

## THE IMPACT OF TANZANIA HIRE PURCHASE ACT, 1966

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### 1. The Economic Background

Hire purchase is the legal form of secured credit sale which, for various reasons, became the usual form of such sales in Britain and has subsequently been adopted in countries with close economic and political ties to Britain. All forms of secured credit-selling perform essentially the same economic function. They have been used in large part to finance sales of "consumer durables", and in that way they have helped to create a mass market for goods such as the motor-car, washing machine, refrigerator, etc. In the advanced consumption-oriented economies of Western Europe and North America this is a crucial sector of the economy. The creation of a mass market for these goods, in particular the motor-car, has stimulated vast investments, not only industrial investment for the mass-production of these items, but also investment in the economic infrastructure necessary for their full use and enjoyment.<sup>1</sup>

In East Africa, as in most so-called "under-developed" countries, the credit sale of consumer durables was virtually non-existent until quite recently. During most of the colonial period investment in these countries was concentrated heavily on plantation agriculture and mining, using unskilled labour at very low wages. The labour force was characteristically migratory—usually men from areas of land shortage moving to employment centres, either seasonally or for one or two years at a time, to earn cash for the payment of taxes and the purchase of basic items not locally made (e.g. blankets, sugar). Since the Second World War there has been a shift in the pattern of investment and in the characteristics of the labour force, and this has been accelerated since the attainment of political independence. There has been increasing investment in manufacturing: in the processing of primary products for export, but more important, in import-substitution in the light branches of manufacturing, such as

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1. Henderson, "The Economic Effects of Hire Purchase, The English Institute of Bankers, Spring Lectures" 1956, p. 6; Baran & Sweezy, *Monopoly Capital* pp. 244-5.

food, beverages, textiles, clothing, furniture, soap and other consumer goods. This change has both helped to create, and been fostered by, the development of a more stabilised, semi-skilled labour force, smaller but better paid than before and therefore more capable of purchasing consumer durables.<sup>2</sup> The latter development was reinforced in East Africa by a conscious governmental policy choice, taken soon after independence, to introduce minimum wages in most sectors of the economy.<sup>3</sup>

It is in this context that we must view the growth of hire purchase in East Africa in the last ten years. The trickle of hire purchase credit starting in the late 1950s swelled to a flood in 1959 with the arrival on the scene of Lombank, the British merchant bank, which invested very large amounts in this sector. This heavy investment soon proved, however, to be over-optimistic, and within two years Lombank withdrew to lick its wounds and reflect on the lessons of a large loss on its African operations. Lombank's operations had led to a general relaxation of credit standards, and the financial intermediaries and dealers engaged in hire purchase took several years to recover from the collapse which followed. However, by 1964 it has been estimated that the total turnover of hire purchase credit in East Africa had grown to £5-6 million and the amount has probably increased considerably since then.<sup>4</sup>

Although probably a large proportion of hire purchase finance in East Africa has been used to create a market for consumer durables among the new African "labour aristocracy" and bureaucratic elite, a smaller but significant proportion has gone into financing the sale of some types of capital goods. In England, the Radcliffe Committee estimated that

2. Arrighi, "International Corporations, Labour Aristocracies and Economic Development in Tropical Africa", in D. Horowitz (ed.) *The Corporation and the Cold War* (1968).

3. See Report of the Territorial Minimum Wages Board, Tanganyika (March, 1962); Report of the Minimum Wages Advisory Board, Uganda (1964). See also Tanzania Revised Laws, Cap. 300; Laws of Uganda, cap. 196.

The measures taken by the East African Governments were not against the natural flow of economic change in most sectors of the economy, as is shown by the fact that wages generally increased beyond the legal minima, in many cases far beyond. At the same time the number of those in wage employment has remained static or decreased, despite the growth of the manufacturing sector. See Arrighi, *loc. cit. supra* n. 2, and Report to the Government of Tanzania on Wages, Incomes and Prices Policy (Govt. Paper No. 3 of 1967). The latter (the "Turner" Report) gives some figures for Tanzania which, while surprising are typical of underdeveloped countries in recent years. Thus the average yearly increase in cash wages 1960-66 is 17 per cent, so that the average wage earner was in real terms 100 per cent better off in 1966 than in 1960. At the same time wage employment dropped by five per cent per year, 1961-1966.

4. J. Loxley, "The Development of the Monetary and Financial System of the East African Currency Area, 1950 to 1964", pp. 171 (unpublished Ph.D. thesis, Univ. of Leeds, 1966). As well as for the information in this paragraph we are indebted to Dr. Loxley for his patience in discussing the economic background of hire purchase with us.

of about £100 million of hire purchase sales in 1958, perhaps £100 million were commercial - i.e. of industrial and agricultural equipment, as well as of commercial and business vehicles.<sup>5</sup> Although in terms of the total amounts of commercial credit this is very small, as a means of medium-term credit for equipment, hire purchase can be quite useful. This is especially so in the case of small, rapidly growing enterprises. Hire purchase as a means of commercial credit may be even more important in a developing country, where opportunities may exist for very rapid growth in some sectors, and where small local enterprises may need any possible source of credit to compete with large self-financing international corporations. In Tanzania, for example, hire purchase is an important source of finance for the purchase of buses and lorries by small scale entrepreneurs or by co-operatives. It has also been a crucial source of finance for the many small operators transporting goods to Zambia.

The distinction between credit sales of capital and consumer goods is important from a macro-economic point of view. Consumer credit helps to stimulate demand directly, while credit for capital goods helps create productive capacity. In the advanced industrial countries consumer credit plays a vital rôle in economic growth. In a poor country there is some question whether consumer credit is at all desirable. It may be possible to find better uses for the scarce capital resources than the stimulation of demand for consumer goods. It could be argued that credit can create a market for local manufacturers, although so far in East Africa this is generally not the case, as there is as yet fairly little local manufacture or even assembly of consumer durables. One can further question, however, whether this type of growth stimulates development in the long term. Most "underdeveloped" countries are mainly agricultural, and their major problem is the falling world demand for agricultural products. In these circumstances perhaps the major aims of industrial investment should be to stimulate effective domestic demand for agricultural products, and to stimulate agricultural productivity by producing suitable capital goods. Investment in consumer goods would not have a high priority in such a development policy.

## 2. The Different Legal Forms

The essence of the secured credit sale is that the consumer or user is given immediate possession of the good, in return for agreeing to pay the price plus financing charges in instalments over a stated period. If the seller is himself financing the arrangement he will retain a security interest

5. Report of the Committee on the Working of the Monetary System, Aug. 1959, CMND 827, pp. 72 ff. By comparison, the Report estimated bank advances at £2,600m. in 1958, and reckoned trade credit to be "on the same scale".

in the goods until the amount has been paid. If a third party is financing, the seller will be paid the cash price, while the financier obtains the security, and usually also an indemnity from the seller. This relationship can be expressed in a number of different forms, each of which carries slightly different legal rights and duties: (1) the lease; (2) the chattel mortgage; (3) the conditional sale or hire purchase.

In a lease of goods, the user is never considered the legal owner but merely pays for the use. A lease can be used for two very different purposes, however. In a true lease the rent will be calculated at the value of the goods depreciated over their estimated life, with provision for interest or profit for the financier and manufacturer or dealer. The user, or lessee, will ordinarily have the right to terminate the lease upon reasonable notice or alternatively the lease will expire after a fixed period. Moreover, in a true lease the lessee does not assume all the burdens of ownership; for example, the cost of hire usually includes servicing and maintenance of the goods, which means that the risk of serious malfunctions is absorbed by the manufacturer or dealer who is in a position to spread the risk by including it in the cost of hire for many similar machines. The other purpose for which a lease is used is as a form of agreement for what is in reality a secured credit sale of goods. In this situation the rent will usually be calculated so that the lessee pays nearly the entire purchase price during the early part of the lease; thereafter the rent will be reduced drastically, often to a nominal amount. The lessee will usually have no right to terminate the lease, at least before the period of high rent has expired, and this type of lease rarely contains a fixed expiration date. Furthermore, the contract typically requires the lessee to assume the obligations ordinarily associated with an owner of goods, such as the duties to repair, to insure, and to bear any uninsured loss to the goods. This type of lease is being used as a legal form for a secured credit sale in Nairobi by some financiers of purchases of office equipment,<sup>6</sup> but it does not appear that the lease is being used extensively in this way in East Africa. Because of certain technical legal advantages, the lease is a fairly popular form of agreement in some developed countries, however, and it may become a more popular form of agreement here now that the hire purchase form is subject to extensive statutory regulation.

Under a chattel mortgage, the user is the legal owner and mortgagor, while the lender has the rights of a mortgagee. This could be regarded as the classic form of security interest, as the mortgagee's rights are

6. Information reported in this article, such as that just mentioned in the text, will frequently be based on confidential interviews we have had with participants in the consumer credit industry, and in these circumstances it will not be possible for us to identify the source of the information.

typically strictly limited to those necessary for the protection of his loan. Thus, if he is forced to foreclose and take possession of the mortgaged property, he usually sells it for the account of the mortgagor and returns the amount, if any, by which the proceeds of resale exceed the unpaid balance of the debt (plus expenses involved in the sale).<sup>7</sup> The chattel mortgage can be used as a device by which a borrower raises money for any purpose and puts up chattels he has previously owned as security for the loan. It can also be used, however, by a buyer of goods who wishes to put up the very goods he intends to purchase as security for a loan to finance that purchase, and in that sense chattel mortgage is one of the forms a secured credit sale can take.

