

THE VENDORS AND PURCHASERS ACT.

however, applications under the Act have been more numerous, and the broad and liberal interpretation which the Courts have given to the Act, both here and in England, is calculated to make it an exceedingly popular mode of disposing of disputes arising on contracts for the sale of land.

The jurisdiction to entertain applications under the Act was originally confined to the Court of Chancery; but under the Judicature Act the jurisdiction is now vested in all the Divisions of the High Court (J. A. s. 9).

Applications were formerly entertained in Chancery either in Court or in Chambers; but latterly the judges of the Chancery Division have decided that all petitions under the Act must be set down to be heard in Court on a Wednesday, and a copy of the petition must be left for the use of the judge at the time of its being set down for hearing. This regulation is due to the fact that questions of title cannot be satisfactorily disposed of in Chambers, where it is impossible to give them the deliberation they require, and because an offhand disposition of such matters might lead to serious consequences. In England, although such applications are always originated in Chambers, yet they may be adjourned into Court, and that is the course usually adopted: *Re Coleman & Farrom*, 4 Chy. D. 165, 168. No special regulations have been made as to the hearing of such applications under this Act in the Queen's Bench and Common Pleas Divisions of the High Court.

Questions affecting the existence or validity of the contract cannot be entertained under the Act; but the effect of this restriction has been the subject of conflicting opinions. In *Re Henderson & Spencer*, 8 P. R. 402, Spragge, C., notwithstanding that the existence of the contract was denied by the affidavit of the purchaser, nevertheless decided the ques-

tion of title raised by the petition, but without prejudice to the purchaser's right to file a bill to have the contract rescinded, or to resist a suit for specific performance; but in *Re Robertson & Daganeau*, 19 C. L. J. 19; 9 P. R. 288, Boyd, C., held that the existence of a dispute as to the validity of the contract virtually ousted the jurisdiction of the Court under the Act, and he refused to decide any matter affecting the title until the dispute as to the validity of the contract was disposed of. This probably is the more correct view, and the result of this construction of the statute is to confine the cases in which relief can be obtained under it to those in which the existence and validity of the contract are not disputed. But when a contract has been entered into, the jurisdiction of the Court will not be ousted by one of the parties subsequently claiming the right to rescind it. But the Court may, and in more than one reported case has, upon an application under the Act, determined the question whether the party claiming the right to rescind the contract has in fact the right so to rescind.

In *Re Burroughs*, 5 Chy. D. 601, James, L.J., stated what he considered to be the scope and object of the Act, thus: "My opinion is that upon the true construction of this Act of Parliament, whatever could be done in Chambers upon a reference as to title under a decree when the contract was established can be done upon proceedings under this Act, and that what this Act has done is this: it has enabled the parties to dispense with the form of a bill and answer, and at once to put themselves in Chambers, in exactly the same position in which they would have been, and with all the rights which they would have under the old form of decree": and this view was concurred in by the other members of the Court of Appeal, and was subsequently adopted by Spragge, C., in *Re Eaton*, 7 P. R. 396. A dictum of James,