

## Statute of Limitations, 1901.

THIS Bill has been prepared by the Commission for the Consolidation of the Statute Law, but it is a codifying and amending as well as a consolidating Bill, and cannot therefore go before Parliament and be dealt with like the consolidation Bills proper.

When the subject of Limitation of Actions came to be dealt with by the Commission, the statute law in New South Wales was found to be in a most unsatisfactory condition. It was so inconsistent and defective that the results of the attempts at its consolidation appeared to be useless, and even absurd. The law in New South Wales as to Limitations is mainly contained in two old English Statutes of James I and Anne and one local statute, 8 Wm. IV, No. 3, which adopted the English statute 3 and 4 Wm. IV, c. 27. It is almost in the same condition as it was in England in 1833,—a condition which the Imperial Parliament, so long ago as the year 1856, considered to require amendment. The subject, though it has been greatly overlaid with technicalities, is one of much importance, dealing as it does with the various periods of time which, in different cases, protect the members of the community against litigation upon stale complaints.

After careful consideration it was decided, with the approval of the Attorney-General, to take advantage of the special examination of the subject which had been made by the Commission, and to prepare an entirely new Bill, which should codify and amend as well as consolidate, and which, while removing the inconsistencies and supplying the defects of the present venerable law, should, if possible, so amend its antiquated form and phraseology as to make it clear to any intelligent man. The accompanying Bill is the result.

The principal features of this Bill are the following:—

- (a) The expression beyond the seas is defined to mean all places outside the Australasian colonies.
- (b) The law of limitations is applied to all Courts. At present it does not apply in terms to Courts of Equity, although those Courts have to a great extent adopted it.
- (c) The law as to acknowledgments is made uniform. There are certain methods of acknowledging from time to time the existence of a debt, which will keep it from being extinguished by the lapse of time. These methods vary in a very confusing and inconsistent way in different cases, and are now brought into agreement.
- (d) The English law is adopted in removing absence beyond the seas, and imprisonment, from the list of plaintiff's disabilities which keep rights of action alive in spite of the lapse of time.
- (e) There may be a doubt, under the existing law, whether, when a lease is under seal, the right to distrain for rent does not last for twenty years. This doubt is removed, and the time reduced to the same as in other cases.

(f) At present, if there are, say, five joint debtors, and one of them is under disability, as it is called, that is, if the lapse of time is not operating to release him, then the others are all kept bound also, though *they* may not be under any disability. The English amendment of this injustice is now adopted.

A similar amendment is made in the law of admissions. At present an admission by one joint debtor may operate to bind all the others; under this Bill it will only bind himself.

The following notes deal with the clauses in their order, and explain how far and to what extent each is an amendment or a consolidation:—

*Clause 2.* A saving clause has been introduced, as s. 6 of the Interpretation Act, 1897, only deals with repealed *enactments*; the particular sections referred to as having abolished certain principles, &c., are ss. 11, 13, 36, and 39 of 3 and 4 Wm. IV, c. 27, which are consequently not re-enacted.

*Clause 3* is unchanged except for the omission of interpretations contained in the Interpretation Act, 1897, and also of words inapplicable to this Colony.

An interpretation has been put upon the expression “beyond the seas” which places the whole of what is geographically known as “Australasia” or “the Australasian Colonies” in the position of being one continent. The closer connection existing between these colonies with each other than with the rest of the world seems to invite some such arrangement. For the necessity for some interpretation of these words see *Ruckmaboye v. Mottichund* (8 Moore’s P. C. C. 4).

*Clause 4, subsection 1* applies all limitations to all Courts. At present only the limitations in 3 and 4 Wm. IV, c. 27, apply in terms to Courts of Equity, but the Court of Equity in all other cases followed the law. See *Bulli Company v. Osborne* ([1899] A.C. 351).

The provisions of this subsection will consequently make no material alteration in the law, as the jurisdiction of the Court of Equity in cases of fraud, acquiescence, and laches are expressly saved by subsections 2 and 3, which adopt the language of the saving clauses in 3 and 4 Wm. IV, c. 27.

*Clause 4, subsection 2.* See last note. The expression “secret” fraud has been used in preference to “concealed” fraud as a more accurate expression in the light of the judgment of the Privy Council in the case last above mentioned.