As in all secured credit sales, the buyer of goods under a hire purchase or conditional sale agreement takes immediate possession and assumes the risks of malfunctions, depreciation and other losses ordinarily assumed by the legal owner of goods. The interest of the seller, or of a third party if one is financing the sale, in the goods is limited in fact, although not necessarily in law, to retaining the right to seize and resell them in the event the buyer defaults on the loan, just as it usually is if a chattel mortgage agreement is used. Neither the seller nor the third party expects or hopes to reacquire the goods at a later time for their own use or for resale. In legal form, however, the conditional sale and hire purchase agreements differ in important respects from the chattel mortgage. In a hire purchase agreement, which is the form primarily used in England and East Africa,<sup>8</sup> the goods purchased by the buyer are technically leased by the buyer for a fixed period of time, at the end of which he has an option to purchase them at a nominal price. The "rent" for the period of hire is not based on the value of the goods depreciated over their estimated life but rather is carefully calculated so that at the end of the agreed period the buyer (called the hirer) will have paid the entire purchase price of the goods together with any financing charges (the total is called the hire purchase price). At common law the hire purchase agreement

7. Typically in East Africa a mortgagee will account to the mortgagor for any excess gained on resale of repossessed goods over the balance of the debt and the standard form agreement contained in the subsidiary legislation to the Tanzania Chattels Transfer Act, Tanzania Rev. Laws, cap. 210 so provides, but the parties may validly provide otherwise in their agreement *Id.*, sec. 47.

8. In a conditional sale agreement the buyer commits himself to purchase the goods and he has no right to terminate the agreement, but the title to the goods does not vest in him until the purchase price has been paid. In other respects a conditional sale agreement resembles a hire purchase contract. For various technical reasons, conditional sale is the preferred form of agreement for a secured credit sale in North America, while hire-purchase is preferred in England and the rest of the Commonwealth. See Goode & Ziegel, *Hire Purchase and Conditional Sale: A Comparative Study of Commonwealth and American Law* (British Institute of International and Comparative Law, 1965).

could, but was not required to, give the hirer the right to terminate the "lease" at any time, but if the hirer was given the right, it was almost invariably a conditional right, exercisable only by incurring a liability to the seller or third party financing the purchase (called the owner) for a stipulated monetary amount by way of "agreed depreciation" or similar type of loss. The owner, on the other hand, always reserved the right to terminate the "lease" anytime the hirer breached any of the many covenants he made in the agreement (in particular his covenant to pay the "rent" at regular intervals) and to recover "his" goods. Upon resale, the owner was not required to account to the hirer for any excess over the unpaid portion of the hire purchase price, since the hirer's payments before termination were merely rent for the use of the goods and did not give him any equity in them. Indeed, regardless of the amount obtained upon resale, the owner could always recover any instalments owing from the hirer at the time of resale, since these instalments represented "rent" for a period of time in which the hirer actually had use of the goods.

The hire purchase form developed in England, and now has almost totally replaced the chattel mortgage in situations in which a buyer of goods on credit gives a security interest in the goods he purchases, not because this form better expressed the economic relationship between the parties but as a result of legal accident. The first legal regulation of chattel mortgages in England, by the Bills of Sale Acts of 1854, 1866 and 1878, provided for a registration system, in order to give notice to intending creditors of outstanding secured interests in goods in the possession of the debtor. The Bills of Sale Act (1878) Amendment Act, 1882, went further in its aims, however, and sought to protect intending debtors from the exactions of harsh creditors. This statute therefore laid down stringent conditions as to the form of the agreement, failure to comply with which rendered the agreement void.<sup>9</sup> It seems to have been essentially to avoid these statutory provisions that hire purchase first came to the forefront as an important legal form for a secured credit sale, and this avoidance was facilitated by early English decisions that a hire purchase agreement did not fall within the Bills of Sale Acts.<sup>10</sup> Hire purchase was imperilled when the Factors Act was passed in 1889, providing that a person in possession of goods which he had bought or agreed to buy could pass a good title to a good faith purchaser. It was held at first that unless the hirer under hire purchase had the right to

9. Bills of Sale Act (1878) Amendment Act, 1882, sec. 9.

10. *Re Robertson, ex p. Crawcour* (1878) 9 Ch. D. 419 (C.A.); *McEntire v. Crossley Bros. Ltd.* [1875] A.C. 457 (H.L.).

terminate the lease before it expired, he must be considered a person who had agreed to buy and could therefore pass title to a good faith purchaser free of the rights of the owner-lender.<sup>11</sup> The courts later held, however, that if the hire purchase agreement gave the hirer either an "option" to buy at the end of the lease (usually for a nominal "purchase price") or a right to terminate, the Factors Act did not apply,<sup>12</sup> and this decision set the seal on hire purchase as legally the most desirable form of secured credit sale from the lender's point of view.

The predominant use of hire purchase for secured credit sale in East Africa seems to be largely the result of the commercial dominance of England as the colonising power. Uganda has specially applied the English Bills of Sale legislation,<sup>13</sup> and so in that country there is legal advantage in using the hire purchase form. Kenya and Tanganyika, however, have both enacted special chattels mortgage legislation, based on a New Zealand Act.<sup>14</sup> The legislation imposes few conditions on the form of the agreement, and, more importantly, it contains a constructive notice provision which provides that once a chattel mortgage agreement has been registered, all persons are presumed to have notice of the mortgagee's interest in the security. Consequently nobody can qualify as a good faith purchaser from the mortgagor and in that way acquire good title under the Factors Act.<sup>15</sup> Most of legal considerations which made hire purchase a more favourable form of agreement than chattel mortgage in England have ceased to exist in Kenya and Tanganyika, therefore. Nevertheless, until the recent legislation regulating hire purchase agreements, there was probably a marginal legal advantage to a seller-lender in Kenya or Tanganyika in using hire purchase, since he was not required to register the agreement and the common law did not impose even the limited restrictions on the form of the agreement that are required by the chattels mortgage legislation.

11. *Lee v. Butter* [1893] 2 Q.B. 318. But see the recent decision in *Newtons of Wembley Ltd. v. Williams* [1964] 3 W.L.R. 888, discussed by Attiyah [1965] J.B.L. 130, and Cornish (1964) 27 M.L.R. 472.

12. *Helby v. Matthews* [1895] A.C. 471.

13. Bills of Sale Act, Laws of Uganda (1964), cap. 77.

14. Chattels Transfer Act, Laws of Kenya, cap. 28; Chattels Transfer Act, Tanzania Revised Laws, cap. 210. See (1930) Kenya Legislative Council Debates, vol. 1, pp. 403 ff.

15. It has also been held in Kenya that the misdescription in the instrument of the consideration for the chattels transfer (i.e., the security) does not invalidate the agreement, although it would do so under the English Act. *Nauhriaram s/o Mustadinal v. Hem Singh* (1932) 14 K.L.R. 17. For a general discussion of the Kenya Act, see Oulton, "Loans in Kenya on the Security of Chattels", (1960) *J. African Law* 17, 79.

### 3. The Tanzania Hire Purchase Act, 1966, and the Controversy Surrounding it

Tanzania's Act regulating hire purchase agreements, enacted in February 1966, and put into effect in November of that year, was the first statutory regulation of hire purchase in East Africa,<sup>16</sup> although both Uganda and Tanganyika had considered legislation in this area some years earlier. The Act was based on the English Hire Purchase Act, 1938, although there were considerable modifications, and apparently no consideration was given to the changes made by the English Hire Purchase (Amendment) Act, 1964. The detailed provisions of Tanzania's Act have been discussed elsewhere,<sup>17</sup> and we will content ourselves with outlining the main provisions.

Most of the provisions in the Act are designed to protect the hirer against what were perceived to be abuses practised by the owner, although there are occasional provisions which grant the owners rights they did not previously possess. Apparently because abuses by owners were thought to pertain mostly to transactions involving lesser amounts, the Act is restricted to transactions in which the hire purchase price is Shs. 60,000/- or less.<sup>18</sup> Ostensibly the most important protection afforded hirers applies once two-thirds of the hire purchase price has been paid and precludes the owner from repossessing the goods upon the hirer's breach unless the hirer voluntarily consents to repossession or the owner first obtains an order for repossession from a court in the hirer's home district.<sup>19</sup> In a suit by an owner for repossession after two-thirds of the hire purchase price has been paid, the court has nearly complete discretion either to order repossession or to amend the payments provision of the agreement and give the hirer a longer period of time to pay the unpaid portion of the hire purchase price.<sup>20</sup> The apparent purpose of

16. Tanzania Acts, No. 22 of 1966. Kenya has recently enacted its own legislation. Kenya Acts, No. 42 of 1968.

17. Macneil, "The Tanzania Hire Purchase Act, 1966", (1966) 2 *E.A.L.J.* 84.

18. Tanzania Acts, No. 22 of 1966, sec. 3. The drafters of the Act may also have felt, although unrealistically, that any hirer spending more than Shs. 60,000/- should take the trouble to find out his rights and duties and bargain about them if they are too unfavourable, and consequently that such hirers did not need the Act's protection.

19. Sections 17 and 18.

20. Technically the court orders repossession but then suspends the order on the condition that the hirer pays the unpaid portion of the hire purchase price in instalments according to a schedule fixed by the court. If the hirer breaches the condition, the owner may then repossess without obtaining any further court order. Section 20(2). It is these "postponed orders" that the English courts have entered in the majority of suits for repossession under the English Act. See Guest, *The Law of Hire Purchase*, para. 553-558 (Sweet and Maxwell 1966).

In addition to the options mentioned in the text if the goods covered by the agreement are divisible, the court may also order some of the goods returned to the owner and vest title in the remainder in the hirer. The amount paid under the agreement by the hirer must exceed the portion of the hire purchase price attributable to the goods retained by the hirer by at least one-third of the unpaid portion of the hire purchase price. Section 18(b).

this provision is to provide protection for the hirer's investment in the goods once he has paid a substantial portion of the hire purchase price. Actually before the Act was passed, owners typically granted indulgences to hirers who were moderately tardy in paying instalments, particularly if the hirer could advance an explanation for his tardiness which indicated that he would be able to make up the late payment in the near future. Owners generally prefer payment of the hire purchase price to repossession because it is only in a minority of cases that they are able to obtain an excess over the unpaid portion of the hire purchase price upon resale of the repossessed goods. There have been a few instances, however, in which an owner has repossessed for a minor breach after nearly all the hire purchase price has been paid and then resold the goods for an amount exceeding the balance owing from the hirer,<sup>21</sup> and no doubt proponents of the Act were concerned to prevent a repetition of those instances. Perhaps more importantly, proponents of the Act may have believed that once the hirer had paid a substantial portion of the hire purchase price, he should be entitled to the judgment of a disinterested third-party—for example, a judge—concerning how much indulgence he should be allowed in paying the remaining balance, rather than being at the mercy of the owner's opinion.

