

Proclamation Relating to Contracts on Land

Text of Proclamation—Amendments to Act Affecting Land Contracts Which Limits Its Scope—Effect of the Two Cases Passed On by the Courts.

Below is the text, as printed in The British Columbia Gazette, of the Proclamation of the Lieutenant-Governor in Council authorized at the last session of the Provincial Legislature by the passage of "An Act to confer certain Powers upon the Lieutenant-Governor in Council respecting Contracts relating to Land":

A Proclamation.

W. J. Bowser, Attorney-General.

Whereas under chapter 35 of the Statutes of Our Province of British Columbia for the year 1915, being "An Act to confer certain Powers upon the Lieutenant-Governor in Council respecting Contracts relating to Land," His Majesty's Lieutenant-Governor for the said Province in Council has power by Proclamation to confer certain authorities upon the Judges of the Supreme and County Courts in Our said Province and to make certain other declarations in respect of certain instruments affecting land situate within the Province for the purposes hereinafter and in said Act set out:

And whereas it is expedient that provision should be made in pursuance of the said Act for all such purposes:

Now therefore, We have thought fit, by and with the advice of Our Executive Council of Our said Province, to issue this Our Proclamation, and We do hereby proclaim, direct, declare, and ordain as follows:—

1. In this Proclamation—

"Instrument" means and includes any mortgage, charge, encumbrance, agreement of sale or purchase, or other instrument charging land with the payment of money, in respect of or affecting land situate within the Province, and created or made prior to the fourth day of August, 1914; but shall not include liens under the "Mechanics' Lien Act" or a certificate of judgment.

"Land" includes all real property, and every estate, right, title, and interest in land or real property, both legal and equitable, and of whatsoever nature and kind, and any contingent, executory, or future interest therein, and a possibility coupled with an interest in such land or real property, whether the object of the gift or limitation of such interest or possibility be ascertained or not, and also a right of entry, whether immediate or future, and whether vested or contingent, into and upon any land.

2. This Proclamation shall—

(a) Authorize any Judge of any Court in the Province in which any action or proceeding was pending on the fourth day of August, 1914, or has since been or may hereafter be taken to secure or enforce any right, remedy, or obligation under any instrument, or in respect of the lands, moneys, covenants, stipulations, or agreements mentioned or contained therein, by order,—

(i.) To postpone the payment of any moneys relating wholly or in part to principal due or accruing due in pursuance of such instrument, and for such purpose to stay any such action or proceeding and the execution of any process already issued in such action, and any proceeding to enforce payment by sale, writ of execution, or other process of the Court in any such action, until after the lapse of a time named in such order;

(ii.) In case of any such action or proceeding upon an instrument charging land upon which any person liable for the payment of the money charged by the instrument, or any member of his family, lives, the whole or the major portion of which is occupied by the person living thereon as his bona-fide place of residence, to postpone, in like manner and by the like means set out in subclause (i), the payment of any moneys relating to interest due or accruing due in pursuance of the instrument;

(iii.) To fix the period to be allowed for redemption of land or any mortgage or charge thereon in any such action or proceeding; and in any such action or proceeding in which the time for redemption has been fixed, to extend the same until after the lapse of a time named in such order:

(b) Authorize any Judge of the Supreme Court of British Columbia to order, in respect of any instrument, that no person shall, upon or by virtue of any power of sale or other power contained in the instrument, or by any other extra-judicial process whatsoever, declare or take advantage of any forfeiture of any land or of any money paid or deposited in respect of the purchase of any land, or take or continue any proceedings for the sale of any land, or levy any distress, or take, resume, or enter into possession of any land, until after the lapse of a time named in such order:

(c) Declare, in respect of all instruments, that no person shall, under or by virtue of any power of sale or other power contained in any instrument, or by any other extra-judicial process whatsoever, declare or take advantage of any forfeiture of any land or of any money paid or deposited in respect of the purchase of any land, or take or continue any proceedings for the sale of any land, or levy any distress, or take, resume, or enter into possession of any land, until after notice in writing of the intention to declare or take advantage of such forfeiture or to take proceedings under such power or process has first been personally served for a period of one month on the mortgagor, encumbrancer, or vendee, and on all persons shown to have any interest in the lands by the records of the Land Registry Office of the land registration district in which the lands are situate, or if in any case personal service of such notice cannot be effected with the exercise of all due diligence, then by effecting such other service of the same as may be directed by any Judge of the Supreme Court:

(d) Authorize the Judge of any County Court within whose territorial jurisdiction no Judge of the Supreme Court resides, to have and possess for the purpose of the said Act the same authority