Law of Property Act 1925

1925 CHAPTER 20

PART II

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS.

Contracts.

40 Contracts for sale, &c, of land to be in writing.

(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the court.

41 Stipulations not of the essence of a contract.

Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, are also construed and have effect at law in accordance with the same rules.

42 Provisions as to contracts.

(1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence—

(a) under a trust for sale; or

(b) under this Act, or the Settled Land Act, 1925, or any other statute.

(2) A stipulation that a purchaser of a legal estate in land shall pay or contribute towards the costs of or incidental to—

(a) obtaining a vesting order, or the appointment of trustees of a settlement, or the appointment of trustees of a conveyance on trust for sale; or

(b) the preparation stamping or execution of a conveyance on trust for sale, or of a vesting instrument for bringing into force the provisions of the Settled Land Act, 1925;

shall be void.

(3) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal estate, shall be void.

(4) If the subject matter of any contract for the sale or exchange of land—

(i) is a mortgage term and the vendor has power to convey the fee simple in the land, or, in the case of a mortgage of a term of years absolute, the leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the fee simple in the land or such leasehold reversion;

(ii) is an equitable interest capable of subsisting as a legal estate, and the vendor has power to vest such legal estate in himself or in the purchaser or to require the same to be so vested, the contract shall be deemed to extend to such legal estate;

(iii) is an entailed interest in possession and the vendor has power to vest in himself or in the purchaser the fee simple in the land, (or, if the entailed interest is an interest in a term of years absolute, such term,) or to require the same to be so vested, the contract shall be deemed to extend to the fee simple in the land or the term of years absolute.

(5) This section does not affect the right of a mortgagee of leasehold land to sell his mortgage term only if he is unable to convey or vest the leasehold reversion expectant thereon.

(6) Any contract to convey an undivided share in land made before or after the commencement of this Act, shall be deemed to be sufficiently complied with by the conveyance of a corresponding share in the proceeds of sale of the land in like manner as if the contract had boon to convey that corresponding share.

(7) Where a purchaser has power to acquire land compulsorily, and a contract, whether by virtue of a notice to treat or otherwise, is subsisting under which title can be made without payment of the compensation money into court, title shall be made in that way unless the purchaser, to avoid expense or delay or for any special reason, considers it expedient that the money should be paid into court.

(8) A vendor shall not have any power to rescind a contract by reason only of the enforcement of any right under this section.

(9) This section only applies in favour of a purchaser for money or money's worth.

43 Rights protected by registration.

(1) Where a purchaser of a legal estate is entitled to acquire the same discharged from an equitable interest which is protected by registration as a pending action, annuity, writ, order, deed of arrangement or land charge, and which will not be over-reached by the conveyance to him, he may notwithstanding any stipulation to the contrary, require—

(a) that the registration shall be cancelled; or

(b) that the person entitled to the equitable interest shall concur in the conveyance;

and in either case free of expense to the purchaser.

(2) Where the registration cannot be cancelled or the person entitled to the equitable interest refuses to concur in the conveyance, this section does not affect the right of any person to rescind the contract.

44 Statutory commencements of title.

(1) After the commencement of this Act thirty years shall be substituted for forty years as the period of commencement of title which a purchaser of land may require; nevertheless earlier title than thirty years may be required in cases similar to those in which earlier title than forty years might immediately before the commencement of this Act be required.

(2) Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.

(3) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(4) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(5) Where by reason of any of the three last preceding subsections, an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement of this Act, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(6) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(7) Where the manorial incidents formerly affecting any land have been extinguished, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title of the person entering into any compensation agreement or giving a receipt for the compensation money to enter into such agreement or to give such receipt, and shall not be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(8) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

(9) Where a lease whether made before or after the commencement of this Act, is made under a power contained in a settlement, will. Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the

deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(10) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale, save that it applies only to contracts for exchange made after such commencement.

(11) This section applies only if and so far as a contrary intention is not expressed in the contract.

45 Other statutory conditions of sale.

(1) A purchaser of any property shall not—

(a) require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or

(b) require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, agreed to be produced, or noticed;

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise :

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

(i) any power of attorney under which any abstracted document is executed; or

(ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or

(iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

(2) Where land sold is held by lease (other than an under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(3) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further

that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(4) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say—

(a) the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection; and

(b) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee;

and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(6) Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

(7) The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

(8) Such acknowledgments of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

(9) A vendor shall be entitled to retain documents of title where—

(a) he retains any part of the land to which the documents relate; or

(b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

(10) This section applies to contracts for sale made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale, except that it applies only to contracts for exchange made after such commencement:

Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.

