This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE Assembly for its concurrence.

> W. L. S. COOPER, Clerk of the Parliaments.

Legislative Council Chamber, Sydney, 12th September, 1917.



New South Wales.

ANNO OCTAVO GEORGII V REGIS.

Act No. , 1917.

An Act to consolidate and amend the law with regard to the limitation of actions and suits.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of 5 the same, as follows :--

1. This Act may be cited as the "Statute of Limita- short title, tions, 1917," and shall commence and come into operaation on the first day of January, one thousand nine hundred and eighteen.

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2. This Act shall not affect any proceedings pending Saving clause. at the commencement of this Act, or any proceedings commenced or taken within one year after the commencement of this Act.

5 3. The several enactments mentioned in the Schedule Repeal to this Act, to the extent therein expressed, are hereby Schedule. repealed; but such repeal shall not be held to revive any principle, doctrine, or presumption of law, or any form of action which were by such enactments expressly 10 abolished.

4. In the interpretation of this Act, unless the sub-Interpretaject-matter or context otherwise indicates or requires,— ^{tion.}

- (a) "rent" shall extend to all services and suits Rent.
 - for which a distress may be made, and to all 3 & 4 Wm.¹ annuities and periodical sums of money charged ^{IV, c. 27, s. 2}. upon or payable out of any land;
- (b) no part of the Commonwealth of Australia Beyond the shall be deemed to be beyond the seas within seas. the meaning of this Act in any case to which section eleven of the Service and Execution of Process Act, 1901–1912, applies, but in any other case every place outside New South Wales shall be deemed to be beyond the seas within the meaning of this Act.
- (c) "Person of unsound mind" includes an insane person or patient, or incapable person within the meaning of the Lunacy Act, 1898.

5. (1) The provisions of this Act shall apply to Proceedings judicial proceedings in all courts, and in the interpreta-inequity included.
30 tion of this Act, unless the subject-matter or context *Ibid. s. 24.* otherwise indicates or requires, such proceedings shall be deemed to be included in the word "action."

(2) (a) In every case of a concealed fraud the Fraud. right of any person to institute proceedings in equity, in *Ibid.* s. 26.
35 respect of any claim of which he or any person through whom he claims has been deprived by such fraud, shall be deemed to have first accrued at the time at which such fraud has, or with reasonable diligence might have, been first known or discovered.

40 (b) Nothing in this subsection shall enable the owner of any land or rent to institute proceedings

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in equity for the recovery of such land or rent or for (2) setting aside any conveyance of such land or rent on account of fraud against any bona fide purchaser for valuable consideration without notice of such fraud.

(3) Nothing in this Act shall be deemed to inter-Saving the 5 fere with any rule or jurisdiction of the Supreme Court of equity in in its equitable jurisdiction in refusing relief on the the case of ground of acquiescence or otherwise to any person &c. whose right to institute proceedings may not be barred Ibid. s. 27.

10 by virtue of this Act.

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(4) Nothing in this Act shall limit the time within Not to affect rights of cestuis. which cestuis que trustent may enforce their rights que trustent as to time. against trustees in the Supreme Court of New South Wales in its equitable jurisdiction.

15 (5) Nothing in this Act shall affect the operation Not to affect special statuof any Statute in which-

tory excep-

(d)

- (a) the operation of this Act or any of the enact-tions. ments hereby repealed is expressly excluded; or $\frac{9 \text{ vic. No. 9}}{\text{ s. 39.}}$
 - (b) the time is expressly limited for bringing any action or proceeding the right to which is given by such Statute.

6. (1) After the commencement of this Act, the following actions and proceedings shall be commenced within the respective times and limitations hereinafter 25 expressed and not after-

- (a) actions or proceedings at law or in equity, to Money recover any sum of money secured by any mort- charged, &c. gage, judgment, or licn, or otherwise charged ^{3&4} Wm. IV, c. 27, s. 40. upon or payable out of any land or rent; including the actions mentioned in paragraph (d) of
 - this subsection but excluding the actions mentioned in paragraphs (i) and (k) of this section;
- (b) actions to recover from the executor or ad-tegacy. 3 & 4 Wm. IV, ministrator with the will annexed any legacy ; c. 27, s. 40. c. 57, s. 8.
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- (c) actions to recover from the executor or adminis- Share on trator any share of the real or personal estate 26 Vic. No. as to which any person dies intestate; 12, s. 36.
- . within twenty years :

(d) actions of covenant or debt upon any specialty; covenant, &e. 5 Vic. No. 9, 8. 39. 3 & 4 Wm. IV, s. 42, s. 3 (e) actions of debt or scire facias upon any recog- Recognizance. nizance ; within twelve years; (f) actions of trespass for injuries to the person, Trespass. or to land or personal property (except those in ²¹ Jac. I, section seven of this Act specially mentioned); c. 16, s. 3. (g) actions of detinue, trover, replevin, and on the Detinue, &c. case other than actions for slander ; Ibid. s. 3. (h) actions of account or for not accounting, Account. including suits for such accounts as concern Ibid. s. 3. the trade of merchandise between merchant 19 & 20 Vic., and merchant, their factors or servants, c. 97, s. 9. where such actions are not founded upon any specialty; (i) actions of debt grounded upon any lending or Simple contract without specialty; 21 Jac. 1, c. 16, contract without specialty; 8. 3. (j) actions of debt upon any award where the Award. submission is not by specialty or for money 5 Vic. No. 9, levied under any writ of fieri facias; s. 39. (k) actions for arrears of rent or arrears of interest Arrears of in respect of any money charged upon or interest. payable out of any land or rent, or for damages 3&4 Wm.IV. in respect of such arrears of rent or interest; c. 27, s, 42.

- (1) actions to recover any arrears of dower or any Ibid. ss. 41, arrears of interest in respect of any legacy, or ⁴². damages in respect of such arrears of dower or interest;
- (m) distress for arrears of rent, whether such rent Distress for rent. is payable under specialty or not; Ibid. s. 42. within six years;

 - (n) actions of assault, menace, battery, wounding, Assault, &c. 21 Jac. I, and imprisonment: c. 16, s. 3.
 - (o) actions for penalties, damages, or sums of Penalties, &c. money given to the party grieved by any law 5 Vic. No. 9, s. 39. now or hereafter to be in force;
 - (p) actions for slander ;

within one year;

Slander. 21 Jac. I. c. 16, s. 3. next

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next after the cause of action or right of distress has Acknowledgment and part accrued, or (except in the case of paragraphs (f), (g), payment.
(n), (o), and (p) next after a written acknowledgment ³ & 4 Wm. IV. has been given to the person entitled thereto, or his ⁴ Wm. IV, No. 17 has been given to the person entitled thereto, or his ⁴ Wm. IV, No. 17 agent, signed by the party liable, or his agent, or (except ¹V, c. 14, s. 1). ⁵ V c. No. 9, s. 1. as aforesaid) next after part payment or satisfaction on ¹⁹ & 20 Vic. c. 97, s. 13.

(2) No endorsement or memorandum of any pay-Endorsement written or made upon any promissory note, bill of ments of payment.
10 exchange, or other writing by or on behalf of the party 9 Geo. IV, to whom such payment is made shall be deemed sufficient c. 14, s. 3. proof of such payment, so as to take the case out of the operation of this Act.

(3) No claim in respect of any matter arising Accounts.
15 more than six years before the commencement of any 19 & 20 Vic., action for account or for not accounting as aforesaid ^{c. 97, s. 9.} shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years before the commencement 20 of such action.

(4) Where any prior mortgagee or encumbrancer Arreurs of has been in possession of any land or in receipt of the rent or interest, profits thereof within one year next before an action 3 & 4 Wm. is brought by any person entitled to a subsequent IV. e 27, 25 mortgage or other encumbrance on the same land, the person entitled to such subsequent mortgage or encumbrance may recover the arrears of interest which have become due during the whole time that such prior mortgagee or encumbrancer was in such possession or 30 receipt as aforesaid although such time has exceeded

the term of six years hereinbefore mentioned.

(5) If in any of the said actions commenced 21 Jac. I, within the time and limitation expressed therefor— $^{c. 16, s. 4}$

(a) the plaintiff be nonsuited; or

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(b) a verdict pass 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, writ, or claim; or

(c) the plaintiff or the defendant dies,

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the plaintiff, his executors, or administrators, as the case requires, may commence a new action or proceeding within a year after the nonsuit, or after the judgment given against the plaintiff, or after the grant of probate 5 or letters of administration to the executors or administrators of the plaintiff or defendant, as the case may be, notwithstanding that the time and limitation expressed for commencing the action or proceeding may have then elapsed.

- 10 7. (1) In any action brought in respect of any Trespass to trespass to land where the plaintiff's title to or possession land. of such land is not disputed by the defendant in his s. 2. defence, the plaintiff shall not recover any damages for
- any act of trespass committed more than twelve months 15 before such action is commenced.

(2) Nothing in this section contained shall apply to any plaintiff who at the time when such act of trespass was committed was beyond the seas or under legal disability.

- 20 8. (1) If any person entitled to any such action, as is Disabilities." in section six hereof mentioned, is at the time the cause Plaintiffs. of action accrues or such acknowledgment, part pay- s. 7. ment, or satisfaction as aforesaid is made-
 - (a) an infant; or

5 Vic. No. 9, 88. 40, 41. 19 & 20 Vic., c. 97, s. 10.

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(b) a person of unsound mind,

then the time hereinbefore limited for bringing such action shall commence when such person is of full age, or has otherwise ceased to be under disability.

- (2) If any person liable to any such action as Disabilities. 30 aforesaid is beyond the seas at the time the cause of Defendants. action accrues, or such acknowledgment, part payment, 4 & 5 Anne, e. 16, s. 19. or satisfaction is made, then the time hereinbefore 5 Vic. No. 9, limited for bringing such action shall commence when ss. 40, 41. such person returns from beyond the seas.
- 35 9. In answer to a plea of this Act the plaintiff in any Acknowledgsuch action or proceeding may reply such acknowledg- ment may be ment or part payment, and that such action or proced- reply. ing was brought within such time as aforesaid. Ibid. P. 41.

10. (1) Where such cause of action with respect to period of limitation moteobe which the period of limitation is fixed by this Act lies extended against against two or more joint debtors, the person entitled by reason of to the same shall not be entitled to any time within beyond the seas.

5 which to bring any such action against any of such ^{19,6,20,Vic., c.} joint debtors who is not beyond the seas at the time such cause of action accrues by reason only that some other of such joint debtors is at the time such cause of action accrues beyond the seas.

10 (2) Such person so entitled as aforesaid shall not be barred from bringing any action against the joint debtor who is beyond the seas at the time the cause of action accrues, after his return from beyond the seas, by reason only that judgment has already been recovered

15 against any one of such joint debtors who was not beyond the seas at the time aforesaid.

11. (1) Where there are two or more co-contractors Co-contracor co-debtors, whether liable jointly only or jointly and tors, coexecutors, &c. severally, or two or more executors or administrators 9 Geo. IV,

20 of any contractor or debtor, no such co-contractor or c. 14, s. 1. co-debtor, executor, or administrator shall lose the 19 & 20 Vic., benefit of this Act so as to be chargeable in respect or 14. by reason only of any written acknowledgment made and signed by any other of them, or his agent duly

25 authorised in that behalf, or in respect or by reason only of part payment or satisfaction made by any other of such co-contractors, co-debtors, executors, or administrators.

(2) In actions commenced against two or more such co-contractors, co-debtors, executors, or adminis-30 trators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act as to one or more of such co-contractors, co-debtors, executors, or administrators, is nevertheless entitled to recover against any other of the defendants by virtue of a new acknowledg-

35 ment or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendants against whom he may recover, and for the other defendants against the plaintiff.

12. The foregoing provisions of this Act shall so far set off. 40 as applicable be deemed to apply to the case of any debt ⁹ Geo. IV, or simple contract alleged by way of set off on the part of any defendant either by plea, notice, or otherwise.

13. (1) Actions of trespass or on the case may be Actions by maintained by executors or administrators for any injury executors, &c. to the real or personal estate of their testator or intestate ⁵ Vic. No. 9, to the real or personal estate of their testator or intestate s. 30. committed in his lifetime and for which the testator or

5 intestate himself might have maintained the like actions.

(2) Such actions shall be brought within one To be brought year after the death of such testator or intestate, and of death for in-jury to property shall be maintained only in respect of an injury com- committed mitted within six months before such death.

(3) The damages recovered in such actions shall Damages part of personal estate. form part of the deceased's personal estate.

within six months of death.

14. (1) Actions of trespass or on the case may be Actions maintained against executors or administrators for any tors, &c. wrong committed by their testator or intestate to another 5 Vic. No. 9, 15 in respect of his property, real or personal. s. 30.

(2) Every such action shall be brought within six months after such executors or administrators have taken on themselves the administration of the estate of the deceased, and shall be maintained only in respect of 20 an injury committed within six months before his death.

(3) The damages recovered in any such action shall be payable in like order of administration as the deceased's debts.

15. (1) After the commencement of this Act no No land or rent 25 person claiming any land or rent shall make an entry, but within or distress, or bring an action to recover the same but after the right within twenty years next after the time at which to the claimant the right to make such entry or distress or to bring such whose estate he action first accrued to him.

(2) In all the succeeding sections of this Act, ^{3 & 4 Wm. IV,} unless the context or subject-matter otherwise indicates Interpretation. 30 or requires c. 27. s. 1.

- (a) the expression "such right" shall mean the right to make an entry, or distress, or bring an action to recover any land or rent;
- (b) the expression "enforce such right" shall mean make an entry, or distress, or bring an action to recover such land or rent;
- (c) a reference to a person entitled to or claiming any land or rent shall include any person by, through, under, or by the act of whom he became entitled to the estate, interest, or right claimed. 16.

3 & 4 Wm. IV,

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16. Notwithstanding anything contained in this Act Mortgaged any person claiming under any mortgage of land may land. make an entry or bring an action to recover such land s. 24.

at any time within twenty years next after the last 5 payment of any part of the principal money or interest secured by such mortgage although more than twenty years may have elapsed since the time at which such right first accrued.

17. In the construction of this Act such right shall, When right 10 subject to the provisions of sections eighteen and nine- accrued. teen hereof, be deemed to have first accrued at such 3 & 4 Wm. 1V, times as are hereinafter mentioned respectively—

> (a) when the person claiming such land or rent Estates in has in respect of the estate or interest claimed possession; been in possession or receipt of the profits of such land or in receipt of such rent, and has while entitled thereto been dispossessed or has discontinued such possession or receipt,

then at the time of such dispossession or on dispossesdiscontinuance of possession or at the last time ^{sion}; at which any such profits or rent were or was so received;

(b) when the person claiming such land or rent on abatement claims the estate or interest of some deceased or death; person who has continued in such possession or receipt in respect of the same estate or interest until the time of his death, and has been the last person entitled to such estate or interest who has been in such possession or receipt,

then at the time of such death;

(c) when the person claiming such land or rent on alienation; claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him 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 has been in such possession or receipt,

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then at the time at which the person claiming as aforesaid became entitled to such possession or receipt by virtue of such instrument:

(d) when the estate or interest claimed has been future an estate or interest in reversion or remainder estates; or other future estate or interest, and no person has 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 at the time at which such estate or interest became an estate or interest in possession;

(e) when the person claiming such land or rent forfeiture or has become entitled by reason of any forfeiture breach. or breach of condition.

then at the time at which such forfeiture was incurred or such condition broken.

18. When such right by reason of any forfeiture or Whereadvan-20 breach of condition has first accrued in respect of any tage of forestate or interest in reversion or remainder, and the land taken by or rent has not been recovered by virtue of such right, remainder. such right shall be deemed to have first accrued in have a new respect of such estate or interest at the time when the his estate 25 same has become an estate or interest in possession as if comes into

no such forfeiture or breach of condition had happened. $_{3 \& 4 \text{ wm. IV}}$

19. (1) Such right shall be deemed to have first Reversioner accrued in respect of an estate or interest in reversion to have a new or remainder or other future estate or interest at the right.

30 time at which the same has become an estate or interest wm. IV. in possession by the determination of any estate in c. 27, s. 5. respect of which such land has been held or the profits c. 57, s. 2. thereof or such rent has been received, notwithstanding the person claiming such land or rent may at any time

35 previously to the creation of the estate which has determined have been in possession or receipt of the profits of such land or in receipt of such rent.

(2) (a) If the person last entitled to any particular estate on which any future estate or interest was 40 expectant was not in the possession or receipt of the profits

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profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action shall be brought by any person becoming entitled in possession to 5 a future estate or interest, but within twenty years next after the time when such right first accrued to the person whose interest has so determined, or within ten years next after the time when the estate of the person becoming entitled in possession became vested in posses-10 sion, whichever of these two periods is the longer;

(b) and if such right of any person has been

barred under this Act no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or

15 settlement, executed or taking effect after the time when such right first accrued to the owner of the particular estate whose interest has so determined as aforesaid, shall enforce such right.

20. For the purposes of this Act an executor or Executor and 20. For the purposes of this field of the testator of a testator daiministrator to claim as though no interval or intestate shall be deemed to claim as if the grant of between the death and grant probate or administration, as the case may be, had been of probate or administration. made at the date of the death of the testator or intestate. See 3 & 4 Wm. IV, c. 27,

21. (1) When any person is in possession or in Claim of 25 receipt of the profits of any land or in receipt of any or for years. rent as tenant at will or tenant from year to year or Ibid. ss. 7, 8. other period without a lease in writing, such right of the person entitled subject to such tenancy shall be deemed to have first accrued—

(a) in the case of a tenant at will, 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; and

(b) in the case of a tenant from year to year or other period without lease in writing, at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy has been received (which last happens).

