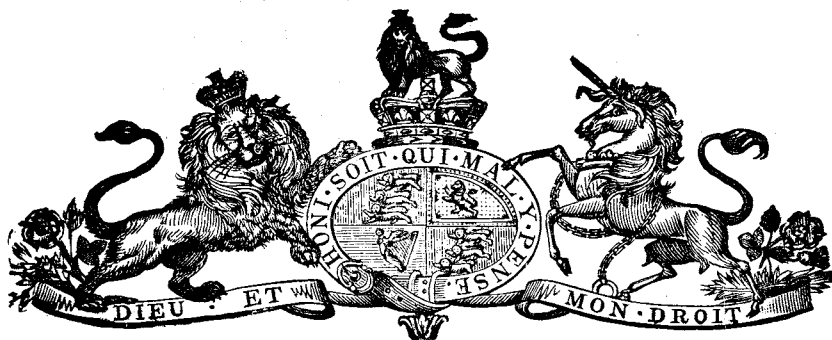


TASMANIA.



1934.

ANNO VICESIMO QUINTO

GEORGII V. REGIS.

No. 32.

ANALYSIS.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Short title. 2. Claims to profits <i>à prendre</i> not to be defeated after thirty years enjoyment by showing the commencement.
After sixty years right to be absolute. 3. In claims of right of way or other easements the periods to be twenty years and forty years. 4. Before mentioned periods to be deemed those next before suits for claims to which such periods relate. 5. In actions on the case the claimant may allege his right generally, &c. | <ol style="list-style-type: none"> In pleas to trespass, &c, where party used to allege his claim from time immemorial, the period mentioned in this Act may be alleged; and exceptions or other matters, &c. 6. Restricting the presumption to be allowed in support of claims herein, &c. 7. Proviso for infants, &c. 8. What time to be excluded in computing the term of forty years appointed by this Act. 9. Ancient lights abolished. |
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AN ACT to consolidate and amend the Law relating to Prescription.

A.D.
1934.

[27 November, 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 *Prescription Act 1934*.

Short title.

Prescription.

A.D. 1934.

Claims to profits
à prendre
not to be defeated
after thirty years
enjoyment by
showing the
commencement.

Cf. 2 and 3 Wm.
IV., c. 71.

After sixty years
right to be
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In claims of
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Before
mentioned
periods to be
deemed those
next before suits
for claims to
which such
periods relate.

In actions on
the case the
claimant may
allege his right
generally, &c.

2 No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any profit or benefit to be taken and enjoyed from or upon any land of His Majesty, or of any person, or body corporate, except such matters and things as are herein specially provided for, and except rent and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

3 No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of His Majesty, or being the property of any person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

4 Each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorising the same to be made.

5 In all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and, if the same shall be denied, all and every the matters in this Act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to

Prescription.

sustain or rebut such allegation; and that in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done; and, if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

A.D. 1934.

In pleas to trespass, &c., where party used to allege his claim from time immemorial, the period mentioned in this Act may be alleged; and exceptions or other matters, &c.

6 In the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim.

Restricting the presumption to be allowed in support of claims herein, &c.

7 The time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, *non compos mentis*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

Proviso for infants, &c.

8 When any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

What time to be excluded in computing the term of forty years appointed by this Act:

9 As from the twenty-fifth day of August, one thousand nine hundred and ten, no right to the access or use of light to or for any building shall have been or shall be capable of coming into existence by reason only of the enjoyment of such access or use for any period, or of any presumption of a lost grant based upon such enjoyment.

Ancient lights abolished.

