insured a verdict which these owners might not have been able to obtain had all of the facts been brought to light. Having begun an action as required by the Act, the owner is prohibited from attempting "to enforce payment of any sum due under the hire-purchase agreement or under any contract of guarantee relating thereto, except by claiming the sum in the said action." If, however, the goods in question are of such a nature that their continued use may wipe out or materially lessen their subsequent value to the owner, the owner may request and the court is empowered to issue

<sup>1</sup> One restriction was, however, placed upon the rights of a merchant who entered into more than one hire-purchase agreement with the same customer. A merchant may no longer make an arbitrary allocation of a partial payment which is not sufficient to discharge all of the hirer's current obligations. Under such circumstances it is reserved for the hirer to designate the particular agreement or agreements to which his payment shall be applied and, should he fail to exercise this right, the Act sets forth a formula by means of which partial payments are to be credited to the customer's outstanding obligations.

<sup>2</sup> When the actual whereabouts of the hirer are unknown, an action may be initiated in the district where the hirer "resided or carried on business at the date on which he last made a payment under the hire-purchase agreement."

### *Restrictions on Repossession*

any order which may be necessary to protect the goods from damage or depreciation until a hearing can be held on the owner's action.

It was Miss Wilkinson's opinion that "the pillar . . . on which the bill rests, is the power of the county court."<sup>1</sup> She regretted that it was impossible "to bring in any Bill so drastic as to protect the British citizen against the consequences of his own folly." To the extent that he could be given some partial protection along this line in buying on the instalment plan she proposed "handing that little job on to the county court judge."<sup>2</sup> Acknowledging that the additional powers which her bill conferred upon these courts might be considered "a little drastic," she argued that justice for a poor and bewildered instalment buyer in any court procedure could be achieved only by placing the judge in a position to equate the unequal advantages of the litigants. Parliament was inclined to accept her reasoning with the result that the Act empowers the county court judge, after a hearing, to make three quite distinct types of decisions in the light of the facts as he sees them.<sup>3</sup>

In the first place, the judge may order all of the hired goods returned to the owner. Such an order would deprive the hirer of any option which he might otherwise have, to obtain title to the goods by paying the balance due under the agreement. Upon making such an order the judge may rule as he thinks fit upon the owner's claim for unpaid instalments and claims arising out of a valid provision in the original agreement calling for pay-

<sup>1</sup> Committee B, February 24, 1938, p. 144.

<sup>2</sup> Parliamentary Debates, House of Commons, Official Report, December 10, 1937, p. 737.

<sup>3</sup> Section 18 of the Act provides that "His Majesty may by Order in Council direct that the jurisdiction conferred upon county courts . . . may be exercised by any inferior court specified in the Order . . ." The possibility of extending jurisdiction to these inferior courts was justified on the ground that their costs were generally less than the costs in the county courts.



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ment of the difference between the sums actually paid and a specified amount if the contract is terminated. By virtue of this general provision it would seem that the judge has ample power to protect a legitimate instalment merchant from the obstructive tactics of an irresponsible or unprincipled customer.

In the second place, it is equally possible for the judge to give comparable protection to a hirer when he is convinced that the hirer is honest and trying to pay but is being victimized by an unscrupulous owner. Under these circumstances, the judge may issue an order for the return of the goods but postpone its operation on condition that the hirer periodically make reasonable payments to the owner.<sup>1</sup> Just what constitutes "reasonable payments" is to be determined by the judge in the light of the hirer's ability to pay. In making his decision the judge is not bound in any way by the amount or frequency of the instalment payments specified in the original agreement. A judge may not, however, make any adjustment in the total amount that the hirer contracted to pay for the goods. Miss Wilkinson pointed out that to deprive the judge of this power "is a pretty big concession to the hire-purchase firms," particularly if the price is out of all proportion to the value of the goods. She recognized, however, that "the British Constitution might drop from its foundations" if a provision enabling the judge to cut prices was written into the Act.<sup>2</sup> Certain members of Parliament would have preferred to limit the period over which a judge was permitted to extend payments of the balance due under an agreement but a majority indicated a complete willing-

<sup>1</sup> The Act requires that all parties to the original agreement, including guarantors, be made parties to the action. The judge may, under favorable circumstances, make the postponement of an order dependent upon the payment of reasonable sums by a guarantor.

<sup>2</sup> House of Commons, December 10, 1937, p. 738.

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ness to leave that matter entirely to the judge's discretion.<sup>1</sup>

When a judge postpones an order for the return of the hired goods any conditions which he may impose, short of altering the purchase price, supersede the conditions in the original contract. The owner, accordingly, may not sue for the payments falling due under the original agreement but must be content with payments specified by the court, however small they may be. Should the hirer fail to comply with any condition of the postponement or with the terms of the original agreement as modified by the judge or if he wrongfully disposes of the goods,<sup>2</sup> the owner may not take any civil action against the hirer except in the court where the order was issued and postponed. Failure of the hirer to make the payments specified by the judge enables the owner to repossess the goods without applying for permission except where the judge has specifically withheld this right. On the other hand, when the hirer has completely paid the balance due in accordance with the postponement, the owner's title to the goods passes to the hirer. If at any time during postponement of the order there should be a change in the conduct or status of either party to the agreement, the judge may vary the conditions of the postponement, revoke it, or issue a new order requiring

<sup>1</sup> The operation of this provision in the Act is illustrated by the following news item from the May 1, 1939, issue of *Time*, page 85: "In Newcastle, England, an importunate salesman sold Mrs. E. Renwick a refrigerator, had the law on her when she was unable to pay the installments. Snorted the indignant judge: 'The only way to treat people who badger for sales is to take them by the scruff of the neck and kick them as hard as possible on the soft part of their anatomy.' Verdict: Mrs. Renwick can have 2,160 years to pay up."

<sup>2</sup> An order to return the goods may not be postponed unless the hirer satisfies the judge that the goods are in his possession or control at the time the order is made. As Miss Wilkinson explained, "restrictions placed . . . on the owner's rights are not intended to operate in favour of a hirer who has wrongfully disposed of the goods" (Committee B, February 24, 1938, p. 149).

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that part of the goods be returned to the owner and granting the hirer a title to the balance.

