



*Printed & was
repealed by
No 14 of 1866-7
3006.*

ANNO VICESIMO QUARTO ET VICESIMO QUINTO

VICTORIÆ REGINÆ.

A.D. 1861.

*When the Act is
counted into opera-
tion? It never
served for the
purpose of the
Act in question.*

No. 13.

An Act to amend the law relating to the Limitation of Actions and Suits.

[Reserved, 29th November, 1861.]

WHEREAS the laws at present in force in the Province of South Australia, relating to the period within which actions may be brought to recover land, money, or chattels, require amendment— Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows—

Preamble.

1. From and after the commencement of this Act, "An Ordinance, for the limitation of actions and suits relating to Real Property and for simplifying the remedies for trying the rights thereto," being No. 6 of 1843; and "An Ordinance to remove doubts as to the applicability to this Province of certain Statutes and parts of Statutes respecting the limitation of actions," being No. 9 of 1848, shall be repealed, and the several provisions of an Act of the Imperial Parliament, made in the third and fourth years of the reign of His late Majesty King William IV., intituled "An Act for the limitation of actions and suits relating to real property, and simplifying the remedies for trying the rights thereto," shall continue to have the force of law in this Province, except such of the clauses as are numbered respectively in the copies of that Act printed by Her Majesty's Printers 16, 17, 18, 40, and 42, which shall cease to have the force of law in the said Province: Provided nevertheless, that where by this Act any of the provisions of the said Imperial Act are extended, altered, or varied, this Act and the said Imperial Act shall be read together, and construed as though the alterations hereby made had been embodied in and formed a portion of the said Imperial Act.

Repeal of No. 6 of 1843, and No. 9 of 1848.

Repeal of sections 16, 17, 18, 40, and 42 of 3 and 4 William 4, c. 27.

See S. 10: 11.

2. The period within which an entry or distress shall be made, or
U action

Period for recovery of land or rent to be ten

sec 2 of 16.13-11861

years in lieu of twenty years
S. 28 of 13
11861

Proviso extending period in case ten years shall have elapsed at the time of this Act coming into operation.

ie "upheld" as "previously"

action brought to recover any land or rent, or where a mortgagor shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent comprised in his mortgage, so that the period within which the mortgagor or any person claiming through him may bring suit to redeem the mortgage shall be respectively ten years in lieu of twenty years, as in such Act mentioned: Provided that if such periods of ten years shall have actually expired when this Act shall come into operation, and the right to recover the land or rent be not then barred, then such entry, distress, action, or suit, may be brought within two years from the date of this Act coming into operation, or within the period within which, but for this Act the same would have been barred, which shall first happen; and if the said period of ten years shall at such date be within three years of expiring, then within five years from the expiration of the said period of ten years, or within the period within which, but for this Act the same would have been barred, which shall first happen.

Limitation of actions on specialties to ten years.

sec 40 of 324 W
V. 27

On simple contract, and for arrears of rent or interest, and trespass on the case, to six years.

3. All actions, suits, or other proceedings to recover any rent reserved by lease; all actions or suits upon any bond or other specialty, or upon any judgment or recognizance, or to recover any money charged upon or payable out of any land or rent, at law or equity, or any legacy shall be commenced and sued within ten years after the cause of such actions or suits, or the recovery of such judgment, but not after: All actions grounded upon any lending, or contract express or implied without specialty, or upon any award where the submission is not by specialty, or for any money levied on fieri facias, all actions of account, or for not accounting; all actions, suits, or other proceedings to recover any arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest; all actions for direct injuries to real or personal property; actions for the taking away, detention, or conversion of property, goods, and chattels; actions for libel, malicious prosecutions, and arrest, and seduction; and actions for all other causes which would be brought in the form of action called trespass on the case, except as hereinafter excepted, shall be commenced and sued within six years after the cause of such actions, but not after: And all actions for assault, menace, battery, wounding, and imprisonment shall be commenced and sued within four years after the cause of such actions, but not after: And all actions for words and for penalties, damages, or sums of money given to the party grieved by any statute now or hereafter to be in force, shall be commenced and sued for within two years after the words spoken, or the cause of such action or suit, but not after: And with respect to every cause of action not herein specifically provided for, such actions in respect thereof shall be brought within the same period of limitation now applicable thereto: Provided that nothing in this Act contained shall alter the period of limitation of any action given by any statute where the time for bringing such action is, or shall be, by any statute specially limited.