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(2) No mortgagor or cestui que trust shall be deemed to be a tenant at will within the meaning of this section to his mortgagee or trustee.

22. When any person is in possession or in receipt Accrual of 5 of the profits of any land or in receipt of any rent by right at time virtue of a lease in writing by which a rent amounting receipt of to the yearly sum of twenty shillings or upwards is on determinareserved, and the rent reserved by such lease has been tion of lease. received by some person wrongfully claiming to be See 3 & 4

10 entitled to such land or rent in reversion immediately c. 27, s. 9. expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or

- 15 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 to the person rightfully entitled at the time at which the rent reserved by such
- 20 lease was first so received by the person wrongfully claiming as aforesaid, and not upon the determination of such lease.

23. No person shall be deemed to have been in Mere entry not possession of any land within the meaning of this Act possession. 25 merely by reason of having made an entry thereon Ibid. s 10.

24. When one of several persons entitled to any land Possession of or rent as co-parceners, joint-tenants, or tenants-in- one co-par-cener, &c., common has been in possession or receipt of the entirety not to be posor more than his undivided share of such land or of the session of the

- 30 profits thereof or of such rent for his own benefit or for 3&4 Wm. IV, c. 27, s. 12. the benefit of any person other than the persons entitled to the other shares, his possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned persons.
- 25. When any acknowledgment of the title of the Acknowledg-35 person entitled to any land or rent has been given in writing given writing to him or his agent, signed by the person in to person possession or in receipt of the profits of such land or in entitled receipt of such mont them receipt of such rent, then such possession or receipt of possession.
- 40 or by the person by whom such acknowledgment has been Ibid. s. 14. 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 has been given at the time of giving the same, and such right of such last-mentioned person or any person claim-

5 ing through him shall be deemed to have first accrued at the time at which such acknowledgment or the last of such acknowledgments, if more than one, was given.

26. (1) If at the time at which such right of any Persons under person first accrues as aforesaid such person is-10

(a) an infant; or

(b) a person of unsound mind :

then such person or the person claiming through him disability, &c may, notwithstanding the period of twenty years or ten Ibid. 8, 16. years (as the case may be) hereinbefore limited has

15 expired, enforce such right at any time within ten years next after the time at which the person to whom such right first accrued has ceased to be under any such disability, or died (which has first happened).

(2) Nothing in this section shall extend the Period after 20 time within which any such person may enforce such right accrues right beyond thirty years from the time at which such thirty years. Ibid. s. 17. Ibid. s. 5. right first accrued.

27. When any person is under any of the disabilities No further hereinbefore mentioned at the time at which such right time allowed for a succes-

25 first accrues to him, and dies without having ceased to sion of disbe under any such disability, no time to enforce such abilities. right, beyond the period of twenty years next after 37 & 38 Vic., such right first accrued, or ten years next after the c. 57, s. 5. death of such person, shall be allowed by reason of 30 any disability of any other person.

28. When such right of any person in respect of When right any land or rent to which he has been entitled for an to estate in estate or interest in possession, has been barred by the barred, right determination of the period hereinbefore limited of same person to

35 applicable to his case, and such person has at any future estates time during such period been entitled to any other 3 & 4 Wm. estate, interest, right, or possibility in reversion, re- IV, c. 27, mainder, or otherwise in or to the same land or rent, ^{s. 20}. such person, or any person claiming through him, shall

40 not enforce such right in respect of such other estate, interest, right, or possibility, unless in the meantime

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disability, &c., allowed ten years from the termination of the

such land or rent has been recovered by some person entitled to an estate, interest, or right which has been limited or taken effect after or in defeasance of such estate or interest in possession.

- 29. When such right of a tenant-in-tail has been where tenant-in-tail barret, 5 barred under the provisions of this Act, such bar shall also remainder man not to recover. extend to such right of any person claiming any estate, Ibid. s. 21. interest, or right which such tenant-in-tail might lawfully have barred.
- 10 30. When a tenant-in-tail of any land or rent Possession entitled to recover the same has died before the adverse to tenant-in-tail expiration of the period hereinbefore limited within to run on which to enforce such right, no person claiming any against re-maindermen. estate, interest, or right which such tenant-in-tail might *Ibid. s. 22.*
- 15 lawfully have barred shall enforce such right, but within the period during which if such tenant-in-tail had so long continued to live he might have enforced such right.

31. When a tenant-in-tail of any land or rent has Where there 20 made an assurance thereof which does not operate to bar has been possession the estates to take effect after or in defeasance of his under an estate tail, and any person by virtue of such assurance assurance by tenant-in-tail at or subsequently to the time of the execution thereof which does is in possession or receipt of the profits of such land or remainders 25 in receipt of such rent, and the same person or any they shall be barred at the other person whatsoever (other than some person end of twenty entitled to such possession or receipt in respect of an years after the time when estate which has taken effect after or in defeasance of the assurance the estate tail) continues to be in such possession or if then executed 30 receipt for the period of twenty years next after the would have commencement of the time at which such assurance if barred them. it had then been executed by such tenant-in-tail or the c. 27, s. 23. person who would have been entitled to his estate tail if.

such assurance had not been executed would without 35 the consent of any other person have operated to bar such estates as aforesaid then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after

40 or in defeasance of such estate tail.

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32. When any land or rent is vested in a trustee Express trust. upon an express trust the right of the cestui que trust 3&4Wm IV, or any person claiming through him to bring a suit c. 27, s. 25. against the trustee or any person claiming through him 5 to recover the same shall be deemed to have first accrued according to the meaning of this Act at the time at which such land or rent has been conveyed to a purchaser for valuable consideration and shall then be deemed to have accrued only against such purchaser 10 and any person claiming through him.

33. (1) When a mortgagee has obtained the posses- Mortgagor to sion or receipt of the profits of any land or the receipt the end of of any rent comprised in his mortgage the mortgagor or twenty years any person claiming through him shall not, subject to when the 15 the provisions hereinafter contained, bring a suit to mortgagee

redeem the mortgage, but within twenty years next after sion, or from the time at which the mortgagee obtained such possession the last written or receipt.

(2) If in the meantime a written acknowledgment ment. 20 of the mortgagor's title or right of redemption has been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person signed by the mortgagee, or the person claiming through him, no such suit shall be brought, but within twenty years next 25 after the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given.

(3) When there is more than one mortgagor or more than one person claiming through the mortgagor such acknowledgment, if given to any such mortgagors. 30 or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons.

(4) Where there is more than one mortgagee or more than one person claiming the estate or interest of 35 the mortgagee such acknowledgment signed by one of such mortgagees or persons shall be effectual only as against the party signing as aforesaid and the persons claiming any part of the mortgage money or land or rent by from or under him and any person entitled to any estate 40 or interest to take effect after or in defeasance of his estate or interest and shall not operate to give to the mortgagor

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Ibid. s. 28.

mortgagor a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent.

(5) Where such of the mortgagees or persons 5 aforesaid, by whom such acknowledgment has been given, are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgage money, the mortgagor shall be entitled to redeem the

10 same divided part of the land or rent on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent

15 comprised in the mortgage.

34. The right and title of any person to the land Extinguishor rent for the recovery whereof such entry, distress, or ment of right action respectively might have been made or brought, of possession. shall be extinguished at the determination of the period 3&4Wm.IV, c. 27, s. 34. 20 limited by this Act within which to enforce such right.

35. The receipt of the rent payable by any tenant Receipt of from year to year or other lessee shall as against such rent to be deemed lessee or any person claiming under him (but subject to receipt of the lease) be deemed for the purpose of this Act to be profits. Ibid. s. 35. 25 the receipt of the profits of the land.

36. Nothing in this Act shall affect the provisions Not to affect the Real Property Act 1900. of the Real Property Act, 1900.

SCHEDULE.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
21 Jac. I, c. 16	An Act for limitation of actions, &c.	7 so far as they apply to New
4 & 5 Anne, c. 16.	An Act for the amendment of the law and the better advancement of justice.	19 as applies to New South Wales and does not apply to suits or actions for seamen's
5 4 Wm. IV, No. 17.	An Act for adopting and applying a certain Act of Parliament for rendering a written memoran- dum necessary to the validity of certain promises and engage-	wages. So far as it adopts sections 1, 3, and 4 of 9 Geo. IV, c. 14.
0 8 Wm. IV, No. 3.	ments. An Act for adopting a certain Act of Parliament passed in the third and fourth years of the reign of His present Majesty King	The whole.
5	William the Fourth, and apply- ing the same in the adminis- tration of justice in New South Wales in like manner as other laws of England are applied	a de adores contratos a 8 8 contratos au
⁰ 5 Vic. No. 9	therein. An Act for the further amend- ment of the law and for the better advancement of justice.	Sections 30, 39, 40, 41.
26 Vic. No. 12. 5	An Act to amend the Law of Property and further to relieve Trustees.	Sections 24, 36, and 71 (being the unrepealed sections).
47 Vic. No. 7	Limitation of Actions for Trespass Act of 1884.	

Sydney : William Applegate Gullick, Government Printer.-1917.

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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE Assembly for its concurrence.

Clerk of the Parliaments.

* * * * * * * * * * * *

Legislative Council Chamber, Sydney, September, 1917.

New South Wales.



ANNO OCTAVO

GEORGII V REGIS.

Act No. , 1917.

An Act to consolidate and amend the law with regard to the limitation of actions and suits.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of 5 the same, as follows :---

1. This Act may be cited as the "Statute of Limita- Short title. tions, 1917," and shall commence and come into operaation on the first day of January, one thousand nine hundred and eighteen. 2.

с 9-A 3949

2. This Act shall not affect any proceedings pending Saving clause. at the commencement of this Act, or any proceedings commenced or taken within one year after the commencement of this Act.

5 **3.** The several enactments mentioned in the Schedule Reputation to this Act, to the extent therein expressed, are hereby Schedule. repealed; but such repeal shall not be held to revive any principle, doctrine, or presumption of law, or any form of action which were by such enactments expressly 10 abolished.

4. In the interpretation of this Act, unless the sub-Interpretaject-matter or context otherwise indicates or requires,—^{tion.}

(a) "rent" shall extend to all services and suits Rent. for which a distress may be made, and to all 3 & 4 Wm. annuities and periodical sums of money charged ^{IV, e, 27, s. 2}. upon or payable out of any land;

- (b) no part of the Commonwealth of Australia Beyond the shall be deemed to be beyond the seas within ^{seas.} the meaning of this Act in any case to which section eleven of the Service and Execution of Process Act, 1901–1912, applies, but in any other case every place outside New South Wales shall be deemed to be beyond the seas within the meaning of this Act.
- (c) "Person of unsound mind" includes an insane person or patient, or incapable person within the meaning of the Lunacy Act, 1898.

5. (1) The provisions of this Act shall apply to Proceedings judicial proceedings in all courts, and in the interpreta-included. 30 tion of this Act, unless the subject-matter or context *Ibid. s. 24.* otherwise indicates or requires, such proceedings shall be deemed to be included in the word "action."

(2) (a) In every case of a concealed fraud the Fraud.
right of any person to institute proceedings in equity, in *Ibid. s. 26.*35 respect of any claim of which he or any person through whom he claims has been deprived by such fraud, shall

be deemed to have first accrued at the time at which such fraud has, or with reasonable diligence might have, been first known or discovered.

40 (b) Nothing in this subsection shall enable the owner of any land or rent to institute proceedings in

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in equity for the recovery of such land or rent or for setting aside any conveyance of such land or rent on account of fraud against any bona fide purchaser for valuable consideration without notice of such fraud.

5 (3) Nothing in this Act shall be deemed to inter-Saving the fere with any rule or jurisdiction of the Supreme Court of equity in in its equitable jurisdiction in refusing relief on the the case of ground of acquiescence or otherwise to any person acquiescence, whose right to institute proceedings may not be barred *thid. s.* 27.

10 by virtue of this Act.

(4) Nothing in this Act shall limit the time within Not to affect rights of cestuis which cestuis que trustent may enforce their rights que trustent against trustees in the Supreme Court of New South Wales in its equitable jurisdiction.

15 (5) Nothing in this Act shall affect the operation Not to affect of any Statute in which—

- (a) the operation of this Act or any of the enact-tions. ments hereby repealed is expressly excluded; or ⁹/_s. ³⁹/₃₉.
- (b) the time is expressly limited for bringing any action or proceeding the right to which is given by such Statute.

6. (1) After the commencement of this Act, the following actions and proceedings shall be commenced within the respective times and limitations hereinafter 25 expressed and not after—

- (a) actions or proceedings at law or in equity, to Money recover any sum of money secured by any mort- ^{charged}, &c. gage, judgment, or lien, or otherwise charged ^{3&4} Wm. IV, upon or payable out of any land or rent; includ
 - ing the actions mentioned in paragraph (d) of this subsection but excluding the actions mentioned in paragraphs (i) and (k) of this section;
- (b) actions to recover from the executor or ad-Legacy. ministrator with the will annexed any legacy; c. 27, s. 40. 57, & 85 Vie. c. 57, s. 8.
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(c) actions to recover from the executor or adminis- Share on trator any share of the real or personal estate 26 Vic. No as to which any person dies intestate; 12, s. 36.

within twenty years :

(d)

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(d) actions of covenant or debt upon any specialty ; covenant, &c. 5 Vic. No. 9, 2. 39.

3 & 4 Wm. IV, s. 42, s. 3

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(e) actions of debt or scire facias upon any recog-Recognizance. 1bid. s. 9. nizance;

within twelve years;

- (f) actions of trespass for injuries to the person, Trespass. or to land or personal property (except those in 21 Jac. I, section seven of this Act specially mentioned); c. 16, s. 3.
- (g) actions of detinue, trover, replevin, and on the Detinue, &c. case other than actions for slander; Ibid. s. 3.
- (h) actions of account or for not accounting, Account. including suits for such accounts as concern Ibid. s. 3. the trade of merchandise between merchant 19 & 20 Vic., and merchant, their factors or servants, c. 97, s. 9. where such actions are not founded upon any specialty:
- (i) actions of debt grounded upon any lending or simple contract, d.c. 21 Jac. I. c. 16, contract without specialty; s. 3.
- (j) actions of debt upon any award where the Award. submission is not by specialty or for money 5 vic. No. 9, levied under any writ of fieri facias; s. 39.
- (k) actions for arrears of rent or arrears of interest Arrears of in respect of any money charged upon or rent or interest. payable out of any land or rent, or for damages 3&4 Wm.IV, in respect of such arrears of rent or interest; c. 27, s, 42.
- (1) actions to recover any arrears of dower or any Ibid. ss. 41, arrears of interest in respect of any legacy, or 42. damages in respect of such arrears of dower or interest;

(m) distress for arrears of rent, whether such rent Distress for is payable under specialty or not; rent. within six years;

Ibid. s. 42.

- (n) actions of assault, menace, battery, wounding, Assault, &c. 21 Jac. I, and imprisonment; c. 16, s. 3.
- (o) actions for penalties, damages, or sums of Penalties, &c. money given to the party grieved by any law 5 Vic. No. 9, . 39.

now or hereafter to be in force; (p) actions for slander; within one year;

Slander. 21 Jac. I, c. 16, s. 3. next

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Act No. , 1917.

Statute of Limitations.

next after the cause of action or right of distress has Acknowledgment and parts accrued, or (except in the case of paragraphs (f), (g), payment. (n), (o), and (p) next after a written acknowledgment ${}^{3}_{x \ 4} Wm. IV$, has been given to the person entitled thereto, or his ${}^{4}_{unt} IV, No. IT$ (adopting 9 Geo. 5 agent, signed by the party liable, or his agent, or (except ${}^{1}_{y \ c}, No. 9, s. 1.$ as aforesaid) next after part payment or satisfaction on ${}^{19, K \ 20}_{c, 97, s. 13}$.

(2) No endorsement or memorandum of any pay-Endorse, ment written or made upon any promissory note, bill of ments of payment.
10 exchange, or other writing by or on behalf of the party 9 Geo. IV, to whom such payment is made shall be deemed sufficient c. 14, s. 3. proof of such payment, so as to take the case out of the operation of this Act.

(3) No claim in respect of any matter arising Accounts.
15 more than six years before the commencement of any 19 & 20 Vic., action for account or for not accounting as aforesaid ^{c. 97, s. 9.} shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years before the commencement 20 of such action.

(4) Where any prior mortgagee or encumbrancer Arrears of has been in possession of any land or in receipt of the rent or profits thereof within one year next before an action 3 & 4 Wm. is brought by any person entitled to a subsequent IV. \circ 27,

25 mortgage or other encumbrance on the same land, the s. 42. person entitled to such subsequent mortgage or encumbrance may recover the arrears of interest which have become due during the whole time that such prior mortgagee or encumbrancer was in such possession or 50 receipt as aforesaid although such time has exceeded

the term of six years hereinbefore mentioned.