The latter type of order constitutes the third course of action which a judge may take after a hearing on an owner's action to recover hired goods. The judge may at no time, however, make such an order unless he is convinced that the amount which the hirer has actually paid by reason of the agreement exceeds the price of the goods retained by at least one-third of the unpaid balance. This restriction constitutes an arbitrary method of calculating a minimum allowance for depreciation on the goods returned to the owner. Operation of the restriction may be illustrated by the following example: If \$100 is the total price of all the goods covered by an agreement and if the hirer had paid \$67 before court action was initiated, the unpaid balance would be \$33. Under these circumstances the hirer could not be granted title to goods the price of which would exceed the amount paid (\$67) minus one-third of the unpaid balance (\$11), or \$56. If the hire-purchase prices of the various items covered by an agreement are indicated, the judge must accept these prices in deciding what items the hirer may retain and what items must be returned to the owner. On the other hand, if the total price is not broken down to indicate the relative values of the various items, the judge may assign parts of the goods to the owner and parts to the hirer on the basis of his own decision as to the relative portions of the total price represented by individual items or groups of items.

### *Termination of Agreements*

One of the most significant features of the Hire-Purchase Act is that it distinguishes between (a) the hirer who wishes to retain goods on which he has paid a substantial portion of the purchase price but who can no

### *Termination of Agreements*

longer continue to meet his obligations as they become due and (b) an entirely different type of hirer who for any reason wishes to return the goods and terminate the agreement. The courts are empowered to protect the interests of a hirer who falls into the first category but some solution far less cumbersome than a court action seemed called for under the latter circumstances. Mutually satisfactory arrangements for the termination of a hire-purchase agreement had on many occasions been independently negotiated between hirers and instalment merchants; but all too frequently a reasonable termination, from the hirer's point of view, was inhibited because an over-greedy merchant insisted upon his full "legal" rights. Valid agreements could be so skilfully drafted that the only possible escape for a hirer was to return the goods and then pay all but a very small fraction of the sum for which he could have purchased them. Had the goods been acquired under a credit-sales agreement, the instalment buyer might conceivably have pawned or sold them to a third party and thus been able to raise sufficient funds to cover his contractual obligations. But under a hire-purchase contract he was helpless—he held no title and was therefore prohibited from disposing of the goods in any other way than by handing them back to the owner on such terms as the owner might feel inclined to impose. In recognition of this situation, the Act provides a means whereby at any time before the final payment is due a hirer may be relieved of all further responsibility by returning the goods to the owner and meeting certain maximum requirements specified in the Act.

The problem which confronted the legislators in attempting to make it possible for an instalment buyer to terminate a hire-purchase agreement involved the development of some formula which would insure the merchant compensation for any incidental expenses in-



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curred because of the agreement (commissions, delivery charges, etc.) and, in addition, provide for the depreciation of the goods while they were in the hirer's possession. It was recognized that such expenses and depreciation would vary considerably from one type of commodity to another. Instead of attempting to draw up a schedule of charges which could be claimed for each individual type of commodity covered by hire-purchase contracts, an effort was made to agree upon some arbitrary fraction of the hire-purchase price which might be presumed to cover the owner's interests under most circumstances. Estimates of what such a fraction should be varied considerably, depending upon whether the estimator's attention was directed toward an article like linoleum, which had been cut to fit a particular room, or some other commodity whose new and re-sale values were almost identical. There was a substantial agreement among the legislators that one-third of the hire-purchase price constituted an adequate allowance for expenses and depreciation under most circumstances but, due to the strenuous protests of hire-purchase firms, the fraction was finally increased to one-half.

The Act accordingly provides that a hirer may terminate an agreement by paying any delinquent instalments plus the amount, if any, by which one-half of the hire-purchase price exceeds the total amount actually paid. A hirer, however, is also liable for damages if he has failed to take reasonable care of the goods while they were in his possession. The hirer's notice of termination must be in writing but it may be served on any person authorized to receive the sums payable under the agreement. Should the hirer wrongfully retain possession of the goods after terminating the agreement, the owner may sue to recover possession and the courts are empowered not only to order the goods returned to the owner but they may also deprive the hirer of his right to

### *Form and Content of Agreements*

secure title to the goods by paying the balance due under the agreement. An instalment merchant, therefore, is always assured of getting his goods back and receiving at least one-half of the hire-purchase price if the contract is terminated. The Act is so drafted, however, that an owner who would be content with less than one-half of the purchase price when the contract is terminated may specify a smaller fraction in the agreement.<sup>1</sup>

### *Form and Content of Agreements*

Although Parliament did not go so far as to specify a standard form of instalment contract, a substantial portion of the Hire-Purchase Act is devoted to the contents and implications of the legal instruments governing instalment transactions. Various sections of the Act outline in considerable detail what a valid agreement must set forth or imply and, on the negative side, what specific types of clauses are to be construed as void and unenforceable. These particular sections are not perhaps so

<sup>1</sup> When an agreement is terminated it may not be practicable for the owner immediately to remove the goods from the former hirer's possession. In the interval of time between termination and removal it had previously been possible for a landlord to seize the goods for unpaid rent on the premises in which they were located. This condition is remedied by the Act which in addition to clarifying the status of goods after the termination of an agreement also defines their status when an order for their return has been issued and postponed. In both instances the goods may not be seized by either landlords or creditors in bankruptcy proceedings. The Law of Distress by means of which a landlord was privileged to seize goods that a tenant was purchasing on the instalment plan was bitterly criticized in the debates on the hire-purchase bill. "One of the chief reasons," it was pointed out, "why hire-purchase firms have used what is now known as the 'snatch back' [i. e. repossession] has been the fear of the landlord having the right to come in quickly and seize goods which in actual fact were their property. . . . If hire-purchase goods are to be protected from seizure by the true owner, as they quite rightly are in this Bill, then, surely, it is right that they should also be protected from seizure by a landlord when the goods are not the property of the tenant . . . ." The legal experts felt, however, that it would be utterly impossible to alter radically the Law of Distress in a bill devoted to a quite different subject. See Committee B, March 1, 1938, p. 175 et seq.

## English Hire-Purchase Act

dramatic as certain other phases of the Act but they are nevertheless an indispensable feature of any comprehensive attempt to regulate the institution of instalment selling.

"The great amount of human ingenuity that has gone into hire-purchase agreements to persuade people that somehow or other 2s. a week does not amount to anything at all, even if you have to pay it for the rest of your life, has certainly been responsible for a good many of the tragedies connected with hire purchase."<sup>1</sup> Such was the conclusion of Miss Wilkinson, and Parliament agreed with her to the extent that the Act requires all hire-purchase agreements to contain a written statement of the:

- a. hire-purchase price
- b. cash price<sup>2</sup>
- c. amount of each instalment
- d. date or method of determining the date on which each instalment is to be paid
- e. a description of the goods in sufficient detail to identify them, and
- f. the hirer's right to terminate the agreement and the restrictions on the owner's right to repossess the goods as set forth in the schedule to the Act.

The agreement must be signed by all parties to it and a copy must be delivered or sent to the hirer within seven

<sup>1</sup> House of Commons, May 6, 1938, p. 1199.

