Falcon Chambers

Happy Birthday Law of Property Act 1925

The Background to the Act

Introduction

This year the Law of Property Act 1925 ("LPA") celebrates its 100th birthday. The LPA is, of course, not an only child. On 7 April 1925 Parliament passed six Acts to consolidate the English law of real property: the LPA and its five siblings, the Settled Land Act 1925; the Trustee Act 1925; the Administration of Estates Act 1925; the Land Charges Act 1925 and the Land Registration Act 1925. Together, the 1925 Acts introduced far-reaching reforms to English land law.

This article is the first in a series written by members of Falcon Chambers to mark the centenary of the 1925 Acts. Each article will look at a different aspect of the LPA 1925. Our first article is not an attempt to give a detailed explanation of the 1925 Acts. This would be of limited appeal, even to property practitioners, and would require a great deal of ink[1]. Instead it seeks to give an overview of what the 1925 legislation achieved and how it got there.

It is difficult for practitioners today to appreciate the magnitude of the changes brought about by the 1925 Acts. Today we take for granted some of the more radical changes made by the legislation, such as the fact that all land in England is held either for a term of years or as freehold land, and we readily accept the ease with which equitable interests can be overridden. It matters not that we may not know what the rule in *Shelley's Case* was, or even that it was abolished by s.131 of the LPA. And how many of us have ever given the slightest thought to just how significant the repeal of the Statute of Uses was or the abolition of the doctrine of *interesse termini* [2]?

[1] For those really interested we commend the series of lectures given by Sir Benjamin Cherry to the Law Society in November-December 1925, published by the Law Society. But note, even Cherry said, in lecture 1 "*I cannot promise you a rollicking time, but I will do my best not to bore you to distraction.*"
[2] See s.149 LPA.

As well as losing sight of just how extensive the 1925 reforms to the law were, most practitioners will be unaware of the political battles which led to the reforms. The reforms finally brought about by the 1925 Acts were built on those proposed before the First World War and they reflect a long struggle between competing political views of what the law of England should be.

We hope that this article gives some insight into the historical context of the 1925 Acts and that this helps one better to understand English land law.

The 1925 Reforms

Practitioners of land law will be familiar with the six volumes which comprise Wolstenholme and Cherry's Conveyancing Statutes. Mr Edward Parker Wolstenholme and his former pupil, Mr (later Sir) Benjamin Lennard Cherry, two Lincoln's Inn practitioners and conveyancing counsel to the court, were both integral to the 1925 reforms. We pick up the story in 1896 when Wolstenholme, assisted by Cherry, prepared a bill whose aim was "*to make the title to land approximate as nearly as circumstances permit to the title to stock, and to obtain the same advantages as would be secured under as good a system of registration of title as may be devised without the disadvantages incidental to a register of owners*."

This aim was ultimately achieved by the 1925 Acts, which had a similar aim. As Sir Benjamin Cherry, in his first in a series of lectures on the new Acts given to the Law Society in 1925[3] reminded his audience, the committee responsible for the 1925 legislation set out: "*(1) To assimilate the law of real and personal property, adopting the best features belonging to either class of property. (2) To approximate the title of land, so far as the subject matter permitted, to the title under which stocks and shares are held, but without the aid of a register. (3) Generally to improve and simplify the law and practice."*

It took a long time to get from Wolstenholme's 1896 Bill to the 1925 reforms.

[3] Delivered on 4 November 1925.

The Need for Reform

The law historically protected wealthy landowners. The use of strict settlements was widespread and ensured land could be passed down from generation to generation, resulting in complicated ownership structures which fragmented both legal and equitable ownership. Property could not be dealt with easily and was not freely alienable. The Settled Land Act of 1882, which had been drafted by Wolstenholme, made land a more marketable asset. It introduced the principle of giving a limited owner in possession most powers of an owner and transferring the interest of beneficiaries and those with future estates to capital money. It was described by Chitty J in Mundy and Roper's Contract [1898] 1 Ch 275 at 288-9 as follows:

> *"The broad policy on which the Act is founded is laid down by the House of Lords: Lord Henry Bruce v. Marquis of Ailesbury. (1) The object is to render land a marketable article, notwithstanding the settlement. Its main purpose is the welfare of the land itself, and of all interested therein, including the tenants, and not merely of the persons taking under the settlement. The Act of 1882 had a much wider scope than the Settled Estates Acts. The scheme adopted is to facilitate the striking off from the land of the fetters imposed by settlement; and this is accomplished by conferring on tenants for life in possession, and others considered to stand in a like relation to the land, large powers of dealing with the land by way of sale, exchange, lease, and otherwise, and by jealously guarding those powers from attempts to defeat them or to hamper their exercise. At the same time the rights of persons claiming under the settlement are carefully preserved in the case of a sale by shifting the settlement from the land to the purchase-money which has to be paid into court or into the hands of trustees. The Act of 1882 and the subsequent Acts ought, then, to be construed by the Court with regard to these broad principles and in a spirit of wise and reasonable liberality."*

This notion of freeing the land and making it transferable free from trusts, while safeguarding the rights of all interested in the land foreshadowed what was to come in the LPA, and can be seen in Wolstenholme's 1896 Bill, which contained the workings of the principle underpinning the 1925 reforms, namely the notion of an indivisible legal estate, fee simple or term of years, which was subject to a power of disposition which would overreach all, or most, subordinate interests.

The 1896 bill was, however, bound up with the movement for compulsory registration of title: those who sought to establish an efficient system of land registration as an alternative to what had become the costly and complicated method of conveyance of property by private treaty. In his work discussing the context of the 1925 Acts, Professor Stuart Anderson[4] explains that the 1925 legislation was the outcome of a prolonged struggle for control of the land transfer process between solicitors and the Land Registry[5]. It seems that Cherry's involvement in the legislative process in 1896 was not limited to formulating the new bill but also to the opposition to the Bill relating to the Land Transfer Act 1897.[6] Throughout this period it seems that views were divided between those with the desire to extend title registration and those seeking to reform and simplify the underlying law. Professor Anderson explains:

> "*The politics could be complex: sometimes a political faction might support extension of title registration as a sop to land reformers, hoping that would be enough to keep them away from substantively redistributive scheme; other factions would see title registration as a useful precursor, or a necessary concomitant ; yet others would see title registration as wholly irrelevant to their plans, though that would not necessarily stop them supporting it in its own right.*"

Ultimately, the Land Transfer Act 1897 only applied to the County of London and the proposals for reform of the underlying law under the Wolstenholme 1896 bill were not pursued. However, the Land Transfer Act 1897 was later the subject of a 1909 Royal Commission, whose final report in 1911 recommended, in addition to various amendments to that Act, also reopening the question of improving and facilitating conveyancing more generally "*to abolish the feudal principles of Real Property Law and to assimilate it to the law of personal property*."

In 1912 Viscount Haldane became Lord Chancellor in Asquith's Liberal government. In 1925 he delivered the preface to Sir Benjamin Cherry's lectures on the Acts in 1925. Explaining the lead up to the 1925 reforms Haldane explained: "*It seemed as though a time was approaching in which the work of Lord Cairns and Lord Selborne in the first*

[4] BCL, MA, Emeritus Fellow of Hertford College Oxford.
[5] The 1925 Property Legislation: Setting Context. Land Law Themes and perspectives, Oxford University Press 1998.
[6] See his First Lecture, ibid.

Conveyancing Act and the Settled Land Act which followed it, ought to be further developed on a large scale." The result was the framing of two bills, one relating to real property the other to conveyancing, later combined into one single bill which was produced in 1914. This bill, sometimes referred to as Mr Cherry's Bill, was less ambitious than the reforms which were later to be enacted but did introduce the principle of "the curtain" i.e. the notion that there would be only two legal estates and everything else would be under a trust and, in effect, sit behind a 'curtain', ineffective against a purchaser of the legal estate.