Although the Act does not go nearly so far in protecting the hirer's interest in the goods if he has paid less than two-thirds of the hire purchase price, it does offer him some protection. One section requires the owner who repossesses goods other than by suit to resell them as soon as possible and to return to the hirer any excess over the unpaid portion of the hire purchase price and reasonable costs of repossession and resale.<sup>22</sup> Another section allows the hirer to "finalize" the hire purchase agreement and acquire title to the goods at any time up to 28 days after repossession by paying the entire unpaid portion of the hire purchase price.<sup>23</sup> Finally, the Act prevents inclusion of two types of clauses in the agreement concerning the owner's rights during and after repossession. Any clause authorizing the owner to enter the hirer's premises without obtaining permission at that time is declared void; similarly ineffective is any provision imposing a greater liability on the hirer after repossession than the costs of placing the goods in a reasonable state of repair plus the instalments already owing or the difference between one-half of the

21. *E.g.*, *Bandali v. Lombank Tanganyika Ltd.* (1963) E.A. 304 (C.A.).

22. Section 19.

23. Section 15. Obviously there is a potential conflict between the owner's duty under section 19 to resell repossessed goods as soon as possible and hirer's right to obtain title to the goods up to 28 days after repossession. It is hoped that when the Act is next amended, this conflict will be resolved.

hire purchase price and the sums already paid, whichever is greater, regardless of the amount the owner is able to obtain at a resale.<sup>24</sup>

The Act contains a number of provisions that are designed to make the hirer aware of the contents of the agreement at the time it is formed. The agreement must be in writing and signed, it must contain a statement of the price at which the hirer could obtain the goods for cash, it must contain a statement of certain rights of the hirer under the agreement in a manner prescribed by subsidiary legislation, and, if the original agreement is not in Swahili, a Swahili translation must be delivered to the hirer within 21 days.<sup>25</sup> All hire purchase agreements for Shs. 60,000/- or less must also be registered. The Registrar is explicitly directed not to register any agreement subject to stamp duty and not properly stamped or which is not accompanied by a Swahili translation that is true and accurate.<sup>26</sup> Registration has no other formal effect under the Act, although it is clearly contemplated that the registry will release information to prospective purchasers from the hirer about the owner's interest in the goods.<sup>27</sup> The Act prohibits the exclusion of certain implied warranties and conditions concerning the owner's title to the goods and their quality.<sup>28</sup>

Finally, the Act gives the hirer the right to terminate the agreement voluntarily at any time. No provision in the agreement may impose a greater liability on the hirer upon voluntary termination than the costs of placing the vehicle in reasonable repair plus the instalments owing at the time of termination or the difference between one-half of the hire purchase price and the sums already paid, whichever is greater.<sup>29</sup>

Considerable controversy surrounded adoption of the Act. There was a fairly lengthy debate in the National Assembly. Most of the criticism from the members was to the effect that the Act did not go far enough in protecting hirers. Three points were advanced most consistently. Although no amendment was offered, at various times it was suggested that the restrictions on repossession should become effective when one-half,<sup>30</sup> one-third,<sup>31</sup> or one-fourth<sup>32</sup> of the hire purchase price had been

24. Section 7(a) and (c).

25. Section 6(2). In addition to the notice of the cash price contained in the agreement, the owner is required to provide further notice of the price in at least one of several ways provided in the Act. Section 6(1).

26. Section 5(2).

27. Section 5(5).

28. Section 8.

29. Section 14. There are, of course, a number of other provisions in the Act, which we consider generally of secondary importance. See generally Macneil, *op. cit.* *supra* note 17.

30. *E.g.*, Bwana Mabawa, Hansard, 22-28 Feb., 1966, pp. 97.

31. *E.g.*, Bwana Mbembela, *id.* at 100.

32. Bwana Chogga, *id.* at 103.

paid. The Bill had apparently been considered by the Committee of Economic Affairs of the National Assembly and they had recommended that the restrictions become effective once one-half of the hire purchase price was paid. Both the Attorney-General, Mr. Mark Bomani,<sup>33</sup> and the Second Vice-President, Mr. Kawawa,<sup>34</sup> spoke to this point, pointing out that in England and Mauritius the repossession restrictions began once one-third of the price had been paid. Mr. Kawawa argued, however, that Tanzania was experimenting with a new type of law and that it would be wise not to impose too many restrictions on hire purchase before an evaluation could be made about the effect of the Act. He seemed to suggest that if the Act were too tough on owners, they might stop offering goods for sale on hire purchase terms. He suggested that after one or two years the Act should be reconsidered with the view of possibly changing the point at which the repossession restrictions attached.

A few members objected, perhaps very prophetically, to the concept of protecting the hirer's equity in the goods by interjecting a court as an arbitrator between the hirer and owner once two-thirds of the hire purchase price had been paid.<sup>35</sup> These members doubted that the discretion given the courts would often be exercised in favour of hirers. It was pointed out that owners will hire lawyers, that hirers already in default will hardly be able to afford a lawyer, and consequently that in any court proceedings the owner will have an advantage. No amendment was offered to change the basic design of the Act of inserting the court as a protector of the hirer, however, although one member suggested the government amend the Bill to vest unfettered title in the goods in the hirer once two-thirds of the price is paid, leaving the owner with only a judgment for an unsecured debt for the balance of the price,<sup>36</sup> and another suggested that all disputes arising because a hirer cannot pay his instalments be decided by the registry rather than a court.<sup>37</sup>

The only amendment proposed concerned the section which requires the owner to resell the goods and return any excess over the unpaid portion of the hire purchase price to the hirer whenever the goods are repossessed otherwise than by suit.<sup>38</sup> The proposers of the amendment

33. *Id.* at 92.

34. *Id.* at 105.

35. Bwana Rulegura, *id.* at 76, 113; Bwana Mzindakaya, *id.* at 84; Bwana Muhaji, *id.* at 91.

36. Bwana Rulegura, *id.* at 76.

37. Bwana Muhaji, *id.* at 91.

38. The amendment was proposed by Bwana Masha, *id.* at 109, 110, and supported by Bwana Rattansey, *id.* at 112.

wanted this section to apply in all situations, including repossession by court order after two-thirds of the price had been paid. The government claimed that the Bill gave courts sufficient discretion in suits for repossession after two-thirds of the price had been paid to order a resale and the return of any excess,<sup>39</sup> but the supporters of the amendment claimed that this matter should not be left to the court's discretion but should be compulsory.<sup>40</sup> Again suspicion was voiced that because hirers would not have lawyers, the court's discretion would ordinarily be exercised in favour of owners. The amendment was defeated.

The companies financing sales on hire purchase in Tanzania also had objections to the Bill, although they did not receive much hearing in the National Assembly. These companies did have an opportunity to comment privately to the government on an earlier draft of the Bill and the two major finance companies in the hire purchase business, and perhaps some others as well, did so—apparently with some success, since the government pushed back the point at which the repossession restrictions applied to two-thirds of the hire purchase price from one-half, as was provided in the original draft. The Act was also criticised after enactment in a letter to the *Tanganyika Standard* from an "Advocate", who likely had some connections with the finance companies and certainly represented their point of view.<sup>41</sup> The companies' principal objection concerned the restriction on repossession once two-thirds of the hire purchase price was paid. They argued that courts in Tanzania were slow to reach a decision and were inefficient servers of summons. Consequently, there would be a considerable period of time after a suit was filed before an order for repossession was entered, and during this time the value of their security—i.e., the goods—would decline. The companies suggested that they be allowed to repossess the goods without a court order at all times but that after a certain percentage of the hire purchase price was paid, they be required to hold the goods for a stipulated period of time during which the hirer could go to court and get an order giving him an exten-

39. *Id.* at 111, 113.

40. The Government replied that even if the amendment were adopted, under section 18 of the Act the court would have discretion to direct that any excess may not be returned to the hirer. *Id.* at 113.

41. *The Tanganyika Standard*, Nov. 14, 1966, pp. 4, col. 2. The letter was in reply to a letter by Professor Macneil criticising the finance companies for ceasing to do any hire purchase business once the Act became effective.

Much of the material in this paragraph is based on interviews with advocates who participated in the communications between the Government and the finance companies at the time the Act was passed.

sion in time with regard to his instalments.<sup>42</sup> The companies also objected to the upper limit, claiming that it should be Shs. 20,000/- rather than Shs. 60,000/-.<sup>43</sup> It should be noted that if the coverage of the Act was reduced as the companies suggested, then most automobiles sold on hire purchase would not be covered, and it was principally the purchase of that type of goods with which the finance companies concerned themselves. Sales of cheaper items on hire purchase, such as radios and sewing machines, are generally financed by the seller himself. Further objection was made by the companies to the registration provisions, partly because the company feared unnecessary delays in registering, but also because the only registry would likely be in Dar es Salaam (this in fact turned out to be the case) and it would be difficult for up-country sellers to register their agreements. Finally, objection was advanced to the provision allowing voluntary termination by the hirer. The provision permits termination merely by sending written notice to the owner, although the hirer then has a duty to return the goods and can be sued for breach if he fails to do so. The companies wanted termination to become effective only after the hirer had returned the goods themselves. The companies also objected to the limitations on the owner's monetary damages in the event of voluntary termination or repossession, arguing that the owner's loss would often exceed the limitation.

