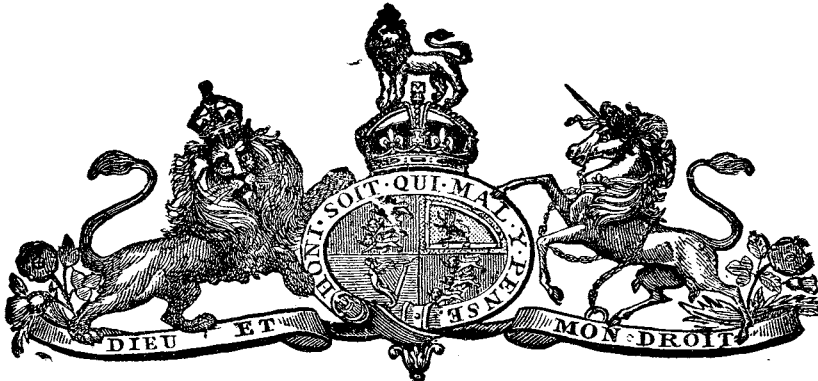


TASMANIA.



1934.

ANNO VICESIMO QUINTO
GEORGII V. REGIS.
No. 57.

ANALYSIS.

- | | |
|---|---|
| <p>1. Short title.
 2. Amendment of 6 Wm. IV. No. 16.
 Title.
 Preamble.
 Section 1.
 New subsection (2).
 Interpretation.
 New subsection (3).
 Citation of sections in schedule.
 Extension of 7 Wm. IV. and 1
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 Mortgagees may bring actions
 to recover land within 12
 years after last payment, &c.</p> | <p>New section 3.
 Short title.
 Repeal of sections 2 to 8 and 10
 to 13.
 3. Repeal of 4 Vict. No. 25.
 4. Amendment of 39 Vict. No. 1.
 Title.
 Preamble.
 Sections 1 and 10.
 Repeal of section 9.
 Section 11.
 Section 12.</p> |
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AN ACT to amend the Act of the Sixth Year of the Reign of His Majesty King *William* the Fourth number sixteen; and the *Real Property Limitation Act* 1875; and to repeal the Act of the Fourth Year of the Reign of Her Majesty Queen *Victoria* number twenty-five. [13 December, 1934.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as the *Limitation of Actions Act* 1934.

A.D.
1934.

Short title.

Limitation of Actions.

A.D.1934. Title.

Amend-
ment of 6
Wm. IV.
No. 16.

2 The Principal Act is hereby amended—

- I. By deleting from the title thereof all the words after the word "Colony" in the first line and substituting therefor the words "certain provisions of the Imperial Acts intituled respectively the *Real Property Limitation Act* 1833 and the *Civil Procedure Act* 1833":

Preamble.

- II. By expunging the preamble thereto and deleting the word "therefore" in the enacting clause:

Section 1.

III. As to section one thereof—

- (a) By inserting the figures "1 (1)" before the word "so" thereby inserted:
- (b) By deleting all the words from the word "from" (first occurring) to the word "Majesty" (secondly occurring) and substituting therefor the words "so much of the Imperial Acts intituled respectively the *Real Property Limitation Act* 1833 and the *Civil Procedure Act* 1833, as is set forth in Parts I. and II. respectively of the schedule as the same are therein modified and amended.":
- (c) By inserting the words "as so amended" after the word "respectively" in the antepenultimate line thereof: and
- (d) By inserting after the end thereof the following new subsections (2) and (3)—

New sub-
section (2).

"(2) In this Act unless the contrary intention appears —

Inter-
pretation.

'Land' shall include messuages, and all other corporeal hereditaments whatsoever, and also any share, estate, or interest in them or any of them, whether the same shall be a freehold or chattel interest, or held according to any other tenure:

'Rent' shall include all services and suits for which a distress may be made and all annuities and periodical sums of money charged upon or payable out of any land—

and the person through whom another person is said to claim shall mean any person by, through, or under, or by the act of whom, the person so claiming became entitled to the estate or interest claimed as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor,

Limitation of Actions.

special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise."

A.D. 1934.

"(3) The several sections set forth in the schedule may be cited as follows :—

i. Those in Part I. as sections of the *Civil Procedure Act 1833* : and

ii. Those in Part II. as sections of the *Real Property Limitation Act 1833*." :
 New sub-section (3).
 Citation of sections in schedule.
 3 and 4
 Wm. IV.,
 c. 42.

IV. By substituting for repealed section two thereof the following new section two :—

"2 From and after the first day of November, one thousand eight hundred and forty, so much of the provisions of the Imperial Act, the *Real Property Limitation Act 1837*, as is set forth in Part III. of the schedule as the same are therein modified and amended, shall extend and apply to this State, and be applied in the administration of justice therein."

Extension
 of 7 Wm.
 IV. and 1
 Vict., c. 28.

and by inserting after Part II. of the schedule thereto the following new Part III. :—

" PART III.

"PROVISIONS ADOPTED FROM THE *REAL PROPERTY LIMITATION ACT 1837* (7 WM. IV. AND 1 VICT., C. 28), AS AMENDED.