*Clause 4, subsection 4.* The rights of *cestuis que trustent* against trustees have been left as at present, the subsection being inserted to prevent a possible contention that the rights of *cestuis que trustent*, arising as they do out of contract, came within clause 5.

*Clause 4, subsection 5.* Instances of (a) will be found in the Municipalities Act and Real Property Act.

An instance of (b) is found in the Employes’ Liability Act.

*Clause 5, subsection 1 (a)*, consolidates the law as interpreted by judicial decision. See *Barnes v. Glenton* ([1899], 1 Q. B. 885).

*Clause 5, subsection 1 (b), (c), (d), (e), (j), (l), (o)* are pure consolidation.

Clause 5, subsection 1 (*f*), (*g*), (*i*), (*n*), (*p*) reproduce provisions of 21 Jac. I, c. 16, s. 3; with regard to *p* the old limitation of two years for slander has been retained as preferable to placing it in the same category with libel by virtue of the Defamation Act.

Clause 5, subsection 1 (*h*) reproduces a provision of 21 Jac., c. 16, s. 3, as amended by the Mercantile Law Amendment Act.

Clause 5, subsection 1 (*k*) consolidates portion of 3 and 4 Wm. IV, c. 27, s. 42, as interpreted by judicial decision. See *Hunter v. Nockolds* (1 Mac. and G., 640).

Clause 5, subsection 1 (*m*). Distress for rent, which in this subsection means rent reserved, is in all cases limited to six years whether the rent is payable under specialty or not. See *Woodfall, Landlord and Tenant* (15th ed.), p. 485.

The law as to acknowledgments has been made uniform, whereas at present the provisions vary:—In cases under 21 Jac. I, c. 16, the acknowledgment must be in writing and signed by the party chargeable. The Mercantile Law Amendment Act, s. 13, provides that a sufficient acknowledgment may also be given by the agent of the party chargeable. It has been decided that the acknowledgment in cases under this Statute may be given to the agent of the creditor (*Edmonds v. Goater*, 15 Beav. 415), but the cases are conflicting as to whether an acknowledgment made to any other third party is sufficient.

In cases under 5 Vic. No. 9, the acknowledgment must be in writing signed by the party chargeable or his agent, and it has been decided that such acknowledgment may be given to a third party (*Moody v. Bannister*, 4 Drew 433).

3 and 4 Wm. IV, c. 27, ss. 40 and 42, expressly provide that acknowledgments in cases under those sections may be given to the claimant or his agent by the party chargeable or his agent. Such an acknowledgment cannot be made to a third party *Grenfell v. Girdlestone*, (2 Y. & Coll. 676). This last provision has by clause 5 been made applicable to all cases under the clause, except cases of tort.

Clause 5, subsection 2, is pure consolidation.

Clause 5, subsection 3, reproduces provisions of s. 9 of the Mercantile Law Amendment Act, and its insertion in the bill is merely a corollary to the insertion of the other provisions of the section appearing in clause 5, subsection 1 (*h*). The clause is a combination of the section (s. 9) which refers only to merchants' accounts, and of case law.

Clause 5, subsection 4, is pure consolidation.

Clause 5, subsection 5, reproduces s. 4 of 21 Jac. I, c. 16, which is at present in force in the Colony.

Clause 6 is pure consolidation. The operation of the clause is specially saved in clause 5, subsection 1 (*f*).

Clause 7. The saving of rights because of disabilities is not apparently applied in terms to actions or suits under ss. 40, 41, and 42 of 3 and 4 Wm. IV c. 27 (which are included in clause 5), but s. 10 of the Mercantile Law Amendment Act seems to assume that some disabilities did apply to such actions.

The disabilities have been made uniform in all cases in clause 5, but absence beyond the seas and imprisonment have been removed from the list of plaintiff's disabilities in accordance with section 10 of the Mercantile Law Amendment Act.

Imprisonment is not among the disabilities mentioned in 3 and 4 Wm. IV, c. 27, s. 16, or 5 Vic. No. 9, s. 40.

Prisoners in modern days have ample means of communication with friends and professional advisers, such as were not enjoyed in the days of James I and Anne.

*Clause 8* is pure consolidation, but applied to all the cases in clause 5 mentioned.

*Clause 9* introduces the amendment made in the law in England by the Mercantile Law Amendment Act, s. 11, and, where there are joint debtors, limits the effect of a disability to the individual under disability.