<sup>2</sup> The Act also requires that "the owner shall state in writing to the prospective hirer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased by him for cash." At least one member of Parliament felt that the Act should go further in this matter. "I should like," he said, "three prices to be shown—the hire-purchase price, the cash price and the ready-money price, which would certainly be lower than the second one." (Committee B, February 15, 1938, p. 55.) Other members pointed out that it would be possible for certain firms to defeat the purpose of Parliament by selling exclusively on a credit basis in which case the cash and hire-purchase prices could be the same. (*Ibid.*, p. 52 et seq.)

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days.<sup>1</sup> Unless the agreement meets these requirements, no security given by the hirer or his guarantors in respect to the money payable under the agreement is enforceable,<sup>2</sup> and the owner may neither enforce the agreement nor recover the goods. A court may, however, dispense with certain of these requirements if it is satisfied that the owner's omissions did not prejudice the hirer and if it is convinced that there are just and reasonable grounds for overlooking the owner's shortcomings.<sup>3</sup>

<sup>1</sup> At any time before the final payment has been made the merchant is required to furnish an instalment buyer who has tendered one shilling for expenses a copy of the agreement and a statement showing the amount paid, the amount due but unpaid, and the amount which is to become payable. Failure of a merchant to comply with such requests makes it impossible for him to enforce the agreement or any security given in connection with it. Furthermore, should his failure continue for one month he may upon conviction be fined up to ten pounds. On the other hand a hirer is required to supply information as to the precise whereabouts of the goods whenever requested to do so in writing by the owner.

<sup>2</sup> "Throughout the bill," Miss Wilkinson pointed out, "we should make it clear that liability under collateral securities ceases when the liability under the original agreement ceases." In the present connection it was the intent of Parliament that, when a hirer could not be sued because of the owner's failure to carry out the requirements of the Act, the owner should not be able to evade the requirements by suing the hirer on the basis of the collateral securities. Similarly, when a hirer has properly terminated an agreement, he may not be sued by third party holders of security used by the owner as a negotiable instrument. With respect to the status of collateral securities, the Attorney-General admitted a number of real problems but he argued that "in the absence of some fairly drastic provision of this kind, a complete coach and horses could be driven through the whole Bill." In a hire-purchase transaction he pointed out that the owner "retains the security of the goods. . . . One looks, therefore, with some question at the taking of further security, particularly in the shape of a document which is negotiable." He concluded that "any document which is capable of being, as it were, put into the world and enforced, possibly irrespective of the debtor performing his due functions under the agreement, is a thing which has to be watched with care." Miss Wilkinson summed up the majority opinion by stating that, in demanding an independent status for collateral securities, hire-purchase traders "not only want to eat their cake and have it, but they want to eat their cake and have it and the halfpenny as well." (Committee B, February 15, 1938, p. 59 et seq.)

<sup>3</sup> Substantially the same requirements are also applied to credit-sales agreements where the total purchase price exceeds five pounds.



## *English Hire-Purchase Act*

Over forty years ago the English Parliament enacted a bill which required that certain conditions and warranties had to be implied in all contracts for the sale of goods.<sup>1</sup> Because hire-purchase agreements emphasized the act of hiring rather than the eventual sale, it was possible to deprive an instalment buyer of rights which would have accrued to him by virtue of this legislation had he been prepared to buy for cash. The Hire-Purchase Act endeavored to eliminate the possibility of discriminating against the instalment buyer. All hire-purchase agreements must, therefore, implicitly guarantee the hirer's right to "enjoy quiet possession of the goods." Use of such agreements by a merchant assures the hirer that the merchant will legally be able to sell the goods when all the instalments have been paid and, moreover, that the goods shall at such time be free from any charge or encumbrance in favor of a third party. Unless it is definitely indicated that the goods have previously been used, there shall be an implied condition that they are of "merchantable quality."<sup>2</sup> Furthermore, should a hirer "expressly or by implication" make known the particular purpose for which the goods are required, the agreement is subject to the condition that they shall be "reasonably fit for such purpose." The latter condition may be modified but, if it is, the instalment merchant must be prepared to prove that before the agreement was signed the modification was brought to the hirer's attention and "its effect made clear to him." In all other respects these conditions and warran-

<sup>1</sup> Sale of Goods Act, 1893.

<sup>2</sup> "Merchantable quality" is defined in Halsbury's Laws of England as follows: "Goods are of merchantable quality where they are of such quality and in such condition that a reasonable man, acting reasonably, would, after a full examination, accept the goods in the circumstances of the case in performance of his offer to buy them, whether he buys for his own use or to sell again." London, Butterworth and Co., 1913, vol. 25, p. 160.

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ties "shall be implied notwithstanding any agreement to the contrary."<sup>1</sup>

The Act is equally specific in defining certain general types of clauses which may not be included in hire-purchase agreements. In most cases the reasons behind these restrictions are obvious and require little explanation or justification. No limitation, for example, may be placed upon the hirer's right to terminate an agreement in accordance with the Act and the liability which the hirer assumes when he exercises this right may not exceed the specific liabilities which the Act itself imposes. Somewhat more controversial is the prohibition of any clause enabling a merchant or his agent to enter an instalment buyer's home for the purpose of repossessing hired goods. To insure the effectiveness of this prohibition, any clause in the agreement relieving the merchant from liability for such entry is void.

In rendering unenforceable certain types of clauses, undoubtedly one of the most significant features of the Act is a clarification of the status of agents. Clauses had been inserted in both hire-purchase and credit-sales agreements whereby a person acting in behalf of an instalment merchant was to be regarded: (a) as the agent of the merchant at the beginning but not at the end of the negotiations leading up to the signing of the agreement, or (b) as the exclusive agent of the instalment buyer throughout the transaction, or (c) as an entirely

<sup>1</sup> An outstanding authority in the field of instalment selling, speaking before a meeting of the Law Society in Manchester on September 27, 1938, pointed out that "It will be a matter for the courts to decide whether finance companies who enter into agreements for the letting of goods are under any duty to inspect the goods or otherwise take steps to see whether the goods are defective. On the whole it is thought that the courts would reject an argument that a finance company need not concern itself to inspect goods which it is letting, and if this is sound such companies must in future either arrange for an inspection or alternatively obtain an undertaking of indemnity from the trader whose transactions they are financing." Littler, G. F., "Objects and Scope of Hire-Purchase Act, 1938," in *The Law Times*, vol. 238, October 1, 1938, p. 240.

