See 1961 Q.S.R. 518
A.L.R. 1972 " 246
" 1973 " 373

Ref to 4 p. 109. 1978 Q.S.R. 202.
Dist. 52. A.L.J.R. 615.

[HIGH COURT OF AUSTRALIA.]

PETRIE . . . . . APPELLANT;
PLAINTIFF,

AND

DWYER AND ANOTHER . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1954.

MELBOURNE, *Oct.* 12;

SYDNEY, *Dec.* 13.

Dixon C.J., Fullagar and Kitto JJ.

Vendor and Purchaser (*Q.*)—"*Contract of sale of land*"—*Statutory regulation of vendor's right to rescind—Exclusion of other remedies in cases covered by statute—Definition*—"*Agreement . . . where . . . terms . . . provide that . . . payment . . . shall be extended over a period of time*" *and* "*any such sale of land*" *—Not fulfilled where balance of purchase money over deposit payable in one sum—Meaning of* "*such*"*—Notice that vendor* "*intends to rescind*"*—Not constituted by immediately operative notice of rescission—Contract—Sale of land—Time of essence—Non-completion by purchaser on due date—Waiver—Subsequent negotiation for extension—Vendor's insistence on strict rights unless payment of additional sum by purchaser—Non-acceptance of condition by purchaser—Right to rescind for non-completion by due date not affected—The Contracts of Sale of Land Act of* 1933 (24 *Geo. V. No.* 26) (*Q.*) *ss.* 3, 13 (1) (*a*).

Section 3 of the *Contracts of Sale of Land Act* of 1933 (Q). defined " contract of sale of land " as meaning " an agreement for the sale and purchase of land where the terms of the sale provide that the payment by the purchaser for the land shall be extended over a period of time : the term also includes any such sale of land where the instrument of sale is not a registrable instrument under ' *The Real Property Acts* 1861 to 1887 ' ".

Held (1) that the first branch of the definition includes a case where the purchase price is made payable in two or more instalments, but not a case where the whole of a balance over and above deposit is payable in one sum.

Held (2) that the second branch of the definition is limited to the class of sales described in the first branch. *Morris* v. *Forrester-Jones* (1950) Q.S.R. 252, at pp. 261-262, disapproved.

Section 13 of the same Act provided that " (1) Notwithstanding anything in any Act or law or rule or process of law to the contrary, and notwithstanding

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the terms, stipulations, and conditions of any contract of sale of land, where the purchaser has paid off an amount from the consideration for the sale of the land concerned, and the purchaser shall fail to continue to comply with the terms and conditions of the contract of sale or make default in the payment of the instalment or instalments therein, the following conditions shall apply :— (a) The vendor may give notice to the purchaser in the prescribed form or according to the practice of the court that he intends to rescind the contract. (b) Such rescission shall not take effect until the expiration of thirty days from the date of such notice, or such further time as the court may in its discretion direct in any particular case, and on application by the purchaser in that behalf ". Sub-section (2) provided, *inter alia*, that the purchaser might remedy his default within the period stated in sub-s. (1) (b) and sub-s. (3) provided that " if, however, within the prescribed period the purchaser neglects or fails to take such action as is set forth in sub-section two of this section the vendor may rescind such contract of sale."

Held (1) that the section applies only to " contracts of sale of land " as defined in s. 3 ; (2) that the section prescribes the only means of rescission of a contract within its terms ; (3) that a notice, not in the prescribed form, purporting to be immediately effective to bring a contract to an end is not a notice for the purposes of s. 13 (1) (*a*). *Morris* v. *Forrester-Jones* (1950) Q.S.R. 252, at p. 263 disapproved.

After the purchaser, under a contract of sale of land in which time was stated to be of the essence, had failed to pay the balance of purchase money by the due date, negotiations took place between the parties for an extension of time for payment. The vendors' attitude in these negotiations was that they would insist on their strict rights unless the purchaser was prepared to pay a sum in addition to the contract price. The purchaser not being prepared to do this, the vendors rescinded the contract.

