



Law of Property Act 1925

1925 CHAPTER 20

PART II

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS.

Covenants.

76 Covenants for title.

- (1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to "whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is (when the law permits) made as tenants in common, that is to say :
- (A) In a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part I. of the Second Schedule to this Act;
 - (B) In a conveyance of leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part II. of the Second Schedule to this Act;
 - (C) In a conveyance by way of mortgage (including a charge) a covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part III. of the Second Schedule to this Act;
 - (D) In a conveyance by way of mortgage (including a charge) of freehold property subject to a rent or of leasehold property, a further covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part IV. of the Second Schedule to this Act;

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- (E) In a conveyance by way of settlement, a covenant by a person who conveys and is expressed to convey as settlor in the terms set out in Part V. of the Second Schedule to this Act;
 - (F) In any conveyance, a covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or as receiver of a defective, or under an order of the court, in the terms set out in Part VI. of the Second Schedule to this Act, which covenant shall be deemed to extend to every such person's own acts only, and may be implied in an assent by a personal representative in like manner as in a conveyance by deed.
- (2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, for the purposes of this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.
 - (3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, for the purposes of this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.
 - (4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or as receiver of a defective, or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.
 - (5) In this section a conveyance does not include a demise by way of lease at a rent, but does include a charge and "convey" has a corresponding meaning.
 - (6) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.
 - (7) A covenant implied as aforesaid may be varied or extended by a deed or an assent, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.
 - (8) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one, but only to assents by a personal representative made after the commencement of this Act.

77 Implied covenants in conveyances subject to rents.

- (1) In addition to the covenants implied under the last preceding section, there shall in the several cases in this section mentioned, be deemed to be included and implied, a

covenant to the effect in this section stated, by and with such persons as are hereinafter mentioned, that is to say:—

- (A) In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land affected by a rentcharge, a covenant by the grantee or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in Part VII. of the Second Schedule to this Act. Where a rentcharge has been apportioned in respect of any land, with the consent of the owner of the rentcharge, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rentcharge were the rentcharge referred to, and the document creating the rentcharge related solely to that land:
- (B) In a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, subject to a part of that rentcharge which has been or is by that conveyance apportioned (but in either case without the consent of the owner of the rentcharge) in respect of the land conveyed:—
 - (i) A covenant by the grantee of the land or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part VIII. of the Second Schedule to this Act;
 - (ii) A covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land affected by such rentcharge is retained, with the grantees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part VIII. of the Second Schedule to this Act:
- (C) In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease, for the residue of the term or interest created by the lease, a covenant by the assignee or joint and several covenants by the assignees (if more than one) with the conveying parties and with each of them (if more than one) in the terms set out in Part IX. of the Second Schedule to this Act. Where a rent has been apportioned in respect of any land, with the consent of the lessor, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land:
- (D) In a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent which has been or is by the conveyance apportioned (but in either case without the consent of the lessor) in respect of the land conveyed :—
 - (i) A covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph, (i) of Part X. of the Second Schedule to this Act;
 - (ii) A covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land comprised in the lease is retained, with the assignees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part X. of the Second Schedule to this Act.

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- (2) Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rentcharge, or part of land comprised in a lease is, without the consent of the owner of the rentcharge or of the lessor, as the case may be, expressed to be conveyed—
- (i) subject to or charged with the entire rent—
then paragraph (B) (i) or (D) (i) of the last subsection, as the case may require, shall have effect as if the entire rent were the apportioned rent; or
 - (ii) discharged or exonerated from the entire rent—
then paragraph (B) (ii) or (D) (ii) of the last subsection, as the case may require, shall have effect as if the entire rent were the balance of the rent, and the words " other " than the covenant to pay the entire rent" had been omitted.
- (3) In this section " conveyance " does not include a demise by way of lease at a rent.
- (4) Any covenant which would be implied under this section by reason of a person conveying or being expressed to convey as beneficial owner may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or as receiver of a defective, or under an order of the court.
- (5) The benefit of a covenant implied as aforesaid shall be annexed and incident to and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.
- (6) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.
- (7) In particular any covenant implied under this section may be extended by providing that—
- (a) the land conveyed; or
 - (b) the part of the land affected by the rentcharge which remains vested in the covenantor; or
 - (c) the part of the land demised which remains vested in the covenantor;
- shall, as the case may require, stand charged with the payment of all money which may become payable under the implied covenant.
- (8) This section applies only to conveyances made after the commencement of this Act.

78 Benefit of covenants relating to land.

- (1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed.