"It shall be lawful for any person entitled to or claiming under any mortgage of land, as defined by the Principal Act, to make an entry or bring an action at law or suit in equity to recover such land at any time within twelve years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twelve years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued, anything in the Principal Act notwithstanding."

Mortgagees
 may bring
 actions to
 recover land
 within 12
 years after
 last pay-
 ment, &c.

V. By substituting for repealed section three thereof the following new section three :—

"3 This Act may be cited as the *Limitation of Actions Act 1836*." : and

New
 section 3.

Short title.

VI. By repealing sections two to eight and ten, twelve, and thirteen thereof.

Repeal of
 sections 2
 to 8 and
 10, 12, and
 13.

3 The Act of the fourth year of the reign of Her Majesty Queen Victoria, number twenty-five, is hereby repealed.

Repeal of 4
 Vict. No.
 25,

Limitation of Actions.

A.D. 1934.

Amend-
ment of 39
Vict. No. 1.

Title.

Preamble.

Sections 1
and 10.Repeal of
section 9.

Section 11.

Section 12.

4 The *Real Property Limitation Act* 1875 is hereby amended—

I. By inserting after the word “Act” in the title thereto the words “to amend the *Limitation of Actions Act* 1836 and”

II. By expunging the preamble thereto and deleting the word “therefore” in the enacting clause :

III. By deleting the words “after the commencement of this Act” in the first lines of sections one and ten respectively :

IV. By repealing section nine thereof :

V. By deleting the words “*Real Property*” in section eleven thereof, and by inserting the words “*of Actions*” after the word “*Limitation*” therein : and

VI. By deleting the words “and come into operation” in section twelve thereof.

*Limitation of Actions.***SCHEDULE.**

A.D. 1934.

*Provisions of Imperial Acts Extended to this State.***PART I.****PROVISIONS ADOPTED FROM CIVIL PROCEDURE ACT 1833
(3 AND 4 WM. IV., C. 42), AS AMENDED.**

3. All actions of debt for rent upon an indenture of demise all actions of covenant or debt upon any bond or other specialty and all actions of debt or *scire facias* upon any recognizance and also all actions of debt upon any award where the submission is not by specialty or for an escape or for money levied on any *fieri facias* and all actions for penalties damages or sums of money given to the party grieved by any law now or hereafter to be in force that shall be sued or brought at any time after the publication of this Act shall be commenced and sued within the time and limitation hereinafter expressed and not after that is to say the said actions of debt for rent upon an indenture of demise or covenant or debt upon any bond or other specialty actions of debt or *scire facias* upon recognizance within ten years after the publication of this Act or within twenty years after the cause of such actions or suits but not after—the said actions by the party grieved within one year after the twenty-fourth day of June one thousand eight hundred and thirty-six or within two years after the cause of such actions or suit but not after—and the said other actions within three years after the said date or within six years after the cause of such actions or suits but not after—Provided that nothing herein contained shall extend to any action given by any Act or Statute where the time for bringing such action is or shall be by any such Act or Statute specially limited.

Limitation of
actions of debts
on specialties, &c.

4. If any person entitled to any such action or suit or *scire facias* is or shall be at the time of any such cause of action accrued within the age of twenty-one years *feme covert non compos mentis* or beyond sea then such person shall be at liberty to bring the same actions so as he or she shall commence the same within such times after being of full age discover of sound memory or returned from beyond sea as other persons having no such impediment should according to the provisions of this Act have done—And if any person against whom there shall be any such cause of action is or shall be at the time such cause of action accrued beyond sea then the party entitled to any such cause of action shall be at liberty to bring the same against such person within such times as are before limited after the return of such person from beyond sea.

Infant *femes*
covert, persons
beyond the sea,
&c.

5. Provided always that if any acknowledgment shall have been made either by writing signed by the party liable by virtue of such indenture specialty or recognizance or his agent 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 such actions to bring his action for the money remaining unpaid and so acknowledged to be due within twenty years after such acknowledgment by writing or part payment or part satisfaction as aforesaid or in case the person entitled to such action shall at the time of such acknowledgment be under such disability as aforesaid or the party making such acknowledgment be at the time of making the same beyond sea then within twenty years after such disability shall have ceased as aforesaid or the party shall have returned from beyond sea as the case may be and the plaintiff in any such action on any indenture

Proviso in case of
acknowledgment
or part payment.

Limitation of Actions.

A.D. 1934.

Limitation after
judgment
reversed, &c.

specialty or recognizance may by way of replication state such acknowledgment and that such action was brought within the time aforesaid in answer to a plea of this Act.

6. If in any of the said actions judgment be given for the plaintiff and the same be reversed or if a verdict shall pass for the plaintiff and upon matter alleged in arrest of judgment the judgment be given against the plaintiff the plaintiff his executors or administrators as the case shall require may commence a new action or suit from time to time within a year after such judgment reversed or given against the plaintiff and not after.

PART II.

PROVISIONS ADOPTED FROM THE REAL PROPERTY LIMITATION ACT 1833 (3 AND 4 WM. IV., C. 27), AS AMENDED.