Held, that the stipulation that time was of the essence of the contract had not been waived by the conduct of the vendors in negotiating with the purchaser and the contract was validly rescinded for non-completion by the due date. *Webb* v. *Hughes* (1870) L.R. 10 Eq. 281, at p. 286 ; *Hipwell* v. *Knight* (1835) 1 Y. & C. Ex. 401 [160 E.R. 163], referred to.

Decision of the Supreme Court of Queensland (*Hanger* J.) affirmed for different reasons.

APPEAL from the Supreme Court of Queensland.

On 18th September 1951 Joseph James Petrie commenced an action in the Supreme Court of Queensland against Francis Joseph Dwyer and Louisa Theresa Dwyer. So far as material the statement of claim in the said action delivered on 24th April 1952 was as follows :—3. By an agreement in writing dated 5th March 1951, the defendants sold to the plaintiff the property situated in the County of Stanley Parish of Yeerongpilly, City of Brisbane containing an area of 1 rood and being the land described as Resubdivisions

134 and 135 and Subdivision 1 of Resubdivision 133 of Subdivision C of Portion 5 together with all improvements thereon for the sum of £1600 0s. 0d. and the defendants received the sum of £100 0s. 0d. by way of deposit and in part payment of the said purchase money. 4. It was provided by the said agreement that the plaintiff would pay to the vendors the balance of purchase money, namely the sum of £1500 0s. 0d., in exchange for a registrable transfer in favour of the purchaser, together with relevant documents free of all encumbrances, within sixty days of the execution of the contract. 5. The defendants as vendors approved of the said sale and executed the said agreement on 12th March 1951. 6. Before 12th May 1951 the plaintiff and the defendants agreed orally to extend the time for the payment of the balance of purchase money until 24th May 1951. 7. On 25th May 1951 the defendants, by their solicitors, by notice in writing addressed to the plaintiff, purported to rescind the said sale and to forfeit £100 0s. 0d., paid as deposit, to the defendants. 8. Before the notice of rescission in the last preceding paragraph became operative under *The Contracts of Sale of Land Act* of 1933 the plaintiff, by his agent Mardon John Trotter, tendered to the solicitors for the defendants the said sum of £1500 0s. 0d. and the sum of £26 0s. 0d. to cover the costs of memorandum of transfer, which said sums were refused by the said solicitors. 10. In breach of the said agreement the defendants refuse to complete the said sale and refuse to take any steps towards the completion of the said agreement for sale. 11. The plaintiff has at all material times been and is now ready and willing to perform his obligations under the said agreement. And the plaintiff claims :—Specific performance of the said agreement, or alternatively, Seven hundred pounds (£700 0s. 0d.) damages.

By their defence, delivered 24th August 1952, the defendants admitted the allegations contained in pars. 3, 4 and 5 of the statement of claim, denied those contained in par. 11 thereof, and pleaded as follows :—3. The defendants say that cl. 9 of the agreement in writing referred to in par. 3 of the statement of claim was in the following terms :—" If the purchaser shall neglect or fail to pay his deposit or any instalment of purchase money or part thereof or any interest or shall fail to comply with any agreement on his part herein contained then (subject to the *Contracts of Sale of Land Act* of 1933 so far as the said Act may apply) the vendor shall be at liberty to rescind this contract." 4. The defendants say that cl. 20 of the said agreement in writing provided that time should in all cases and in every respect be deemed to be the essence of the contract. 5. As to pars. 6 and 7