(5) If in any of the said actions commenced ²¹ Jac. I, within the time and limitation expressed therefor—

(a) the plaintiff be nonsuited; or

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(b) a verdict pass 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, writ, or claim; or

(c) the plaintiff or the defendant dies,

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the plaintiff, his executors, or administrators, as the case requires, may commence a new action or proceeding within a year after the nonsuit, or after the judgment given against the plaintiff, or after the grant of probate

5 or letters of administration to the executors or administrators of the plaintiff or defendant, as the case may be, notwithstanding that the time and limitation expressed for commencing the action or proceeding may have then elapsed.

10 7. (1) In any action brought in respect of any Trespass to trespass to land where the plaintiff's title to or possession land. of such land is not disputed by the defendant in his 47 Vic. No. 7, defence, the plaintiff shall not recover any damages for

any act of trespass committed more than twelve months 15 before such action is commenced.

(2) Nothing in this section contained shall apply to any plaintiff who at the time when such act of trespass was committed was beyond the seas or under legal disability.

20 8. (1) If any person entitled to any such action, as is Disabilities. in section six hereof mentioned, is at the time the cause Plaintiffs. of action accrues or such acknowledgment, part pay- s. 7. ment, or satisfaction as aforesaid is made-

5 Vic. No. 9, ss. 40, 41. 19 & 20 Vic. c. 97, s. 10,

(a) an infant; or

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(b) a person of unsound mind,

then the time hereinbefore limited for bringing such action shall commence when such person is of full age, or has otherwise ceased to be under disability.

- (2) If any person liable to any such action as Disabilities. 30 aforesaid is beyond the seas at the time the cause of Defendants. action accrues, or such acknowledgment, part payment, 4 & 5 Anne, c. 16, s. 19. or satisfaction is made, then the time hereinbefore 5 Vic. No. 9, limited for bringing such action shall commence when ss. 40, 41. such person returns from beyond the seas.
- 9. In answer to a plea of this Act the plaintiff in any Acknowledge 35 such action or proceeding may reply such acknowledg- ment may pleaded in ment or part payment, and that such action or proced- reply. 1 ing was brought within such time as aforesaid. Ibid. s. 41.

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10. (1) Where such cause of action with respect to period of limitation to be which the period of limitation is fixed by this Act lies extended against against two or more joint debtors, the person entitled by reason of to the same shall not be entitled to any time within beyond the seas.
5 which to bring any such action against any of such ^{19 & 20} Vic. c. ^{19, x.11} joint debtors who is not beyond the seas at the time such cause of action accrues by reason only that some other of such joint debtors is at the time such cause of action accrues by reason of action accrues beyond the seas.

10 (2) Such person so entitled as aforesaid shall not be barred from bringing any action against the joint debtor who is beyond the seas at the time the cause of action accrues, after his return from beyond the seas, by reason only that judgment has already been recovered

15 against any one of such joint debtors who was not beyond the seas at the time aforesaid.

11. (1) Where there are two or more co-contractors Co-contractors co-contractors, whether liable jointly only or jointly and tors, co-executors, whether liable jointly only or jointly and tors, co-executors, we severally, or two or more executors or administrators 9 Geo. IV, 20 of any contractor or debtor, no such co-contractor or c. 14, s. 1. co-debtor, executor, or administrator shall lose the 19 & 20 Vic., benefit of this Act so as to be chargeable in respect or 14. by reason only of any written acknowledgment made and signed by any other of them, or his agent duly

25 authorised in that behalf, or in respect or by reason only of part payment or satisfaction made by any other of such co-contractors, co-debtors, executors, or administrators.

(2) In actions commenced against two or more such co-contractors, co-debtors, executors, or adminis-30 trators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act as to one or more of such co-contractors, co-debtors, executors, or administrators, is nevertheless entitled to recover against any other of the defendants by virtue of a new acknowledg-

35 ment or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendants against whom he may recover, and for the other defendants against the plaintiff.

12. The foregoing provisions of this Act shall so far Set off. 40 as applicable be deemed to apply to the case of any debt ⁹ Geo. 1V, or simple contract alleged by way of set off on the part of any defendant either by plea, notice, or otherwise.

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13. (1) Actions of trespass or on the case may be Actions by **13.** (1) Actions of trespass of on the case hay by executors, &c. maintained by executors or administrators for any injury ⁵ Vic. No. 9, to the real or personal estate of their testator or intestate s, 30, committed in his lifetime and for which the testator or

5 intestate himself might have maintained the like actions.

(2) Such actions shall be brought within one To be brought within one year after the death of such testator or intestate, and of death for injury to proper shall be maintained only in respect of an injury com-mitted within six months before such death. mitted within six months before such death.

10 (3) The damages recovered in such actions shall Damages part of personal estate. form part of the deceased's personal estate.

14. (1) Actions of trespass or on the case may be Actions maintained against executors or administrators for any against execuwrong committed by their testator or intestate to another 5 vie. No. 9, s. 30.

15 in respect of his property, real or personal. (2) Every such action shall be brought within six months after such executors or administrators have taken on themselves the administration of the estate of

the deceased, and shall be maintained only in respect of 20 an injury committed within six months before his death.

(3) The damages recovered in any such action shall be payable in like order of administration as the deceased's debts.

15. (1) After the commencement of this Act no No land or rent to be recovered 25 person claiming any land or rent shall make an entry, but within or distress, or bring an action to recover the same but after the right within twenty years next after the time at which to the claimant the right to make such entry or distress or to bring such whose estate he claims. action first accrued to him.

(2) In all the succeeding sections of this Act, ^{3 & 4 Wm. IV,} unless the context or subject-matter otherwise indicates Interpretation. 3 & 4 Wm. IV. 30 or requires c. 27, s. 1.

- (a) the expression "such right" shall mean the right to make an entry, or distress, or bring an action to recover any land or rent;
- (b) the expression "enforce such right" shall mean make an entry, or distress, or bring an action to recover such land or rent;
- (c) a reference to a person entitled to or claiming any land or rent shall include any person by, through, under, or by the act of whom he became entitled to the estate, interest, or right claimed. 16.

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16. Notwithstanding anything contained in this Act Mortgaged any person claiming under any mortgage of land may land. ²⁶ Vic. No. 12, make an entry or bring an action to recover such land s. 24. at any time within twenty years next after the last 5 payment of any part of the principal money or interest secured by such mortgage although more than twenty years may have elapsed since the time at which such right first accrued.

17. In the construction of this Act such right shall, When right deemed to have 10 subject to the provisions of sections eighteen and nine- accrued. teen hereof, be deemed to have first accrued at such ⁸/₆.⁴/₂, ⁸/₈.⁴ Wm. IV, times as are hereinafter mentioned respectively—

(a) when the person claiming such land or rent Estates in has in respect of the estate or interest claimed ^{possession}; been in possession or receipt of the profits of such land or in receipt of such rent, and has while entitled thereto been dispossessed or has discontinued such possession or receipt,

then at the time of such dispossession or on dispossesdiscontinuance of possession or at the last time ^{sion}; at which any such profits or rent were or was so received;

(b) when the person claiming such land or rent on abatement claims the estate or interest of some deceased or death; person who has continued in such possession or receipt in respect of the same estate or interest until the time of his death, and has been the last person entitled to such estate or interest who has been in such possession or receipt, then at the time of such death :

then at the time of such death;

(c) when the person claiming such land or rent on alienation; claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him 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 has been in such possession or receipt,

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then at the time at which the person claiming as aforesaid became entitled to such possession or receipt by virtue of such instrument;

(d) when the estate or interest claimed has been future an estate or interest in reversion or remainder estates; or other future estate or interest, and no person has 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 at the time at which such estate or interest became an estate or interest in possession;

(e) when the person claiming such land or rent forfeiture or has become entitled by reason of any forfeiture breach. or breach of condition,

then at the time at which such forfeiture was incurred or such condition broken.

18. When such right by reason of any forfeiture or Whereadvan 20 breach of condition has first accrued in respect of any tage of forestate or interest in reversion or remainder, and the land taken by or rent has not been recovered by virtue of such right, remainderman he shall such right shall be deemed to have first accrued in have a new respect of such estate or interest at the time when the his estate 25 same has become an estate or interest in possession as if comes into

no such forfeiture or breach of condition had happened. $_{3\&4 Wm, IV}$, 10 (1) Such wight shall be dermad to have $f_{act} = f_{act} + f_{act} +$

19. (1) Such right shall be deemed to have first Reversioner accrued in respect of an estate or interest in reversion to have a new or remainder or other future estate or interest at the right.

30 time at which the same has become an estate or interest wm. IV, in possession by the determination of any estate in c. 27, s. 5. respect of which such land has been held or the profits c. 57, s. 2. thereof or such rent has been received, notwithstanding the person claiming such land or rent may at any time 35 previously to the creation of the estate which has

determined have been in possession or receipt of the profits of such land or in receipt of such rent.

(2) (a) If the person last entitled to any particular estate on which any future estate or interest was 40 expectant was not in the possession or receipt of the profits

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right when

37 & 38 Vic.,

profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action shall be brought by any person becoming entitled in possession to 5a future estate or interest, but within twenty years next after the time when such right first accrued to the person whose interest has so determined, or within ten years next after the time when the estate of the person becoming entitled in possession became vested in posses-10 sion, whichever of these two periods is the longer;

(b) and if such right of any person has been barred under this Act no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or

15 settlement, executed or taking effect after the time when such right first accrued to the owner of the particular estate whose interest has so determined as aforesaid, shall enforce such right.

20. For the purposes of this Act an executor or Executor and administrator to 20. For the purposes of this field and character administrator to 20 administrator claiming the estate or interest of a testator claim as though or intestate shall be deemed to claim as if the grant of between the death and grant probate or administration, as the case may be, had been of probate or administration, made at the date of the death of the testator or intestate. See 3 & 4 Wm. IV, c. 27,

(2)

21. (1) When any person is in possession or in Claim of 25 receipt of the profits of any land or in receipt of any or for years. rent as tenant at will or tenant from year to year or Ibid. ss. 7, 8. other period without a lease in writing, such right of the person entitled subject to such tenancy shall be deemed to have first accrued-

- (a) in the case of a tenant at will, 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; and
 - (b) in the case of a tenant from year to year or other period without lease in writing, at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy has been received (which last happens).

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(2) No mortgagor or cestui que trust shall be deemed to be a tenant at will within the meaning of this section to his mortgagee or trustee.

22. When any person is in possession or in receipt Accrual of 5 of the profits of any land or in receipt of any rent by right at time virtue of a lease in writing by which a rent amounting receipt of to the yearly sum of twenty shillings or upwards is on determinareserved, and the rent reserved by such lease has been tion of lease. received by some person wrongfully claiming to be See 3 & 4 wm. IV.

10 entitled to such land or rent in reversion immediately c. 27, s o expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or

15 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 to the person rightfully entitled at the time at which the rent reserved by such

20 lease was first so received by the person wrongfully claiming as aforesaid, and not upon the determination of such lease.

23. No person shall be deemed to have been in Mere entry not to be deemed possession of any land within the meaning of this Act possession 25 merely by reason of having made an entry thereon

24. When one of several persons entitled to any land Possessión of or rent as co-parceners, joint-tenants, or tenants-in- one co-parcommon has been in possession or receipt of the entirety not to be p or more than his undivided share of such land or of the session of the 50 profits thereof or of such rent for his own benefit or for 3& + wm. IV,

the benefit of any person other than the persons entitled to the other shares, his possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned persons.

25. When any acknowledgment of the title of the Acknowledg-35 person entitled to any land or rent has been given in ment in writing given writing to him or his agent, signed by the person in to person possession or in receipt of the profits of such land or in entitled equivalent to receipt of such rent, then such possession or receipt of possession.

40 or by the person by whom such acknowledgment has been Ibid. s. 14 given shall be deemed, according to the meaning of this

Act

Ibid. s. 10.

Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment has been given at the time of giving the same, and such right of such last-mentioned person or any person claim-

5 ing through him shall be deemed to have first accrued at the time at which such acknowledgment or the last of such acknowledgments, if more than one, was given.

26. (1) If at the time at which such right of any Persons under

person first accrues as aforesaid such person is-10 (a) an infant; or

(b) a person of unsound mind;

then such person or the person claiming through him disability, &c may, notwithstanding the period of twenty years or ten Ibid. s, 16. years (as the case may be) hereinbefore limited has

15 expired, enforce such right at any time within ten years next after the time at which the person to whom such right first accrued has ceased to be under any such disability, or died (which has first happened).

(2) Nothing in this section shall extend the Period after 20 time within which any such person may enforce such right accrues not to exceed right beyond thirty years from the time at which such thirty years. right first accrued.

27. When any person is under any of the disabilities No further hereinbefore mentioned at the time at which such right time allowed for a successful the success 25 first accrues to him, and dies without having ceased to sion of disbe under any such disability, no time to enforce such abilities. right, beyond the period of twenty years next after ^{*Ibid. s. 18.*} such right first accrued, or ten years next after the c. 57, s. 5. death of such person, shall be allowed by reason of

30 any disability of any other person.

28. When such right of any person in respect of When right any land or rent to which he has been entitled for an to estate in oossession estate or interest in possession, has been barred by the barred, right determination of the period hereinbefore limited of same 35 applicable to his case, and such person has at any future estates time during such period been entitled to any other 3 & 4 Wm. estate, interest, right, or possibility in reversion, re- IV, c. 27, mainder, or otherwise in or to the same land or rent, s. 20. such person, or any person claiming through him, shall 40 not enforce such right in respect of such other estate, interest, right, or possibility, unless in the meantime

disability, &c., allowed ten years from the termination of the

such

such land or rent has been recovered by some person entitled to an estate, interest, or right which has been limited or taken effect after or in defeasance of such estate or interest in possession.

- 29. When such right of a tenant-in-tail has been where tenant-in-tail barred, 5 barred under the provisions of this Act, such bar shall also remainder mainter motor erever. extend to such right of any person claiming any estate, Ibid. s. 21. interest, or right which such tenant-in-tail might lawfully have barred.
- 30. When a tenant-in-tail of any land or rent Possession 10 entitled to recover the same has died before the adverse to expiration of the period hereinbefore limited within to run on which to enforce such right, no person claiming any against re-maindermen. estate, interest, or right which such tenant-in-tail might Ibid. s. 22.
- 15 lawfully have barred shall enforce such right, but within the period during which if such tenant-in-tail had so long continued to live he might have enforced such right.

31. When a tenant-in-tail of any land or rent has Where there 20 made an assurance thereof which does not operate to bar has been possession the estates to take effect after or in defeasance of his under an estate tail, and any person by virtue of such assurance assurance by tenant-in-tail at or subsequently to the time of the execution thereof which does is in possession or receipt of the profits of such land or remainders

- 25 in receipt of such rent, and the same person or any they shall be other person whatsoever (other than some person end of twenty entitled to such possession or receipt in respect of an years after the time when estate which has taken effect after or in defeasance of the assurance the estate tail) continues to be in such possession or if then executed
- 30 receipt for the period of twenty years next after the would have commencement of the time at which such assurance if barred them. it had then been executed by such tenant-in-tail or the $\frac{3 \& 4 Wm IV}{c. 27, s. 23}$. person who would have been entitled to his estate tail if

such assurance had not been executed would without 35 the consent of any other person have operated to bar such estates as aforesaid then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after 40 or in defeasance of such estate tail.

32.

32. When any land or rent is vested in a trustee Express trust. upon an express trust the right of the cestui que trust 3&4Wm IV, or any person claiming through him to bring a suit c. 27, s. 25.

against the trustee or any person claiming through him 5 to recover the same shall be deemed to have first accrued according to the meaning of this Act at the time at which such land or rent has been conveyed to a purchaser for valuable consideration and shall then be deemed to have accrued only against such purchaser 10 and any person claiming through him.

33. (1) When a mortgagee has obtained the posses- Mortgagor to sion or receipt of the profits of any land or the receipt the end of of any rent comprised in his mortgage the mortgagor or twenty years any person claiming through him shall not, subject to when the 15 the provisions hereinafter contained, bring a suit to mortgagee redeem the mortgage, but within twenty years next after sion, or from the time at which the mortgagee obtained such possession the last written or receipt.

from the time took possesacknowledg-

(2) If in the meantime a written acknowledgment ment. 20 of the mortgagor's title or right of redemption has been Ibid. s. 28. given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person signed by the mortgagee, or the person claiming through him, no such suit shall be brought, but within twenty years next 25 after the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given.

(3) When there is more than one mortgagor or more than one person claiming through the mortgagor such acknowledgment, if given to any such mortgagors, 30 or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons.

(4) Where there is more than one mortgagee or more than one person claiming the estate or interest of 35 the mortgagee such acknowledgment signed by one of such mortgagees or persons shall be effectual only as against the party signing as aforesaid and the persons claiming any part of the mortgage money or land or rent by from or under him and any person entitled to any estate 40 or interest to take effect after or in defeasance of his estate or interest and shall not operate to give to the mortgagor

mortgagor a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent.

(5) Where such of the mortgagees or persons 5 aforesaid, by whom such acknowledgment has been given, are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgage money, the mortgagor shall be entitled to redeem the

10 same divided part of the land or rent on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent

15 comprised in the mortgage.

34. The right and title of any person to the land Extinguishor rent for the recovery whereof such entry, distress, or of party out action respectively might have been made or brought, of possession. shall be extinguished at the determination of the period 3& 4 Wm. IV, 20 limited by this Act within which to enforce such right.

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

25 the receipt of the profits of the land.