#### 4. The Impact of the Act on the Hire Purchase Business

We have made empirical inquiries to determine the impact on the Act on the hire purchase business, with a view to ascertaining how effective the Act has been in achieving its objectives. Most of our information has come from interviews with business concerns engaging in secured credit sales to consumers and with a number of advocates for such concerns. Because of a lack of time and money, these interviews have been limited to Dar es Salaam. Some information about the effect of the Act up-country has been gained by inspection of the registries for hire purchase and chattel mortgage agreements, both of which are located only in Dar es Salaam. Unfortunately it has not been feasible to inspect court records to determine what actions have been taken in suits for reposses-

42. The recently enacted Kenya Hire Purchase Act includes a provision similar to the one suggested by the finance companies for Tanzania. If the hirer is late on two or more instalments, the owner may seize the goods immediately. If two-thirds of the hire purchase price has been paid, however, the owner must keep the goods in safe custody at his own expense and immediately apply to the court for an order of repossession. On such applications the courts have the same options open to them as they do under the Tanzania Act and they may order the goods returned to the hirer. Kenya Acts, No. 42 of 1968, section 16(3)(b).

43. See note 18 *supra* and accompanying text. The companies argued that the very reasons for putting a jurisdictional limit on the Act at all indicated that the limit should be Shs. 20,000/-.

sion litigated under the Act, but some information has been obtained through discussion with local magistrates and with the owners and advocates who initiate these actions. In addition we have benefited from discussions with various government officials who have some knowledge of the situation and some information has been available from newspapers.

Although the Act was passed in February, 1966, by its terms it did not become effective until a day fixed by the Minister for Commerce.<sup>44</sup> This date was fixed as November 1st, 1966, by an order published on November 4th, 1966.<sup>45</sup> The immediate effect of this order was the very substantial suspension of hire purchase business involving less than Shs. 60,000/- simply because none of the sellers on hire purchase had bothered to prepare forms that met the Act's provisions during the eight months that had lapsed since the enactment of the Act. A few companies continued to sell on hire purchase but used the old forms. As a result their agreements could not be registered nor were they enforceable in court, but there was nothing illegal about such a transaction so long as legal sanctions did not need to be employed. The motor vehicle business probably felt the suspension most severely, principally because many of the dealers relied on finance companies to supply the capital for their sales on hire purchase and the independent finance companies all suspended their hire purchase business under Shs. 60,000/-. Many of the sellers of cheaper items (such as radios, refrigerators, etc.) self-financed their hire purchase sales. Although these sellers may have been embarrassed by the lack of proper forms, at least the suspension of business by the finance companies did not affect most of them.

To determine the impact of the Act after the initial suspension of nearly all hire purchase business, it is necessary to distinguish between the motor vehicle business and the credit sale of other items sold for less than Shs. 60,000/-. The effect of the Act on the availability of credit for the purchase of motor vehicles has continued to be substantial because the finance companies which ceased offering hire purchase facilities when the Act became effective have never resumed financing hire purchase sales that are subject to the Act's restrictions. The reasons why the finance companies have acted in this manner are not altogether clear. The finance companies say that they have decided that they can no longer operate a hire purchase business profitably because the Act's provisions are too stringent on owners. There is some reason to believe, however, that the finance companies' decision may have been motivated by a desire to

44. Section 1.

45. Govt. Notice 312, 4 Nov. 1966.

encourage Kenya and Uganda not to adopt Acts similar to Tanzania's Act by demonstrating that such activity could have rather cataclysmic consequences. These finance companies are branches of large international concerns for whom their Tanzanian business was a small part of their operations. Each company also operates hire purchase businesses in Kenya and Uganda and particularly in the former country these businesses have a considerably larger volume. The idea that an Act might be enacted to regulate hire purchase contracts had been in the air for some time in Nairobi and Kampala. After the enactment of the Tanzanian Act, J. M. Kariuki, M.P., introduced a private member's Bill on the subject in the Kenya parliament, and shortly thereafter an informal committee, including several representatives of the finance companies, was set up to discuss the Bill. In this committee the finance companies argued that Kenya should avoid making the statute too unfavourable to owners and risking a repetition of the Tanzanian experience. This argument apparently had some influence, for the Kenyan statute is significantly more favourable than the Tanzanian statute to the finance companies.<sup>46</sup> Another reason one of the two major finance companies which ceased doing business in Tanzania (National Industrial Credit Co.) may have withdrawn is that it was partly owned by The Standard Bank Ltd. and used the Bank's up-country branches to administer the agreements made in those areas. Only three months after the Hire Purchase Act went into effect, the Bank was nationalized, and consequently, if the finance company wanted to re-enter the Tanzanian market after the initial suspension of business, it would have had to establish an entire new administrative network.

In the absence of the finance companies, motor vehicle dealers have had to find other sources to finance their credit sales, and dealers have fared differentially in this endeavour. Dealers operating only one or two outlets in Tanzania and who are not linked to an international corporation have found it very difficult to find other sources and as a result have had largely to stop selling vehicles on credit. They have tended to use the limited capital available to them to support credit for very short periods, such as 30 days. Because these dealers have been unable to supply long term credit to prospective customers, they have likely lost a number of sales they would otherwise have made. Other dealers, although in differing degrees, have been more successful in securing capital to finance credit.<sup>47</sup> Some dealers have secured only limited funds and con-

46. See, e.g. note 42 *supra*.

47. Some dealers who have been able to raise sufficient capital have established finance companies to handle their credit business. These new finance companies do all their business with an affiliated dealer and do not operate as an independent finance company doing business with a number of sellers, as did the finance companies doing business before the Act.



sequently have been forced to be very selective in choosing to whom to extend credit, with the result that many prospective customers who could have secured credit a few years ago have to be turned away. Other dealers have secured enough capital to finance credit for all customers they consider creditworthy, but even in those cases credit is probably not as available as it once was. As we mentioned earlier,<sup>48</sup> during the early 1960s there was intense competition among finance companies, and these companies substantially lowered their standards of creditworthiness as a result. Indeed, some dealers who supplied the capital to support most of their credit sales even at that time would refer poorer risks to the finance companies, who would often accept them. These poorer risks can no longer obtain credit, but this source of finance would probably have disappeared even if there were no Hire Purchase Act, since the finance companies were in a period of re-adjusting their credit standards at the time they ceased doing hire purchase business in Tanzania.

Since the enactment of the Hire Purchase Act, therefore, there has been a noticeable decline in the amount of secured credit sales in the motor vehicle business. This decline has resulted directly from the decision of the finance companies to stop doing hire purchase business governed by the Act, but it may not have been an inevitable consequence of the Act. There has also been a noticeable change in the legal form that secured credit sales of motor vehicles have taken. A substantial number of sellers of vehicles on secured credit now use the chattel mortgage form of agreement. In the five month period from January to May, 1968, inclusive, 392 chattel mortgage agreements were registered and in 348, or 89%, of these a motor vehicle was listed as the security. In the corresponding period in 1966—that is, before the Act became effective—only 83 agreements were registered and only 37, or 43%, of these listed a motor vehicle as security. Moreover, in 1966 only two of the agreements appeared to be in actuality secured credit sales. In the 1968 period 208 of the agreements appeared to be such sales.<sup>49</sup> A number of the remaining chattel mortgage agreements registered appear to concern loans, usually to farmers, secured by one or more vehicles already owned by the borrower. During the 1968 period, there are also a substantial number of agreements registered in which the government or a local authority has made a loan to one of

48. See Note 4 *supra* and accompanying text.

49. The data about how many of the registered chattels mortgages were in actuality secured credit sales is based on inferences we have drawn from the identity of the mortgagee. If the mortgagee is a motor vehicle dealer or a finance company affiliated with a dealer, we have assumed that the chattel mortgage was a secured credit sale, and in all other instances we have assumed it was not. No doubt some of the inferences we have drawn are inaccurate, and so the data reported in the text should be considered approximate only.

their employees for the purpose of purchasing a vehicle. In the case of the government, however, this credit was in fact extended by dealers. The government has entered into agreements with some dealers in which the government agrees to guarantee any credit given a civil servant providing certain conditions are met, and to facilitate the repayment of the loan by the civil servant by taking the monthly instalments from his salary and paying them to the dealer. In these cases the government actually registers a chattel mortgage agreement between itself and the borrower to provide it with a security interest in the event it must perform on its guarantee.

The shift to the chattel mortgage form of agreement, although substantial, is hardly uniform. During the same five-month period in 1968, 330 hire purchase agreements involving the sale of motor vehicles were registered. It is perhaps surprising that there has not been a more marked switch to the chattel mortgage form of agreement. As we discussed earlier, few of the disadvantages in using the chattel mortgage as a form of agreement that exist in England, and prevent that form being used as a means of avoiding the restrictions of the English Hire Purchase Act, exist in Tanzania under its Chattels Transfer Act. Indeed, in light of the Hire Purchase Act, the chattels mortgage form of agreement offers the lender a number of advantages. For example, there are no restrictions on repossession and few on the form of the agreement, a seller may continue to exclude implied warranties and conditions, and the lender is unrestricted in including acceleration provisions making the entire debt payable if one instalment is late.<sup>50</sup> Of these advantages, those dealers using chattel mortgage indicated that the lack of restriction on repossession was by far the most important and was almost the only reason they had switched from hire purchase. One dealer, who is using chattel mortgages for trucks and lorries but continues using hire purchase to finance sale of passenger cars, reported that the possibility of an acceleration clause making the unpaid balance due immediately in the event of default was particularly attractive in a credit sale of trucks and lorries because they often depreciate in value faster than the unpaid balance declines. When those motor vehicle dealers who are still using hire purchase were asked why they did not switch to chattel mortgage, they typically replied that they did not want to appear to be evading the Hire Purchase Act.<sup>51</sup> One dealer replied that the government had warned dealers not

50. Another advantage of the chattel mortgage is the inapplicability of many of the restrictions contained in the Act concerning the damages available to an owner after repossession. See note 68 *infra* and accompanying text.

51. There appears to be some fear among dealers and their advocates that if they use the chattel mortgage form for a secured credit sale, there will be some risk that a court will hold that the agreement is in fact a hire purchase agreement that does not meet the requirements of the Act and is therefore unenforceable.

to use chattel mortgage as a means of avoiding the Hire Purchase Act, but we were unable to obtain any confirmation of this report from other dealers or from government officials.