*Clause 10* introduces the amendment made in the law in England by the Mercantile Law Amendment Act, ss. 13 and 14, while consolidating s. 1 of 9 Geo. IV, c. 14, which is now in force.

This alters the law in so far that it provides that part payment by one co-contractor, &c., shall not prejudice any other co-contractor, &c.

*Clause 11* is pure consolidation.

*Clause 12.* This clause, so far as it relates to real estate, is a consolidation of s. 30 of the Act 5 Vic. No. 9. So far as it empowers executors and administrators to bring actions relating to personal estate it embodies the provisions of the Act 4 Edward III, c. 7. The limitation fixed for such actions by subsection 2 is new; there does not seem to be any reason why executors and administrators should not have the same time to bring all their actions.

*Clause 13* is pure consolidation.

*Clause 14.* No attempt has been made to deal with the word "rent" in this section. It has been judicially interpreted to have only a limited meaning in this and the following sections; it has been held not to include rents reserved on leases for years, but to be confined to rents existing as an inheritance distinct from the land. See the case of *Grant v. Ellis* (9 M. and W. 113); see also *Angell v. Angell* (9 Q.B. 328). It seems a pity when redrafting the Act not to be able to use different words where different things are meant; but it is difficult to foresee how far reaching any alteration might be. No change of language it is feared could render this Statute readily intelligible; while professional men are accustomed to the old form of words. It has, therefore, been decided with some reluctance to leave the expression "land or rent" unchanged.

By means of subsection 2 of this clause it has been found possible to shorten considerably the succeeding sections.

*Clauses 15, 16 and 17.* These are pure consolidation.

*Clause 18.* In this clause the words "or remainder or other future estate or interest" and the words "or rent" have been added as was done in England by the Act 37 and 38 Vic., c. 57, s. 2.

*Clause 19.* This clause is extended to executors as well as administrators. By the old law prior to the 3 and 4 Wm. IV, c. 27, it was held that an administrator's right to enter in respect of a chattel interest in land (which, of course, was all that passed to him then), accrued on the grant of letters of administration no matter how long an interval of time had elapsed since the death of the intestate. The title of an executor on the other hand, vested from the moment of the testator's death. *Hickman v. Walker* (Willes 27). The language of the Probate Acts on this point is somewhat ambiguous; by specially mentioning executors in this clause the law will be kept as it certainly was before the Probate Act, 1890, and as it probably is now.

*Clause 20* is pure consolidation of ss. 7, 8 of the Act 3 and 4 Wm. IV, c. 27.

*Clauses 21-23* are pure consolidation.

*Clause 24* is pure consolidation except so far as it permits an acknowledgment of title to be made by the agent of a party in possession. In the report on clause 5 subsection 1, reference is made to the difference in language in the various sections dealing with acknowledgments. It has been decided on s. 14 of the 3 and 4 Wm. IV, c. 27, the original of the present section, that the acknowledgment here mentioned cannot be given by an agent of the person in possession. *Ley v. Peter* (3 H. and N. 101). This has been altered in the draft in this clause, and also in clause 32, so that acknowledgments all the way through this Act should be on exactly the same footing. If an agent may be allowed to acknowledge that his principal is liable for money secured on land by a mortgage or lien, &c. (3 and 4 Wm. IV, c. 27, s. 40), or for arrears of rent or interest in respect of money charges on land, &c. (3 and 4 Wm. IV, c. 27, s. 42), one does not see why he should not also acknowledge the title of a proprietor of land or a mortgagor's right to redeem on behalf of his principal.

*Clauses 26-31* are pure consolidation.

*Clause 32* is pure consolidation except as to acknowledgments by agents. See note on clause 24.

*Clauses 33, 34* are pure consolidation.

CHAS. G. HEYDON,  
Commissioner for the Consolidation of the Statute Law.

Class 101 This class is extended to include as administrators by the old law... (The text is extremely faint and largely illegible due to bleed-through from the reverse side of the page.)

N.S. & W. IV, s. 28.

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N.S. & W. IV, s. 28.