36. Nothing in this Act shall affect the provisions Not to affect of the Real Property Act, 1900.

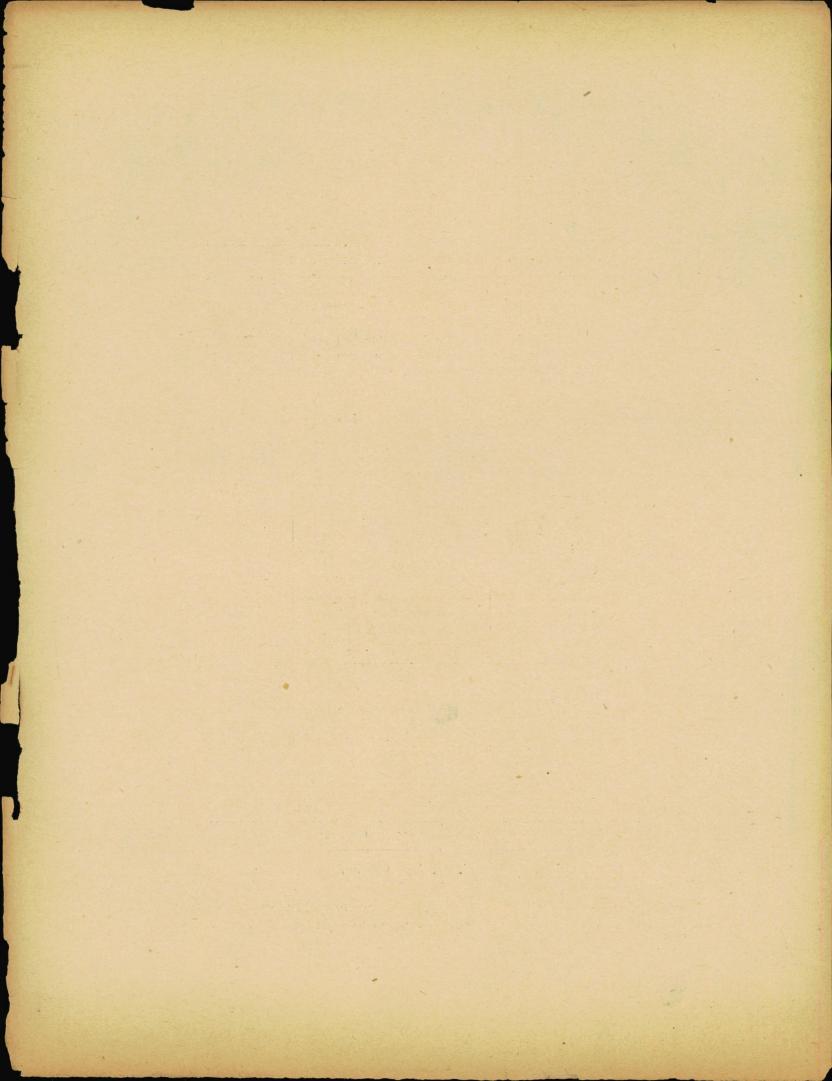
SCHEDULE.

Act No. , 1917.

Statute of Limitations.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
21 Jac. I, c. 16 5	An Act for limitation of actions, &c.	Sections 3, 4, and 7 so far as they apply to New South Wales.
4 & 5 Anne, c. 16. 10	An Act for the amendment of the law and the better advancement of justice.	So much of section
15 4 Wm. IV, No. 17.	An Act for adopting and applying a certain Act of Parliament for rendering a written memoran- dum necessary to the validity of certain promises and engage-	
20 8 Wm. IV, . No. 3.	ments. An Act for adopting a certain Act of Parliament passed in the third and fourth years of the reign	The whole.
25	of His present Majesty King William the Fourth, and apply- ing the same in the adminis- tration of justice in New South Wales in like manner as other laws of England are applied	
30 5 Vic. No. 9	therein. An Act for the further amend- ment of the law and for the	Sections 30, 39, 40, 41.
26 Vic. No. 12. 35	better advancement of justice. An Act to amend the Law of Property and further to relieve Trustees.	Sections 24, 36, and 71 (being the unrepealed sections).
47 Vic. No. 7	Limitation of Actions for Trespass Act of 1884.	The unrepealed portion.



Tegislative Council.

No. , 1917.

A BILL

To consolidate and amend the law with regard to the limitation of actions and suits.

[MR. GARLAND;-8 August, 1917.]

(As for adoption of Report.)

B^E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of 5 the same, as follows :---

1. This Act may be cited as the "Statute of Limita-short title. tions, 1917," and shall commence and come into operaation on the first day of January, one thousand nine hundred and eighteen.

10 2. This Act shall not affect any proceedings pending Saving clause. at the commencement of this Act, or any proceedings commenced or taken within one year after the commencement of this Act.

c 9—

Repeal Schedule. **3.** The several enactments mentioned in the Schedule to this Act, to the extent therein expressed, are hereby repealed; but such repeal shall not be held to revive any principle, doctrine, or presumption of law, or any form of action which were by such enactments expressly 5 abolished.

4. In the interpretation of this Act, unless the subject-matter or context otherwise indicates or requires,—

Rent. 3 & 4 Wm. IV, c. 27, s. 2.

Interpretation.

Beyond the seas.

Proceedings in equity included. *Ibid.* s. 24.

Fraud. *Ibid.* s. 26.

Saving the jurisdiction of equity in the case of acquiescence, &c. *I bid.* s. 27. (a) "rent" shall extend to all services and suits for which a distress may be made, and to all 10 annuities and periodical sums of money charged upon or payable out of any land;

- (b) no part of the Commonwealth of Australia shall be deemed to be beyond the seas within the meaning of this Act. 15
- (c) "Person of unsound mind" includes an insane person or patient, or incapable person within the meaning of the Lunacy Act, 1898.

5. (1) The provisions of this Act shall apply to judicial proceedings in all courts, and in the interpreta-20 tion of this Act, unless the subject-matter or context otherwise indicates or requires, such proceedings shall be deemed to be included in the word "action."

(2) (a) In every case of a concealed fraud the right of any person to institute proceedings in equity, in 25 respect of any claim of which he or any person through whom he claims has been deprived by such fraud, shall be deemed to have first accrued at the time at which such fraud has, or with reasonable diligence might have, been first known or discovered. 30

(b) Nothing in this subsection shall enable the owner of any land or rent to institute proceedings in equity for the recovery of such land or rent or for setting aside any conveyance of such land or rent on account of fraud against any bona fide purchaser for 35 valuable consideration without notice of such fraud.

(3) Nothing in this Act shall be deemed to interfere with any rule or jurisdiction of the Supreme Court in its equitable jurisdiction in refusing relief on the ground of acquiescence or otherwise to any person 40 whose right to institute proceedings may not be barred by virtue of this Act. (5)

(4) Nothing in this Act shall affect the operation Not to affect special statuof any Statute in which-. tory excep-

- (a) the operation of this Act or any of the enact-tions. ments hereby repealed is expressly excluded; or 9 Vic. No. 9, s. 39.
- (b) the time is expressly limited for bringing any action or proceeding the right to which is given by such Statute.

6. (1) After the commencement of this Act, the following actions and proceedings shall be commenced 10 within the respective times and limitations hereinafter expressed and not after-

> (a) actions of covenant or debt upon any speci- covenant, &c. 5 Vic. No. 9, alty; s. 39.

(b) actions of debt or scire facias upon any recog- Recognizance. Ibid. s. 9. nizance;

- (c) actions or proceedings to recover any sum of Money money secured by any mortgage, judgment, or charged, &c. licn, or otherwise charged upon or payable out ^{3&4}_{c. 27, s. 40.} of any land or rent at law or in equity, 37 & 38 Vic., excluding the actions mentioned in paragraph c. 57, s. 8. (i) of this subsection ;
- (d) actions to recover from the executor or ad-Legacy. ministrator with the will annexed any legacy; c. 27, s. 46.
- (e) actions to recover from the executor or ad-Share on ministrator any share of the real or personal ^{intestacy.} 26 Vic. No. estate as to which any person dies intestate; 12, s. 36. within twelve years;
 - (f) actions of trespass for injuries to the person, Trespass. or to land or personal property (except those in 21 Jac. 1, c. 16, s. 3. section seven of this Act specially mentioned);
 - (g) actions of detinue, trover, replevin, and on the Detinue, &c. case other than actions for slander; Ibid. s. 3.
 - (h) actions of account or for not accounting, Account. including suits for such accounts as concern Ibid. s. 3. the trade of merchandise between merchant 19 & 20 Vic., and merchant, their factors or servants, where c. 97, s. 9. such actions are not founded upon any specialty;
 - (i) actions of debt grounded upon any lending or simple contract without specialty;

contract, &c. 21 Jac. I, c. 16, 8. 3. (1)

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^{3 &}amp; 4 Wm. IV, c. 42, s. 3.

(j) actions of debt upon any award where the Award. 5 Vic. No. 9, submission is not by specialty or for money s. 39. levied under any writ of fieri facias; (k) actions for arrears of rent or arrears of interest Arrears of rent or in respect of any money charged upon or 5 interest. payable out of any land or rent, or for damages 3 & 4 Wm. IV, c. 27, s, 42. in respect of such arrears of rent or interest. where such rent or interest is not payable under any specialty; (1) actions to recover any arrears of dower or any 10 Ibid. ss. 41, 42. arrears of interest in respect of any legacy, or damages in respect of such arrears of dower or interest: Distress for (m) distress for arrears of rent, whether such rent rent. is payable under specialty or not; 15 Ibid. s. 42. within six years; Assault, &c. (n) actions of assault, menace, battery, wounding, 21 Jac. 1, and imprisonment; c. 16, s. 3. (o) actions for penalties, damages, or sums of Penalties, &c. money given to the party grieved by any law 20 5 Vic. No. 9, s. 39. now or hereafter to be in force : Slander. (p) actions for slander; 21 Jac. I, within one year; c. 16, s. 3. next after the cause of action or right of distress has Acknowledgment and part payment. accrued, or (except in the case of paragraphs (f), (g), 25 3 & 4 Wm. IV, (n), (o), and (p) next after a written acknowledgment 3 & 4 Wm. IV, c. 27, ss. 40, 42. 4 Wm. IV, No. 17 (adopting 9 Geo. IV, c. 14, s. 1). 5 Vic. No. 9, s. 1. 19 & 20 Vic., c. 97, s. 13. has been given to the person entitled thereto, or his agent, signed by the party liable, or his agent, or (except as aforesaid) next after part payment or satisfaction on account of the principal or interest due. 30 (2) No endorsement or memorandum of any pay-Endorsements of ment written or made upon any promissory note, bill of payment. exchange, or other writing by or on behalf of the party 9 Geo. IV. to whom such payment is made shall be deemed sufficient c. 14, s. 3. proof of such payment, so as to take the case out of the 35 operation of this Act.

(3) No claim in respect of any matter arising more than six years before the commencement of any action for account or for not accounting as aforesaid shall be enforceable by action by reason only of some 40 other matter of claim comprised in the same account having arisen within six years before the commencement of such action. (4)

Accounts. 19 & 20 Vic., c. 97, s. 9.

(4) Where any prior mortgagee or encumbrancer Arrears of has been in possession of any land or in receipt of the interest, profits thereof within one year next before an action 3 & 4 Wm. is brought by any person entitled to a subsequent IV, c 27, 5 mortgage or other encumbrance on the same land, the s. 42. person entitled to such subsequent mortgage or encumbrance may recover the arrears of interest which have become due during the whole time that such prior mortgagee or encumbrancer was in such possession or 10 receipt as aforesaid although such time has exceeded

the term of six years hereinbefore mentioned.

(5) If any of the said actions commenced within 21 Jac. I. the time and limitation expressed therefor :--c. 16, s. 4.

(a) the plaintiff be nonsuited; or

(b) a verdict pass 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, writ, or claim; or

(c) the plaintiff or the defendant dies,

20 the plaintiff, his executors, or administrators, as the case requires, may commence a new action or proceeding within a year after the nonsuit, or after the judgment given against the plaintiff, or after the grant of probate or letters of administration to the executors or adminis-

25 trators of the plaintiff or defendant, as the case may be, notwithstanding that the time and limitation expressed for commencing the action or proceeding may have then elapsed.

7. (1) In any action brought in respect of any Trespass to 30 trespass to land where the plaintiff's title to or possession land.

of such land is not disputed by the defendant in his 47 Vic. No. 7, defence, the plaintiff shall not recover any damages for any act of trespass committed more than twelve months before such action is commenced.

35 (2) Nothing in this section contained shall apply to any plaintiff who at the time when such act of trespass was committed was beyond the seas or under legal disability.

8. (1) If any person entitled to any such action, as is Disabilities. 40 in section six hereof mentioned, is at the time the cause Plaintiffs. of action accrues or such acknowledgment, part pay- 21 Jac. 1, c. 16, ment, or satisfaction as aforesaid is made-

(a) an infant; or

5 Vic. No. 9, ss. 40, 41. (b)19 & 20 Vic., c. 9, s. 10.

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(b) a person of unsound mind,

then the time hereinbefore limited for bringing such action shall commence when such person is of full age, or has otherwise ceased to be under disability.

(2) If any person liable to any such action as 5 Disabilities. aforesaid is beyond the seas at the time the cause of Defendants. 4 & 5 Anne, action accrues, or such acknowledgment, part payment, c. 16, s. 19. or satisfaction is made, then the time hereinbefore 5 Vic. No. 9, limited for bringing such action shall commence when 10 such person returns from beyond the seas.

9. In answer to a plea of this Act the plaintiff in any Acknowledgment may be such action or proceeding may reply such acknowledgment or part payment, and that such action or proceding was brought within such time as aforesaid.

10. (1) Where such cause of action with respect to 15 Period of limitation not to be extended against which the period of limitation is fixed by this Act lies all joint debtors against two or more joint debtors, the person entitled some being beyond the seas, to the same shall not be entitled to any time within 19 & 20 Vic., c. which to bring any such action against any of such 97, s. 11. joint debtors who is not beyond the seas at the time 20 such cause of action accrues by reason only that some other of such joint debtors is at the time such cause of action accrues beyond the seas.

> (2) Such person so entitled as aforesaid shall not be barred from bringing any action against the 25 joint debtor who is beyond the seas at the time the cause of action accrues, after his return from beyond the seas, by reason only that judgment has already been recovered against any one of such joint debtors who was not beyond 30 the seas at the time aforesaid.

Co.contractors, coexecutors, &c. 9 Geo. IV, c. 14, s. 1. 19 & 20 Vic., c. 97, ss. 13, 14.

11. (1) Where there are two or more co-contractors or co-debtors, whether liable jointly only or jointly and severally, or two or more executors or administrators of any contractor or debtor, no such co-contractor or co-debtor, executor, or administrator shall lose the 35 benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment made and signed by any other of them, or his agent duly authorised in that behalf, or in respect or by reason only of part payment or satisfaction made by any other of such 40 co-contractors, co-debtors, executors, or administrators. (2)

ss. 40, 41.

pleaded in

Ibid. s. 41.

reply.

(2) In actions commenced against two or more such co-contractors, co-debtors, executors, or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act as to one or more of 5 such co-contractors, co-debtors, executors, or administrators, is nevertheless entitled to recover against any other of the defendants by virtue of a new acknowledgment or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendants against 10 whom he may recover, and for the other defendants against the plaintiff.

12. The foregoing provisions of this Act shall so far Set off. as applicable be deemed to apply to the case of any debt 9 Geo. IV, c. 14, s. 4. or simple contract alleged by way of set off on the part 15 of any defendant either by plea, notice, or otherwise.

13. (1) Actions of trespass or on the case may be Actions by maintained by executors or administrators for any injury executors, &c. to the real or personal estate of their testator or intestate $_{s. 30}^{5}$ Vic. No. 9, committed in his lifetime and for which the testator or 20 intestate himself might have maintained the like actions.

(2) Such actions shall be brought within one To be brought year after the death of such testator or intestate, and of death for inshall be maintained only in respect of an injury com- tate committee within six mitted within six months before such death.

months of death.

(3) The damages recovered in such actions shall Damages part of personal estate. 25 form part of the deceased's personal estate.

14. (1) Actions of trespass or on the case may be Actions maintained against executors or administrators for any against execuwrong committed by their testator or intestate to another 5 Vic. No. 9,

s. 30. 30 in respect of his property, real or personal.

(2) Every such action shall be brought within six months after such executors or administrators have taken on themselves the administration of the estate of the deceased, and shall be maintained only in respect of 35 an injury committed within six months before his death.

(3) The damages recovered in any such action shall be payable in like order of administration as the deceased's debts.

15. (1) After the commencement of this Act no No land or rent 40 person claiming any land or rent shall make an entry, but within person claiming any land or rent shall make an entry, but which or distress, or bring an action to recover the same but after the right of action accrued within twenty years next after the time at which the to the claimant right to make such entry or distress or to bring such whose estate he claims. action first accrued to him.

3 & 4 Wm. IV, c. 27, s. 2. (2)37 & 38 Vic., c. 57, s. 1,

Interpretation. 3 & 4 Wm. IV, c. 27, s. 1.

(2) In all the succeeding sections of this Act, unless the context or subject-matter otherwise indicates or requires-

- (a) the expression "such right" shall mean the right to make an entry, or distress, or bring an 5 action to recover any land or rent;
- (b) the expression "enforce such right" shall mean make an entry, or distress, or bring an action to recover such land or rent:
- (c) a reference to a person entitled to or claiming 10 any land or rent shall include any person by, through, under, or by the act of whom he became entitled to the estate, interest, or right claimed.