Except for an initial period when there was a shortage of valid hire purchase forms and sellers were considering their response to the Act, the Hire Purchase Act has not had much impact on the volume of secured credit sales for less than Shs. 60,000/- of items other than motor vehicles. Almost all of these items cost less than Shs. 10,000/-, consisting mostly of radios, refrigerators and sewing machines. Before the Act was passed, most sellers of these items, including the largest, Singer Sewing Machine Co., financed their own credit, and consequently they were not affected by the withdrawal of the finance companies. A few sellers did rely on the finance companies to support their credit sales, but on the whole they seem to have been more successful than the motor vehicle dealers at securing the necessary capital to enable them to finance their own credit sales now. Many sellers of these items report that their sales have declined since the Act, but they say the decline is not due to a tightening of credit standards but rather to increased competition, an indication that overall sales may be increasing. Singer Sewing Machine Co. has tightened their credit standards considerably, with a resulting decrease in sales, but this action was taken to reduce the considerable percentage of bad debts they incurred while using their previous more liberal standards and not because they feared that their security interest in the goods sold was less valuable as a result of the Act. One Dar es Salaam seller, which financed its own credit sales before the Act, claims to have stopped selling on credit altogether. In an interview, however, the seller admitted that it had always found the credit side of its business unprofitable and that it was glad to have the Act as an excuse for abandoning credit sales.

Not one seller of items other than motor vehicles has switched to the chattel mortgage as a form of agreement. There is not an altogether logical explanation for this failure. A few sellers in Dar es Salaam have decided to forego secured credit entirely since the Act and rely on the buyer's unsecured promise to pay the price in instalments (hereinafter called an unsecured credit sale). Even when they were using hire purchase before the Act was passed, these sellers rarely repossessed because they did not consider the value of the used goods substantial enough to justify the effort. Instead these sellers would wait until all the hire purchase instalments were due (the agreements ordinarily have a duration of no more than six or eight months) and then sue for a money judgment, which if awarded, as it nearly always was, they would collect through conventional wage or property attachments. When the Act was passed,

they decided it was simpler to give up the security interest they hardly ever used than to comply with the new requirements for hire purchase agreements. Other credit sellers continue to take a security interest in the goods sold, however, and for them chattel mortgage would seem today to be a generally more desirable form of agreement than the hire purchase form they are using. Perhaps the only disadvantage of chattel mortgage is that the registration fees for small value items are higher than for hire purchase,<sup>52</sup> but these fees are always passed on to the buyer in any event. When the merchants still using hire purchase were asked why they had not switched to chattel mortgage, most of them gave us the impression that the idea had not occurred to them, nor had their advocates suggested it. On the other hand, most of these merchants had considered the possibility of abandoning their security altogether and using an unsecured credit sale. In most instances they had rejected this possibility not because they considered their security interest valuable in the sense that they were likely to recoup the unpaid portion of the purchase price by reselling the repossessed goods, but because they considered the threat of repossession a useful means of inducing a buyer to pay his instalments without the necessity of court action.<sup>53</sup> At least one large seller indicated, however, that it does rely on repossession as a means of recouping the unpaid portion of the price and in fact repossesses in about 10% of its agreements.

So far we have been talking just about the reaction of merchants in Dar es Salaam, who are the only ones we have interviewed. Our information on the effect of the Act up-country is far less complete, but there is some indication that the Act may have had a greater impact there. Only one business selling items other than motor vehicles exclusively from up-country outlets has been registering hire purchase agreements. Since chattel mortgage agreements also have not been registered by these firms, the inference is that these firms are either not selling on credit, selling on unsecured credit, or not registering their agreements. The reason is not clear but it could be that up-country firms find it difficult to arrange for registration in Dar es Salaam, where the only registry is located. Singer Sewing Machine Co. still sells on hire purchase from its up-country

52. The registration fee under the Chattels Transfer Act is twenty shillings regardless of the size of agreement. Under the Hire Purchase Act the registration fees vary according to the hire purchase price. The fee is five shillings for agreements up to Shs. 1,000/-, ten shillings for agreements between Shs. 1,000/- and Shs. 5,000/-, and continues to increase up to sixty shillings for agreements between Shs. 40,000/- and Shs. 60,000/-.

53. One seller indicated he preferred hire purchase because its use effectively postponed the application of the statute of limitations beyond the time it would apply if an unsecured credit sale were used. This extra time provides the seller more flexibility in determining whether to grant indulgences.

outlets, of course, but it has those outlets send the agreements to the Dar es Salaam office, from where they are registered. Like Singer, most up-country motor vehicle dealers are part of larger companies having outlets in Dar es Salaam, and they too send their agreements to the Dar es Salaam office to be registered.<sup>54</sup>

There remains to be considered the impact of the Hire Purchase Act on the administration of hire purchase agreements currently in use. One of the Act's principal purposes is to insure that the hirer receives notice of his rights and obligations. The provisions regarding the form of the agreement seem to be directed to this end. The sellers appear to be faithfully complying with these provisions. In practice a seller will usually submit a draft of his proposed hire purchase agreement to the registry, ostensibly to obtain approval of the Swahili translation, but it is likely that the registry also examines the draft for compliance with the other notice provisions as well. The real test of the success of the Act's notice provisions, however, is not whether the formal requirements are being met, but whether as a result of this compliance hirers are more aware of their rights and duties. We have not had the resources available to permit a survey of hirers, so it is somewhat difficult to resolve this question conclusively. Our discussions with sellers have given us some clues, however.

Although the Act requires elaborate notice-giving procedures to insure that the hirer is aware of the price at which he could purchase the goods for cash<sup>55</sup> (generally about 20% below the hire purchase price), sellers on hire purchase are unanimously of the opinion that buyers are no more inclined to purchase their goods in that manner than they were before the Act. Apparently even before the Act most buyers were aware of the availability of a substantial discount for cash, and those hirers who prefer credit can probably only afford to buy at all on that basis.

The Act also makes substantial efforts to insure that hirers become aware of the rights available to them if they get into difficulty in paying their instalments. Subsidiary legislation under the Act requires each agreement to include a notice, in the prescribed form, about the right to terminate the agreement voluntarily and about the restrictions on the owner's right of repossession. This notice must be displayed separately from the other terms and conditions and must not be in small print.<sup>56</sup>

54. One motor vehicle dealer who is registering hire purchase agreements sells exclusively through up-country outlets.

55. See note 25 *supra*.

56. Section 6(2)(c); Govt. Notice No. 327, 18 November, 1966. Our observations are that owners are generally complying with these notice requirements.

It is difficult to determine how effective these notice provisions have been at making hirers aware of their rights. Owners report that no hirers are taking advantage of their right to voluntary termination. This failure may be caused by the fact that hirers are not in fact aware of this right despite the required notice. On the other hand, the statutory requirement that a hirer voluntarily terminating his agreement pay at least one-half the hire purchase price, regardless of how many instalments have become due,<sup>57</sup> makes voluntary termination not a very desirable course of action for a hirer early in the life of the agreement. It is early in the life of the agreement that hirers are most likely to desire voluntary termination, since they have less invested in the goods then.

It is also difficult to determine the extent to which hirers are aware of the restrictions on the owner's right of repossession once two-thirds of the hire purchase price has been paid. The owners that we interviewed were generally of the opinion that despite the Act's notice provisions, hirers were usually unaware of their rights.<sup>58</sup> There have been few opportunities to test this opinion by subjecting the hirers to the trials of the repossession process after they have paid two-thirds of the hire purchase price, however. Because the shortage of forms complying with the Act at the time it became effective resulted in few hire purchase agreements being concluded during the first six months of the Act's life, only a few hire purchase agreements covered by the Act have been in force for more than a year at the time of this writing,<sup>58a</sup> and as a result not many agreements have reached the point where two-thirds of the hire purchase price has been paid. Thus, one resident magistrate we talked to in Dar es Salaam indicated he was not aware of any great influx of cases for repossession under the Act in recent months. One automobile seller we interviewed reported that he had filed a few cases for repossession after two-thirds of the hire purchase price had been paid, and that in some of these cases the court had entered a postponed order in effect extending the time period in which the hirer was required to pay the balance of the hire purchase price,<sup>59</sup> but these are the only repossession cases under the Act that we encountered.

57. See note 29 *supra* and accompanying text.

58. One seller of motor vehicles reported to us that in one respect the restrictions have become too effective. He complained that shortly after the Act was passed, some more educated buyers, very aware that some type of hire purchase regulation had been enacted, thought that owners were precluded from repossessing without a court order in all circumstances and as a result gave sellers great difficulty in collecting instalments. Presumably this was only a passing phenomenon.

58a. October, 1968.

59. This same seller also reported that most hirers are unaware of their special rights under the Act once two-thirds of the hire purchase price had been paid and that consequently the threat of repossession had lost none of its efficacy. See generally the subsequent text discussion.