### *English Hire-Purchase Act*

independent entity who had no relationship to either buyer or seller. The net effect of all of these various devices was approximately the same: The merchant was relieved of responsibility for any verbal agreements which his agent might make and the instalment buyer was indirectly deprived of his rights under the agreement—a hirer, for instance, might be privileged to terminate the agreement by returning the goods to the owner or his agent but, since the person with whom the hirer made the agreement was not an agent for the owner, the hirer had no choice but to continue payments because the owner's place of business was in a distant city. The Act remedies this situation by rendering all of these clauses unenforceable and it prohibits any provisions "whereby an owner or seller is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion" of either a hire-purchase or a credit-sales agreement.

### *Scope of the Act*

The simplicity of the initial section which defines the precise area of trade to which the Hire-Purchase Act is applicable belies the complexity of the issues that were raised by this particular arrangement of ninety-odd words. Throughout the period during which the bill was under consideration, members of Parliament were besieged by persistent advisers who agreed with the bill "in principle" and thought that it should certainly be enacted but who argued, most convincingly at times, that an exception should be made in connection with the particular commodities or lines of business in which they were interested. By undertaking to define the scope of the bill before reaching an agreement on what the proposed legislation was expected to accomplish within the

### *Scope of the Act*

defined area, Parliament may have precipitated a greater amount of controversy than it would have, had it reversed the order in which these topics were considered. Certainly there was substantially more agreement on the general objectives than there was on the types of instalment selling which required legislation in order to insure these objectives. Under the circumstances, and perhaps inevitably, discussion of the scope of the proposed legislation instead of being concentrated at a single point was interspersed throughout the entire progress of the bill.

Since the basic purpose of the legislation was to help those unfortunate persons whose deficiency in bargaining power had caused them to be victimized by unscrupulous merchants, it was essential to define the application of the Act in such a way that most if not all the instalment contracts entered into by such persons would be subject to the conditions and requirements which the Act imposes. At the same time, however, there was an evident reluctance to deprive buyers and sellers of their freedom to make individual contracts unless the protection of a substantial body of consumers could be achieved in no other way. How properly to differentiate between those instalment buyers who needed the protection of the Act and those who did not was conceived to be a problem of including and excluding instalment transactions on the basis of the total amount of money payable under each contract.

Since one hundred pounds represented the maximum jurisdiction of the English County Courts, this figure was a convenient one with which to begin discussion on the proper scope of the bill. Few members indicated complete satisfaction with this particular figure. Some, for instance, pointed out that many instalment contracts calling for the payment of considerably more than one hundred pounds possessed all the vicious features



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which the bill was designed to eliminate. Others argued that a host of contracts which required no legislative intervention would be brought within the scope of the bill if the maximum limit was placed at such a high level. However, since it was impractical to write into the bill an elaborate cross-classification of buyers and commodities, a one hundred pound maximum came to be accepted as an expedient solution of the problem. Although many exemptions from this arbitrary limit were considered, only three were actually granted—the maximum was reduced where the contract relates to a motor vehicle or a railway wagon and increased where livestock is purchased on the instalment plan. Aside from these specific exemptions, the Act is applicable to all hire-purchase and credit-sales agreements where the total amount that an instalment buyer is required to pay is less than one hundred pounds.<sup>1</sup> The exemptions, however, are sufficiently significant to merit special consideration.

The scope of the Act increases fivefold when livestock is made the subject of an instalment contract. Farm animals are usually acquired in herds rather than singly and, because of the larger sums involved, farmers would in this respect be deprived of the benefits of the Act if the one hundred pound limit had been applied to such agreements. The exclusion of a substantial portion of the credit trade in livestock would have been objectionable to many legislators who did not represent agricultural constituencies because livestock, unlike practically every other commodity sold on the instalment plan, generally tends to increase in value during the period of partial payments. Repossession under these circumstances acquires an entirely different complexion. By

<sup>1</sup> Credit-sale agreements in which the purchase price is payable in less than five instalments are, by definition, excluded from the application of the Act.

### *Scope of the Act*

virtue of this distinction it was argued that judicial review should be extended over a wider range of such contracts because "the owner . . . is able to take possession of an improving asset as well as . . . the instalments, and under the harsh exercise of this power many farmers have been brought to bankruptcy."<sup>1</sup> Initially it was proposed to include within the scope of the bill all hire-purchase and credit-sales agreements relating to livestock irrespective of the amounts involved. After further consideration, however, it was thought advisable to include only those agreements involving less than five hundred pounds so as to preserve complete freedom of contract in credit purchases of pedigreed animals, particularly race horses, where the purchaser might be assumed to be able to take care of himself.

Economic considerations were chiefly responsible for limiting the application of the Act to contracts involving less than fifty pounds in the case of motor vehicles. Lord Amulree, who championed Miss Wilkinson's bill in the House of Lords, explained that "a practice has grown up in the motor trade where the person making the purchase arranges for the value of his old car to be taken into account. It is felt that if a higher figure than £50 was specified it might seriously affect the sale of new cars and thereby seriously affect the manufacture of cars."<sup>2</sup> Even Miss Wilkinson felt that this limitation could be accepted "with a clear conscience"<sup>3</sup> for the reasons indicated above and presumably because the instalment selling of new motor cars in England had not been characterized by the vicious abuses which were so prevalent in other fields of retail trade.

Railway wagons and other railway rolling stock presented a peculiar problem. As Miss Wilkinson pointed

<sup>1</sup> House of Lords, June 2, 1938, p. 846.

<sup>2</sup> *Ibid.*

<sup>3</sup> House of Commons, May 6, 1938, p. 1199.

### *English Hire-Purchase Act*

out, "it was never the intention of Parliament to bring in a hire-purchase Bill to protect those who may casually buy a railway wagon under hire-purchase."<sup>1</sup> On the other hand, she felt that specifically to exempt this type of equipment would lead to demands for similar treatment on the part of other commodities where the case for exemption was not nearly so convincing. She was not, she said, prepared "to die in the last ditch for railway rolling stock. . . . But if we once start on a process of elimination of things from the Bill we shall get into a tangle and we shall make things much more difficult. Is it really going to put any great hardship on anybody if, because of the limit of price, second-hand railway rolling stock does come within the scope of the Bill? I suggest it will not."<sup>2</sup> The answer of most members was also in the negative and, by limiting the application of the act to contracts involving less than fifty pounds, all but an insignificant fraction of the trade in railway equipment was effectively excluded from the requirements of the Act.

Both the publicly and privately owned utilities energetically sought to be relieved from the necessity of complying with the Act. They argued that they were already subject to stringent regulations; that they differed from other purveyors of appliances in that their interest was not in the profit to be derived from the sale of an appliance but in the consequent expansion of the services which they rendered; and, finally, that installation charges which had no repossession value bulked large in their instalment prices. Legislators were somewhat skeptical about the first and second reasons. Granting that the utilities were subject to regulation, it was pointed out that regulating bodies seldom if ever set up standards governing the sale of appliances. The dissimilarity of motives between utilities and independ-

<sup>1</sup> *Ibid.*

<sup>2</sup> Committee B, February 10, 1938, p. 33.