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thereof the defendants say that on 8th May 1951, the plaintiff, having by his failure to complete the said contract within sixty days after the execution thereof, repudiated the said contract, the defendants accepted such repudiation by letter written to the plaintiff in the following terms :—" We have been instructed to inform you that our clients are not prepared to grant any further extension of time for the completion of the above matter, and have instructed us to give you notice that the contract for sale entered into between you and them is hereby rescinded." 6. Subsequently the defendants informed the plaintiff that, if the plaintiff paid, on or before 24th May 1951, the moneys which had been due under the said contract, they would give consideration to the completion of the transaction. 7. The plaintiff failed to pay the said moneys on or before 24th May 1951 and, on 25th May 1951, the defendants, by their solicitors, wrote to the plaintiff and informed him that the contract was rescinded and that the deposit of £100 0s. 0d. was forfeited. The said letter was in the following terms :—" We wish to confirm our telephonic conversation with you to-day when we informed you that the vendor was not prepared to grant any further extension of time for the payment of the balance of purchase money, and that, when you had failed to pay the balance of purchase money by yesterday, the sale was treated as being cancelled and the deposit forfeited to the vendor." 9. The defendants deny that the said contract is a contract of sale of land within the meaning of *The Contracts of Sale of Land Act* of 1933 but, if it is such a contract, (which is denied), then the defendants say that the said contract was duly rescinded in accordance with that Act. 10. As to par. 8 thereof, the defendants admit the tender and refusal therein referred to, but deny that the tender was made within the time alleged.

The action was heard before *Hanger* J. who, in a judgment delivered on 3rd December 1953, found the facts as follows :— " On the 12th March 1951 a contract, dated 5th March 1951, for the sale of certain land and premises as therein set out, was executed by the plaintiff and the defendants, the plaintiff being the purchaser and the defendants the vendors ; the vendors approved of the sale. The deposit of £100 provided for by the contract was paid on 12th March 1951. By the contract the balance of the purchase price, namely £1500, was due within 60 days of 12th March, that is on 11th May. This money was not paid by the due date, but on 8th May the solicitor for the defendants, in error, wrote to the plaintiff giving notice that the contract of sale was rescinded. Subsequent to this date, and prior to 24th May, negotiations took place between

the plaintiff or his agent and the defendants or their agents for an extension of time to 24th May for the payment of the balance of the purchase money; more particularly I find that on 10th May the plaintiff was told by the defendants' solicitors that if he increased the price by £200 the defendants would consider proceeding with the contract. I am not satisfied on the evidence that the time for payment of the balance was extended by agreement to 24th May. In accordance with the admissions in the pleadings, I find that, on or after the 18th June, the plaintiff tendered to the defendants the balance of purchase money (£1500) and the sum of £26 to cover the costs of the memorandum of transfer, which tender was refused by the defendants." On these facts, the trial judge held that the agreement was a contract of sale of land within the meaning of s. 3 of the *Contracts of Sale of Land Act* of 1933 (Q.) and, consequently, subject to the provisions of s. 13 of that Act, and that it had been rescinded on 25th May 1951, notwithstanding the fact that no such notice of intention to rescind as is prescribed in s. 13 (1) (a) of the Act had been given to the plaintiff, that section merely enabling and not requiring a vendor to give the notice mentioned therein. Accordingly judgment in the action was entered for the defendants.

From this decision the plaintiff appealed to the High Court.

T. J. Lehane and *B. J. Jeffriess*, for the appellant.

E. S. Williams, for the respondents.

Cur. adv. vult.

Dec. 3.

THE COURT delivered the following written judgment:—

This is an appeal against a judgment of the Supreme Court of Queensland (*Hanger* J.), dismissing a purchaser's action for specific performance of a contract for the sale of land. The contract was in writing. It bears date 5th March 1951, but it is now common ground that it was executed on 12th March 1951. The purchase price of the land was £1600. A deposit of £100 was paid on the signing of the contract, and it was provided that "the purchaser agrees to pay to vendor the balance of purchase money, namely £1500, in exchange for a registrable transfer in favour of purchaser together with relevant documents free of all encumbrance within sixty days of execution of this contract." The due date for payment of the balance was thus 11th May 1951.

Clause 9 of the contract provides:—"If the purchaser shall neglect or fail to pay his deposit or any instalment of purchase

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money or part thereof or any interest or shall fail to comply with any agreement on his part herein contained then (subject to the *Contracts of Sale of Land Act* of 1933 so far as the said Act may apply) the vendor shall be at liberty to rescind this contract." By cl. 20 it was provided that time should in all cases and in every respect be deemed to be the essence of the contract.