2. *Repealed by 39 Vict. No. 1, post.*

When the right
shall be deemed
to have accrued:
in the case of an
estate in
possession;

on dispossession;

on abatement or
death;

on alienation;

in case of
future estates;

in case of
forfeiture or
breach of condi-
tion.

3. In the construction of this Act the right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; and when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken,

Limitation of Actions.

4. Provided always, that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

A.D. 1934.

Where advantage of forfeiture is not taken by remainderman, he shall have a new right when his estate comes into possession.

5. *Repealed by 39 Vict. No. 1, post.*

6. For the purposes of this Act an administrator claiming the estate or interest of the deceased person to whose chattels he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

An administrator to claim as if he obtained his estate without interval after, &c.

7. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined: Provided always, that no mortgagor or cestuique trust shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee.

In the case of a tenant at will, the right shall be deemed to have accrued at the end of one year.

8. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or to bring an action to recover such land or rent shall be deemed to have first accrued at the determination of the first year of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

No person after a tenancy from year to year, to have any right but from the end of the first year or last payment of rent.

9. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing, by which a rent amounting to the yearly sum of twenty shillings or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims, to make an entry or distress or to bring an action after the determination of such lease shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

Where rent amounting to 20s., reserved by a lease in writing, shall have been wrongfully received, no right to accrue on the determination of the lease.

10. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon.

A mere entry not to be deemed possession.

11. No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action.

No right to be preserved by continual claim.

Limitation of Actions.

A.D. 1934.

Possession of one coparcener, &c., not to be the possession of the others.

Acknowledgment in writing given to the person entitled, or his agent, to be equivalent to possession or receipt of rent.

Where possession is not adverse at the time of passing the Act, the right shall not be barred until the end of five years afterwards.

No further time to be allowed for a succession of disabilities.

When the right to an estate in possession is barred, the right of the same person to future estate shall also be barred.

12. That when any one or more of several persons entitled to any land or rent as coparceners, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.

14. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

15. When no such acknowledgment as aforesaid shall have been given before the passing of this Act, and the possession or receipt of the profits of the land, or the receipt of the rent, shall not at the time of the passing of this Act have been adverse to the right or title of the person claiming to be entitled thereto, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress or bring an action to recover such land or interest at any time within five years next after the passing of this Act.

16-17. *Repealed by 39 Vict. No. 1, post.*

18. When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress or to bring an action to recover such land or rent beyond the said period of twelve years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent shall have first accrued, or the said period of six years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

20. When the right of any person to make an entry or distress or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right, or possibility, in reversion, remainder, or otherwise, in or to the same land or rent, no entry, distress, or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest, or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

Limitation of Actions.

21. When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period hereinbefore limited, which shall be applicable in such case, no such entry, distress, or action shall be made or brought by any person claiming any estate, interest, or right which such tenant in tail might lawfully have barred.

22. When a tenant in tail of any land or rent, entitled to recover the same, shall have died before the expiration of the period hereinbefore limited, which shall be applicable in such case, for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest, or right which such tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent but within the period during which, if such tenant in tail had so long continued to live he might have made such entry or distress or brought such action.

23. *Repealed by 39 Vict. No. 1, post.*

24. After the said thirty-first day of December, one thousand eight hundred and thirty-three no person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate, interest, or right in or to the same as he shall claim therein in equity.

25. When any land or rent shall be vested in a trustee upon any express trust, the right of the cestuique trust, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act. at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

26. In every case of a concealed fraud the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered; provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud, against any *bonâ fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed.

27. Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Act.

28. *Repealed by 39 Vict. No. 1, post.*

34. At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any writ of quare impedit or other action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within period, shall be extinguished.

A.D. 1934.

Where tenant in tail is barred, remaindermen, whom he might have barred, shall not recover.

Possession adverse to a tenant in tail shall run on against the remaindermen whom he might have barred.

No suit in equity to be brought after the time when the plaintiff, if entitled at law, might have brought an action.

In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser.

In cases of fraud no time shall run whilst the fraud remains concealed.

Saving the jurisdiction of equity on the ground of acquiescence or otherwise.

At the end of period of limitation the right of party out of possession to be extinguished.

*Limitation of Actions.***A.D. 1934.**

Receipt of rent
to be deemed
receipt of profits.

Descent cast, &c.,
not to bar right
of entry.

No arrears of
dower to be
recovered for
more than six
years.

No arrears of
rent or interest
to be recovered
for more than six
years.

35. The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this Act.

39. No descent cast, discontinuance, or warranty which may happen or be made after the said twenty-fourth day of June, one thousand eight hundred and thirty-six, shall toll or defeat any right of entry or action for the recovery of land.

40. *Repealed by 30 Vict. No. 1, post.*

41. After the said thirty-first day of December, one thousand eight hundred and thirty-three no arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

42. After the said thirty-first day of December, one thousand eight hundred and thirty-three no 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, shall be recovered by any distress, action, or suit but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent: Provided nevertheless that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years.