### *Scope of the Act*

ent appliance stores was conceded but, since these different types of outlets for appliances were in direct competition, it did not seem fair to subject one to regulation and not the other. With respect to installation charges, however, the peculiar position of the utilities was acknowledged. The Act provides that where installation charges are specifically indicated in the agreement, these charges must be paid by the instalment buyer under all circumstances and references in the Act to the buyers' rights when one-third or one-half of the purchase price has been paid shall apply only to that portion of the total price which does not represent an installation charge.



## APPENDICES

## CHRONOLOGY OF HIRE-PURCHASE BILL

October 29, 1937	First Reading in House of Commons
December 10, 1937	Second Reading in House of Commons
February 10, 1938	Consideration by Standing Committee B
February 15, 1938	Consideration by Standing Committee B
February 17, 1938	Consideration by Standing Committee B
February 22, 1938	Consideration by Standing Committee B
February 24, 1938	Consideration by Standing Committee B
March 1, 1938	Consideration by Standing Committee B
May 6, 1938	Report in House of Commons (Third Reading)
May 10, 1938	First Reading in House of Lords
June 2, 1938	Second Reading in House of Lords
July 5, 1938	Consideration by Committee of the Whole House of Lords (Third Reading)
July 19, 1938	Consideration of House of Lords' Amendments by House of Commons
July 29, 1938	Royal Assent

# TEXT OF HIRE-PURCHASE ACT, 1938

[1 & 2 GEO. 6. CH. 53.]

## ARRANGEMENT OF SECTIONS

### Section

1. Application of Act.
2. Requirements relating to hire-purchase agreements.
3. Requirements relating to credit-sale agreements.
4. Right of hirer to determine hire-purchase agreement.
5. Avoidance of certain provisions.
6. Duty of owners and sellers to supply documents and information.
7. Duty of hirer to give information as to whereabouts of goods.
8. Conditions and warranties to be implied in hire-purchase agreements.
9. Appropriation of payments made in respect of hire-purchase agreements.
10. Evidence of adverse detention in actions by owners to recover possession of the goods.
11. Restriction of owner's right to recover possession of goods otherwise than by action.
12. Powers of court in certain actions by owners to recover possession of the goods.
13. Effect of postponement of operation of an order for specific delivery of goods to the owner.
14. Powers of the court to deal with payments arising on determination of hire-purchase agreements.
15. Successive hire-purchase agreements between the same parties.
16. Provisions as to bankruptcy of hirer and distress on hirer's premises.
17. Hirer's refusal to surrender goods not to be conversion in certain cases.
18. Provision for the exercise by inferior courts other than county courts of the jurisdiction conferred by this Act.
19. Special provisions as to installation charges.
20. Application of Act in relation to existing agreements.
21. Interpretation.
22. Short title, commencement and extent.

SCHEDULE.—Notice to be included in Note or Memorandum of Hire-Purchase Agreement.

## CHAPTER 53

An Act to amend the law with respect to the hire-purchase and sale upon credit of goods and the law of distress in its relation thereto. A.D. 1938

[29th July 1938.]

**B**E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act shall apply in relation to all hire-purchase agreements and credit-sale agreements under which the hire-purchase price or total purchase price, as the case may be, does not exceed—

- (a) where the agreement relates to a motor vehicle or railway wagon or other railway rolling stock, the sum of fifty pounds,
- (b) where the agreement relates to livestock, the sum of five hundred pounds, and
- (c) in any other case, the sum of one hundred pounds,

and the expressions "hire-purchase agreement" and "credit-sale agreement" shall be construed accordingly.

2.—(1) Before any hire-purchase agreement is entered into in respect of any goods, the owner shall state in writing to the prospective hirer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased by him for cash (in this section referred to as the "cash price"):

Provided that this subsection shall be deemed to have been sufficiently complied with—

- (a) if the hirer has inspected the goods or like goods and at the time of his inspection tickets or labels were

### *Text of Hire-Purchase Act*

attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised therein, or

- (b) if the hirer has selected the goods by reference to a catalogue, price list, or advertisement, which clearly stated the cash price either of the goods as a whole or of all the different articles or sets of articles comprised therein.

(2) An owner shall not be entitled to enforce a hire-purchase agreement or any contract of guarantee relating thereto or any right to recover the goods from the hirer, and no security given by the hirer in respect of money payable under the hire-purchase agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or guarantor by any holder thereof, unless the requirement specified in the foregoing subsection has been complied with, and—

- (a) a note or memorandum of the agreement is made and signed by the hirer and by or on behalf of all other parties to the agreement, and
- (b) the note or memorandum contains a statement of the hire-purchase price and of the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the hire-purchase price is to be paid and of the date, or the mode of determining the date, upon which each instalment is payable, and contains a list of the goods to which the agreement relates sufficient to identify them, and
- (c) the note or memorandum contains a notice, which is at least as prominent as the rest of the contents of the note or memorandum, in the terms prescribed in the Schedule to this Act, and
- (d) a copy of the note or memorandum is delivered or

### *Text of Hire-Purchase Act*

sent to the hirer within seven days of the making of the agreement:

Provided that, if the court is satisfied in any action that a failure to comply with the requirement specified in the foregoing subsection or any requirement specified in paragraph (b), (c), or (d) of this subsection has not prejudiced the hirer, and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

3.—(1) Before making any credit-sale agreement under which the total purchase price exceeds five pounds, the seller shall state in writing to the prospective buyer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased by him for cash (in this section referred to as the "cash price"):

Requirements  
relating to  
credit-sale  
agreements

Provided that this subsection shall be deemed to have been sufficiently complied with—

- (a) if the buyer has inspected the goods or like goods and at the time of his inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised therein, or
- (b) if the buyer has selected the goods by reference to a catalogue, price list, or advertisement which clearly stated the cash price either of the goods as a whole or of all the different articles or sets of articles comprised therein.

