

Bill No. 5 of 1964 (L.A.)

PUBLISHED 15TH FEBRUARY, 1964.

LEGISLATURE,
Public Buildings,
Georgetown.

8th February, 1964.

The following Bill which will be introduced in the Legislative Assembly is published for general information.

E. V. VIAPREE,
Acting Clerk of the Legislature.

No. 152

Bill No. 5 of 1964 (L.A.).

HIRE-PURCHASE BILL, 1964.

Arrangement of Sections.

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FIRST SCHEDULE

SECOND SCHEDULE

A BILL

Intituled

AN ORDINANCE with respect to hire-purchase and sale upon credit of goods.

Enacted by the Legislature of British Guiana :—

1.(1) This Ordinance may be cited as the Hire-Purchase Ordinance, 1964.

A.D. 1964.

Short title and commencement.

(2) This Ordinance shall come into operation on such date as the Governor may by order appoint.

Interpreta-
tion.

2.(1) In this Ordinance —

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

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“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;

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

“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 Ordinance as a single agreement made at the time when the last of the agreements was made;

“hire-purchase price” means the total sum payable by the hirer under a hire-purchase agreement (being not more than the amount of the cash price as defined for the purposes of section 3 hereof together with interest charged thereon in accordance with the provisions of this Ordinance) 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 and includes any sum payable by the hirer under a hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such an agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means;

“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;

“owner” means the person who proposes to let, 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;

“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.

(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 5, 7, 12, 13, 14 and 15 of this Ordinance, be deemed to be a payment of that part of the hire-purchase price.

3.(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, being not more than the listed or marked price (in this section referred to as the "cash price").

Requirements relating to hire-purchase agreement.

(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 subsection (1) of this section 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 first schedule to this Ordinance, and
- (d) a copy of the note or memorandum is delivered or sent to the hirer at his address as contained in the agreement within seven days of the making of the agreement:

First schedule.

Provided that, if the court is satisfied in any action that a failure to comply with the requirement specified in subsection (1) of this section 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.

4.(1) Before making any credit-sale agreement under which the total purchase price exceeds twenty-five dollars, 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, being not more than the listed or marked price (in this section referred to as the "cash price").

Requirements relating to credit-sale agreement.

(2) A person who has sold goods by a credit-sale agreement under which the total purchase price exceeds twenty-five dollars 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 enforceable against the buyer or guarantor by any holder thereof, unless the requirement specified in subsection (1) of this section 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 in-

stalment 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 at his address as contained in the agreement 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 subsection (1) of this section 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.

5.(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 at the same time, or prior thereto shall deliver the goods to the owner, 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 of instalments, if any, due in respect of the hire-purchase price immediately before the termination, or such less amount as may be specified in the agreement.

(2) If a hirer gives notice of termination of a hire-purchase agreement without delivering the goods as required by this section such notice shall be of no effect and the hire-purchase agreement shall remain in full force.

(3) 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.

(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.

Avoidance of
certain pro-
visions.

6. Any provision in any agreement —

- (a) whereby an owner or any person acting on his behalf is authorised to enter forcibly 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 forcible entry, or
- (b) whereby the right conferred on a hirer by this Ordinance to determine the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Ordinance is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this Ordinance, or
- (c) whereby the right conferred on a hirer by this Ordinance to remedy the breach of a hire-purchase agreement in accordance with the provisions of this Ordinance is excluded or restricted or whereby any liability in addition to any liability imposed by this Ordinance is imposed on a hirer by reason of the continuation of the hire-purchase agreement under this Ordinance, or
- (d) 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 Ordinance, or
- (e) whereby any person acting on behalf of an owner or seller in connection with the formation or con-

clusion of a hire-purchase or credit-sale agreement is treated as or deemed to be the agent of the hirer or the buyer, or

- (f) 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.

7.(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 seven 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 fifty cents 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 —

Duty of owner and seller to supply documents and information.

- (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) The request in writing required by this section shall contain an address to which the copy of the memorandum or note of the agreement and the statement are to be sent and a person entitled to enforce the agreement against the hirer or buyer shall be deemed to have complied with the provisions of this section if, within the said seven days, he delivers the copy of the memorandum or note of the agreement and the statement, or sends the same by registered post, to the hirer or buyer at the said address and if the request does not contain an address as required by this subsection, then a person entitled to enforce the agreement against the hirer or buyer shall be deemed to have complied with the provisions of this section if, within the said seven days, he delivers the copy of the memorandum or note of the agreement and the statement, or sends the same by registered post, to the hirer or buyer at his address given in the hire-purchase agreement or credit-sale agreement.