The balance of purchase money was not paid on 11th May. On 8th May the vendor's solicitors wrote to the purchaser a letter purporting to rescind the contract for non-payment on the due date. This letter appears to have been written under a mistake, occasioned by the fact that the contract bears date 5th March. It might perhaps have been treated as a repudiation by the vendor, but it was not so treated, and nothing appears now to turn on it. The plaintiff gave evidence that, between 8th May and 24th May, he had some conversations by telephone with the office of the defendants' solicitors, in which he requested that the time for completion should be extended. The evidence was very unsatisfactory, and the learned trial judge found that an agreement, which had been alleged in the defence, to extend the time to 24th May was not established. All that the plaintiff appears to have been told is that the vendors would consider extending the time on condition of receiving £200 over and above the contract price. This condition the plaintiff declined to accept. On 25th May the defendants' solicitors wrote to the plaintiff a letter in which they said that the contract was cancelled, and the deposit forfeited. This letter gives some colour to the plaintiff's allegation that there had been an agreement to extend the time for completion to the 24th May, because it purports to " confirm " a telephone conversation of the same day at which the plaintiff was informed that the vendors were not prepared " to grant any *further* extension of time ", and it speaks of a failure to pay the balance of purchase money " *by yesterday* ". The letter, however, is not inconsistent with the evidence that negotiations had taken place on the basis of a proposal that a further £200 should be paid as the price of an extension of time, and the finding of his Honour that the alleged agreement was not proved appears to be fully justified. It was admitted that on or about 18th June the plaintiff tendered to the defendants a bank cheque for £1526, but this tender was refused. It appears from the evidence that the plaintiff was not before that date able to find the money which the contract required him to pay.

On the facts summarized above, it was assumed by *Hanger* J., and assumed in the argument before us, that—apart from a statute to which it will be necessary to refer—the plaintiff could not

maintain a claim for specific performance. The assumption appears to be correct. The position at law and in equity in such cases is explained by Lord *Parker* of Waddington in *Stickney* v. *Keeble* (1); see also *Carr* v. *J. A. Berriman Pty. Ltd.* (2). Here time was expressly made of the essence of the contract, and the contract must be regarded as effectively rescinded both at law and in equity by the letter of 25th May, unless it is established that before that date the defendants had elected not to exercise the right given by cl. 9 to rescind for non-completion on the due date. No doubt, the continuance of negotiations on the footing that the contract is still subsisting after that date would generally warrant the inference that there had been such an election. "If time be made the essence of the contract, that may be waived by the conduct of the purchaser; and if the time is once allowed to pass, and the parties go on negotiating for completion of the purchase, then time is no longer of the essence of the contract": *Webb* v. *Hughes* (3); and see *Hipwell* v. *Knight* (4). No such "waiver", however, is established here. The vendors had, on 8th May, indicated an intention to adhere to the stipulation as to time, and, although the notice of that date was ineffective, they did not thereafter depart from that intention. If it be true to say that "negotiations" proceeded after 11th May, the vendors' attitude seems to have been that they would insist on their strict rights unless the plaintiff was prepared to pay £200 more than the contract price for the land. They were not "negotiating for the completion of the purchase" in accordance with the terms of the contract other than those relating to time, but really saying no more than that they would consider an offer by the plaintiff to purchase for a price other than that fixed by the contract. The basic assumption was not that the contract was alive but that the vendors were not bound by it. It is impossible to say that they were electing not to rescind for non-completion on the day. So far as the rules of common law and equity go, the contract was effectively rescinded by the vendors on 25th May.

The plaintiff, however, relies on a Queensland statute, the *Contracts of Sale of Land Act* of 1933, which is referred to in cl. 9 of the contract. This statute is remarkably ill-conceived and remarkably ill-drawn, but its obvious purpose is to place a purchaser of land under certain classes of contract in a position more advantageous than that which he would enjoy at common law or in equity. Why

(1) (1915) A.C. 386, at pp. 415, 416.
(2) (1953) 89 C.L.R. 327, at pp. 348, 349.
(3) (1870) L.R. 10 Eq. 281, at p. 286.
(4) (1835) 1 Y. & C. Ex. 401 [160 E.R. 163].