# Statute of Limitations.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
21 JAC. I, c. 16.		
3	5 subsec. 1 ( <i>f</i> ), ( <i>g</i> ), ( <i>h</i> ), ( <i>i</i> ), ( <i>n</i> ), ( <i>p</i> ). 5 (5) 7 (1)	
4		
7		
4 AND 5 ANNE, c. 16.		
19	7 (2)	
9 GEO. IV, c. 14 (ADOPTED BY 4 WM. IV No. 17).		
1	5 (1), 10 5 (2) 11	
3		
4		
3 AND 4 WM. IV, c. 27 (ADOPTED BY 8 WM. IV No. 3).		
1	3, 14 (2)	Omitting provisions contained in Act No. 4, 1897, and provision as to escheat.
2	14	
3	16	
4	17	
5	18	
6	19	
7	20	
8	20	
9	21	
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11	.....	
12	23	
13	.....	
14	24	
15	.....	
16	25 (1)	
17	25 (2)	
18	26	
19	.....	
20	27	
21	28	
22	29	
23	30	
24	4 (1)	
25	31	
26	4 (2)	

See section 2.

See section 2.

Spent.

Inapplicable.

Extended generally.

Extended generally.

Section of Repealed Acts	Section of Consolidated Act.	Remarks.
3 AND 4 WM. IV, C. 27 (ADOPTED BY 8 WM. IV No. 3)— <i>continued.</i>		
27	4 (3)	
28	32	
29	} .....	Inapplicable.
30		
31		
32		
33		
34	33	
35	34	
36	} .....	See section 2.
37	} .....	Spent.
38	} .....	See section 2.
39	5 subsecs. 1; 1 (a), (d)	
40	5 subsec. 1 (l)	
41	5 subsecs. 1 (k), (l), (m); 4	
42	} .....	Inapplicable.
43		
44		
45	} .....	Spent.
5 VICTORIA No. 9.		
30	12, 13	
39	4 (5); 5 subsec. 1 (b), (c), (j), (o).	
40	5 (1); 7 (1), (2)	
41	5 (1); 7 (1), (2); 8	
26 VICTORIA No. 12.		
24	15	
36	5 subsec. 1 (e)	
47 VICTORIA No. 7.		
2	6	

Section of Repealed Act

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Legislative Council.

No. \_\_\_\_\_, 1901.

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## A BILL

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

[MR. WISE ;—14 *August*, 1901.]

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**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 the same, as follows :—

5       1. This Act may be cited as the "Statute of Limitations, 1901," Short title.  
and shall not affect any proceedings pending at the passing of this  
Act, or any proceedings commenced or taken within one year after  
the passing of this Act.

10       2. The several enactments mentioned in the Schedule to this Repeal Schedule.  
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  
abolished.

- Interpretation. **3.** 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. (a) “rent” shall extend to all services and suits for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land; 5
- Beyond the seas. (b) no part of the continent of Australia or of the state of Tasmania or the colony of New Zealand shall be deemed to be beyond the seas within the meaning of this Act.
- Proceedings in equity included.  
*Ibid.* s. 24. **4.** (1) The provisions of this Act shall apply to judicial proceedings in all courts, and in the interpretation of this Act, unless 10 the subject-matter or context otherwise indicates or requires, such proceedings shall be deemed to be included in the word “action.”
- Fraud.  
*Ibid.* s. 26. (2) (a) In every case of a secret fraud the right of any person to institute proceedings in equity, in respect of any claim of which he or any person through whom he claims has been deprived by 15 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.
- (b) Nothing in this subsection shall enable the owner of any land or rent to institute proceedings in equity for the recovery 20 of such land or rent or for setting aside any conveyance of such land or rent on account of fraud against any bonâ fide purchaser for valuable consideration without notice of such fraud.
- Saving the jurisdiction of equity in the case of acquiescence, &c.  
*Ibid.* s. 27. (3) Nothing in this Act shall be deemed to interfere with any rule or jurisdiction of the Supreme Court in its equitable jurisdiction 25 in refusing relief on the ground of acquiescence or otherwise to any person whose right to institute proceedings may not be barred by virtue of this Act.
- Trustees. (4) Nothing in this Act shall limit the time within which cestuis que trustent may enforce their rights against trustees in the 30 Supreme Court in its equitable jurisdiction.
- Not to affect special statutory exceptions.  
5 Vic. No. 9, s. 39. (5) Nothing in this Act shall affect the operation of any Statute in which—
- (a) the operation of this Act or any of the enactments hereby repealed is expressly excluded; or 35
- (b) the time is expressly limited for bringing any action or proceeding the right to which is given by such Statute.
- 5.** (1) After the passing of this Act, the following actions and proceedings shall be commenced within the respective times and limitations hereinafter expressed and not after:— 40
- Money charged, &c.  
3 & 4 Wm. IV c. 27,  
s. 40. (a) actions or proceedings to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent at law or in equity, excluding the actions mentioned in subsection (i) of this section; 45
- Covenant, &c.  
5 Vic No. 9, s. 39.  
Recognizance.  
*Ibid.* s. 9. (b) actions of covenant or debt upon any specialty;  
(c) actions of debt or *scire facias* upon any recognizance; (d)