(2) A person who has sold goods by a credit-sale agreement under which the total purchase price exceeds five pounds shall not be entitled to enforce the agreement or any contract of guarantee relating thereto, and no security given by the buyer in respect of money payable under the credit-sale agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be en-



### *Text of Hire-Purchase Act*

forceable against the buyer or guarantor by any holder thereof, unless the requirement specified in the foregoing subsection has been complied with, and—

- (a) a note or memorandum of the agreement is made and signed by the buyer and by or on behalf of all other parties to the agreement, and
- (b) the note or memorandum contains a statement of the total purchase price and of the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the total purchase price is to be paid and of the date, or the mode of determining the date, upon which each instalment is payable, and contains a list of the goods to which the agreement relates sufficient to identify them, and
- (c) a copy of the note or memorandum is delivered or sent to the buyer within seven days of the making of the agreement:

Provided that, if the court is satisfied in any action that a failure to comply with the requirement specified in the foregoing subsection or any requirement specified in paragraph (b) or (c) of this subsection has not prejudiced the buyer, and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

Right of hirer  
to determine  
hire-purchase  
agreement

4.—(1) A hirer shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive the sums payable under the agreement, and shall, on determining the agreement under this section, be liable, without prejudice to any liability which has accrued before the termination, to pay the amount, if any, by which one-half of the hire-purchase price exceeds the total of the sums paid and the sums due in respect of the hire-purchase price immediately before

### *Text of Hire-Purchase Act*

the termination, or such less amount as may be specified in the agreement.

(2) Where a hire-purchase agreement has been determined under this section, the hirer shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

(3) Where a hirer, having determined a hire-purchase agreement under this section, wrongfully retains possession of the goods, then, in any action brought by the owner to recover possession of the goods from the hirer, the court shall, unless it is satisfied that having regard to the circumstances it would not be just and equitable so to do, order the goods to be delivered to the owner, without giving the hirer an option to pay the value of the goods.

(4) Nothing in this section shall prejudice any right of a hirer to determine a hire-purchase agreement otherwise than by virtue of this section.

### 5. Any provision in any agreement—

- (a) whereby an owner or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods which have been let under a hire-purchase agreement, or is relieved from liability for any such entry, or
- (b) whereby the right conferred on a hirer by this Act to determine the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this Act, or—
- (c) whereby a hirer, after the determination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under this Act, or
- (d) whereby any person acting on behalf of an owner or

Avoidance  
of certain  
provisions

### *Text of Hire-Purchase Act*

seller in connection with the formation or conclusion of a hire-purchase or credit-sale agreement is treated as or deemed to be the agent of the hirer or the buyer, or

- (e) whereby an owner or seller is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase agreement or credit-sale agreement, shall be void.

Duty of owners and sellers to supply documents and information

6.—(1) At any time before the final payment has been made under a hire-purchase agreement or credit-sale agreement, any person entitled to enforce the agreement against the hirer or buyer shall, within four days after he has received a request in writing from the hirer or buyer and the hirer or buyer has tendered to him the sum of one shilling for expenses, supply to the hirer or buyer a copy of any memorandum or note of the agreement, together with a statement signed by the said person or his agent showing—

- (a) the amount paid by or on behalf of the hirer or buyer,
- (b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment, and
- (c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(2) In the event of a failure without reasonable cause to comply with the last foregoing subsection, then, while the default continues—

- (a) no person shall be entitled to enforce the agreement against the hirer or buyer or to enforce any contract of guarantee relating to the agreement, and, in the case of a hire-purchase agreement, the owner shall

### *Text of Hire-Purchase Act*

not be entitled to enforce any right to recover the goods from the hirer, and

- (b) no security given by the hirer or buyer in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or buyer or the guarantor by any holder thereof,

and, if the default continues for a period of one month, the defaulter shall be liable on summary conviction to a fine not exceeding ten pounds.

7.—(1) Where by virtue of a hire-purchase agreement a hirer is under a duty to keep the goods comprised in the agreement in his possession or control, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

Duty of hirer to give information as to whereabouts of goods

(2) If a hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be liable on summary conviction to a fine not exceeding ten pounds.

8.—(1) In every hire-purchase agreement there shall be—

- (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass;
- (d) except where the goods are let as second hand goods, and the note or memorandum of the agreement made in pursuance of section two of this Act contains a statement to that effect, an implied condition that the goods shall be of merchantable quality, so, how-

Conditions and warranties to be implied in hire-purchase agreements



### *Text of Hire-Purchase Act*

ever, that no such condition shall be implied by virtue of this paragraph as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or, if the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed.

(2) Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(3) The warranties and conditions set out in subsection (1) of this section shall be implied notwithstanding any agreement to the contrary, and the owner shall not be entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection (2) of this section unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

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

Appropriation of payments made in respect of hire-purchase agreements

9. 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 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 towards the satisfaction of the sums due under the respective hire-purchase agreements in the proportions which those sums bear to one another.

### *Text of Hire-Purchase Act*

10. Where, in an action by an owner of goods which have been let under a hire-purchase agreement to enforce a right to recover possession of the goods from the hirer, the owner proves that, before the commencement of the action and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession thereof, be deemed to be adverse to the owner.

Evidence of adverse detention in actions by owners to recover possession of the goods

Nothing in this section shall affect a claim for damages for conversion.

11.—(1) Where goods have been let under a hire-purchase agreement and one-third of the hire-purchase price has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer or any guarantor, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by action.

Restriction of owner's right to recover possession of goods otherwise than by action

(2) If an owner recovers possession of goods in contravention of the foregoing subsection, the hire-purchase agreement, if not previously determined, shall determine, and—

- (a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the hirer under the agreement or under any security given by him in respect thereof, and
- (b) any guarantor shall be entitled to recover from the owner in an action for money had and received all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) The provisions of this section shall not apply in any case in which the hirer has determined the agreement or the bailment by virtue of any right vested in him.

12.—(1) Where, in any case to which the last foregoing section applies, an owner commences an action to enforce a right to recover possession of goods from a hirer after one-

Power of court in certain actions by owners to recover possession of the goods

### *Text of Hire-Purchase Act*

third of the hire-purchase price has been paid or tendered as aforesaid, the action shall be commenced in the county court for the district in which the hirer resides or carries on business or resided or carried on business at the date on which he last made a payment under the hire-purchase agreement, and after the action has been commenced the owner shall not take any step to enforce payment of any sum due under the hire-purchase agreement or under any contract of guarantee relating thereto, except by claiming the sum in the said action.

(2) Subject to such exceptions as may be provided for by county court rules, all the parties to the agreement and any guarantor shall be made parties to the action.

(3) Pending the hearing of the action the court shall, in addition to any other powers, have power, upon the application of the owner, to make such orders as the court thinks just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the user of the goods or giving directions as to their custody.

(4) On the hearing of the action the court may, without prejudice to any other power,—

- (a) make an order for the specific delivery of all the goods to the owner, or
- (b) make an order for the specific delivery of all the goods to the owner and postpone the operation of the order on condition that the hirer or any guarantor pays the unpaid balance of the hire-purchase price at such times and in such amounts as the court, having regard to the means of the hirer and of any guarantor, thinks just, and subject to the fulfilment of such other conditions by the hirer or a guarantor as the court thinks just, or
- (c) make an order for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

(5) No order shall be made under paragraph (b) of the last

### *Text of Hire-Purchase Act*

foregoing subsection unless the hirer satisfies the court that the goods are in his possession or control at the time when the order is made.