Then came the First World War. But "*...the peace came four years later, and with it a more progressive attitude towards questions of reform*".[7]

In 1919 Lloyd George's Government was in power and Lord Birkenhead became Lord Chancellor. A committee chaired by Leslie Scott KC produced a report in November 1919 with the aim of assimilating the law of real property to that of personal property. John H Johnson, writing in the Columbia Law Review in 1925, said of this report:[8] "*The principle of the Wolstenholme bill together with the allied and at times overlapping principle of the assimilation of the law of realty to that of personalty were to become the basic principles of the present legislation*."

The Scott report, and subsequent draft Bill, was an amended version of Mr Cherry' s Bill, thus, the work done pre-War was not lost and was the starting point for what became the new Property Act of 1922.

Lord Birkenhead (who had been Scott's pupil) was the minister responsible for the Bill. It was published in February 1920,[9] but it was vast and impenetrable, attempting to cover all which was later the subject of the six property Acts of 1925. The bill was presented to Parliament as one simply making improvements to the machinery of the law. It did this by providing for there to be only two legal estates, estates in fee simple and estates for a definite term of years, with everything else being under a trust. Viscount Haldane's

[7] Per Viscount Haldane in his Preface to Mr Cherry's Lectures.
[8] In his article written in May 1925, The Reform of Real Property Law in England, Columbia Law Review, Vol.25, No. 5 (May 1925), pp. 609-627
[9] (1920) HLP v 323.

preface to Cherry's lectures refers to the Bill having had a "*pretty through sifting in the two Houses*". It seems as if this might have been an understatement. Also writing in 1925, John Johnson refers to the bill being passed thanks to Lord Birkenhead's *"... parliamentary genius and determination"* and *"after many legislative vicissitudes and further radical amendment*."[10]

The bill was, however, passed in June 1922 and became the Law of Property Act 1922. The 1922 Act, it seems, was not popular. It was impossible for lawyers and non-lawyers alike to understand, and it quickly became obvious that more was required[11]. The 1922 Act was to come into force on 1 January 1925 but was later the subject of a bill postponing its enactment.

Following the 1922 general election, and under the new Conservative Government, Lord Cave replaced Lord Birkenhead as Lord Chancellor. Lord Cave thought that the 1922 Act should be incorporated as one of a series of amending and consolidating statutes.[12] Sir Benjamin Cherry was once again integral to this further drafting process and was one of the committee of six experts, chaired by Romer J, tasked with providing the necessary Bills.

There followed a period of political upheaval, with general elections in 1922, 1923 and 1924. Shortly after the 1922 election Viscount Haldane once again became Lord Chancellor under the first Labour Government. It was on his watch that an amending bill and six consolidating bills were presented to Parliament, in a carefully revised form, in July 1924 (together with a bill postponing the coming into force of the 1922 Act). Lord Cave then returned as Lord Chancellor. The Bills were eventually passed by Parliament and received Royal Assent on 9 April 1925. They came into force on 1 January 1926.

What did the 1925 Acts do?

[10] The Reform of Real Property Law in England Columbia Law Review, Vol.25, No. 5 (May 1925), pp. 609-627.
[11] See Viscount Haldane in his preface "*But great as was the new Property Act of 1922 it had become obvious that more was requisite.*"
[12] Ibid. vii

The 1925 Acts were described as Acts to consolidate the English law of real property. They brought together most of the statute law concerned with real property enacted since Edward I was on the throne. Significantly, this included incorporation of Lord Birkenhead's Act of 1922 and the subsequent Amendment Act which had been passed in 1924. The 1925 Acts reflect the struggle between different factions of the law reformers of the time[13]. But the key principles which are embodied in the 1925 Acts are (i) the idea of a single indivisible legal estate with an estate owner with a power of disposition; (ii) the principle that equitable and subordinate interests can be overreached, while still giving protection to them; (ii) the notion that the law of real property should be assimilated as much as possible to the law of personalty.