- (*d*) actions to recover from the executor or administrator with the will annexed any legacy; Legacy.  
3 & 4 Wm. IV c. 27, s. 40.
- (*e*) actions to recover from the executor or administrator any share of the personal estate as to which any person dies intestate; Share on intestacy.  
26 Vic. No. 12, s. 36.
- 5 within twenty years;
- (*f*) actions of trespass for injuries to the person, or to land or personal property (except those in section six of this Act specially mentioned); Trespass.  
21 Jac. I, c. 16, s. 3.
- 10 (*g*) actions of detinue, trover, replevin, trespass on the case other than actions for slander; Detinue, &c.  
Ibid. s. 3.
- (*h*) actions of account or for not accounting, and upon the case, including suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, where such actions are not founded upon any specialty; Account.  
Ibid. s. 3.  
19 & 20 Vic., c. 97, s. 9.
- 15 (*i*) actions of debt grounded upon any lending or contract without specialty; Simple contract, &c.  
21 Jac. I, c. 16, s. 3.
- (*j*) actions of debt upon any award where the submission is not by specialty or for money levied under any writ of *feri facias*; Award.  
5 Vic. No. 9, s. 39.
- 20 (*k*) actions for arrears of rent or arrears of interest 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 any specialty; Arrears of rent or interest.  
3 & 4 Wm. IV, c. 27, s. 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; Ibid. ss. 41, 42.
- 25 (*m*) distress for arrears of rent, whether such rent is payable under specialty or not; Distress for rent.  
Ibid. s. 42.
- within six years;
- 30 (*n*) actions of assault, menace, battery, wounding, and imprisonment; Assault, &c.  
21 Jac. I, c. 16, s. 3.
- within four years;
- (*o*) actions for penalties, damages, or sums of money given to the party grieved by any law now or hereafter to be in force; Penalties, &c.  
5 Vic. No. 9, s. 39.
- 35 (*p*) actions for slander; Slander.  
21 Jac. I, c. 16, s. 3.
- within two years;
- next after the cause of action or right of distress has accrued, or (except in the case of subsections *f*, *g*, *n*, *o*, and *p*) next after a written acknowledgment 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. Acknowledgment and part payment.  
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. 41.  
19 & 20 Vic., c. 97, s. 13.
- 40 (2) No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing by or on behalf of the party to whom such payment is made shall be deemed sufficient proof of such payment, so as to take the case out of the operation of this Act. Endorsements of payment.  
9 Geo. IV, c. 14, s. 3.
- (4)

## Accounts.

19 &amp; 20 Vic., c. 97, s. 9.

(3) No claim in respect of any matter arising more than six years before the commencement of any action or suit for account or for not accounting as aforesaid 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 of such action. 5

## Arrears of rent or interest.

3 &amp; 4 Wm. IV, c. 27, s. 42.

(4) Where any prior mortgagee or encumbrancer has been in possession of any land or in receipt of the profits thereof within one year next before an action is brought by any person entitled to a subsequent 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 receipt as aforesaid although such time has exceeded the term of six years hereinbefore mentioned. 15

21 Jac. I, c. 16, s. 4.

(5) If in any of the said actions judgment be given for the plaintiff, and the same be reversed by 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, 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. 20

## Trespass to land.

47 Vic. No. 7, s. 2.

6. (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 before such action is commenced. 25

(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. 30

## Disabilities.

## Plaintiffs.

21 Jac. I, c. 16, s. 7.

5 Vic. No. 9, ss. 40,

41.

19 &amp; 20 Vic., c. 9, s.