(6) The court shall not make an order transferring to the hirer the owner's title to a part of the goods unless it is satisfied that the amount which the hirer has paid in respect of the hire-purchase price exceeds the price of that part of the goods by at least one-third of the unpaid balance of the hire-purchase price.

(7) Where damages have been awarded against the owner in the proceedings, the court may treat the hirer as having paid in respect of the hire-purchase price, in addition to the actual amount paid, the amount of the damages, or such part thereof as the court thinks fit, and thereupon the damages shall accordingly be remitted either in whole or in part.

(8) In this section the expression "order for the specific delivery of the goods" means an order for the delivery of the goods to the owner without giving the hirer an option to pay their value, and the expression "price" in relation to any goods means such part of the hire-purchase price as is assigned to those goods by the note or memorandum of the hire-purchase agreement, or, if no such assignment is made, such part of the hire-purchase price as the court may determine.

(9) If at any time before the hearing of an action to which this section applies the owner has recovered possession of a part of the goods, the references in subsection (4) hereof to all the goods shall be construed as references to all the goods which the owner has not recovered, and, if the parties have not agreed upon an adjustment of the hire-purchase price in respect of the goods so recovered, the court may for the purposes of paragraphs (b) and (c) of subsection (4) hereof make such reduction of the hire-purchase price and of the unpaid balance thereof as the court thinks just.

(10) Where an owner has recovered a part of the goods let



### *Text of Hire-Purchase Act*

under a hire-purchase agreement, and the recovery was effected in contravention of the last foregoing section, the provisions of this section shall not apply in relation to any action by the owner to recover the remainder of the goods.

Effect of postponement of operation of an order for specific delivery of goods to the owner

**13.**—(1) While the operation of an order for the specific delivery of goods to the owner is postponed under the last foregoing section, the hirer shall be deemed to be a bailee of the goods under and on the terms of the hire-purchase agreement:

Provided that—

- (a) no further sum shall be or become payable by the hirer or a guarantor on account of the unpaid balance of the hire-purchase price, except in accordance with the terms of the order, and
- (b) the court may make such further modification of the terms of the hire-purchase agreement and of any contract of guarantee relating thereto as the court considers necessary having regard to the variation of the terms of payment.

(2) If while the operation of an order for the specific delivery of the goods to the owner is so postponed the hirer or a guarantor fails to comply with any condition of the postponement, or with any term of the agreement as varied by the court, or wrongfully disposes of the goods, the owner shall not take any civil proceedings against the hirer or guarantor otherwise than by making an application to the court by which the order was made:

Provided that, in the case of a breach of any condition relating to the payment of the unpaid balance of the hire-purchase price, it shall not be necessary for the owner to apply to the court for leave to execute the order unless the court has so directed.

(3) When the unpaid balance of the hire-purchase price has been paid in accordance with the terms of the order, the owner's title to the goods shall vest in the hirer.

### *Text of Hire-Purchase Act*

(4) The court may at any time during the postponement of the operation of such an order as aforesaid—

- (a) vary the conditions of the postponement, and make such further modification of the hire-purchase agreement and of any contract of guarantee relating thereto as the court considers necessary having regard to the variation of the conditions of the postponement;
- (b) revoke the postponement;
- (c) make an order, in accordance with the provisions of the last foregoing section, for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

**14.**—(1) Where a hire-purchase agreement validly provides for the payment by the hirer on or after the determination of the agreement or the bailment of such sum as, when added to the sums paid and the sums due in respect of the hire-purchase price before the determination, is equal to a fixed amount, and a claim is made in respect of any such sum in an action to which section twelve of this Act applies, then—

- (a) if the court makes an order for the specific delivery of a part of the goods to the owner and the transfer to the hirer of the owner's title to the remainder of the goods, the claim shall be disallowed,
- (b) if the court postpones the operation of an order for the specific delivery of the goods to the owner, it shall not entertain the claim unless and until the postponement is revoked, and shall then deal with the claim as if the agreement had just been determined.

(2) Where the hirer or a guarantor has paid or has been ordered to pay any such sum as aforesaid, and the owner subsequently seeks to recover the goods in an action to which section twelve of this Act applies, the court may treat the

Powers of the court to deal with payments arising on determination of hire-purchase agreements

### *Text of Hire-Purchase Act*

said sum as a sum paid or payable, as the case may be, in respect of the hire-purchase price.

Successive  
hire-purchase  
agreements  
between the  
same parties

15. Where goods have been let under a hire-purchase agreement and at any time after one-third of the hire-purchase price has been paid or tendered the owner makes a further hire-purchase agreement with the hirer comprising those goods, the provisions of sections eleven and twelve of this Act shall have effect in relation to that further agreement as from the commencement thereof.

Provisions  
as to bank-  
ruptcy of  
hirer and  
distress on  
hirer's  
premises.  
8 Edw. 7.  
c. 53.  
4 & 5 Geo. 5.  
c. 59

16.—(1) Where, under the powers conferred by this Act, the court has postponed the operation of an order for the specific delivery of goods to any person, the goods shall not, during the postponement, be treated as goods which are by the consent or permission of that person in the possession, order, or disposition of the hirer for the purposes of section four of the Law of Distress Amendment Act, 1908, or of section thirty-eight of the Bankruptcy Act, 1914.

(2) After the determination of a hire-purchase agreement, or after an owner, having a right to recover from a hirer goods which have been let under a hire-purchase agreement, has commenced an action to enforce that right, the goods which have been let under the agreement, or the goods claimed in the action, as the case may be, shall not (notwithstanding that the court in any such action postpones the operation of an order for the specific delivery of the goods to the owner) be treated as goods comprised in the hire-purchase agreement for the purposes of section four of the Law of Distress Amendment Act, 1908.

Hirer's  
refusal to  
surrender  
goods not to  
be conversion  
in certain  
cases

17. If, whilst by virtue of this Act the enforcement by an owner of a right to recover possession of goods from a hirer is subject to any restriction, the hirer refuses to give up possession of the goods to the owner, the hirer shall not, by reason only of the refusal, be liable to the owner for conversion of the goods.

### *Text of Hire-Purchase Act*

18.—(1) His Majesty may by Order in Council direct that the jurisdiction conferred upon county courts by this Act may be exercised by any inferior court specified in the Order, and whilst any such Order is in force with respect to any inferior court, an action to which section twelve of this Act applies may, where the hirer resides or carries on business within the jurisdiction of that inferior court or resided or carried on business within the jurisdiction of that court at the date on which he last made a payment under the hire-purchase agreement, be commenced either in a county court in accordance with the provisions of the said section or in that inferior court.