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this should have been thought necessary or desirable need not be considered. The rules of equity are generous to such a purchaser, and the caveat system under the *Real Property Acts* provides machinery for the protection of his equities. But the statute is obviously the work of one not versed either in law or in equity. Its invocation by the plaintiff in the present case raises two questions. The first is whether the contract is one of the class with which the relevant provisions of the Act deal. If this question is answered in the affirmative, the second question arises, which is whether those provisions operate to destroy the effect of the "rescission" of 25th May. *Hanger* J. decided the first question in favour of the plaintiff, and the second against him. In the view which we take, it is convenient to deal with the second question first.

The provisions on which the plaintiff relies are contained in s. 13 of the Act. That section, so far as material, is in the following terms:—"(1) Notwithstanding anything in any Act or law or rule or process of law to the contrary, and notwithstanding the terms, stipulations, and conditions of any contract of sale of land, where the purchaser has paid off an amount from the consideration for the sale of the land concerned, and the purchaser shall fail to continue to comply with the terms and conditions of the contract of sale or make default in the payment of the instalment or instalments therein, the following conditions shall apply:—(a) The vendor may give notice to the purchaser in the prescribed form or according to the practice of the court that he intends to rescind the contract. (b) Such rescission shall not take effect until the expiration of thirty days from the date of such notice, or such further time as the court may in its discretion direct in any particular case, and on application by the purchaser in that behalf. (2) At any time within the said period of thirty days (or extended time as the case may be) upon payment or tender by the purchaser to the vendor of the amount due under the contract of sale at the date of such notice of intention as aforesaid, or upon the payment of any instalment or instalments due by the purchaser at such date, or upon the performance or tender of performance of any other term or condition of the contract of sale (where the failure to make such payment or non-performance of such term or condition entitled the vendor to give such notice of intention to rescind the contract) and payment to the vendor of any reasonable expenses necessarily incurred by him herein, no action shall be taken by the vendor to rescind the contract of sale concerned, and the contract shall continue in force as if no default had occurred. (3) If, however, within the prescribed period the purchaser neglects or fails to take

such action as is set forth in subsection two of this section the vendor may rescind such contract of sale. (4) Notice to the purchaser by the vendor as aforesaid shall be given in writing by the owner to the purchaser, delivered either personally or by registered post, directed to the purchaser at his last known place of business or residence. A notice so posted shall be taken to have been given at the time when the registered letter would in the ordinary course be delivered." A form of notice has been prescribed by regulations made under the Act (reg. 39). The form states that the vendor intends to rescind the contract unless the purchaser, on or (*sic*) before the expiration of thirty days " remedies " his " failure or default ". One would have expected him to be required to remedy his failure or default *within* thirty days, but, by the time one reaches reg. 39, one's capacity for being surprised is exhausted.

The learned trial judge appears to have thought that to give to s. 13 the effect for which the plaintiff contended involved reading the word " may " in sub-s. (1) (a) as meaning " shall " and he did not think it possible so to read that word. He referred to *Reg.* v. *Bishop of Oxford* (1). But no such question as that which arose in *Reg.* v. *Bishop of Oxford* (1) arises here. Clearly the vendor is not required to give any notice under s. 13. But what the section sets out to do, in our opinion, is to prescribe the means, and the only means, by which a vendor may effectively rescind for breach a contract which falls within the section. The section is, of course, extremely badly drawn. In expression and in arrangement it is both elliptical and illogical. But the intention can, we think, be gathered without much difficulty. The words which give the key to the meaning are the words " the following conditions shall apply." The two clauses which begin with the word " notwithstanding " do not refer to provisions qualifying a vendor's right to give a notice of intention to rescind. Such provisions are not to be expected to occur in a contract. Those two clauses refer to rights of rescission which exist at law or by virtue of some special provision in a contract, and the section is saying " Whatever the law says, and whatever the contract says, the vendor's right to rescind for breach is governed by the following conditions." And " the following conditions " are really not only the conditions set out in sub-s. (1) but those set out in sub-ss. (2), (3) and (4) also.