(3) In the event of a failure without reasonable cause to comply with subsection (1) of this section, 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 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 one hundred dollars.

8.(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

Duty of hirer to give information as to whereabouts of goods and

to permit inspection of goods.

when the information is given or, if it is sent by post, at the time of posting.

(2) If a hirer —

- (a) fails without reasonable cause to give the information required to be given by subsection (1) of this section within fourteen days of the receipt of the request, or
- (b) gives any information for the purposes of subsection (1) of this section which he knows or has reasonable cause to believe is false, or
- (c) does not, at the request of the owner or any person acting on his behalf, permit the owner or that person to inspect the goods at the place indicated under subsection (1) of this section,

he shall be liable on summary conviction to a fine not exceeding one hundred dollars.

Conditions and warranties to be implied in hire-purchase agreement.

9.(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 3 of this Ordinance contains a statement to that effect, an implied condition that the goods shall be of merchantable quality, so, however, 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.

10. 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.

11.(1) 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 action by owner to recover possession of the goods.

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

12.(1) Where goods have been let under a hire-purchase agreement and sixty-six and two-thirds per centum 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 otherwise than by action.

Owner may only recover goods by action where sixty-six and two-thirds per centum of hire-purchase price paid.

(2) If an owner recovers possession of goods in contravention of subsection (1) of this section, 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.

13.(1) Where in any case to which section 12 of this Ordinance applies, an owner commences an action to enforce a right to recover possession of goods from a hirer after sixty-six and two-thirds per centum of the hire-purchase price has been paid or tendered as aforesaid, the action shall be commenced in the magistrate's court for the district in which the hire-purchase agreement was entered into, 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.

Powers of court in certain action by owner to recover possession of the goods.

(2) Subject to such exceptions as may be provided for by rules made under the Summary Jurisdiction (Magistrates) Ordinance, all the parties to the agreement and any guarantor shall be made parties to the action.

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(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 and if any person fails to comply with any requirement of an order under this section with which he is required by such order to comply, such person shall be liable on summary conviction to a fine not exceeding two hundred dollars.

(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 guaran-

tor 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 subsection (4) of this section 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 to the owner" means an order for 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) of this section 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 the said subsection (4) 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 under a hire-purchase agreement, and the recovery was effected in contravention of section 12 of this Ordinance, the provisions of this section shall not apply in relation to any action by the owner to recover the remainder of the goods.

(11) (a) A magistrate's court shall have jurisdiction to hear and determine an action referred to in subsection (1) of this section notwithstanding that the hire-purchase price of the goods claimed in such action exceeds two hundred and fifty dollars, and subject as hereinafter provided, the provisions of the Summary Jurisdiction (Magistrates) Ordinance and of any rules made thereunder, the Summary Jurisdiction (Petty Debt) Ordinance and the Summary Jurisdiction (Appeals) Ordinance, shall apply in respect of every such action as they apply in respect of actions which a magistrate's court is authorised to hear and determine under the Summary Jurisdiction (Petty Debt) Ordinance.

(b) The application of the provisions of the Summary Jurisdiction (Magistrates) Ordinance and of any rules made thereunder and of the Summary Jurisdiction (Petty Debt) Ordinance, in respect of any action referred to in subsection (1) of this section shall be subject to the provisions of this Ordinance.

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

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

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.

(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 section 13 of this Ordinance, 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) Where a postponed order for the specific delivery of goods to the owner has been made under paragraph (b) of subsection (4) of section 13 of this Ordinance, the powers of the court under paragraphs (a) and (c) of subsection (4) of this section may be exercised, notwithstanding that any condition of the postponement has not been complied with, at any time before the goods are delivered to the owner in accordance with a writ of execution issued in pursuance of the order, and where such a writ has been issued the court shall —

- (a) if the court varies the conditions of the postponement under the said paragraph (a) suspend the writ on the like conditions;
- (b) if the court makes an order under the said paragraph (c) 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 remaining part thereof, cancel the writ so far as it provides for the delivery of the lastmentioned part of the goods.