Mortgaged land.

16. Notwithstanding anything contained in this Act 15 any person claiming under any mortgage of land may ²⁶ Vic. No. 13, make an entry or bring an action to recover such land 37 & 38 Vic., at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage although more than twenty 20 years may have elapsed since the time at which such right first accrued.

> 17. In the construction of this Act such right shall, subject to the provisions of sections eighteen and nineteen hereof, be deemed to have first accrued at such 25 times as are hereinafter mentioned respectively-

(a) when the person claiming such land or rent has in respect of the estate or interest claimed been in possession or receipt of the profits of such land or in receipt of such rent, and has 30 while entitled thereto been dispossessed or has discontinued such possession or receipt,

then 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 35 so received;

(b) when the person claiming such land or rent claims the estate or interest of some deceased person who has continued in such possession or receipt in respect of the same estate or interest 40 until

When right deemed to have accrued. 3 & 4 Wm. IV. c. 27, s. 3.

Estates in possession;

en dispossession;

on abatement or death :

until the time of his death, and has been the last person entitled to such estate or interest who has been in such possession or receipt,

then at the time of such death;

(c) when the person claiming such land or rent on alienation; claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him 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 has been in such possession or receipt,

then at the time at which the person claiming as aforesaid became entitled to such possession or receipt by virtue of such instrument;

(d) when the estate or interest claimed has been future an estate or interest in reversion or remainder estates; or other future estate or interest, and no person has 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 at the time at which such estate or interest became an estate or interest in possession;

(e) when the person claiming such land or rent forfeiture or has become entitled by reason of any forfeiture or breach of condition.

then at the time at which such forfeiture was incurred or such condition broken.

18. When such right by reason of any forfeiture or Whereadvanbreach of condition has first accrued in respect of any feiture is not so estate or interest in reversion or remainder, and the land taken by or rent has not been recovered by virtue of such right, man he shall such right shall be deemed to have first accrued in have a new respect of such estate or interest at the time when the his estate same has become an estate or interest in possession as if comes into possession.
40 no such forfeiture or breach of condition had happened. 3 & 4

19. Wm. IV, c. 27, s. 4.

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Reversioner right. 3 & 4 Wm. IV, c. 27, s. 5. 37 & 38 Vic., c. 57, s. 2.

19. (1) Such right shall be deemed to have first to have a new accrued in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which the same has become an estate or interest in possession by the determination of any estate in 5 respect of which such land has been held or the profits thereof or such rent has been received, notwithstanding the person claiming such land or rent may at any time previously to the creation of the estate which has determined have been in possession or receipt of the 10 profits of such land or in receipt of such rent.

(2) (a) If the person last entitled to any particular estate on which any future estate or interest was expectant was not in the possession or receipt of the profits of such land, or in receipt of such rent, at the 15 time when his interest determined, no such entry or distress shall be made, and no such action shall be brought by any person becoming entitled in possession to a future estate or interest, but within twenty years next after the time when such right first accrued to the 20 person whose interest has so determined, or within ten years next after the time when the estate of the person becoming entitled in possession became vested in possession, whichever of these two periods is the longer;

(b) and if such right of any person has been 25 barred under this Act no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement, executed or taking effect after the time when such right first accrued to the owner of the particular 30 estate whose interest has so determined as aforesaid, shall enforce such right.

Executor and administrator to claim as though no interval between the death and grant of probate or administration. Sec 3 & 4 Wm. IV, c. 27,

20. For the purposes of this Act an executor or claim as though administrator claiming the estate or interest of a testator or intestate shall be deemed to claim as if the grant of 35 probate or administration, as the case may be, had been made at the date of the death of the testator or intestate.

21. (1) When any person is in possession or in Claim of tenant at will receipt of the profits of any land or in receipt of any 40 or for years. Ibid. ss. 7, 8. rent as tenant at will or tenant from year to year or other

other period without a lease in writing, such right of the person entitled subject to such tenancy shall be deemed to have first accrued—

(a) in the case of a tenant at will, 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; and

(b) in the case of a tenant from year to year or other period without lease in writing, at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy has been received (which last happens).

(2) No mortgagor or cestui que trust shall be deemed to be a tenant at will within the meaning of this section to his mortgagee or trustee.

22. When any person is in possession or in receipt Accrual of of the profits of any land or in receipt of any rent by right at time 20 virtue of a lease in writing by which a rent amounting receipt of to the yearly sum of twenty shillings or upwards is rent and not reserved, and the rent reserved by such lease has been tion of lease. received by some person wrongfully claiming to be See 3 & 4 Wm. IV. entitled to such land or rent in reversion immediately c. 27, s 9.

25 expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards 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

30 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 to the person rightfully entitled at the time at which the rent reserved by such lease was first so received by the person wrongfully 35 claiming as aforesaid, and not upon the determination of such lease.

23. No person shall be deemed to have been in Mere entry not to be deemed possession of any land within the meaning of this Act possession. Ibid. merely by reason of having made an entry thereon

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Possession of one co-parcener, &c., session of the others. 3 & 4 Wm. IV,-

c. 27, s. 12.

24. When one of several persons entitled to any land or rent as co-parceners, joint-tenants, or tenants-innot to be pos- common has been in possession or receipt of the entirety or more than his undivided share of such land or of the profits thereof or of such rent for his own benefit or for 5 the benefit of any person other than the persons entitled to the other shares, his possession or receipt shall not be deemed to have been the possession or receipt of or by

Acknowledgment in writing given to person entitled equivalent to possession. Ibid. s. 14.

such last-mentioned persons. **25.** When any acknowledgment of the title of the 10 person entitled to any land or rent has been given in. writing to him or his agent, 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 has been 15 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 has been given at the time of giving the same, and such right of such last-mentioned person or any person claim- 20 ing through him shall be deemed to have first accrued at the time at which such acknowledgment or the last of such acknowledgments, if more than one, was given.

Persons under disability, &c., allowed ten years from the termination of the Ibid. s, 16.

26. (1) If at the time at which such right of any person first accrues as aforesaid such person is-25(a) an infant; or

(b) a person of unsound mind;

disability, &c. then such person or the person claiming through him may, notwithstanding the period of twenty years or ten 37 & 38 Vic., years (as the case may be) hereinbefore limited has 30 expired, enforce such right at any time within ten years next after the time at which the person to whom such right first accrued has ceased to be under any such

disability, or died (which has first happened). (2) Nothing in this section shall extend the 35 Period after right accrues, time within which any such person may enforce such thirty years. right beyond thirty years from the time at which such right first accrued.

27. When any person is under any of the disabilities No further time hereinbefore mentioned at the time at which such right 40 first accrues to him, and dies without having ceased to be

Ibid. s. 17.

Ibid. s. 5.

allowed for a

succession of disabilities.

Ibid. s. 18. Ibid. s. 9.

be under any such disability, no time to enforce such right, beyond the period of twelve years next after such right first accrued, or six years next after the death of such person, shall be allowed by reason of any disability 5 of any other person.

28. When such right of any person in respect of When right any land or rent to which he has been entitled for an to estate in possession estate or interest in possession, has been barred by the barred, right determination of the period hereinbefore limited of same person to

- 10 applicable to his case, and such person has at any future estates applicable to his case, and such period has at any also barred. time during such period been entitled to any other 3 & 4 Wm. estate, interest, right, or possibility in reversion, re- IV, c. 27, mainder, or otherwise in or to the same land or rent, ^{s. 20}. such person, or any person claiming through him, shall
- 15 not enforce such right in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest, or right which has been limited or taken effect after or in defeasance of such 20 estate or interest in possession.

29. When such right of a tenant-in-tail has been where tenantbarred under the provisions of this Act, such bar shall also remainder man not to recover. extend to such right of any person claiming any estate, Ibid. s. 21. interest, or right which such tenant-in-tail might law-

25 fully have barred.

30. When a tenant-in-tail of any land or rent Possession entitled to recover the same has died before the adverse to tenant-in-tail expiration of the period hereinbefore limited within to run on which to enforce such right, no person claiming any against re-maindermen. 30 estate, interest, or right which such tenant-in-tail might Ibid. s. 22. lawfully have barred shall enforce such right, but within the period during which if such tenant-in-tail had so long continued to live he might have enforced such right.

31. When a tenant-in-tail of any land or rent has where there 35 made an assurance thereof which does not operate to bar has been the estates to take effect after or in defeasance of his under an estate tail, and any person by virtue of such assurance assurance by tenant-in-tail at or subsequently to the time of the execution thereof which does

40 is in possession or receipt of the profits of such land or remainders in receipt of such reut, and the same person or any they shall be other

possession

end of twenty years after the assurance if then executed would have c. 27, s. 23. 37 & 38 Vic., c. 57, s. 6.

barred at the other person whatsoever (other than some person entitled to such possession or receipt in respect of an the time when estate which has taken effect after or in defeasance of the estate tail) continues to be in such possession or receipt for the period of twenty years next after the 5 barred them. commencement of the time at which such assurance if 3&4Wm.IV, it had then been executed by such tenant-in-tail or the person who would have been entitled to his estate tail if such assurance had not been executed would without the consent of any other person have operated to bar 10 such estates as aforesaid then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after 15 or in defeasance of such estate tail.

Express trust. c. 27, s. 25.

Mortgagor to be barred at when the mortgagee took possession, or from the last written acknowledgment.

Ibid. s. 28. 37 & 38 Vic, c. 57, s. 7.

32. When any land or rent is vested in a trustee 3&4Wm IV, upon an express trust the right of the cestui que trust or any person claiming through him to bring a suit against the trustee or any person claiming through him to recover the same shall be deemed to have first 20 accrued according to the meaning of this Act at the time at which such land or rent has been conveyed to a purchaser for valuable consideration and shall then be deemed to have accrued only against such purchaser 25 and any person claiming through him.

33. (1) When a mortgagee has obtained the possession or receipt of the profits of any land or the receipt twenty years of any rent comprised in his mortgage the mortgagor or any person claiming through him shall not, subject to the provisions hereinafter contained, bring a suit to 30 redeem the mortgage, but within twenty years next after the time at which the mortgagee obtained such possession or receipt.

(2) If in the meantime a written acknowledgment of the mortgagor's title or right of redemption has been 35 given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person signed by the mortgagee, or the person claiming through him, no such suit shall be brought, but within twenty years next after the time at which such acknowledgment, or the last of 40 such acknowledgments, if more than one was given. (3)

(3) When there is more than one mortgagor or more than one person claiming through the mortgagor such acknowledgment, if given to any such mortgagors, or persons, or his or their agent, shall be as effectual as if 5 the same had been given to all such mortgagors or persons.

(4) Where there is more than one mortgagee or more than one person claiming the estate or interest of the mortgagee such acknowledgment signed by one of 10 such mortgagees or persons shall be effectual only as against the party signing as aforesaid and the persons claiming any part of the mortgage money or land or rent by from or under him and any person entitled to any estate or interest to take effect after or in defeasance of his 15 estate or interest and shall not operate to give to the mortgagor a right to redeem the mortgage as against

the person or persons entitled to any other undivided or divided part of the money or land or rent.

(5) Where such of the mortgagees or persons 20 aforesaid, by whom such acknowledgment has been given, are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgage money, the mortgagor shall be entitled to redeem the

25 same divided part of the land or rent on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent 30 comprised in the mortgage.

34. The right and title of any person to the land Extinguishor rent for the recovery whereof such entry, distress, or ment of right action respectively might have been made or brought, of possession. shall be extinguished at the determination of the period 3&4Wm.IV,

35 limited by this Act within which to enforce such right.

35. The receipt of the rent payable by any tenant Receipt of from year to year or other lessee shall as against such rent to be deemed lessee or any person claiming under him (but subject to receipt of the lease) be deemed for the purpose of this Act to be profits. 40 the receipt of the profits of the land.

36. Nothing in this Act shall affect the provisions Not to affect Real Property of the Real Property Act, 1900.

c. 27, s. 34.

Ibid. s. 35.

Act, 1900.

SCHEDULE,

Reference to Act.	Title or short title.	Extent of repeal.		
21 Jac. I, c. 16	An Act for limitation of actions, &c.	Sections 3 and 7 so farasthey apply to New South 5 Wales.		
4 & 5 Anne, c. 16.	An Act for the amendment of the law and the better advancement of justice.	So much of section 19 as applies to New South Wales and does 10 not apply to suits or actions for seamen's		
4 Wm. IV, No. 17.	An Act for adopting and applying a certain Act of Parliament for rendering a written memoran- dum necessary to the validity of certain promises and engage- ments.	sections 1, 3, and 4 of 9 Geo. IV, c. 14.		
8 Wm. IV, No. 3.	An Act for adopting a certain Act of Parliament passed in the third and fourth years of the reign	The whole.		
-	of His present Majesty King William the Fourth, and apply- ing the same in the adminis- tration of justice in New South Wales in like manner as other laws of England are applied	25		
5 Vic. No. 9	therein. An Act for the further amend- ment of the law and for the better advancement of in the	Sections 30, 39, ³⁰ 40, 41.		
26 Vic. No. 12.	better advancement of justice. An Act to amend the Law of Property and further to relieve Trustees.	Sections 24, 36, and 71 (being 35 the unrepealed sections).		
47 Vic. No. 7	Limitation of Actions for Trespass Act of 1884.	The unrepealed portion.		

SCHEDULE.

Tegislative Council.

No. , 1917.

A BILL

To consolidate and amend the law with regard to the limitation of actions and suits.

[MR. GARLAND;-8 August, 1917.]

(Amendments made in Committee of the Whole House.)

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of 5 the same, as follows :--

1. This Act may be cited as the "Statute of Limita- short title. tions, 1917," and shall commence and come into operaation on the first day of January, one thousand nine hundred and eighteen.

10 2. This Act shall not affect any proceedings pending Saving clause. at the commencement of this Act, or any proceedings commenced or taken within one year after the commencement of this Act. 3.

Note.-The words cmitted are ruled through, and the words inserted are underlined.

c 9-

Repeal Schedule.

Interpretation.

3 & 4 Wm.

IV, c. 27, s. 2.

Beyond the seas.

Rent.

3. The several enactments mentioned in the Schedule to this Act, to the extent therein expressed, are hereby repealed; but such repeal shall not be held to revive any principle, doctrine, or presumption of law, or any form of action which were by such enactments expressly 5 abolished.

4. In the interpretation of this Act, unless the subject-matter or context otherwise indicates or requires,-

- (a) "rent" shall extend to all services and suits for which a distress may be made, and to all 10 annuities and periodical sums of money charged upon or payable out of any land;
- (b) no part of the Commonwealth of Australia shall be deemed to be beyond the seas within the meaning of this Act in any case to which 15 section eleven of the Service and Execution of Process Act, 1901–1912, applies, but in any other case every place outside New South Wales shall be deemed to be beyond the seas within the meaning of this Act. 20

(c) "Person of unsound mind" includes an insane person or patient, or incapable person within the meaning of the Lunacy Act, 1898.

5. (1) The provisions of this Act shall apply to judicial proceedings in all courts, and in the interpreta- 25 tion of this Act, unless the subject-matter or context otherwise indicates or requires, such proceedings shall be deemed to be included in the word "action."

(2) (a) In every case of a concealed fraud the right of any person to institute proceedings in equity, in 30 respect of any claim of which he or any person through whom he claims has been deprived by such fraud, shall be deemed to have first accrued at the time at which such fraud has, or with reasonable diligence might have. been first known or discovered. 35

(b) Nothing in this subsection shall enable the owner of any land or rent to institute proceedings in equity for the recovery of such land or rent or for setting aside any conveyance of such land or rent on account of fraud against any bona fide purchaser for 40 valuable consideration without notice of such fraud.

(3)

Proceedings in equity included. Ibid. s. 24.

Fraud. Ibid. s. 26.

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and goal of

(3) Nothing in this Act shall be deemed to inter-Saving the fere with any rule or jurisdiction of the Supreme Court of equity in in its equitable jurisdiction in refusing relief on the the case of ground of acquiescence or otherwise to any person &c.
5 whose right to institute proceedings may not be barred *Ibid. s. 27.* by virtue of this Act.

(4) Nothing in this Act shall limit the time within Not to affect which cestuis que trustent may enforce their rights of cestuisagainst trustees in the Supreme Court of New South

10 Wales in its equitable jurisdiction.

(4) (5) Nothing in this Act shall affect the opera- Not to affect tion of any Statute in which—

- (a) the operation of this Act or any of the enact-tions. ments hereby repealed is expressly excluded; or 9 Vio. No. 9, s. 39.
- 15
- (b) the time is expressly limited for bringing any action or proceeding the right to which is given by such Statute.