The introduction of the indivisible legal estate was the most significant change introduced. Post-1925 the legal estate in land is indivisible, save for the purposes of creating a term of years, and for practical purposes there are now only two legal estates (albeit other interests are treated as legal estates, such as easements held for a similar interest to the fee simple and term of years absolute)[14]. Before 1925 there were a huge variety of estates in land which took effect at law. As Cherry explained[15] "[o]*ne of the great stumbling blocks to all land law reform has been the multiplicity and complexity of our tenure. Until copyhold and customary tenures were abolished nothing in the nature of a comprehensive simplification was feasible.*" The list of legal estates which were abolished reads like the lyrics to a Gilbert & Sullivan song: life estates; determinable fees; remainders, reversions, possibilities of reverter, tenancies in common, estates of coparceners, to name a few.

The abolition of these numerous legal estates vastly simplified the conveyancing process, especially the abolition of legal tenancies in common. Post-1 January 1926 a legal estate is not capable of subsisting or being created in an undivided share in land: there is now always an estate owner with a power of disposition. Undivided shares could,

[13] See, for example the co-existence of s.1(1) and s.1(4) of the LPA.
[14] Section 1 of the LPA.
[15] In his first lecture to the Law Society, ibid.

under the new law, only be created in the form of equitable interests. The legal estate would be held by trustees on trust for sale,[16] limited to a maximum of four joint tenants.

Allowing the abolished legal estates and forms of co-ownership to exist in equity gave trust law a significant role to play in the land law. This is unique to English land law and is not found in other common law jurisdictions.

The whole purpose of limiting legal estates was to simplify conveyancing. It undoubtedly did this. Previously, legal estates could pass from one owner to another, sometimes automatically, and without being evidenced. Under *Patman v Horland* (1881) 17 Ch D 353 a purchaser would be deemed to have constructive notice of the contents of any deed forming part of the chain of title of his vendor if he had notice of the instrument itself. Abstracts of title could run to many pages in some cases. The new law removed these obstacles. The general new rule was that a legal estate could only be conveyed by the estate owner, and thus the legal estate became the basis of conveyancing. The new law ensured there would always be an instrument under which the legal estate passes from one owner to another.

Section 2 of the LPA was one of the more important provisions of the Act. The power to overreach equitable interests was not a new concept, but the 1925 Act's regime of overreaching went further than the previous law and allowed equitable interests which were not subordinate to any existing settlement or trust for sale to automatically and compulsorily be shifted to the proceeds of sale, with exceptions for some registerable interests. A purchaser could also require a transaction to be through the means of a trust for sale: s.42. This change all but abolished the doctrine of notice. This, is the 'curtain' principle. A purchaser would now discover registered equitable interests by looking on the register. Establishing the title to the legal estate was hugely simplified.

The rules on devolution on intestacy were also simplified. The "heir-at-law" was abolished, as was tenancy by curtesy, dower and free bench. We now barely recall what these were. Escheat was abolished (replaced with the right to take real estate as *bona vacantia*). The estate of a deceased would now devolve on the personal representative.

[16] Now replaced by the Trusts of Land and Appointment of Trustees Act 1996.

There were many other significant changes made by the Acts, but as explained above, this is not intended to be a comprehensive explanation of the Acts.

Happy Birthday LPA

Looking back at the reforms achieved in 1925 Acts is quite humbling. It is difficult to imagine such far-reaching reforms would be possible today.

Many students and lawyers, including property practitioners, consider modern English land law complicated, perhaps unnecessarily so. Our predecessors would tell us that "you don't know you're born." The law of property can still be complicated, perhaps notably on those rare occasions when we have to consider the law pre-1925.

The law has, of course, now moved on from the 1925 Acts, most notably in the further advancement of Land Registration and the replacement of the Land Registration Act 1925 with the Land Registration Act 2002. The modern world, with its technological advances and the current political desire to do away with leasehold tenure, looks likely to give rise to future developments. But whatever lies ahead, we are grateful to be property practitioners in 2025, looking back at what the 1925 Acts did, rather than practitioners in 1925 when, it is said, many solicitors retired rather than having to grapple with the brave new world of property law.

Jonathan Gaunt KC

Elizabeth Fitzgerald