(6) At any time before the delivery of goods to the owner in accordance with a writ issued as mentioned in subsection (5) of this section, the writ may, so far as it provides for the delivery of the goods, be discharged by the payment to the owner by the hirer or any guarantor of the whole of the unpaid balance of the hire-purchase

price; and in any such case the owner's title to the goods shall vest in the hirer.

(7) If in an action to which section 13 of this Ordinance applies, an offer as to conditions for the postponement of the operation of an order under paragraph (b) of subsection (4) of that section is made by the hirer and accepted by the owner in accordance with rules of court, an order under that paragraph may thereupon be made by the court in accordance with the said offer without hearing evidence as to the matters specified in the said paragraph (b) or in subsection (5) of that section:

Provided that where a guarantor is a party to the action, no such order shall be made before the date fixed for the hearing of the action.

Successive
hire-purchase
agreements
between the
same parties.

15. Where goods have been let under a hire-purchase agreement and at any time after sixty-six and two-thirds per centum 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 12 and 13 of this Ordinance shall have effect in relation to that further agreement as from the commencement thereof.

Provisions
as to
insolvency
of hirer.

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16.(1) Where, under the powers conferred by this Ordinance, 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 39 of the Landlord and Tenant Ordinance, or of section 42 of the Insolvency Ordinance.

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(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 goods to the owner) be treated as goods comprised in the hire-purchase agreement for the purposes of section 39 of the Landlord and Tenant Ordinance.

Where less
than sixty-six
and two-thirds
per centum of
hire-purchase
price is paid,
owner to give
notice in cer-
tain circum-
stances before
enforcing his
right to re-
cover posses-
sion of goods.

17.(1) Where goods have been let under a hire-purchase agreement and less than sixty-six and two-thirds per centum 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 where the only breach of the hire-purchase agreement or any default in respect of which the owner seeks to enforce the right aforesaid is a failure by the hirer to pay any instalment of the hire-purchase price then due, unless he gives to the hirer not less than twenty-one days' notice in writing of his intention to do so.

(2) The notice referred to in subsection (1) of this section shall be in writing and shall state the amount of the hire-purchase price which is then due and unpaid, and shall further state that it is the intention of the owner, on the expiration of twenty-one days after such notice has been given to the hirer, to enforce his right to recover possession of the goods unless the hirer has previously made good his default.

(3) If within the period of twenty-one days after a notice has been given to the hirer under subsection (1) of this section the hirer pays to the owner all instalments of the hire-purchase price due at the date of the giving of the said notice the hire-purchase agreement shall continue in force as if the breach stated in such notice had never occurred.

(4) For the purposes of this section, a notice shall be deemed to have been given if it is directed to the hirer, and delivered at, or despatched by registered letter to, his address as mentioned in the hire-purchase agreement.

(5) If an owner recovers possession of goods in contravention of subsection (1) of this section the provisions of subsection (2) of section 12 of this Ordinance shall apply as they apply where an owner recovers possession of goods in contravention of subsection (1) of the said section 12.

(6) 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.

18. If, whilst by virtue of this Ordinance 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.

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

19. If, when the enforcement by an owner of a right to recover possession of goods from a hirer is not subject to any restriction imposed by or under this Ordinance, the hirer obstructs or attempts to obstruct the owner in the lawful exercise of his right to recover possession of such goods, the hirer shall be guilty of an offence and shall be liable on summary conviction therefor to a fine not exceeding two hundred dollars.

Obstruction.

20.(1) Where under any hire-purchase agreement made after the commencement of this Ordinance the owner is required to carry out any installation, the note or memorandum of the agreement shall specify the amount to be paid in respect of the installation but such amount shall not be treated for the purposes of this Ordinance as part of the hire-purchase price.

Installation charges.

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

- (a) the installing of any electric line as defined in the Electric Lighting Ordinance;
- (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;
- (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.

Cap. 237.

21.(1) In every hire-purchase agreement, the owner shall be entitled to charge interest, as part of the hire-purchase price, at a rate not more than two and one-half per centum in excess of the minimum bank rate as prescribed for the purposes of this Ordinance in the second schedule hereto, and the said schedule may from time to time be amended, varied, rescinded or revoked by order of the Minister for the time being charged with responsibility for commerce.

Rate of interest chargeable in hire-purchase transactions and method of calculating the total amount of interest. Second schedule.

(2) The total amount of interest charged, shall be calculated at a rate not exceeding the rate allowed by this Ordinance, on such amount of the unpaid cash price from time to time remaining unpaid.