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7. (1) If any person entitled to any such action, as is in section five hereof mentioned, is at the time the cause of action accrues or such acknowledgment, part payment, or satisfaction as aforesaid is made— 35

(a) an infant; or

(b) under disability by reason of coverture; or

(c) an idiot, insane or incapable person, or insane patient, within the meaning of the Lunacy Act, 1898, or person of unsound mind, 40

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

(2)

(2) If any person liable to any such action as aforesaid is beyond the seas at the time the cause of 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.

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

8. 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 proceeding was brought within such time as aforesaid.

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

9. (1) Where such cause of action with respect to which the period of limitation is fixed by this Act lies against two or more joint debtors, the person entitled 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 other of such joint debtors is at the time such cause of action accrues beyond the seas.

Period of limitation not to be extended against all joint debtors by reason of some being beyond the seas.  
19 & 20 Vic., c. 97, s. 11.

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

10. (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 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 co-contractors, co-debtors, executors, or administrators.

Co-contractors, co-executors, &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 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 acknowledgment 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.

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

Set off.  
9 Geo. IV, c. 14, s. 4.

Actions by executors,  
&c.  
5 Vic. No. 9, s. 30.

**12.** (1) Actions of trespass or on the case may be 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

To be brought within one year of death for injury to real estate committed within six months of death.

(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 committed within six months before such death.

Damages part of personal estate.

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

Actions against executors, &c.  
5 Vic. No. 9, s. 30.

**13.** (1) Actions of trespass or on the case may be maintained against executors or administrators for any wrong committed by their testator or intestate to another 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 an injury committed within six months before his death. 15

(3) The damages recovered in any such action shall be payable in like order of administration as the deceased's debts. 20

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.  
Interpretation.  
*Ibid.* s. 1.

**14.** (1) After the passing of this Act no person claiming any land or rent shall make an entry, or distress, or bring an action to recover the same but within 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. 25

(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 action to recover any land or rent; 30

(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. 35

Mortgaged land.  
26 Vic. No. 12, s. 24.

**15.** Notwithstanding anything contained in this Act any person claiming under any mortgage of land may make an entry or bring an action to recover such land 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 years may have elapsed since the time at which such right first accrued. 40

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

5 (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 while entitled thereto been dispossessed or has discontinued such possession or receipt,

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

Estates in possession.

on dispossession ;

10 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 ;

15 (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 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,

on abatement or death ;

then at the time of such death ;

20 (c) when the person claiming such land or rent 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,

on alienation ;

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

30 (d) when the estate or interest claimed has been 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 in respect of such estate or interest,

future estates ;

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

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

forfeiture or breach.

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

17. When such right by reason of any forfeiture or breach of condition has first accrued in respect of any 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 no such forfeiture or breach of condition had happened.

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

Ibid. s. 4.

18.

Reversioner to have  
a new right.

3 & 4 Wm. IV, c. 27,  
s. 5.

Vide 37 & 38 Vic.  
c. 57, s. 2.

18. Such right shall be deemed to have first 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 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 profits of such land or in receipt of such rent. 5

Executor and administrator to claim as though no interval between the death and grant of probate or administration.

3 & 4 Wm. IV, c. 27,  
s. 6.

Claim of tenant at will or for years.

*Ibid.* ss. 7, 8.

19. For the purposes of this Act an executor or administrator claiming the estate or interest of a testator or intestate shall be deemed to claim as if the grant of probate or administration, as the case may be, had been made at the date of the death of the testator or intestate. 10

20. (1) When any person is in possession or in receipt of the profits of any land or in receipt of any rent as tenant at will or tenant from year to year or other period without a lease in writing, such right of the person entitled subject to such tenancy shall be deemed to have first accrued— 15

(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 20

(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). 25

(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. 30

Accrual of right at time of first receipt of rent and not on determination of lease.

*Ibid.* s. 9.

21. When any person is in possession or in receipt of the profits of any land or in receipt of any rent by virtue of a lease in writing by which a rent amounting to the yearly sum of twenty shillings or upwards is 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 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 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 claiming as aforesaid, and not upon the determination of such lease. 40 45 22.



22. 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.

Mere entry not to be deemed possession. 3 & 4 Wm. IV, c. 27, s. 10.

23. When one of several persons entitled to any land or rent as co-parceners, joint-tenants, or tenants-in-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 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.