For the purposes of this subsection in connexion with covenants restrictive of the user of land " successors in title " shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

- (2) This section applies to covenants made after the commencement of this Act, but the repeal of section fifty-eight of the Conveyancing Act, 1881, does not affect the operation of covenants to which that section applied.

79 Burden of covenants relating to land.

- (1) A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.

This subsection extends to a covenant to do some act relating to the land, notwithstanding that the subject matter may not be in existence when the covenant is made.

- (2) For the purposes of this section in connexion with covenants restrictive of the user of land " successors in title" shall be deemed to include the owners and occupiers for the time being of such land.
- (3) This section applies only to covenants made after the commencement of this Act.

80 Covenants binding land.

- (1) A covenant and a bond and an obligation or contract under seal made after the thirty-first day of December, eighteen hundred and eighty-one, binds the real estate as well as the personal estate of the person making the same if and so far as a contrary intention is not expressed in the covenant, bond, obligation, or contract.

This subsection extends to a covenant implied by virtue of this Act.

- (2) Every covenant running with the land, whether entered into before or after the commencement of this Act, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of any such enactment or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.
- (3) The benefit of a covenant relating to land entered into after the commencement of this Act may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Act.
- (4) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

81 Effect of covenant with two or more jointly.

- (1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to

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sue on the covenant, contract, bond, or obligation devolves, and where made after the commencement of this Act shall be construed as being also made with each of them.

- (2) This section extends to a covenant implied by virtue of this Act.
- (3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and has effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.
- (4) Except as otherwise expressly provided, this section applies to a covenant, contract, bond, or obligation made or implied after the thirty-first day of December, eighteen hundred and eighty-one.

82 Covenants and agreements entered into by a person with himself and another or others.

- (1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.
- (2) This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the court made before such commencement.

83 Construction of implied covenants.

In the construction of a covenant or proviso, or other provision, implied in a deed or assent by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

84 Power to discharge or modify restrictive covenants affecting land.

- (1) The Authority hereinafter defined shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied—
 - (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Authority may deem material, the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user; or
 - (b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or

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- (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction:

Provided that no compensation shall be payable in respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the restriction, unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification, nor shall any compensation be payable in excess of such loss; but this provision shall not affect any right to compensation where the person claiming the compensation proves that by reason of the imposition of the restriction, the amount of the consideration paid for the acquisition of the land was reduced.

- (2) The court shall have power on the application of any person interested—
- (a) To declare whether or not in any particular case any freehold land is affected by a restriction imposed by any instrument; or
- (b) To declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is enforceable and if so by whom.
- (3) The Authority shall, before making any order under this section, direct such enquiries, if any, to be made of any local authority, and such notices, if any, whether by way of advertisement or otherwise, to be given to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged, modified, or dealt with as, having regard to any enquiries notices or other proceedings previously made, given or taken, the Authority may think fit.
- (4) The Reference Committee mentioned in this section may make rules in relation to any applications to be made to the Authority under this section, and with the consent of the Treasury may prescribe the fees to be paid in connexion with any application to the Authority.
- (5) Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction, which is thereby discharged, modified, or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not, but any order made by the Authority shall, in accordance with rules of court, be subject to appeal to the court.
- (6) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified, or dealt with, may not have been produced to the court or the Authority, and the court or the Authority may act on such evidence of that instrument as it may think sufficient.
- (7) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter, but this section does not apply where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes.
- (8) This section applies whether the land affected by the restrictions is registered or not, but, in the case of registered land, the Land Registrar shall give effect on the register to any order under this section when made.
- (9) Where any proceedings by action or otherwise are taken to enforce a restrictive covenant, any person against whom the proceedings are taken, may in such

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proceedings apply to the court for an order giving leave to apply to the Authority under this section, and staying the proceedings in the meantime.

- (10) In this section " the Authority " means such one or more of the Official Arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, as may be selected by the Reference Committee under that Act.
- (11) This section does not apply- to restrictions imposed by the Commissioners of Works under any statutory power for the protection of any Royal Park or Garden or to restrictions of a like character imposed upon the occasion of any enfranchisement effected before the commencement of this Act in any manor vested in His Majesty in right of the Crown or the Duchy of Lancaster, nor to restrictions created or imposed—
- (a) for Naval, Military or Air Force purposes,
 - (b) for civil aviation purposes under the powers of the Air Navigation Act, 1920.
- (12) Where a term of more than seventy years is created in land (whether before or after the commencement of this Act) this section shall, after the expiration of fifty years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold:

Provided that this subsection shall not apply to mining leases.