(3) Where the hirer fails to pay any instalment to the owner on the due date, the owner shall, unless he enforces his right to recover possession of the goods, be entitled to charge interest from day to day for the period during which the instalment remains unpaid at the rate of interest allowed to be charged in respect of a hire-purchase agreement subject to the provisions of this Ordinance.

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

Application of Ordinance in relation to existing agreements.

- (a) section 10 of this Ordinance, so far as it relates to payments made after the commencement of this Ordinance;

(b) section 11 of this Ordinance, so far as it relates to the recovery of possession of goods after the commencement of this Ordinance.

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

FIRST SCHEDULE

Sec. 3 (2) (c).

Notice to be included in Note or Memorandum of Hire-purchase agreement.

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 and at the same time or prior thereto by delivering the goods to the owner.

2. He must then pay any instalments which are in arrears at the time when he gives notice.

3. If the hirer does not deliver the goods to the owner at the time mentioned in paragraph 1 above, the notice of termination will be ineffective and the agreement will remain in force.

4. 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.

5. 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.

RESTRICTIONS OF OWNER'S RIGHT TO RECOVER GOODS WHERE SIXTY-SIX AND TWO-THIRDS PER CENTUM OF THE HIRE-PURCHASE PRICE HAS BEEN PAID.

1. *[After (here insert an amount equal to sixty-six and two-thirds per centum of the hire-purchase price) 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.

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 15 of this Ordinance, the words in square brackets should be omitted.

RESTRICTION OF OWNER'S RIGHT TO RECOVER GOODS WHERE LESS THAN SIXTY-SIX AND TWO-THIRDS PER CENTUM OF THE HIRE-PURCHASE PRICE HAS BEEN PAID.

1. Where less than (here insert an amount equal to sixty-six and two-thirds per centum of the hire-purchase price) has been paid, the owner of the goods cannot take them back from the hirer without his consent unless the hirer has himself put an end to the agreement or has committed some breach of the agreement other than failure to pay any instalment of the hire-purchase price.

2. Where the hirer has failed to pay any instalment of the hire-purchase price and this is the only default, the owner of the goods cannot recover them without giving the hirer twenty-one days' notice in writing of his intention to do so.

3. If within the said period of twenty-one days the hirer pays to the owner all instalments of the hire-purchase price due at the date of the issue of such notice, the agreement will continue in force.

SECOND SCHEDULE

Sec. 21 (1).

The minimum bank rate is hereby prescribed to be six and one-half per centum.

OBJECTS AND REASONS

It is considered desirable to introduce legislation in British Guiana relating to transactions governed by hire-purchase and credit-sale agreements. This Bill which is based on the Hire-Purchase Acts, 1938 and 1954 of the United Kingdom and similar legislation in Trinidad and Jamaica, seeks to make provision accordingly. This legislation differs from the legislation of other territories in that provision has been made controlling the rate of interest to be charged in hire-purchase agreements, stipulating that interest should be charged on the basis of the reducing balance of the amount remaining unpaid. The Bill also applies generally to all hire-purchase transactions irrespective of the amount involved.

2. Clause 8 of the Bill seeks to provide for the supply of information to the owner of the goods by the hirer as to their location, and a duty is also imposed on the hirer to allow the owner of the goods or anyone acting on his behalf to inspect them.

3. Where goods have been let under a hire-purchase agreement and sixty-six and two-thirds per centum of the hire-purchase price has been paid, clause 12 of the Bill seeks to provide that the owner of the goods cannot recover possession of them otherwise than by an order of a court, and clause 13 seeks to make provision for the powers which may be exercised by the court in an action for the recovery of goods.

4. Where less than sixty-six and two-thirds per centum of the hire-purchase price has been paid the owner of the goods has the right to recover possession of the goods where the hirer is in default. Where however the only default by the hirer is his failure to pay any instalment of the hire-purchase price, it is sought to impose a duty on the owner of the goods to give twenty-one days' notice in writing to the hirer before enforcing the right of recovery. Where the hirer makes good the default by paying the amount due under the hire-purchase agreement at the date the notice was given, the hire-purchase agreement will continue in force. Clause 17 seeks to provide accordingly.

B. H. BENN,

Minister of Agriculture, Forests and Lands.

(M.P. TI 13/58).

(Bill 5/1964 (L.A.)).