Possession of one co-parcener, &c., not to be possession of the others. *Ibid.* s. 12.

24. When any acknowledgment of the title of the 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, or his agent, then such possession or receipt of or by the person by whom or on whose behalf such acknowledgment has been given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment has been given at the time of giving the same, and such right of such last-mentioned person or any person claiming 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.

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

25. (1) If at the time at which such right of any person first accrues as aforesaid such person is—  
 (a) an infant; or  
 (b) under disability by reason of coverture; or  
 (c) a person of unsound mind;

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

then such person or the person claiming through him may, notwithstanding the period of twenty years hereinbefore limited has 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 time within which any such person may enforce such right beyond forty years from the time at which such right first accrued.

Period after right accrues not to exceed forty years. *Ibid.* s. 17.

26. When any person is under any of the disabilities hereinbefore mentioned at the time at which such right first accrues to him, and dies without having ceased to be under such disability, no time to enforce such right, beyond the period of twenty years next after such right first accrued, or ten years next after the death of such person, shall be allowed by reason of any disability of any other person.

No further time allowed for a succession of disabilities. *Ibid.* s. 18.

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

When right to estate in possession barred, right of same person to future estates also barred. *Ibid.* s. 20.

before limited applicable to his case, and such person has at any time during such period been entitled to any other estate, interest, right, or possibility in reversion, remainder, or otherwise in or to the same land or rent, such person, or any person claiming through him, shall 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 estate or interest in possession. 5

Where tenant-in-tail barred, remaindermen not to recover. 3 & 4 Wm. IV, c. 27, s. 21.

28. When such right of a tenant-in-tail has been barred under the provisions of this Act, such bar shall also extend to such right of any person claiming any estate, interest, or right which such tenant-in-tail might lawfully have barred. 10

Possession adverse to tenant-in-tail to run on against remaindermen. *Ibid.* s. 22.

29. When a tenant-in-tail of any land or rent 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 the period during which if such tenant-in-tail had so long continued to live he might have been entitled to enforce such right. 15 20

Where there has been possession under an assurance by tenant-in-tail which does not bar the remainders they shall be barred at the end of twenty years after the time when the assurance if then executed would have barred them. *Ibid.* s. 23.

30. When a tenant-in-tail of any land or rent has made an assurance thereof which does not operate to bar 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 in receipt of such rent, and the same person or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an 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 commencement of the time at which such assurance if it had 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 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 or in defeasance of such estate tail. 25 30 35

Express trust. *Ibid.* s. 25.

31. When any land or rent is vested in a trustee 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 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 and any person claiming through him. 40 45

32. (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 any person claiming through him shall not subject to the provisions hereinafter contained bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt.

Mortgagor to be barred at the end of twenty years from the time when the mortgagee took possession or from the last written acknowledgment.

3 & 4 Wm. IV, c. 27, s. 28.

(2) If in the meantime a written acknowledgment 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 or the agent of such mortgagee or person, no such suit shall be brought but within twenty years next 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 of such mortgagors 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 the mortgagee such acknowledgment signed by or on behalf of one of such mortgagees or persons shall be effectual only as against such mortgagee or person and the persons claiming any part of the mortgage money or land or rent by from or under them and any person entitled to any estate or interest to take effect after or in defeasance of their 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 aforesaid, by or on whose behalf 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 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 comprised in the mortgage.

33. Such right of any person shall be extinguished at the determination of the period limited by this Act within which to enforce such right.

Extinguishment of right of party out of possession. *Ibid.* s. 34.

34. 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 purposes of this Act to be the receipt of the profits of the land.

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

## 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 far they apply to New South Wales. 5
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 10 seamen's wages.
4 Wm. IV, No. 17	An Act for adopting and applying a certain Act of Parliament for rendering a written memorandum necessary to the validity of certain promises and engagements.	So far as it adopts sections 1, 3, and 4 of 9 Geo. IV, c. 14. 15
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 applying the same in the administration of justice in New South Wales in like manner as other laws of England are applied therein.	The whole. 20
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 30, 39, 40, 41. 25
26 Vic. No. 12 ...	An Act to amend the Law of Property and further to relieve Trustees.	Sections 24, 36.
47 Vic. No. 7 ...	Limitation of Actions for Trespass Act of 1884.	The unrepealed portion. 30

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