The result of the above construction is that, if s. 13 applies to the contract in the present case, the vendor was not entitled to rescind except upon giving the prescribed notice and upon non-compliance by the purchaser with that notice. No such notice

(1) (1879) 4 Q.B.D. 245.

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was given. It follows that the contract has never been effectively rescinded, but is still subsisting.

We think that the conditions on which s. 13 is itself expressed to operate exist in this case. The purchaser should, we think on the assumption that s. 13 applies to the contract at all be held to have "paid off an amount from the consideration" in the shape of the deposit, and to have "failed to continue to comply with the terms of the contract" within the meaning of the section. It remains, however, to consider whether the contract in this case is one to which s. 13 applies at all. It applies, in our opinion, only to "contracts of sale of land" as defined in the Act. The term "contract of sale of land" is defined by s. 3 as meaning: "An agreement for the sale and purchase of land where the terms of the sale provide that the payment by the purchaser for the land shall be extended over a period of time: the term also includes any such sale of land where the instrument of sale is not a registrable instrument under '*The Real Property Acts*, 1861 to 1887'." This muddled and dubious "definition" is of a piece with the rest of the Act. Both branches of it raise difficulties. With regard to the first branch, the words "extended over a period of time" suggest that the draftsman had in mind a contract under which a balance of purchase money over and above a "deposit" is payable by instalments, as distinct from a contract under which the balance is payable in full after a period regarded as reasonable for investigation of title, requisitions, &c. The language used is perhaps not incapable of including the latter class of case as well as the former. But, if it does include the latter class of case, it includes, practically speaking, *all* contracts for the sale of land, so that no "definition" was necessary. Is it possible, on the other hand, to give to the words "extended over a period of time" any definite meaning which will exclude the latter class of case? The second branch of the "definition" is even more difficult: it is indeed practically unintelligible. If the word "such" merely refers back to "any agreement for the sale and purchase of land", then the second branch of the definition merely means "and all other contracts for the sale of land", for no contract is registrable under the Torrens system. If, on the other hand, it refers back to some limited (though perhaps extremely wide) class of contracts mentioned in the first branch, then it adds nothing whatever to the definition.

Hanger J., very naturally, was content to accept the view expressed by *Macrossan* C.J. and *Mansfield* S.P.J. (*Matthews* J. expressing no opinion on the question) in *Morris* v. *Forrester-Jones* (1). Dealing with a contract which was, as *Hanger* J. thought,

(1) (1950) Q.S.R. 252, at pp. 261-262, 263.

not distinguishable from the contract in the present case, their Honours were of opinion that it fell outside the first branch, but within the second branch, of the definition in s. 3. We agree that such a contract as the present contract falls outside the first branch of the definition, but we are, with respect, unable to agree that it falls within the second branch.

The requirement of the definition that " the payment by the purchaser for the land " shall be " extended over a period of time " seems inappropriate to the case where the only reason for postponing payment in full is to allow for investigation of title or for the obtaining of the consent of some authority to the contract. Both the word " extend " and the words " *over* a period " strongly suggest that the cases envisaged are cases where payment of a balance is to be made in more than one amount, and where the postponement of payment is made for the accommodation of the purchaser. The only thing that is clear about the whole Act is that it is intended for the protection of a purchaser, and we think that the wording of the definition makes it at least fairly clear that it is in cases of that kind that the purchaser is to be protected. In our opinion, what the definition contemplates is the case where the purchaser is required to make a payment or payments (apart from a " deposit ") without receiving a conveyance or transfer in exchange therefor. In effect this means that we regard payment of the purchase price as " extended over a period of time " if that price is made payable in two or more instalments. We think that this view is to some extent supported by the reference to " the instalment or instalments " in s. 13 (1). The word " instalment " is a non-technical term, which even the draftsman of this Act may be expected to have understood. It seems to be contemplated that at least one " instalment " will be payable, and the word is obviously inappropriate to a case where the whole of a balance over and above deposit is payable in one sum.