Provision for  
the exercise  
by inferior  
courts other  
than county  
courts of the  
jurisdiction  
conferred by  
this Act

(2) The Order may contain such provisions as appear to His Majesty to be expedient with respect to the rules of court for regulating the procedure to be followed in any such action, and may also, where it appears to His Majesty to be necessary, contain provisions authorising the making of such rules.

(3) Any Order made under this section may be revoked or varied by a subsequent Order in Council made in like manner.

19.—(1) Where under any hire-purchase agreement made after the commencement of this Act the owner is required to carry out any installation, and the note or memorandum of the agreement specifies as part of the hire-purchase price the amount to be paid in respect of the installation, the references in section four of this Act to one-half of the hire-purchase price and in sections eleven, twelve and fifteen of this Act to one-third of the hire-purchase price shall be construed as references to the aggregate of the said amount and either one-half of the remainder of the hire-purchase price or one-third of the remainder of the hire-purchase price as the case may be.

Special  
provisions  
as to in-  
stallation  
charges

(2) For the purpose of this section the expression "installation" means—

(a) the installing of any electric line as defined by the Electric Lighting Act, 1882, or any gas or water pipe,

45 & 46 Vict.  
c. 56

*Text of Hire-Purchase Act*

- (b) the fixing of goods to which the agreement relates to the premises where they are to be used, and the alteration of premises to enable any such goods to be used thereon, and
- (c) where it is reasonably necessary that any such goods should be constructed or erected on the premises where they are to be used, any work carried out for the purpose of such construction or erection.

Application  
of Act in  
relation to  
existing  
agreements

20.—(1) The following sections of this Act shall, to the extent hereinafter specified, apply in relation to all hire-purchase agreements whether made before or after the commencement of this Act, that is to say:—

- (a) section nine of this Act, so far as it relates to payments made after the commencement of this Act,
- (b) sections eleven and fifteen of this Act, so far as they relate to the recovery of possession of goods after the commencement of this Act,
- (c) sections ten, twelve, thirteen, fourteen and fifteen of this Act, so far as they relate to actions commenced after the commencement of this Act,
- (d) subsection (1) of section sixteen of this Act, so far as it relates to orders made after the commencement of this Act, and subsection (2) of the said section so far as it relates to agreements determined or actions commenced, as the case may be, after the commencement of this Act, and
- (e) section seventeen of this Act, so far as it relates to a refusal to give up possession of goods after the commencement of this Act.

(2) Where goods have been let under a hire-purchase agreement made before the commencement of this Act, and the owner has, as part of the consideration for the hire-purchase price, carried out in relation to those goods any installation within the meaning of the last foregoing section, then, if the owner has served upon the hirer a notice specifying a

*Text of Hire-Purchase Act*

sum not exceeding the expense actually incurred by the owner in respect of the installation, sections eleven, twelve and fifteen of this Act, so far as by virtue of the last foregoing subsection they apply in relation to that agreement, shall, as respects the recovery of possession of goods after the expiration of twenty-eight days from the service of the notice, and as respects actions commenced after the expiration of the said period, have effect as if for the references in the said sections to one-third of the hire-purchase price there were substituted references to the aggregate of the said sum and one-third of the amount which remains after deducting that sum from the hire-purchase price.

(3) Save as aforesaid this Act shall not apply in relation to any hire-purchase agreement or credit-sale agreement made before the commencement of this Act.

21.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

“Action,” “buyer,” “delivery,” “goods,” “property,” “sale,” “seller,” “warranty” have the meanings respectively assigned to them by the Sale of Goods Act, 1893;

“Hire-purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and 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 therein will or may pass to the bailee, the agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last of the agreements was made;

“Credit-sale agreement” means an agreement for the sale of goods under which the purchase price is payable by five or more instalments;

Interpreta-  
tion

56 & 57 Vict.  
c. 71



*Text of Hire-Purchase Act*

"Hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"Owner" means the person who lets or has let goods to a hirer 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 has passed by assignment or by operation of law;

"Hirer" means the person who takes or has taken goods from an owner 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;

"Contract of guarantee" means, in relation to any hire-purchase agreement or credit-sale agreement, a contract, made at the request express or implied of the hirer or buyer, to guarantee the performance of the hirer's or buyer's obligations under the hire-purchase agreement or credit-sale agreement, and the expression "guarantor" shall be construed accordingly;

"Total purchase price" means the total sum payable by the buyer under a credit-sale agreement, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"Motor vehicle" has the same meaning as in the Road Traffic Act, 1930;

"Livestock" means horses, cattle, sheep, goats, pigs, or poultry.

(2) Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of sections four, six, eleven, twelve, thirteen, fourteen and fifteen of this Act, be deemed to be a payment of that part of the hire-purchase price.

*Text of Hire-Purchase Act*

22.—(1) This Act may be cited as the Hire-Purchase Act, 1938.

Short title,  
commence-  
ment and  
extent

(2) This Act shall come into force on the first day of January nineteen hundred and thirty-nine.

(3) This Act shall not extend to Scotland or Northern Ireland.

## SCHEDULE.

Notice to be included in Note or Memorandum of Hire-Purchase Agreement.

## NOTICE.

*Right of Hirer to terminate Agreement.*

1. The hirer may put an end to this agreement by giving notice of termination in writing to any person who is entitled to collect or receive the hire-rent.

2. He must then pay any instalments which are in arrear at the time when he gives notice. If, when he has paid those instalments, the total amount which he has paid under the agreement is less than (*here insert the minimum amount which the hirer is required to pay in accordance with the provisions of sections four and nineteen of this Act*) he must also pay enough to make up that sum.

3. If the goods have been damaged owing to the hirer having failed to take reasonable care of them, the owner may sue him for the amount of the damage unless that amount can be agreed between the hirer and the owner.

4. The hirer should see whether this agreement contains provisions allowing him to put an end to the agreement on terms more favourable to him than those just mentioned. If it does, he may put an end to the agreement on those terms.

*Restriction of Owner's right to recover Goods.*

1.\*[After (*here insert an amount calculated in accordance with the provisions of sections eleven and nineteen of this Act*) has been paid, then,] unless the hirer has himself put an end to the agreement, the owner of the goods cannot take them back from the hirer without the hirer's consent unless the owner obtains an order of the court.

*Text of Hire-Purchase Act*

2. If the owner applies to the court for such an order, the court may, if the court thinks it just to do so, allow the hirer to keep either—

- (a) the whole of the goods, on condition that the hirer pays the balance of the price in the manner ordered by the court; or
- (b) a fair proportion of the goods having regard to what the hirer has already paid.

\* If the agreement is a "further" agreement within the meaning of section fifteen of this Act, the words in square brackets should be omitted.