6. (1) After the commencement of this Act, the following actions and proceedings shall be commenced 20 within the respective times and limitations hereinafter expressed and not after—

- (a)-actions of covenant or debt upon-any-specialty;
- (b)-actions-of-debtor-scire-facias-upon-any-recognizance;
- 25

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(e) (a) actions or proceedings at law or in equity, to Money recover any sum of money secured by any mort-3&4 Wm. IV, gage, judgment, or lien, or otherwise charged c. 27, s. 40. upon or payable out of any land or rent at law 37 & 38 Vic., or in equity, excluding the actions mentioned in c. 57, s. 8.

paragraph-(i)-of this subsection; including the actions mentioned in paragraph (d) of this subsection but excluding the actions mentioned in paragraphs (c) and (k) of this section;

(e) (c) actions to recover from the executor or share on administrator any share of the real or personal 26 Vic. No. estate as to which any person dies intestate; 12, s. 36.

within twelve twenty years;

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(a) (d) actions of covenant or debt upon any speci- covenant, i.e. <u>alty</u>; (b) (e) <u>s. 39</u>. <u>s. 44 Wm. IV</u>, <u>s. 44 Wm. IV</u>,

Recognizance, Ibid. s. 9.	(+) (e) actions of debt or scire facias upon any recog-
10.0. 5. 5.	nizance ;
wit	hin twelve years;
Trespass. 21 Jac. I, c. 16, s. 3.	(f) actions of trespass for injuries to the person, or to land or personal property (except those in 5 section seven of this Act specially mentioned);
Detinue, &c. Ibid. s. 3.	(g) actions of detinue, trover, replevin, trespass and on the case other than actions for slander;
Account. <i>Ibid.</i> s. 3. 19 & 20 Vic., c. 97, s. 9.	(h) actions of account or for not accounting, and upon the ease, including suits for such 10 accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, where such actions are not founded upon any specialty;
Simple contract, & c. 21 Jac. I, c. 16, s. 3.	(i) actions of debt grounded upon any lending or 15 contract without specialty;
Award. 5 Vic. No. 9, 8. 39.	(j) actions of debt upon any award where the submission is not by specialty or for money levied under any writ of fieri facias;
Arrears of rent or interest. 3 & 4 Wm.IV, c. 27, s, 42.	 (k) actions for arrears of rent or arrears of interest 20 in respect of any money charged upon or payable out of any land or rent, or for damages in respect of such arrears of rent or interest, where such rent-or-interest-is not-payable-under .ny-specialty;
<i>Ibid.</i> 58. 41, 42.	 (l) actions to recover any arrears of dower or any arrears of interest in respect of any legacy, or damages in respect of such arrears of dower or interest;
Distress for rent. <i>Ibid.</i> s. 42. wit	 (m) distress for arrears of rent, whether such rent 30 is payable under specialty or not; hin six years;
Assault, &c. 21 Jac. I, c. 16, s. 3.	 (n) actions of assault, menace, battery, wounding, and imprisonment; hin-four years; 35
Penalties, &c. 5 Vic. No. 9, 5. 39.	(o) actions for penalties, damages, or sums of money given to the party grieved by any law now or hereafter to be in force;
Slander. 21 Jac. I, wit c, 16, s. 3.	(p) actions for slander; hin two one years; 40

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next

next after the cause of action or right of distress has Acknowledgement and part accrued, or (except in the case of paragraphs (f), (g), payment. (n), (o), and (p) next after a written acknowledgment 3 & 4 Wm. IV. c. 27, ss. 40, 42. has been given to the person entitled thereto, or his 4 Wm. IV, No. IV (adopting 9 Geo. 5 agent, signed by the party liable, or his agent, or (except ^{1V}₅, c. 14, s. 1). as aforesaid) next after part payment or satisfaction on ^{19 & 20 Vic.} account of the principal or interest due.

(2) No endorsement or memorandum of any pay- Endorsement written or made upon any promissory note, bill of ments of payment.
10 exchange, or other writing by or on behalf of the party 9 Geo. IV, to whom such payment is made shall be deemed sufficient c. 14, s. 3. proof of such payment, so as to take the case out of the operation of this Act.

(3) No claim in respect of any matter arising Accounts.
15 more than six years before the commencement of any 19 & 20 Vic., action or suit for account or for not accounting as aforesaid c. 97, s. 9. shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years before the commencement

20 of such action.

(4) Where any prior mortgagee or encumbrancer Arrears of has been in possession of any land or in receipt of the interest. profits thereof within one year next before an action $3 \& 4 \ Wm$. is brought by any person entitled to a subsequent $IV, c \ 27, s. \ 42$.

25 mortgage or other encumbrance on the same land, the ^sperson entitled to such subsequent mortgage or encumbrance may recover the arrears of interest which have become due during the whole time that such prior mortgagee or encumbrancer was in such possession or 20 receipt as aforesaid although such time has exceeded the term of six years hereinbefore mentioned.

(5) If in any of the said actions judgment be given for 21 Jac. I, the plaintiff, and the same be reversed by error or a verdict ^{c. 16, s. 4}.

pass for the plaintiff, and upon matter alleged in arrest 35 of judgment the judgment be given against the plaintiff

that he take nothing by his plaint, writ, or claim, the plaintiff, his executors or administrators, as the case requires, may commence a new action or proceeding within a year after such judgment reversed or such 40 judgment given against the plaintiff, and not after.

commenced within the time and limitation expressed therefor :---

(a) the plaintiff be nonsuited; or

(b) a verdict pass 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, writ, or claim; or (c)

(c) the plaintiff or the defendant dies.

the plaintiff, his executors, or administrators, as the case requires, may commence a new action or proceeding within a year after the nonsuit, or after the judgment given against the plaintiff, or after the grant of probate 5 or letters of administration to the executors or administrators of the plaintiff or defendant, as the case may be, notwithstanding that the time and limitation expressed for commencing the action or proceeding may have then elapsed. 10

Trespass to land. 47 Vic. No. 7, 8. 2.

Disabilities. Plaintiffs.

5 Vic. No. 9, ss. 40, 41.

19 & 20 Vic., c. 9, s. 10.

21 Jac. I, c. 16,

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7. (1) In any action brought in respect of any trespass to land where the plaintiff's title to or possession of such land is not disputed by the defendant in his defence, the plaintiff shall not recover any damages for any act of trespass committed more than twelve months 15 before such action is commenced.

(2) Nothing in this section contained shall apply to any plaintiff who at the time when such act of trespass was committed was beyond the seas or under legal disability. 20

8. (1) If any person entitled to any such action, as is in section six hereof mentioned, is at the time the cause of action accrues or such acknowledgment, part payment, or satisfaction as aforesaid is made-

(a) an infant; or

(b) a person of unsound mind,

then the time hereinbefore limited for bringing such action shall commence when such person is of full age, or has otherwise ceased to be under disability.

(2) If any person liable to any such action as 30 Disabilities. aforesaid is beyond the seas at the time the cause of Defendants. 4 & 5 Anne, action accrues, or such acknowledgment, part payment, c. 16, s. 19. or satisfaction is made, then the time hereinbefore 5 Vic. No. 9, ss. 40, 41. limited for bringing such action shall commence when such person returns from beyond the seas. 35

Acknowledgment may be pleaded in reply. Ibid. s. 41.

9. In answer to a plea of this Act the plaintiff in any such action or proceeding may reply such acknowledgment or part payment, and that such action or proceding was brought within such time as aforesaid.

10. (1) Where such cause of action with respect to Period of limitation not to be which the period of limitation is fixed by this Act lies extended against against two or more joint debtors, the person entitled by reason of some being to the same shall not be entitled to any time within beyond the seas.

5 which to bring any such action against any of such ^{19 & 20 Vic., c.} joint debtors who is not beyond the seas at the time such cause of action accrues by reason only that some other of such joint debtors is at the time such cause of action accrues beyond the seas.

10 (2) Such person so entitled as aforesaid shall not be barred from bringing any action against the joint debtor who is beyond the seas at the time the cause of action accrues, after his return from beyond the seas, by reason only that judgment has already been recovered 15 against any one of such joint debtors who was not beyond

the seas at the time aforesaid.

11. (1) Where there are two or more co-contractors Co-contractors co-contractors, whether liable jointly only or jointly and tors, co-executors, whether liable jointly only or jointly and tors, co-executors, whether liable jointly only or jointly and tors, co-executors, we can be added and signed by any other of them, or his agent duly
25 authorised in that behalf, or in respect or by reason only of part payment or satisfaction made by any other of such

co-contractors, co-debtors, executors, or administrators. (2) In actions commenced against two or more such co-contractors, co-debtors, executors, or adminis-

30 trators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act as to one or more of such co-contractors, co-debtors, executors, or administrators, is nevertheless entitled to recover against any other of the defendants by virtue of a new acknowledg35 ment or otherwise, judgment may be given and costs

allowed for the plaintiff as to such defendants against whom he may recover, and for the other defendants against the plaintiff.

12. The foregoing provisions of this Act shall so far set off. 40 as applicable be deemed to apply to the case of any debt ⁹ Geo. IV, or simple contract alleged by way of set off on the part of any defendant either by plea, notice, or otherwise.

Actions by 8. 30.

To be brought within one year of death for in-jury to real estate committed within six

Damages part of personal estate.

Actions against executors, &c.

s. 30.

13. (1) Actions of trespass or on the case may be executors, &c. maintained by executors or administrators for any injury to the real or personal estate of their testator or intestate committed in his lifetime and for which the testator or

intestate himself might have maintained the like actions. 5 (2) Such actions shall be brought within one year after the death of such testator or intestate, and shall be maintained only in respect of an injury commonths of death. mitted within six months before such death.

· (3) The damages recovered in such actions shall 10 form part of the deceased's personal estate.

14. (1) Actions of trespass or on the case may be maintained against executors or administrators for any 5 Vic. No. 9, wrong committed by their testator or intestate to another in respect of his property, real or personal. 15

(2) Every such action shall be brought within six months after such executors or administrators have taken on themselves the administration of the estate of the deceased, and shall be maintained only in respect of an injury committed within six months before his death. 20

(3) The damages recovered in any such action shall be payable in like order of administration as the deceased's debts.

15. (1) After the commencement of this Act no person claiming any land or rent shall make an entry, 25 or distress, or bring an action to recover the same but within twelve twenty years next after the time at which the right to make such entry or distress or to bring such action first accrued to him.

Interpretation. 8 & 4 Wm. IV, c. 27, s. 1.

(2) In all the succeeding sections of this Act, 30 unless the context or subject-matter otherwise indicates or requires -

- (a) the expression "such right" shall mean the right to make an entry, or distress, or bring an action to recover any land or rent;
- (b) the expression "enforce such right" shall 35 mean make an entry, or distress, or bring an action to recover such land or rent;
- (c) a reference to a person entitled to or claiming any land or rent shall include any person by, through, under, or by the act of whom he 40 became entitled to the estate, interest, or right claimed. 16.

No land or rent to be recovered but within twenty years after the right of action accrued to the claimant or some person whose estate he claims. 3 & 4 Wm. IV, c. 27, s. 2. 37 & 38 Vic., c. 57, s. 1.

16. Notwithstanding anything contained in this Act Mortgaged any person claiming under any mortgage of land may land. make an entry or bring an action to recover such land s. 24. at any time within twelve twenty years next after the last 37 & 38 Vic., c. 57, s. 9.

"5 payment of any part of the principal money or interest secured by such mortgage although more than twelve twenty years may have elapsed since the time at which such right first accrued.

17. In the construction of this Act such right shall, When right leemed to have 10 subject to the provisions of sections eighteen and nine- accrued. teen hereof, be deemed to have first accrued at such 3 & 4 Wm. IV, times as are hereinafter mentioned respectively—

> (a) when the person claiming such land or rent Estates in has in respect of the estate or interest claimed possession; been in possession or receipt of the profits of such land or in receipt of such rent, and has while entitled thereto been dispossessed or has on disposses. sion : discontinued such possession or receipt,

then 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 :

- (b) when the person claiming such land or rent on abatement claims the estate or interest of some deceased or death; person who has continued in such possession or receipt in respect of the same estate or interest until the time of his death, and has been the last person entitled to such estate or interest who has been in such possession or receipt, then at the time of such death;
- (c) when the person claiming such land or rent on alienation claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him 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 has been in such possession or receipt,

then

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then at the time at which the person claiming as aforesaid became entitled to such possession or receipt by virtue of such instrument;

(d) when the estate or interest claimed has been 5 an estate or interest in reversion or remainder or other future estate or interest, and no person has obtained the possession or receipt of the profits of such land or the receipt of such rent 10 . . in respect of such estate or interest,

then at the time at which such estate or interest became an estate or interest in possession;

(e) when the person claiming such land or rent has become entitled by reason of any forfeiture 15 or breach of condition,

then at the time at which such forfeiture was incurred or such condition broken.

18. When such right by reason of any forfeiture or Whereadvanfeiture is not breach of condition has first accrued in respect of any 20 estate or interest in reversion or remainder, and the land or rent has not been recovered by virtue of such right, such right shall be deemed to have first accrued in respect of such estate or interest at the time when the same has become an estate or interest in possession as if 25 no such forfeiture or breach of condition had happened.

19. (1) Such right shall be deemed to have first to have a new accrued in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which the same has become an estate or interest 30 in possession by the determination of any estate in respect of which such land has been held or the profits thereof or such rent has been received, notwithstanding the person claiming such land or rent may at any time previously to the creation of the estate which has 35 determined have been in possession or receipt of the profits of such land or in receipt of such rent.

> (2) (a) If the person last entitled to any particular estate on which any future estate or interest was expectant was not in the possession or receipt of the 40 profits

forfeiture or breach.

tage of for-

taken by remainder. man he shall have a new right when his estate comes into possession. 3 & 4 Wm. IV, c. 27. s. 4. Reversioner right. 3 & 4 Wm. IV, c. 27, s. 5. 37 & 38 Vic., c. 57, s. 2.

future estates ;

profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action shall be brought by any person becoming entitled in possession to 5 a future estate or interest, but within twelve twenty years next after the time when such right first accrued to the person whose interest has so determined, or within six ten years next after the time when the estate of the person becoming entitled in possession became vested in posses-10 sion, whichever of these two periods is the longer;

(b) and if such right of any person has been barred under this Act no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or

15 settlement, executed or taking effect after the time when such right first accrued to the owner of the particular estate whose interest has so determined as aforesaid, shall enforce such right.

20. For the purposes of this Act an executor or Executor and administrator to 20 administrator claiming the estate or interest of a testator claim as though or intestate shall be deemed to claim as if the grant of between the death and grant probate or administration, as the case may be, had been of probate or administration. made at the date of the death of the testator or intestate. See 3 & 4 Wm. IV, c. 27,

21. (1) When any person is in possession or in Claim of 25 receipt of the profits of any land or in receipt of any tenant at will rent as tenant at will or tenant from year to year or Ibid. 85. 7, 8. other period without a lease in writing, such right of the person entitled subject to such tenancy shall be deemed to have first accrued—

(a) in the case of a tenant at will, 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; and

(b) in the case of a tenant from year to year or other period without lease in writing, at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy has been received (which last happens).

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(2)

deemed to be a tenant at will within the meaning of

(2) No mortgagor or cestui que trust shall be

Accrual of right at time of first receipt of See 3 & 4 Wm. IV, c. 27, s 9.

this section to his mortgagee or trustee. 22. When any person is in possession or in receipt of the profits of any land or in receipt of any rent by 5 virtue of a lease in writing by which a rent amounting on determination to the yearly sum of twenty shillings or upwards is tion of lease. reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately 10 expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards 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 15 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 to the person rightfully entitled at the time at which the rent reserved by such lease was first so received by the person wrongfully 20 claiming as aforesaid, and not upon the determination of such lease.

Mere entry not to be deemed possession. Ibid. s 10.

Possession of one co-parothers. 3 & 4 Wm. IV, c. 27, s. 12.

to person possession. Ibid. 8. 14.

23. 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 25

24. When one of several persons entitled to any land or rent as co-parceners, joint-tenants, or tenants-innot to be pos. common has been in possession or receipt of the entirety session of the or more than his undivided share of such land or of the profits thereof or of such rent for his own benefit or for 30 the benefit of any person other than the persons entitled to the other shares, his possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned persons.

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25. When any acknowledgment of the title of the 35 writing given person entitled to any land or rent has been given in writing to him or his agent, signed by the person in entitled equivalent to 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 has been 40 given shall be deemed, according to the meaning of this Act

Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment has been given at the time of giving the same, and such right of such last-mentioned person or any person claim-

5 ing through him shall be deemed to have first accrued at the time at which such acknowledgment or the last of such acknowledgments, if more than one, was given.

26. (1) If at the time at which such right of any Persons under person first accrues as aforesaid such person is— 10

(a) an infant; or

(b) a person of unsound mind;

then such person or the person claiming through him disability, &c may, notwithstanding the period of twelve twenty years Ibid. 8, 16. or six ten years (as the case may be) hereinbefore limited 37 & 38 Vic., c. 57, ss. 3, 4.

15 has expired, enforce such right at any time within six ten years next after the time at which the person to whom such right first accrued has ceased to be under any such disability, or died (which has first happened).

(2) Nothing in this section shall extend the Period after 20 time within which any such person may enforce such right accrues not to exceed right beyond thirty years from the time at which such thirty years. right first accrued.

27. When any person is under any of the disabilities No further time allowed for a succession of disabilities.

25 first accrues to him, and dies without having ceased to Ibid. s. 18, be under any such disability, no time to enforce such Ibid. s. 9. right, beyond the period of twelve twenty years next after such right first accrued, or six ten years next after the death of such person, shall be allowed by reason of

30 any disability of any other person.