Although it is difficult to determine whether hirers are aware of their special rights once two-thirds of the hire purchase price has been paid, because of the rôle repossession played in the administration of hire purchase agreements before the Act, it is clear that awareness by hirers of these rights is essential if the Act's restrictions on repossession are to accomplish their principal purpose (which we understand to be to substitute the court's judgment for the owner's about how much indulgence it would be appropriate to afford the owner). Most sellers under a hire purchase agreement do not desire to repossess the goods for resale. A successful hire purchase operation expects to derive its profit from the rate of interest charged on the loan, which is high enough to cover the relatively high risk.<sup>60</sup> Moreover, many large companies finance the credit sale of their own manufactured goods and therefore make a profit on the sale even if the credit operation itself is not profitable. Most importantly, however, the resale price of used goods is often not great, and at the time of repossession the hirer will undoubtedly be in arrears on his instalments. As a result, the resale price for the seized goods is unlikely to equal the unpaid portion of the hire purchase price (including arrears), and once the hirer has been deprived of the goods, it is unlikely that he will make any more payments unless forced to do so by a court. For these reasons, even before the Act was enacted, when a hirer was in default on one or more instalments, most owners would concentrate on inducing the hirer to pay his arrears. The techniques for accomplishing this end varied considerably between sellers. Some owners relied heavily on making a personal contact with the hirer. Others would just send letters. Before actually repossessing or suing in court, many owners would have an advocate send a letter demanding payment, but the time period that would be allowed to elapse before the dispute was referred to the advocate also varied between owners. One practice common to all owners, however, was that at one time or another they would threaten to repossess unless the hirer paid his arrears, and all owners considered this threat a very effective way to induce payment. Even if forced to repossess, most owners considered this act just one more means of inducing payment and would keep the goods in the hopes that the hirer would then pay the arrears, in which event the owner would return the goods to him. Some owners returned the repossessed goods even if the hirer just paid part of the arrears and presented a plausible scheme of how he would make up the balance in the reasonable future. Finally, largely in

60. Traditionally the interest rate—typically listed as 10 or 12 per cent—is calculated on the total hire purchase price rather than on the actual amount outstanding at any time. The “true” interest rate on actual capital employed, therefore, is likely to be on the order of 30 per cent (economists differ as to how this figure should be calculated).

order to provide themselves with another technique for inducing payment, many owners also insisted the hirer find some guarantors of his obligations at the time the contract was formed. With rare exceptions, the owners would not actually exact payment from the guarantors, but many owners would use their right to demand payment from the guarantors to induce the latter to put pressure on the hirer, who usually was an employee or a friend, to pay his arrears.

It can be seen, therefore, that it is not repossession for purposes of resale but the threat of repossession that is the principal weapon used against hirers when they encounter difficulty in making their payments. Under the Hire Purchase Act, after two-thirds of the hire purchase price has been paid, there is nothing to prohibit an owner from threatening a hirer in arrears with repossession. On the contrary, before the owner can succeed in a suit for repossession under the Act, he must show that he made a written request to the hirer to surrender the goods which was refused.<sup>61</sup> If the hirer complies with this request and voluntarily returns the goods to the owner, there is probably no violation of the Act even though the owner in effect recovers the goods other than by suit.<sup>62</sup> If the hirer is aware of his rights under the Act, and in particular of the possibility that a court will enter a suspended order of repossession in effect giving the hirer an extension of time in which to pay the remaining instalments, then of course he can confidently resist the threats of and demands for repossession.<sup>63</sup> If the hirer is unaware of these rights, however, the threats of repossession are likely to be as effective at inducing payment of arrears as they were before the Act, and possibly at inducing voluntary return of goods. The hirer may also still be vulnerable to

61. According to the common law, in a suit for return of the goods it must be shown that the hirer's possession is adverse to the owner. The Hire Purchase Act, section 16, provides that if the owner has made a written request for surrender of the goods, the hirer's continued possession of them will be considered adverse to the owner. Presumably, this section is the only way the owner can establish adverse possession once two-thirds of the hire purchase price has been paid.

62. There have been English cases holding that there is no violation in these circumstances. *E.g.*, *Mercantile Credit Co. Ltd., v. Cross*, (1965) 2 Q.B. 205. See Guest, *op. cit. supra*, para 542. The result is sensible, since otherwise the hirer in every case would be required either to terminate the agreement himself or take the risk of being assessed the costs of a suit for repossession, and we have no reason to believe the Tanzanian Act will be interpreted differently.

63. It may be a hirer should not resist a demand for surrender of the goods as confidently as we suggest. Not only does he run the risk of paying the costs of the suit for repossession, but section 18(8) seems to provide that, if the court directs return of the goods to the owner, the hirer does not have the right to finalize the agreement by paying the unpaid portion of the hire purchase price within 28 days after repossession. If the hirer voluntarily surrenders the goods, he retains this right.

pressure from his guarantors to pay the arrears.<sup>64</sup> Moreover, even if the hirer resists the threats of and demands for repossession, unless he is aware of his rights, he may not defend the owner's suit for repossession under the Act,<sup>65</sup> and unless he defends the suit and presents some information to the court about why he has not paid the instalments and when he would likely be able to, it will be very difficult for the court to make an intelligent judgment about whether to grant the hirer an indulgence (in the form of a postponed order).

There is another reason why awareness by hirers of the repossession restrictions is essential if the Hire Purchase Act is to be effective. According to the Act, if an owner repossesses without a court order after two-thirds of the hire purchase price has been paid, the hirer is released from all liability under the agreement and both he and his guarantors are entitled to recover all sums they have paid to the owner, without any deduction to compensate for the hirer's use of the goods.<sup>66</sup> This is a fairly extreme sanction if invoked, but it is up to the hirer and his guarantors to initiate proceedings to effectuate the sanction. Since no notice about this sanction is provided in most agreements (nor is any required by the Act), it would seem that the hirer would ordinarily not initiate proceedings unless he should happen to be aware that his rights have been infringed and consequently consults an advocate. One seller, which at the time of our interview claimed not to have encountered yet the problem of having to repossess after two-thirds of the hire purchase price had been paid, told us that when the problem did arise, the company was considering just repossessing in violation of the Act, on the theory that it would be only the extreme minority of victims that would sue them for return of all the sums paid. This company had considerable reason to believe their theory was correct. For the first seven months after the Act became effective, the company continued to use its old hire purchase forms and did not register the agreements. According to the Act, these agreements were unenforceable in court and the owner was precluded from suing for either the hire purchase price or the goods. With only three or four exceptions, however, the hirers who were parties to these agreements raised no protest; the owner even repossessed the goods for failure to pay the instalments under several of the agreements.

64. Under the Act guarantors do not have to be provided with a copy of the agreement, although they do have to sign it. Section 6(2). Since notice of most of the provisions benefiting the hirer is provided only in the agreement, guarantors who have not received a copy may be unaware of the hirer's special rights even though the hirer is.

65. Sellers who rely on money judgments rather than repossession when a credit buyer is in default find that most of their suits are not defended.

66. Section 17(2).

Finally some mention should be made of the impact of some of the other provisions of the Act, which on the whole we consider less important. The owners report that some hirers do pay the unpaid portion of the hire purchase price a short time after repossession, thereby exercising their right under the Act to finalize the agreement at any time up to 28 days after repossession.<sup>67</sup> It is likely that these incidents would have occurred even if the Act had not been passed, however, since, as we indicated above, it was quite common before the Act for owners to permit hirers to reacquire the goods after repossession even if they just paid the arrears, and many hirers are probably aware of this practice. The Act contains a number of provisions fixing monetary recovery to which the hirer or owner are entitled upon repossession other than by suit by the owner. If the resale proceeds fail to equal the unpaid portion of the hire purchase price, the owner is restricted to recovering the costs of repairing the vehicle, if any, plus the arrears. If the sums paid plus the arrears equal less than one-half of the hire purchase, then the owner can also recover the difference.<sup>68</sup> So far as we can determine, sellers using hire purchase are complying with this provision. Indeed most sellers on hire purchase seem to be satisfied with recovering the arrears owing at the time of repossession, whether or not that amount is sufficient to cover the difference between the resale price and unpaid portion of the hire purchase price. On the other hand, two motor vehicle dealers interviewed who are using chattel mortgage reported that when they repossess they regularly sue for the difference between the resale price and the unpaid portion of the total credit sale price, whether that amount exceeds or is less than the arrears owing at the time of repossession. Such action is permissible under the Chattels Transfer Act, but it does indicate still another way in which the chattel mortgage can be used to evade the Hire Purchase Act.

The Hire purchase Act also provides that if the owner's proceeds from resale exceed the unpaid portion of the hire purchase price plus the reasonable costs of repossession and sale, the excess is to be returned to the hirer.<sup>69</sup> This is the same result that would be reached under the Chattels Transfer Act in the absence of an express provision in the agreement to the contrary,<sup>70</sup> but it is a change in the common law applicable to hire purchase agreements.<sup>71</sup> Most sellers using hire purchase that we

67. Section 15. See note 23 *supra* and accompanying text.

68. Section 7(c). At common law the hirer was liable for the entire difference between the resale price and the unpaid portion of the hire purchase price.

69. Section 19.

70. We have not encountered any chattel mortgage agreement which provides otherwise.

71. At common law, regardless of the size of the resale proceeds, the owner is entitled to keep the instalments paid and sue for any arrears on the theory that they constitute rent for the period in which the hirer used the goods.

interviewed reported that they had never encountered the problem of the resale price exceeding the unpaid part of the total price but that if they did, they intended to return the excess. We were not entirely confident that the owners were being truthful with us on this point, although it is probable that the problem of an excess will not arise frequently since repossession only occurs after the hirer is several instalments in arrears. It should be pointed out, however, that if owners ignored this provision, it is unlikely that any sanction would be imposed on them. The only means provided in the Act for enforcing the duty to return the excess is a suit by the hirer for that amount. Before a hirer will institute such a suit, he must be aware of his right to the excess and he must have some means of determining whether the owner's resale netted an excess. We doubt that very many hirers are aware of their rights to an excess,<sup>72</sup> and it would clearly be an easy matter for an owner intent on evading his duty to return any excess to make it difficult for a hirer to discover the resale price. In this regard, it is interesting that one of the largest sellers of goods on hire purchase told us that they do occasionally net an excess on resale and that they never return it to the hirer, instead using the amount to balance off the losses they more commonly suffer upon repossession because of an inability to enforce a judgment for arrears or other damages. This seller had apparently never been sued for return of the excess.