S. 42 of 324 W
V. 27

For assault, &c., to four years.

For slanders and penalties by statute, to two years.

For all other causes within the period of limitation now applicable.

Period of limitation given by statute not to be altered.

In case of specialties, action may be brought within ten years after

4. If any acknowledgment shall have been, or shall be made, either by writing signed by the party liable by virtue of any indenture

indenture, specialty, judgment, or recognizance, or in the case of any money charged upon or payable out of any land or rent, such acknowledgment shall have been made, or shall be made by the party liable to pay such money, or the agent of such party respectively, or by part payment, or part satisfaction on account of any principal or interest being then due thereon, it shall be lawful for the person entitled to bring his action, suit, or other proceeding for the money remaining unpaid, and so acknowledged to be due, within ten years after such acknowledgment, by writing, or part payment, or part satisfaction, as aforesaid, and the plaintiff in any such action or suit, may rely on such acknowledgment, and that such action was brought within the time aforesaid in answer to a plea of this statute.

acknowledgment or part payment.

5. In actions grounded upon any simple contract no acknowledgment or promise shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this Act in relation to the limitation of actions, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby, or in a writing signed by an agent of the party chargeable thereby, duly authorized to make such acknowledgment or promise; and where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of this Act, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whomsoever.

After acknowledgment or part payment in respect of liabilities on simple contract.

6. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall be made shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the provisions of this Act, in relation to the limitation of actions.

Endorsement of payment by creditor not to take case out of statute.

7. This Act shall be deemed and taken to apply to the case of any debt alleged by way of set-off on the part of any defendant.

As to debts alleged by way of set-off.

8. When there shall be two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor, or administrator, shall lose the benefit of the said enactments, or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money by any other or others of such co-contractors or co-debtors, executors, or administrators.

Payment by one co-contractor not to prejudice the other.

9. If in any of the said actions judgment be given for the plaintiff, and the same be reversed on appeal, or a verdict pass, or upon judgment by default, damages be assessed for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff that he take nothing by his plaint, in all such cases the party plaintiff,

Limitation after judgment arrested or reversed.

plaintiff, his heirs, executors, or administrators, as the case shall require, may commence a new action or suit from time to time within the period of limitation hereinbefore provided for in such action, or within a year after such judgment reversed or judgment against the plaintiff, and not after.

Period of limitation to run as to joint debtors in the Province, though some are absent therefrom.

See S. 1.

Judgment recovered against joint debtors in the Province to be no bar to proceeding against others absent therefrom after their return.

10. Where such cause of action or suit, with respect to which the period of limitation is fixed by the enactments aforesaid, or any of them, lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be absent from the said Province at the time of such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were, at the time such cause of action accrued, absent from the said Province; and such person or persons, so entitled as aforesaid, shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were absent from the said Province at the time the cause of action or suit accrued, after his or their return to the said Province, by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not absent from the said Province at the time aforesaid.

Period of limitation not to be extended by reason of disability only.

See S. 1.

11. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same shall be brought is fixed by this Act, shall be entitled to any time within which to commence and sue such action and suit beyond the period so fixed for the same by the said enactments, by reason only of such person, or some one or more of such persons, being at the time of such cause or causes of action or suit accrued, under any disability, such as infancy, coverture, lunacy, unsoundness of mind, or absence from the said Province, so as to deprive any party of the benefit of this Act, it being the intention of this Act that the respective periods of limitation hereinbefore provided shall, under every circumstance and condition, be the extreme period within which any entry, distress, action, suit, or other proceeding hereinbefore respectively mentioned, shall be made or brought.

General limitation of actions under local and personal Acts.

12. No action shall be brought for anything done under the authority of any Act of a local or personal nature, except within two years after such cause of action, and in case of continuing damage, then within one year after such damage shall have ceased.

Saving rights of the Crown.

13. Nothing in this Act contained shall be deemed or taken to affect the rights of the Crown.

I hereby reserve this Act for the signification of the Queen's pleasure.

RICHARD GRAVES MACDONNELL,

Governor.

Government House, Adelaide,
29th November, 1861.