(11) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would hot be enforced against him by the court.

46 Forms of contracts and conditions of sale.

The Lord Chancellor may from time to time prescribe and publish forms of contracts and conditions of sale of land, and the forms so prescribed shall, subject to any modification, or any stipulation or intention to the contrary, expressed in the correspondence, apply to contracts by correspondence, and may, but only by express reference thereto, be made to apply to any other cases for which the forms are made available.

47 Application of insurance money on completion of a sale or exchange.

(1) Where after the date of any contract for sale or exchange of property, money becomes payable' under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

(2) This section applies only to contracts made after the commencement of this Act, and has effect subject to—

(a) any stipulation to the contrary contained in the contract,

(b) any requisite consents of the insurers,

(c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

(3) This section applies to a sale or exchange by an order of the court, as if—

(a) for references to the " vendor " there were substituted references to the " person bound by the order ";

(b) for the reference to the completion of the contract there were substituted a reference to the payment of the purchase or equality money (if any) into court;

(c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

48 Stipulations preventing a purchaser, lessee or underlessee from employing his own solicitor to be void.

(1) Any stipulation made on the sale of any interest in land after the commencement of this Act to the effect that the conveyance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and, if a sale is effected by demise or subdemise, then, for the purposes of this subsection, the instrument required for giving effect to the transaction shall be deemed to be a conveyance:

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared, or

to charge a reasonable fee therefor, or, where a perpetual rentcharge is to be reserved as the only consideration in money or money's worth, the right of a vendor to stipulate that the draft conveyance is to be prepared by his solicitor at the expense of the purchaser.

(2) Any covenant or stipulation contained in, or entered into with reference to any lease or underlease made before or after the commencement of this Act—

(a) whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee or underlessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or underlessor or his solicitor ; or

(b) which in any way restricts the right of the purchaser to have such conveyance carried out on his behalf by a solicitor appointed by him ;

shall be void:

Provided that, where any covenant or stipulation is rendered void by this subsection, there shall be implied in lieu thereof a covenant or stipulation that the lessee or underlessee shall register with the lessor or his solicitor within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all conveyances and devolutions (including probates or letters of administration) affecting the lease or underlease and pay a fee of one guinea in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the lease or underlease shall apply and extend to the breach of any covenant so to be implied.

(3) Save where a sale is effected by demise or sub-demise, this section does not affect the law relating to the preparation of a lease or underlease or the draft thereof.

(4) In this section " lease " and " underlease " include any agreement therefor or other tenancy, and " lessee " and " underlessee " and " lessor " and " under-lessor " have corresponding meanings.

49 Applications to the court by vendor and purchaser.

(1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way to the court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the court may make such order upon the application as to the court may appear just, and may order how and by whom all or any of the costs of and incident to the application are to be borne and paid.

(2) Where the court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit.

(3) This section applies to a contract for the sale or exchange of any interest in land.

50 Discharge of incumbrances by the court on sales or exchanges.

(1) Where land subject to any incumbrance, whether immediately realisable or payable or not, is sold or exchanged by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into court of such sum as is hereinafter mentioned, that is to say—

(a) in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, the sum to be paid into court shall be of such amount as, when invested in Government securities, the court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and

(b) in any other case of capital money charged on the land, the sum to be paid into court shall be of an amount sufficient to meet the incumbrance and any interest due thereon;

but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

(2) Thereupon, the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale or exchange, and give directions for the retention and investment of the money in court and for the payment or application of the income thereof.

(3) The court may declare all other land, if any, affected by the incumbrance (besides the land sold or exchanged) to be freed from the incumbrance, and this power may be exercised either after or without notice to the incumbrancer, and notwithstanding that on a previous occasion an order, relating to the same incumbrance, has been made by the court which was confined to the land then sold or exchanged.

(4) On any application under this section the court may, if it thinks fit, as respects any vendor or purchaser, dispense with the service of any notice which would otherwise be required to be served on the vendor or purchaser.

(5) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(6) This section applies to sales or exchanges whether made before or after the commencement of this Act, and to incumbrances whether created by statute or otherwise.