One section of the Hire Purchase Act voids any provision in the agreement authorizing the owner to enter the hirer's premises to effect repossession without obtaining permission at that time.<sup>73</sup> This provision mainly effects goods usually kept in a dwelling, such as a refrigerator, radio, etc., and does not usually hinder repossession of a motor vehicle without permission. Even so, the provision has been called "extremely important";<sup>74</sup> if a hirer refuses permission to enter his premises at the time the owner desires to repossess goods kept there, the provision potentially could force the owner to repossess by suit even though two-thirds of the hire purchase price has not been paid. Nevertheless, the provision has had little impact. Nothing in the Act prevents a hirer from giving the owner permission to enter the premises at the time he desires to effect repossession, and sellers have had little difficulty in obtaining the requisite permission. This result is not altogether surprising when one realizes that the hirer is probably ordinarily unaware of his right to resist repossession and in

72. Most hire purchase agreements we have seen make no mention of this right, nor does the Act require the owner to provide any notice.

73. Section 7(a).

74. Macneil, *op. cit. supra* note 17, at 90.

addition probably feels somewhat guilty because of his failure to keep up the instalments.<sup>75</sup>

#### Evaluation:

Before evaluating the impact of the Hire Purchase Act, it is necessary to identify the goals such a statute can strive to achieve. The most evident goal, and the one the Tanzanian Act seems principally designed to achieve, is to reduce the incidence of sharp practice in the administration of hire purchase agreements. By eliminating sharp practice in this context we do not mean forcing a basic change in the rules ordinarily applied to hire purchase agreements, but rather insuring that all decisions in the administration of hire purchase agreements are rational and consistent with the rules ordinarily applied in fact. For example, if an owner repossesses after a substantial portion of the hire purchase price has been paid and when the hirer is only one or two instalments in arrears, the owner is acting inconsistently with the rules ordinarily applied in fact by not granting the hirer a reasonable indulgence. A second goal for which hire purchase regulation might strive is to make some basic changes in the rules that are in fact applied to the administration of hire purchase agreements. There is no evidence that Tanzania's Act attempted such changes, although if the Act had adopted the suggestion of one member of the National Assembly that a hirer be vested with unfettered title to the goods once he had paid two-thirds of the hire purchase price, then such a change would have been attempted. Closely related to these goals, sought by the regulation of consumer credit in many countries, is the desire to improve the "quality" of credit. By improving the "quality" of credit, we mean forcing lenders to pay more attention to the credit-worthiness of the buyer and to rely less on the security in the goods. Regulation of the quality of credit, therefore, is designed to discourage secured credit sales to poor risks. The motivation for such regulation might be a belief that persons with poor credit standings should not be permitted, for their own good, to become too heavily in debt. So far as we can determine, it was not the government's intention in enacting the Hire Purchase Act to improve the quality of credit, although such might have been the inevitable consequence of the provisions designed to eliminate sharp practice if they had been effective, since their effect would have been to make it somewhat more difficult for a lender to realize on his security. There has, of course, been a considerable improvement in the quality of credit since the Act, but this change has resulted primarily from the reduction in the amount of finance

75. Moreover, the remedy available to the hirer if the owner enters his premises without permission is inadequate. Usually he must initiate proceedings in tort for trespass and possibly conversion.

available as a result of the finance companies' decision to withdraw.<sup>76</sup>

A second set of goals that might be taken into account in formulating hire purchase regulations concerns the considerations of overall development investment strategy that we have discussed earlier. These goals would be concerned with affecting the volume of credit outstanding and, even more importantly, with the direction in which the credit is being invested—for example, whether it is being used to promote purchases of consumer or capital goods. There is no indication that considerations of development investment strategy entered into the formulation of the Hire Purchase Act, however.

The Hire Purchase Act has not been altogether successful in achieving its primary goal of eliminating the occasional case of sharp practice by forcing owners to apply consistently the rules ordinarily applied in the administration of hire purchase agreements. The principal reason for its lack of success has been the ease with which sellers on secured credit have been able to evade it through the simple device of using a chattel mortgage as a form of agreement. The Chattels Transfer Act was not enacted, with its provisions strongly favouring the lender, to facilitate the secured credit sale but rather to encourage the extension of credit to farmers and small businessmen whose only security may be chattels.<sup>77</sup> Legislation should be enacted which limits the use of chattel mortgage to these situations, at least if the agreement involves less than the Shs. 60,000/- limit of the Hire Purchase Act. At the same time consideration should be given to legislation that would prevent the development of the lease as a form of agreement for a secured credit sale in order to avoid the Act.

A more intriguing question is whether the use of an unsecured credit sale by sellers of small value items should be considered an undesirable evasion of the purposes of the Hire Purchase Act. One of the main purposes of the Act is to prohibit abuse of the owner's right of repossession, and, perhaps, to make the owner's threat to repossess less effective in inducing credit purchasers to pay their arrears. These purposes are automatically accomplished in an unsecured credit sale since the lender has no right of repossession. Moreover, if the buyer fails to meet his instalments, a court will get an opportunity to review the transaction, since the only way the lender can recover the payments is to bring an

76. Moreover, at the time the Act was passed the finance companies were in the process of tightening their credit standards as they reacted to the lessons of Lombank's fiasco. It is likely, therefore, that there would have been a considerable improvement in the quality of credit even if no Act had been passed at all.

77. See Oulton, "Loans in Kenya on the Security of Chattels", (1960) *J. of African Law* 17, 79.

action to establish a judgment debt. But a number of other goals of Hire Purchase Act are avoided. There is no restriction on the form of an unsecured credit sale agreement, so the buyer may have less opportunity to become aware of his rights and obligations. The unsecured credit buyer also has no opportunity to terminate the agreement and return the goods if that is his desire. Perhaps most importantly, when a lender does sue under an unsecured credit sale agreement, the court does not have the power to enter a postponed order, in effect extending the period of time in which the buyer must pay his instalments; instead, the court usually must enter an order for the entire unpaid portion of the purchase price, which the seller can collect immediately through wage or property attachment.<sup>78</sup>

In apparent recognition of the evasions possible through the use of the unsecured credit sale, England does regulate unsecured credit sales over £30. Most of the regulation concerns the form of the agreement, however.<sup>79</sup> As a result unsecured credit sales are becoming increasingly popular in England because they avoid the possibility that the court will enter a postponed order. And after getting a money judgment under an unsecured credit sale, the lender may be able to levy execution on the very goods sold!<sup>80</sup> Consequently, if Tanzania considers regulation of unsecured credit sales, it may wish to make more of the principles of the Hire Purchase Act applicable than England has.

It is a bit too early to determine certainly whether the Hire Purchase Act will be effective in accomplishing its purposes in those situations in which hire purchase is still being used as a form of agreement, but there are substantial grounds to doubt that it will be. The difficulty with the Act is that it requires too much initiative by the hirer if its purposes are to be realized. The drafters of the Act recognized this problem to some extent, and therefore they required the owner to initiate a suit for repossession after two-thirds of the hire purchase price has been paid, rather than allowing immediate repossession and then giving the hirer an opportunity to go to court with any complaints, as the finance companies proposed. But it is likely that the drafters did not go far enough in meeting this

78. Another difficulty is that a seller on an unsecured credit sale is free to exclude all implied warranties and conditions.

79. See generally Guest, *op cit. supra*, para. 1091-1102.

80. Another advantage to the unsecured credit sale in England is that there is a summary procedure available for obtaining a judgment for the unpaid portion of the purchase price. *Id.*, at para. 1102-03. This advantage does not exist in Tanzania. It takes at least as long to obtain a judgment for a debt, even if the action is not defended, as it does to obtain an order for repossession. In either case the minimum time period is usually about five weeks. In a suit for repossession, the Hire Purchase Act does permit a court to enter *ex parte* orders affecting the custody of the goods pending a hearing if such action is considered necessary to protect the goods. Section 18(3). So far as we know, however, this section has never been employed.

problem. The only device for enforcement of the owner's duty to go to court to repossess provided by the Act is a suit by the hirer, albeit for very extensive damages. Most importantly, unless the hirer is aware of his special rights after two-thirds of the price is paid, nothing has been done to diminish the effectiveness of the threat to repossess—traditionally the owner's most potent weapon.

The difficulty encountered by the Act is one which is encountered to a greater or lesser extent by all attempted regulation to eliminate sharp practice in contractual transactions between a party who specializes in those transactions and a party who enters them only occasionally. The specialist takes the trouble to learn about his rights and obligations, whereas the occasional participant rarely does. And the specialist can institutionalize the processes for invoking the aid of enforcement mechanisms (usually the courts) while the occasional participant must make special arrangements in every case. It is necessary, therefore, to attempt to devise measures to redress this imbalance. At the same time, however, it is desirable to take some account of the effect of any measures on the costs and risks in administering hire purchase agreements assumed by owners. Probably any effective regulation will have some impact on the costs of administering hire purchase agreements; for example, if the threat of repossession is made a less effective means of inducing payment of arrears and owners are forced to resort regularly to the courts for a remedy once two-thirds of the hire purchase price is paid, then their administrative costs will increase somewhat. Although this would probably be an acceptable result and would be likely to have only a modest impact on the volume and quality of credit, it is desirable to guard against a substantial and unintended effect on the quality and volume of outstanding credit in the guise of eliminating sharp practice. It is, of course usually necessary to have control over the volume of credit, but it is doubtful that this control should be implemented through such a crude tool as increasing the costs of administering hire purchase agreements. In our view no country has ever completely solved the problem of devising effective measures to eliminate sharp practice while at the same time avoiding substantial unintended effect on the volume of credit. There are various possible measures, however, none of them perfect, that are not tried in Tanzania's Hire Purchase Act and which should now be considered.