28. When such right of any person in respect of When right any land or rent to which he has been entitled for an to estate in estate or interest in possession, has been barred by the barred, right determination of the period hereinbefore limited of same person to

35 applicable to his case, and such person has at any future estates time during such period been entitled to any other 3 & 4 Wm. estate, interest, right, or possibility in reversion, re- IV, c. 27, mainder, or otherwise in or to the same land or rent, s. 20, such person, or any person claiming through him, shall

40 not enforce such right in respect of such other estate, interest, right, or possibility, unless in the meantime such

disability, &c., allowed ten years from the termina. tion of the

Ibid. s. 17. Ibid. s. 5.

such land or rent has been recovered by some person entitled to an estate, interest, or right which has been limited or taken effect after or in defeasance of such estate or interest in possession.

29. When such right of a tenant-in-tail has been 5 barred under the provisions of this Act, such bar shall also remainder man not to recover. extend to such right of any person claiming any estate, interest, or right which such tenant-in-tail might lawfully have barred.

> **30.** When a tenant-in-tail of any land or rent 10 entitled to recover the same has died before the expiration of the period hereinbefore limited within which to enforce such right, no person claiming any estate, interest, or right which such tenant-in-tail might lawfully have barred shall enforce such right, but within 15 the period during which if such tenant-in-tail had so long continued to live he might have enforced such right.

31. When a tenant-in-tail of any land or rent has made an assurance thereof which does not operate to bar 20 the estates to take effect after or in defeasance of his estate tail, and any person by virtue of such assurance at or subsequently to the time of the execution thereof is in possession or receipt of the profits of such land or they shall be in receipt of such reut, and the same person or any 25 end of twenty other person whatsoever (other than some person entitled to such possession or receipt in respect of an the assurance estate which has taken effect after or in defeasance of the estate tail) continues to be in such possession or receipt for the period of twelve twenty years next after the 30 commencement of the time at which such assurance if it had then been executed by such tenant-in-tail or the 37 & 38 Vic., person who would have been entitled to his estate tail if such assurance had not been executed would without the consent of any other person have operated to bar 35 such estates as aforesaid then at the expiration of such period of twelve twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail. 40

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Possession adverse to tenant-in-tail to run on against re maindermen. Ibid. s. 22.

Where tenantin-tail barred.

Ibid. s. 21.

Where there has been possession under an assurance by tenant-in-tail which does not bar the remainders barred at the vears after the time when if then executed would have barred them. 3&4Wm.IV, c. 27, s. 23. c. 57, s. 6.

32. When any land or rent is vested in a trustee Express trust. upon an express trust the right of the cestui que trust 3&4Wm IV, or any person claiming through him to bring a suit ^{c. 27, s. 25.} against the trustee or any person claiming through him

5 to recover the same shall be deemed to have first accrued according to the meaning of this Act at the time at which such land or rent has been conveyed to a purchaser for valuable consideration and shall then be deemed to have accrued only against such purchaser 10 and any person claiming through him.

33. (1) When a mortgagee has obtained the posses-Mortgagor to sion or receipt of the profits of any land or the receipt the end of of any rent comprised in his mortgage the mortgagor or twenty years any person claiming through him shall not, subject to when the

15 the provisions hereinafter contained, bring a suit to mortgagee redeem the mortgage, but within twelve twenty years sion, or from next after the time at which the mortgagee obtained the last such possession or receipt.

(2) If in the meantime a written acknowledgment ment.
20 of the mortgagor's title or right of redemption has been rotation in the mortgagor or some person claiming his estate, c. 57, s. 7. or to the agent of such mortgagor or person signed by the mortgagee, or the person claiming through him, no such suit shall be brought, but within twelve twenty years next

25 after the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given.

(3) When there is more than one mortgagor or more than one person claiming through the mortgagor such acknowledgment, if given to any such mortgagors,
30 or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons.

(4) Where there is more than one mortgagee or more than one person claiming the estate or interest of 35 the mortgagee such acknowledgment signed by one of such mortgagees or persons shall be effectual only as against the party signing as aforesaid and the persons claiming any part of the mortgage money or land or rent by from or under him and any person entitled to any estate 40 or interest to take effect after or in defeasance of his estate or interest and shall not operate to give to the mortgagor

Mortgagor to be barred at the end of twenty years from the time when the mortgagee took possession, or from the last written acknowledgment. *Ibid.* s. 28. 37 & 38 Vic, mortgagor a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent.

(5) Where such of the mortgagees or persons aforesaid, by whom such acknowledgment has been 5 given, are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgage money, the mortgagor shall be entitled to redeem the same divided part of the land or rent on payment with 10 interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent 15 comprised in the mortgage. 34. The right and title of any person to the land

Extinguishment of right or rent for the recovery whereof such entry, distress, or of possession. action respectively might have been made or brought, c. 27, s. 34.

Receipt of rent to be deemed receipt of profits. Ibid. s. 35.

Not to affect Real Property Act, 1900.

3&4Wm. IV, shall be extinguished at the determination of the period limited by this Act within which to enforce such right. 20 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 for the purpose of this Act to be

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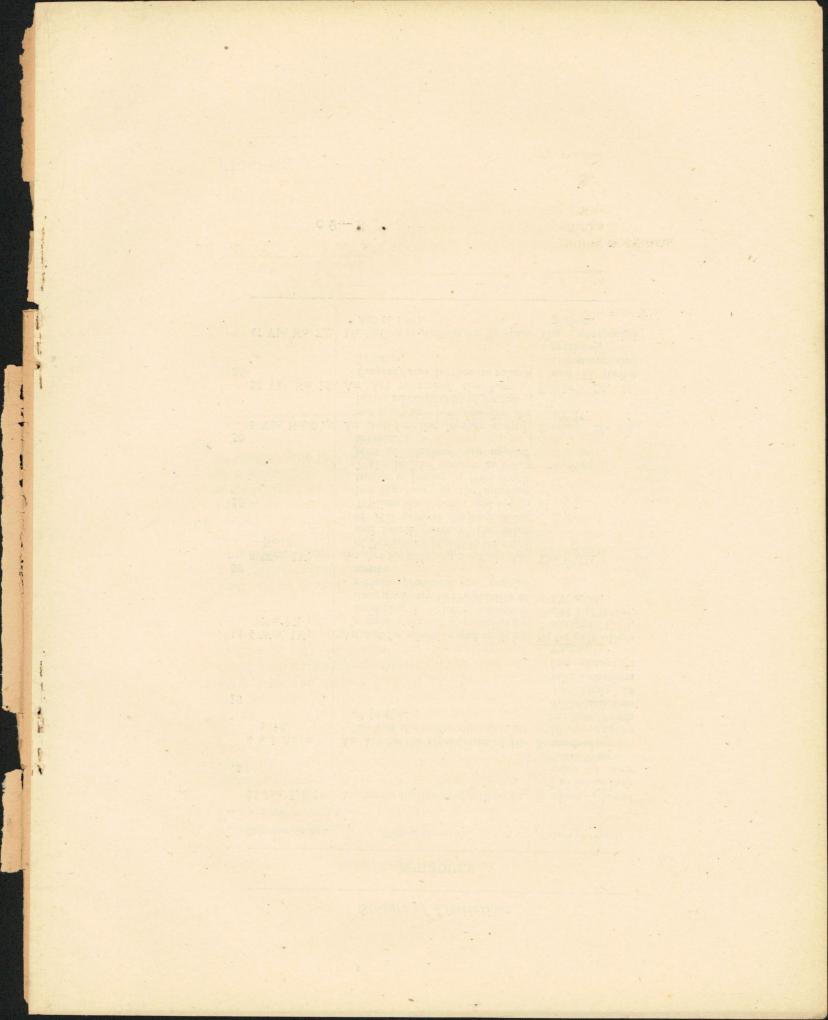
the receipt of the profits of the land. 36. Nothing in this Act shall affect the provisions of the Real Property Act, 1900.

SCHEDULE.

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SC		1 4	P 4

Reference to Act.	Title or short title.	Extent of repeal.				
21 Jac. I, c. 16	An Act for limitation of actions, &c.	7 so far as they apply to New				
4 & 5 Anne, c. 16.	An Act for the amendment of the law and the better advancement of justice.	South Wales. So much of section 19 as applies to New South Wales and does not apply to suits or actions for seamen's wages.				
15 4 Wm. 1V, No. 17.	An Act for adopting and applying a certain Act of Parliament for rendering a written memoran- dum necessary to the validity of certain promises and engage-					
8 Wm. IV, No. 3.	ments. An Act for adopting a certain Act of Parliament passed in the third and fourth years of the reign	The whole.				
25	of His present Majesty King William the Fourth, and apply- ing the same in the adminis- tration of justice in New South Wales in like manner as other laws of England are a pplied					
5 Vic. No. 9	ment of the law and for the	Sections 30, 39, 40, 41.				
26 Vic. No. 12. 35	better advancement of justice. An Act to amend the Law of Property and further to relieve Trustees.	Sections 24, 36 and 71 (being the unrepealed sections).				
47 Vic. No. 7	Limitation of Actions for Trespass * Act of 1884.					

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Legislative Council.

No. , 1917.

A BILL

To consolidate and amend the law with regard to the limitation of actions and suits.

[MR. GARLAND; -8 August, 1917.]

) E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of 5 the same, as follows :---

1. This Act may be cited as the "Statute of Limita- Short title. tions, 1917," and shall commence and come into operaation on the day of

2. This Act shall not affect any proceedings pending Saving clause 10 at the commencement of this Act, or any proceedings commenced or taken within one year after the commencement of this Act. 3.

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Repeal Schedule.

3. The several enactments mentioned in the Schedule to this Act, to the extent therein expressed, are hereby repealed; but such repeal shall not be held to revive any principle, doctrine, or presumption of law, or any form of action which were by such enactments expressly 5 abolished.

4. In the interpretation of this Act, unless the subject-matter or context otherwise indicates or requires,-

(a) "rent" shall extend to all services and suits for which a distress may be made, and to all 10 annuities and periodical sums of money charged upon or payable out of any land;

- (b) no part of the Commonwealth of Australia shall be deemed to be beyond the seas within the meaning of this Act. 15
- (c) "Person of unsound mind" includes an insane person or patient, or incapable person within the meaning of the Lunacy Act, 1898.

5. (1) The provisions of this Act shall apply to judicial proceedings in all courts, and in the interpreta-20 tion of this Act, unless the subject-matter or context otherwise indicates or requires, such proceedings shall be deemed to be included in the word "action."

(2) (a) In every case of a concealed fraud the right of any person to institute proceedings in equity, in 25 respect of any claim of which he or any person through whom he claims has been deprived by such fraud, shall be deemed to have first accrued at the time at which such fraud has, or with reasonable diligence might have, been first known or discovered. 30

(b) Nothing in this subsection shall enable the owner of any land or rent to institute proceedings in equity for the recovery of such land or rent or for setting aside any conveyance of such land or rent on account of fraud against any bona fide purchaser for 35 valuable consideration without notice of such fraud.

(3) Nothing in this Act shall be deemed to interfere with any rule or jurisdiction of the Supreme Court in its equitable jurisdiction in refusing relief on the ground of acquiescence or otherwise to any person 40 whose right to institute proceedings may not be barred by virtue of this Act. (5)

Interpretation. Rent.

3 & 4 Wm. IV, c. 27, s. 2.

Beyond the seas.

Proceedings in equity included. Ibid. s. 24.

Fraud. Ibid. s. 26.

Saving the jurisdiction of equity in the case of acquiescence, &c. Ibid. s. 27.

(4) Nothing in this Act shall affect the operation Not to affect of any Statute in which—

- (a) the operation of this Act or any of the enact-tions. ments hereby repealed is expressly excluded; or 9 Vic. No. 9, s. 39.
- (b) the time is expressly limited for bringing any action or proceeding the right to which is given by such Statute.

6. (1) After the commencement of this Act, the following actions and proceedings shall be commenced 10 within the respective times and limitations hereinafter expressed and not after—

(a) actions of covenant or debt upon any speci- Covenant, &c. 5 Vic. No. 9, ality;

3 & 4 Wm. IV, c. 42, s. 3.

- (b) actions of debt or scire facias upon any recog- Recognizance. nizance;
- (c) actions or proceedings to recover any sum of Money money secured by any mortgage, judgment, or charged, &c. lien, or otherwise charged upon or payable out c. 27, s. 40. of any land or rent at law or in equity, 37 & 38 vic., excluding the actions mentioned in paragraph ^{c. 57, s. 8}.
 (i) of this subsection ;
- (d) actions to recover from the executor or ad-Legacy. ministrator with the will annexed any legacy; ^{3 & 4 Wm. IV.} ^{3 & 4 Wm. IV.} ^{3 & 4 Wm. IV.} ^{3 & 4 Wm. IV.}
- (e) actions to recover from the executor or ad-Share on ministrator any share of the real or personal intestacy. estate as to which any person dies intestate; 12, s. 36.
 within twelve years;
 - (f) actions of trespass for injuries to the person, Trespass. or to land or personal property (except those in ²¹/_c, ¹⁶/_s, ^s, ³/_s) section seven of this Act specially mentioned);
 - (g) actions of detinue, trover, replevin, trespass on Detinue, &c. the case other than actions for slander; *Ibid.* s. 3.
 - (h) actions of account or for not accounting, and Account. upon the case, including suits for such Ibid. s. 3. accounts as concern the trade of merchandise 19 & 20 Vic., between merchant and merchant, their factors ^{c. 97, s. 9.} or servants, where such actions are not founded upon any specialty;
 - (i) actions of debt grounded upon any lending or simple contract without specialty; (j) ^{21 Jac. 1, o. 16}

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Award. 5 Vic. No. 9, s. 39.			
Arrears of rent or interest.	 levied under any writ of fieri facias; (k) actions for arrears of rent or arrears of interest in respect of any money charged upon or 5 		
3 & 4 Wm.IV c. 27, s, 42.	payable out of any land or rent, or for damages in respect of such arrears of rent or interest,		
	where such rent or interest is not payable under any specialty;		
<i>Ibid.</i> ss. 41, 42.	(l) actions to recover any arrears of dower or any 10 arrears of interest in respect of any legacy, or		
	damages in respect of such arrears of dower or interest;		
Distress for rent.	(m) distress for arrears of rent, whether such rent		
Ibid. s. 42.	is payable under specialty or not; 15 within six years;		
Assault, &c.	(n) actions of assault, menace, battery, wounding,		
21 Jac. 1, c. 16, s. 3.	and imprisonment;		
	within four years;		
Penalties, &c.			
5 Vic. No. 9, s. 39.	money given to the party grieved by any law		
Slander.	now or hereafter to be in force;		
21 Jac. I,	(p) actions for slander; within two years;		
c. 16, s. 3. Acknowledg-	next after the cause of action or right of distress has 25		
ment and part payment.	accrued, or (except in the case of paragraphs (f) (g)		
3 & 4 Wm. IV, c. 27, ss. 40, 42. 4 Wm. IV, No. 17 (adopting 9 Geo IV, c. 14, s. 1). 5 Vic. No. 9, s. 1. 19 & 20 Vic., 0 75 \$ 12	(n), (o), and (p) next after a written acknowledgment		
4 Wm. IV, No. 17 (adopting 9 Geo	has been given to the person entitled thereto, or his		
IV, c. 14, s. 1). 5 Vic. No. 9, s. 1.	agent, signed by the party liable, or his agent, or (except		
19 & 20 Vic., c. 97, s. 13.			
	account of the principal or interest due.		
Endorse- ments of	(2) No endorsement or memorandum of any pay-		
payment.	ment written or made upon any promissory note, bill of exchange, or other writing by or on behalf of the party		
9 Geo. IV, c. 14, s. 3.	to whom such payment is made shall be deemed sufficient 35		
	proof of such payment, so as to take the case out of the		
	operation of this Act.		
Accounts.	(3) No claim in respect of any matter arising		
19 & 20 Vic.,	more than six years before the commencement of any		
с. 97, в. 9.	action or suit for account or for not accounting as 40		
in the	aforesaid shall be enforceable by action by reason only		
and the second	of La		

of some other matter of claim comprised in the same account having arisen within six years before the commencement of such action.

(4) Where any prior mortgagee or encumbrancer Arrears of
5 has been in possession of any land or in receipt of the rent or interest. profits thereof within one year next before an action 3 & 4 Wm. is brought by any person entitled to a subsequent IV, c 27, mortgage or other encumbrance on the same land, the person entitled to such subsequent mortgage or encum10 brance may recover the arrears of interest which have become due during the whole time that such prior mortgage or encumbrancer was in such possession or mortgage or encumbrancer was in such possession or mortgage.

receipt as aforesaid although such time has exceeded the term of six years hereinbefore mentioned.

15 (5) If in any of the said actions judgment be 21 Jac. I, given for the plaintiff, and the same be reversed by ^{c. 16}, ^{s. 4}. error or a verdict pass 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,

20 writ, or claim, the plaintiff, his executors or administrators, as the case requires, may commence a new action or proceeding within a year after such judgment reversed or such judgment given against the plaintiff, and not after.

7. (1) In any action brought in respect of any Trespass to 25 trespass to land where the plaintiff's title to or possession land. of such land is not disputed by the defendant in his s. 2. defence, the plaintiff shall not recover any damages for any act of trespass committed more than twelve months before such action is commenced.

30 (2) Nothing in this section contained shall apply to any plaintiff who at the time when such act of trespass was committed was beyond the seas or under legal disability.