The first branch of the definition, construed as we would construe it, does not cover the contract in the present case. Nor do we think that that contract comes within the second branch of the definition. It is impossible, in our opinion, to regard the word " such " as referring to anything but the limited class of sales described in the first branch of the definition. In *H. Jones & Co. Pty. Ltd.* v. *Kingborough Corporation* (1) (to which *Hanger* J. refers in his judgment) very strong reasons existed for attributing to the word " such ", in one of the statutes there considered, a meaning which

(1) (1950) 82 C.L.R. 282.

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was not its natural meaning in the context. No such reasons exist here. On the contrary, considerations of the scope and purpose of the statute are opposed to attributing the wider reference to the word " such ". We have said that the second branch of the definition appears to us to be almost unintelligible. It may be that the draftsman had in mind instruments which were not contractual in form but, while purporting actually to convey land, were not immediately registrable. It is unnecessary, however, to express any concluded opinion about this.

An argument against the view which we have taken of the first branch of the definition may be found in s. 5 of the Act. Section 4 provides that, save as thereinafter provided, " every owner who sells to any person any land on terms of sale so that the payment thereof is spread over a period of time " shall provide security in manner specified—presumably for the due performance of the contract on his part. The language of this section seems to cover clearly enough all cases which would fall within the first branch of the definition of " contract of sale of land " in s. 3. Section 5, however, then provides that " nothing in s. 4 shall be construed to extend to " a considerable number of specified cases. One of those cases is " (d) a sale of land where the balance of purchase money is payable upon the production of documents required to complete the transfer of the land under the *Real Property Acts* to the purchaser ". The " balance of purchase money " referred to may be taken to mean the balance payable over and above a deposit, and par. (d) thus covers such a case as the present. And it may be said that, when we find a particular class of contract expressly excluded from the Act for limited purposes, the proper conclusion is that it was intended to include that class of contract in the definition for the general purposes of the Act. In the case of a reasonably well drawn Act such an argument might carry a good deal of weight. But, in such an Act as this, inferences of intention based on apparently logical grounds cannot be drawn with any confidence. And an examination of s. 5 shows that the suggested inference cannot really be drawn from par. (d) of that section. For it seems clear that the case mentioned in par. (e), and probably those mentioned in pars. (f) and (g) also, would be outside s. 4 even if it had not been expressly so provided. It cannot, therefore, in any case, safely be inferred that the case mentioned in par. (d) would have been included if it had not been expressly excluded.

Although we have not been able to accept the view of the learned judge either on the effect of the definition in s. 3 or on the effect of s. 13, our opinion is that s. 13 does not apply to the contract in

this case, and it follows that that contract was effectively rescinded and the plaintiff's action rightly dismissed by *Hanger* J.

One point must be mentioned in conclusion. We have proceeded throughout on the footing that the letter of 25th May was not a notice complying with the requirements of s. 13 (1). We think that it was not such a notice. It was not a " notice in the prescribed form ", nor do we think that it was a notice that the vendor *intended* to rescind the contract. It purported to be immediately effective to bring the contract to an end, and it is not, in our opinion, the kind of notice contemplated by s. 13 at all. So far as the decision in *Morris* v. *Forrester-Jones* (1) is inconsistent with this view, we think that that case was wrongly decided.

The appeal should be dismissed.

Appeal dismissed with costs including the costs of the application to Matthews J. by summons dated 23rd September 1954.

Solicitor for the appellant, *J. H. Howard*, Brisbane.

Solicitors for the respondents, *M. G. Lyons & Co.*, Brisbane, by *Cleary, Ross & Doherty*.

R. D. B.

(1) (1950) Q.S.R. 252.