The most obvious measures are to devise better means to provide more notice to hirers about their rights and obligations—and to guarantors as well, so that owners cannot so effectively exert pressure through them—than they apparently now receive. First of all, there is need to improve the content of the notice provided in the agreement. Although the Act does require each agreement to include mention of some of the hirer's

rights under the Act, many rights do not have to be noted in the agreement and they typically are not—for example, the hirer's right to any excess over the unpaid portion of the hire purchase price received by a seller upon resale of repossessed goods,<sup>81</sup> and the hirer's right to sue for return of all sums paid if the owner repossesses without a court order after two-thirds of the total price has been paid.<sup>82</sup> It would be easy enough to amend the Act to require each agreement to mention these rights, even if not so prominently as some of the hirer's other more important rights. Perhaps most promising, there could be a requirement that at the time the agreement is made the owner inform the hirer orally of his rights. In recognition of the fact that the spoken word often has more impact than the written word—particularly in a society with a high degree of illiteracy—most owners already orally inform the hirer of the duty to make payments at the required intervals and warn him of the possibility of repossession. It would be simple enough for them to tell about the hirer's rights once two-thirds of the hire purchase price has been paid as well, although they are unlikely to do so without some compulsion.<sup>83</sup> A second approach that could be tried is to provide notice to the hirer at a time later in the transaction than when the agreement is made. It is axiomatic that when two businessmen enter into a transaction, they rarely contemplate breach and will not put any provisions in their contract concerning breach or intervening difficulty unless some lawyer catches their ear.<sup>84</sup> It is also likely that when a hirer enters into a hire purchase agreement, he contemplates making all his payments and therefore does not pay much attention to his rights in the event he fails and repossession becomes a threat. We have already mentioned that before an owner can file a suit for repossession under the Act, he must show that he has in writing requested return of the goods and been refused.<sup>85</sup> It would be easy enough to amend the Hire Purchase Act to require that this request include a notification of the hirer's rights once two-thirds of the price has been paid. There could even be a statutory standard form for the owner's request to return the goods, which would mention the hirer's rights. Even this legislation would have no impact on the threats of repossession that could precede the formal written request for return of the goods. For this reason, perhaps the Act should be amended to

81. Section 19.

82. Section 17(2).

83. A requirement of an oral explanation would raise considerable enforcement problems, of course. Even if no effective enforcement device could be devised, however, a requirement that an explanation be given would probably be effective in inducing at least some explanations.

84. See Macaulay, "Non-Contractual Relations in Business: A preliminary Study" 28 *Am. Soc. Rev.* 55 (1963).

85. See note 61 *supra* and accompanying text.



require mention of the hirer's rights regarding repossession any time the owner communicates with the hirer, whether orally or in writing.<sup>86</sup>

Regulation designed to increase the amount of notice provided to hirers attempts to redress the imbalance in skill and knowledge that inevitably exists between the parties to a consumer transaction by making hirers more aware of their rights and therefore more likely to insist upon them. It is difficult to object to such regulations: it does not unduly increase the administrative burden on owners and usually it will be effective in making at least some hirers more aware of their rights. On the other hand, it is unlikely that notice regulation will ever solve completely the difficulties in eliminating sharp practice caused by the failure of many hirers to insist on their rights. Consequently it is necessary to consider devising means to initiate proceedings against owners who violate the Act without relying on the hirer to assert his rights.

One approach would be to establish an administrative agency to hear all disputes under the Act. An administrative agency has advantages over a court in terms of the initiative it can take in protecting the rights of parties appearing before it. Thus, if an owner applied for repossession before an agency and the hirer did not respond to the summons, the agency might conduct an investigation of its own to determine whether a postponed order was appropriate or whether the owner had violated any provision of the Act. More generally, the agency could conduct campaigns to publicize the hirer's rights under the Act and investigations to determine the extent to which the Act is being applied. It could also be authorized to initiate proceedings on behalf of hirers whose rights had been abused. More extremely, in order to minimize the adverse effects of threats of repossession owners might be forbidden to communicate directly with hirers once an instalment is late, instead being required to channel their demands for payment through the agency. In theory it should be possible to organize an administrative agency so that it did not impose any additional administrative costs on owners other than the costs resulting from a diminished ability to evade the purposes of the Act. With Tanzania's current manpower shortage, however, it is unlikely that such an agency could be endowed with sufficient high level personnel to permit it to operate efficiently. Until recently the Rent Restriction Act,<sup>87</sup> which has purposes resembling those of the Hire Purchase Act, was administered by an administrative agency similar to the one we have

86. This requirement would also raise enforcement problems, but at least some check on written communications could be made by examining the standard forms that are developed by any large volume seller on hire purchase.

87. Tanzania Rev. Laws, cap. 479.

suggested. The government was apparently so dissatisfied with the performance of the agency that they passed legislation transferring most of the powers of the agency to the courts.<sup>88</sup>

There are other possible ways of enabling somebody other than the hirer to take the initiative in detecting violations of the Act that would involve considerably less commitment of resources, however. For example, every seller using hire purchase might be required to be licensed, with provision for revocation of the licence if there is wholesale violation of the Act. The licensing agency would not necessarily have to engage in regular and thorough investigations of the hire purchase business to detect violations. But it would have the authority to impose sanctions in those cases in which wholesale violation of the Act became notorious, and it would provide an extra incentive on owners to respect the Act.<sup>89</sup> A similar approach would be to make certain violations of the Act, such as repossession without a court order after two-thirds of the price has been paid, subject to criminal penalties. This approach is already taken with regard to certain minor provisions of the Act and is also taken with regard to a number of the provisions of the Rent Restriction Act. In neither case does it appear that the police have been very diligent in prosecuting violations, no doubt because they have other matters to attend to which are more pressing. Again, however, the possibility of invoking criminal sanctions would allow prosecution of the flagrant violator, and it would provide owners with another incentive to obey the Act. Neither the licensing and the criminal approaches would be likely to reduce the effectiveness of the threat of repossession in inducing payment of arrears. Moreover, both approaches suffer from the difficulty that they invite selective imposition of the sanctions; since limited resources dictate that the sanctions would not be applied to every violation of the Act, the suspicion would arise that, when they are applied, the decision to initiate proceedings was based on considerations other than efficient enforcement of the Hire Purchase Act. It may be, however, that this risk is one that must be borne if efficient implementation of the principles of the Hire Purchase Act is to be achieved.

Finally in considering further regulation of hire purchase, consideration should be given to the set of goals concerning overall development investment strategy. Although the Hire Purchase Act was apparently not intended to have any impact on these goals, because of the decision

88. Tanzania Acts, No. 57 of 1966.

89. One difficulty with a licensing scheme is that the extra burden of acquiring a licence might discourage the seller who does only a limited amount of credit selling from using hire purchase at all.

of the finance companies not to do business under the Act, it has had a substantial effect in reducing the amount of credit available to consumers, particularly in purchasing motor vehicles. It does not appear that this effect was a necessary one. Those financiers of hire purchase who have continued to operate since the Act have not on the whole found that the Act affects substantially the value of their security. There is no reason to believe the finance companies would have fared differently, whatever the reason was for their withdrawal. If the Act is amended in any of the ways we suggest to make it more effective in controlling sharp practice, however, it may be that the Act will have some impact on the quality of credit, and this effect in turn may have some impact on the volume of credit outstanding by reducing the amount of credit extended to poor risks. This effect is likely to be marginal, however, and largely insignificant in its impact on investment strategy goals when compared with the effect of the general economic climate. For this reason there may be a need to consider more direct controls on the volume of credit outstanding and the direction in which the credit is invested.

The National Bank of Commerce is presently considering various schemes by which it could fill the void left by the finance companies and finance the purchase of motor vehicles and other goods on hire purchase terms. So long as the National Bank of Commerce is the principal financier of hire purchase, the government probably has sufficient control over investment policy simply through its ability to control the amount of money the Bank invests in different areas. Of course, this control will be effective only if it is exercised, and certainly it is to be hoped that if the National Bank of Commerce does begin financing secured credit sales, it will give consideration both to the volume of credit it creates and to the direction in which the credit is extended—that is, to whether most of the Bank's limited funds should be used to promote purchase of consumer or production goods.<sup>90</sup>

It may be that to achieve investment strategy goals it is not sufficient to rely on the already existing control over the actions of the National Bank of Commerce. Today more and more motor vehicle dealers are acquiring the means to finance their own sales on hire purchase, particularly those dealers affiliated with large international concerns, and credit sellers of cheaper consumer goods have always financed their own credit. In determining what controls to employ over this source of investment finance, some consideration might be given to the system devised in

90. Since this article was written, the National Bank of Commerce has begun financing hire purchase sales. So far the Bank has mostly restricted its efforts to financing the purchase of capital goods—principally factory machinery and commercial buses and lorries.

Britain to limit the amount, and control the direction, of hire purchase credit in existence. The Board of Trade is empowered to regulate the minimum down-payment and the period in which the remaining balance can be paid.<sup>91</sup> This power not only allows the Board of Trade to control the amount of credit in existence (by raising the minimum down-payment and making the period for paying the remaining balance short, the Board can reduce the number of people who can afford to enter into a hire purchase agreement) but it also allows the Board to have considerable influence on the direction of credit since the Board can and does establish different regulations for different goods.

In conclusion we wish to note that we have ignored many problems that could and do arise under the Act we consider less significant than the ones we have discussed.<sup>92</sup> We do not wish to minimize the desirability of amending the Act to deal with some of these problems. But we do believe that unless some of the problems that we have discussed are solved, the objectives of the Hire Purchase Act are unlikely to be substantially achieved.

91. See generally Guest, *op. cit. supra*, para. 981-1035.

92. The following list of problems calling for legislative attention is not intended to be exhaustive. Serious consideration should be given to repeal of the registration provisions. They do not appear to have performed a significant policing function, and they may be responsible for the low number of agreements negotiated up-country that are being registered under either the Hire Purchase or Chattel Transfer Acts. There is an obvious conflict between sections 19 and 15 of the Hire Purchase Act which should be resolved. See note 23 *supra*. We are personally convinced of the validity of the argument advanced in the National Assembly to the effect that section 19 should apply to all repossessions, whether or not ordered by a court, and perhaps renewed consideration should be given to these arguments. See notes 38-40 *supra* and accompanying text. Finally consideration should be given to amending section 14 which requires hirers to pay at least one-half of the hire purchase price if they voluntarily terminate the agreement. Since hirers are most likely to consider voluntary termination early in the agreement, this provision can lead to harsh results and may be responsible for the failure of hirers to exercise their rights to terminate the agreement voluntarily. See text accompanying note 57 *supra*.