8. (1) If any person entitled to any such action, as is Disabilities.
 35 in section six hereof mentioned, is at the time the cause Plaintiffs. of action accrues or such acknowledgment, part pay-²¹ Jac. I, c. 16, s. 7. ment, or satisfaction as aforesaid is made—

(a) an infant; or

(b) a person of unsound mind,

5 Vic. No. 9, ss. 40, 41. 19 & 20 Vic., c. 9, s. 10.

then

then the time hereinbefore limited for bringing such action shall commence when such person is of full age, or has otherwise ceased to be under disability.

Disabilities. Defendants. 4 & 5 Anne, c. 16, s. 19. 5 Vic. No. 9, ss. 40, 41.

Acknowledgment may be pleaded in reply. Ibid. s. 41.

Period of limita-19 & 20 Vic., c. 97, s. 11.

aforesaid is beyond the seas at the time the cause of 5 action accrues, or such acknowledgment, part payment, or satisfaction is made, then the time hereinbefore limited for bringing such action shall commence when such person returns from beyond the seas.

(2) If any person liable to any such action as

9. In answer to a plea of this Act the plaintiff in any 10such action or proceeding may reply such acknowledgment or part payment, and that such action or proceding was brought within such time as aforesaid.

10. (1) Where such cause of action with respect to tion not to be extended gainst which the period of limitation is fixed by this Act lies 15 all joint debtors some being some being beyond the seas. to the same shall not be entitled to any time within which to bring any such action against any of such joint debtors who is not beyond the seas at the time such cause of action accrues by reason only that some 20 other of such joint debtors is at the time such cause of action accrues beyond the seas.

> (2) Such person so entitled as aforesaid shall not be barred from bringing any action against the joint debtor who is beyond the seas at the time the cause 25 of action accrues, after his return from beyond the seas, by reason only that judgment has already been recovered against any one of such joint debtors who was not beyond the seas at the time aforesaid.

11. (1) Where there are two or more co-contractors 30 or co-debtors, whether liable jointly only or jointly and severally, or two or more executors or administrators of any contractor or debtor, no such co-contractor or co-debtor, executor, or administrator shall lose the benefit of this Act so as to be chargeable in respect or 35 by reason only of any written acknowledgment made and signed by any other of them, or his agent duly authorised in that behalf, or in respect or by reason only of part payment or satisfaction made by any other of such co-contractors, co-debtors, executors, or administrators. 40 (2)

Co.contractors, coexecutors, &c. 9 Geo. IV, c. 14, s. 1. 19 & 20 Vic., c. 97, ss. 13, 14

(2) In actions commenced against two or more such co-contractors, co-debtors, executors, or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act as to one or more of 5 such co-contractors, co-debtors, executors, or administrators, is nevertheless entitled to recover against any other of the defendants by virtue of a new acknowledgment or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendants against 10 whom he may recover, and for the other defendants against the plaintiff.

12. The foregoing provisions of this Act shall so far Set off. as applicable be deemed to apply to the case of any debt 9 Geo. IV, c. 14, s. 4. or simple contract alleged by way of set off on the part 15 of any defendant either by plea, notice, or otherwise.

13. (1) Actions of trespass or on the case may be Actions by maintained by executors or administrators for any injury executors, &c. to the real or personal estate of their testator or intestate $\frac{5}{3}$ Vic. No. 9, committed in his lifetime and for which the testator or

20 intestate himself might have maintained the like actions.

(2) Such actions shall be brought within one To be brought year after the death of such testator or intestate, and of death for inshall be maintained only in respect of an injury com-mitted within six months before such death. mitted within six months before such death.

(3) The damages recovered in such actions shall Damages part of personal estate. 25 form part of the deceased's personal estate.

14. (1) Actions of trespass or on the case may be Actions maintained against executors or administrators for any against execuwrong committed by their testator or intestate to another 5 vic. No. 9, s. 30. '30 in respect of his property, real or personal.

(2) Every such action shall be brought within six months after such executors or administrators have taken on themselves the administration of the estate of the deceased, and shall be maintained only in respect of 35 an injury committed within six months before his death.

(3) The damages recovered in any such action shall be payable in like order of administration as the deceased's debts.

15. (1) After the commencement of this Act no No land or rent 40 person claiming any land or rent shall make an entry, but within or distress, or bring an action to recover the same but after the right of action accrued within twelve years next after the time at which the to the claiman right to make such entry or distress or to bring such whose estate he claims. action first accrued to him. 3 & 4 Wm. IV,

c. 27, s. 2. 37 & 38 Vic., c. 57, s. 1.

Interpretation. 3 & 4 Wm. IV, c. 27, s. 1.

(2) In all the succeeding sections of this Act. unless the context or subject-matter otherwise indicates or requires -

- (a) the expression "such right" shall mean the right to make an entry, or distress, or bring an 5 action to recover any land or rent:
- (b) the expression "enforce such right" shall mean make an entry, or distress, or bring an action to recover such land or rent;
- (c) a reference to a person entitled to or claiming 10 any land or rent shall include any person by, through, under, or by the act of whom he became entitled to the estate, interest, or right claimed.

Mortgaged land. c. 57, s. 9.

16. Notwithstanding anything contained in this Act 15 any person claiming under any mortgage of land may 26 Vic. No. 12, make an entry or bring an action to recover such land 37 & 38 Vic., 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 20 years may have elapsed since the time at which such right first accrued.

When right deemed to have accrued. 3 & 4 Wm. IV, c. 27, s. 3,

Estates in possession :

on disposses. sion :

on abatement or death :

17. In the construction of this Act such right shall. subject to the provisions of sections eighteen and nineteen hereof, be deemed to have first accrued at such 25 times as are hereinafter mentioned respectively-

(a) when the person claiming such land or rent has in respect of the estate or interest claimed been in possession or receipt of the profits of such land or in receipt of such rent, and has 30 while entitled thereto been dispossessed or has discontinued such possession or receipt,

then 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 35 so received ;

(b) when the person claiming such land or rent claims the estate or interest of some deceased person who has continued in such possession or receipt in respect of the same estate or interest 40 until

until the time of his death, and has been the last person entitled to such estate or interest who has been in such possession or receipt,

then at the time of such death;

(c) when the person claiming such land or rent on alienation; claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him 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 has been in such possession or receipt,

then at the time at which the person claiming as aforesaid became entitled to such possession or receipt by virtue of such instrument;

(d) when the estate or interest claimed has been future an estate or interest in reversion or remainder estates; or other future estate or interest, and no person has 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 at the time at which such estate or interest became an estate or interest in possession;

(e) when the person claiming such land or rent forfeiture or breach. has become entitled by reason of any forfeiture or breach of condition,

then at the time at which such forfeiture was incurred or such condition broken.

18. When such right by reason of any forfeiture or Whereadvanbreach of condition has first accrued in respect of any feiture is not 35 estate or interest in reversion or remainder, and the land taken by or rent has not been recovered by virtue of such right, man he shall such right shall be deemed to have first accrued in have a new respect of such estate or interest at the time when the his estate same has become an estate or interest in possession as if comes into no such forfeiture or breach of condition had been and 40 no such forfeiture or breach of condition had happened. 3 & 4

remainder. right when

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19. Wm. IV, c. 27, s. 4.

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Reversioner 3 & 4 Wm. IV, c. 27, s. 5. 37 & 38 Vie.. c. 57, s. 2.

19. (1) Such right shall be deemed to have first to have a new accrued in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which the same has become an estate or interest in possession by the determination of any estate in 5 respect of which such land has been held or the profits thereof or such rent has been received, notwithstanding the person claiming such land or rent may at any time previously to the creation of the estate which has determined have been in possession or receipt of the 10 profits of such land or in receipt of such rent.

(2) (a) If the person last entitled to any particular estate on which any future estate or interest was expectant was not in the possession or receipt of the profits of such land, or in receipt of such rent, at the 15 time when his interest determined, no such entry or distress shall be made, and no such action shall be brought by any person becoming entitled in possession to a future estate or interest, but within twelve years next after the time when such right first accrued to the 20 person whose interest has so determined, or within six years next after the time when the estate of the person becoming entitled in possession became vested in possession, whichever of these two periods is the longer;

(b) and if such right of any person has been 25 barred under this Act no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement, executed or taking effect after the time when such right first accrued to the owner of the particular 30 estate whose interest has so determined as aforesaid, shall enforce such right.

Executor and claim as though no interval between the death and grant of probate or administration. See 3 & 4 Wm. IV, c. 27, s. 6.

20. For the purposes of this Act an executor or administrator to administrator claiming the estate or interest of a testator or intestate shall be deemed to claim as if the grant of 35 probate or administration, as the case may be, had been made at the date of the death of the testator or intestate.

Claim of **21.** (1) When any person is in possession or in tenant at will receipt of the profits of any land or in receipt of any 40 Ibid. 88. 7. 8. rent as tenant at will or tenant from year to year or other

other period without a lease in writing, such right of the person entitled subject to such tenancy shall be deemed to have first accrued—

- (a) in the case of a tenant at will, 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; and
- (b) in the case of a tenant from year to year or other period without lease in writing, at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy has been received (which last happens).

(2) No mortgagor or cestui que trust shall be 15 deemed to be a tenant at will within the meaning of this section to his mortgagee or trustee.

- 22. When any person is in possession or in receipt Accrual of of the profits of any land or in receipt of any rent by right at time 20 virtue of a lease in writing by which a rent amounting receipt of to the yearly sum of twenty shillings or upwards is on determinareserved, and the rent reserved by such lease has been tion of lease. received by some person wrongfully claiming to be See 3 & 4 entitled to such land or rent in reversion immediately c. 27, s 9.
- 25 expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards 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 30 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 to the person rightfully entitled at the time at which the rent reserved by such lease was first so received by the person wrongfully 35 claiming as aforesaid, and not upon the determination of such lease.

23. No person shall be deemed to have been in Mercentry not to be deemed possession of any land within the meaning of this Act possession. Ibid. s. 10. merely by reason of having made an entry thereon.



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Possession of one co-parcener, &c., session of the others. 3 & 4 Wm. IV, c. 27, s. 12.

Acknowledgment in to person entitled possession. Ibid. s. 14.

24. When one of several persons entitled to any land or rent as co-parceners, joint-tenants, or tenants-innot to be pos common has been in possession or receipt of the entirety or more than his undivided share of such land or of the profits thereof or of such rent for his own benefit or for 5 the benefit of any person other than the persons entitled to the other shares, his possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned persons.

25. When any acknowledgment of the title of the 10 writing given person entitled to any land or rent has been given in writing to him or his agent, signed by the person in equivalent to 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 has been 15 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 has been given at the time of giving the same, and such right of such last-mentioned person or any person claim- 20 ing through him shall be deemed to have first accrued at the time at which such acknowledgment or the last of such acknowledgments, if more than one, was given.

26. (1) If at the time at which such right of any person first accrues as aforesaid such person is— 25 (a) an infant; or

(b) a person of unsound mind; disability, &c. then such person or the person claiming through him may, notwithstanding the period of twelve years or six 37 & 38 Vic., years (as the case may be) hereinbefore limited has 30 expired, enforce such right at any time within six years next after the time at which the person to whom such right first accrued has ceased to be under any such disability, or died (which has first happened).

(2) Nothing in this section shall extend the 35 Period after right accrues not to exceed time within which any such person may enforce such right beyond thirty years from the time at which such thirty years. Ibid. s. 17. right first accrued. Ibid. s. 5.

26. When any person is under any of the disabilities No further time allowed for a hereinbefore mentioned at the time at which such right 40 first accrues to him, and dies without having ceased to be

Persons under disability, &c., allowed ten years from the termination of the Ibid. s, 16.

succession of disabilities.

Ibid. s. 18. Ibid. s. 9.

be under any such disability, no time to enforce such right, beyond the period of twelve years next after such right first accrued, or six years next after the death of such person, shall be allowed by reason of any disability 5 of any other person.

28. When such right of any person in respect of When right any land or rent to which he has been entitled for an possession estate or interest in possession, has been barred by the barred, right determination of the period hereinbefore limited of same 10 applicable to his case, and such person has at any future estates time during such period been entitled to any other 3&4 Wm. estate, interest, right, or possibility in reversion, re- IV, c. 27,

mainder, or otherwise in or to the same land or rent, s. 20.

such person, or any person claiming through him, shall 15 not enforce such right in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest, or right which has been limited or taken effect after or in defeasance of such

20 estate or interest in possession.

29. When such right of a tenant-in-tail has been where tenant-in-tail barred, barred under the provisions of this Act, such bar shall also remainder man not to recover. extend to such right of any person claiming any estate, Ibid. s. 21. interest, or right which such tenant-in-tail might law-25 fully have barred.

30. When a tenant-in-tail of any land or rent Possession entitled to recover the same has died before the adverse to tenant-in-tail expiration of the period hereinbefore limited within to run on which to enforce such right, no person claiming any against re-maindermen.

30 estate, interest, or right which such tenant-in-tail might Ibid. s. 22. lawfully have barred shall enforce such right, but within the period during which if such tenant-in-tail had so long continued to live he might have enforced such right.

31. When a tenant-in-tail of any land or rent has Where there 35 made an assurance thereof which does not operate to bar has been possession the estates to take effect after or in defeasance of his under an estate tail, and any person by virtue of such assurance assurance by tenant-in-tail at or subsequently to the time of the execution thereof which does 40 is in possession or receipt of the profits of such land or remainders

in receipt of such reut, and the same person or any they shall be

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other

years after the assurance if then executed would have c. 27, s. 23. 37 & 38 Vic., c. 57, s. 6.

barred at the other person whatsoever (other than some person end of twenty entitled to such possession or receipt in respect of an the time when estate which has taken effect after or in defeasance of the estate tail) continues to be in such possession or receipt for the period of twelve years next after the 5 barred them. commencement of the time at which such assurance if 3&4Wm.IV, it had then been executed by such tenant-in-tail or the person who would have been entitled to his estate tail if such assurance had not been executed would without the consent of any other person have operated to bar 10 such estates as aforesaid then at the expiration of such period of twelve years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail. 15

Express trust. c. 27, s. 25.

32. When any land or rent is vested in a trustee 3&4Wm IV, upon an express trust the right of the cestui que trust or any person claiming through him to bring a suit against the trustee or any person claiming through him to recover the same shall be deemed to have first 20 accrued according to the meaning of this Act at the time at which such land or rent has been conveyed to a purchaser for valuable consideration and shall then be deemed to have accrued only against such purchaser 25 and any person claiming through him.

Mortgagor to be barred at the end of twelve years mortgagee took posses. sion, or from the last written acknowledgment.

Ibid. s. 28. 37 & 38 Vic, c. 57, s. 7.

33. (1) When a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage the mortgagor or from the time any person claiming through him shall not, subject to the provisions hereinafter contained, bring a suit to $\varepsilon 0$ redeem the mortgage, but within twelve years next after the time at which the mortgagee obtained such possession or receipt.

(2) If in the meantime a written acknowledgment of the mortgagor's title or right of redemption has been 35 given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person signed by the mortgagee, or the person claiming through him, no such suit shall be brought, but within twelve years next after the time at which such acknowledgment, or the last of 40 such acknowledgments, if more than one was given.

(3)

(3) When there is more than one mortgagor or more than one person claiming through the mortgagor such acknowledgment, if given to any such mortgagors, or persons, or his or their agent, shall be as effectual as if 5 the same had been given to all such mortgagors or persons.

(4) Where there is more than one mortgagee or more than one person claiming the estate or interest of the mortgagee such acknowledgment signed by one of 10 such mortgagees or persons shall be effectual only as against the party signing as aforesaid and the persons claiming any part of the mortgage money or land or rent by from or under him and any person entitled to any estate or interest to take effect after or in defeasance of his 15 estate or interest and shall not operate to give to the mortgagor a right to redeem the mortgage as against

the person or persons entitled to any other undivided or divided part of the money or land or rent.

(5) Where such of the mortgagees or persons 20 aforesaid, by whom such acknowledgment has been given, are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgage ^{de} money, the mortgagor shall be entitled to redeem the

25 same divided part of the land or rent on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent 30 comprised in the mortgage.

34. The right and title of any person to the land Extinguishor rent for the recovery whereof such entry, distress, or ment of right of party out action respectively might have been made or brought, of possession. shall be extinguished at the determination of the period 3&4Wm.IV, 35 limited by this Act within which to enforce such right.

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

40 the receipt of the profits of the land.

c. 27, s. 34.

Ibid. s. 35.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
21 Jac. I, c. 16	An Actfor limitation of actions, &c.	Sections 3 and 7 so faras they apply to New South Wales.
4 & 5 Anne, c. 16.	An Act for the amendment of the law and the better advancement of justice.	So much of section 19 as applies to New South Wales and does not apply to suits or actions for seamen's wages.
4 Wm. IV, No. 17.	An Act for adopting and applying a certain Act of Parliament for rendering a written memoran- dum necessary to the validity of certain promises and engage- ments.	
8 Wm. IV, No. 3.	An Act for adopting a certain Act of Parliament passed in the third and fourth years of the reign of His present Majesty King William the Fourth, and apply- ing the same in the adminis- tration of justice in New South Wales in like manner as other laws of England are applied therein.	
5 Vic. No. 9	An Act for the further amend- ment of the law and for the	Sections 30, 39, 40, 41.
26 Vic. No. 12.	better advancement of justice. An Act to amend the Law of Property and further to relieve Trustees.	Sections 24, 36, and 71 (being the unrepealed sections).
47 Vic. No. 7	Limitation of Actions for Trespass Act of 1884.	

SCHEDULE.

[18.]

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