

Western Australia.

LIMITATION ACT, 1935.

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LIMITATION.

26^o GEO. V., No. XXXV.

No. 35 of 1935.

AN ACT to consolidate and amend the Law relating to the Limitation of Time for commencing Actions and Suits.

[Assented to 7th January, 1936.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

- Short title.** 1. This Act may be cited as the *Limitation Act, 1935*, and shall come into force on a day to be fixed by proclamation.*
- Repeal.** 2. The Acts mentioned in the Schedule to this Act, to the extent thereby expressed to be repealed, are hereby repealed.
- Interpretation.** 3. In this Act unless inconsistent with the context or subject matter—
- “Action” means a civil proceeding commenced, in the Supreme Court by writ or in such other manner as may be prescribed by Rules of Court, or in a Local Court or other inferior court in the manner prescribed by or under the Act conferring jurisdiction on such court.
- “Land” includes messuages and all corporeal hereditaments whatsoever, and any share, estate, or interest in them or any of them, whether the same is a freehold or chattel interest, and whether freehold or held according to any other tenure.

3 & 4 Will. IV.
c. 27, s. 1.
(Adopted by
Will. IV., No.
4.)
Victoria No.
3754, s. 274.

* Proclaimed to commence 14th April, 1936. (See *Gazette*, 9th April, 1936.)

“Person” includes a body corporate, and a class of persons as well as an individual.

The person through whom another person is said to claim, means any person by, through, or under, or by the act of whom, the person so claiming became entitled in any capacity to the estate or interest claimed.

“Rent” includes all annuities and periodical sums of money charged upon or payable out of any land.

4. No person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.*

No land or rent to be recovered but within 12 years after the right of action accrued.

42 Vict., No. 6, s. 1.

37 and 38 Vict., c. 57 (Impl.), s. 1.*

Victoria, No. 3754, s. 276.

5. In the construction of this Act, the right to make an entry or distress, or bring an action to recover land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say:—

When the right shall be deemed to have accrued.

3 & 4 Will. IV., c. 27, s. 3.

(Adopted by 6 Will. IV., No. 4.)

Victoria, No. 3754, s. 277.

In the case of an estate in possession.

On dispossession.

(a) When the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of such land, or in receipt of such rent, and while entitled thereto has been dispossessed, or has discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.

(b) When the person claiming such land or rent claims the estate or interest of some deceased person who

On abatement or death.

*By Section 9 of 37 and 38 Vict., c. 57 (Impl.) and of 42 Vict., No. 6 (W.A.), it is enacted that “all the provisions of the Act 3 and 4 Will. IV., c. 27, except those contained in the several sections hereinafter mentioned, shall remain in full force, and shall be construed together with this Act, and shall take effect as if the provisions hereinbefore contained [inserted in this consolidation as Sections 4, 7, 16, 17, 18, 23, 29, and 32] were substituted in such Act for the provisions contained in the sections thereof numbered 2, 5, 16, 17, 23, 28, and 40 respectively, and which several sections are repealed.”

As to the word “rent” in the expression “land or rent,” see Halsbury’s Laws of England, Vol. 19, par. 195.

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 such right shall be deemed to have first accrued at the time of such death.

On alienation.

(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 or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument has been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument.

In case of future estates.

(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, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

In case of forfeiture or breach of condition.

(e) When the person claiming such land or rent, or the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

When right of entry shall be deemed to have accrued.

For the purposes of this section, the right to make an entry, or bring an action to recover any land, has not and shall not be deemed to have first accrued to any person in any case, whether or not such person has been in possession or receipt of the rents and profits of such land, until such land is in the actual possession of some person not entitled to such possession, and any land not in the actual possession of any

person shall be deemed to be in the possession of the person entitled to such possession.

6. Provided always that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition 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, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

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

3 & 4 Will. IV.,
c. 27, s. 4.
Victoria, No.
3754, s. 278.

7. A right to make an entry or distress, or to bring an action to recover any land or rent, 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 shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land or rent, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent:

Provision for case of future estates.

42 Vict., No. 6,
s. 2.

37 and 38 Vict.,
c. 57 (Impl.),
s. 2.

Victoria, No.
3754, s. 279.

Provided that if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the 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 a future estate or interest, but within twelve years next after the time when the right to make an entry or distress, or to bring an action for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession, whichever of those two periods shall be the longer.

Time limited to six years when person entitled to the particular estate out of possession, etc.

Provided also that if the right of any such person to make such entry or distress, or to bring any such action, shall have 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 settlement, executed or taking effect after the time when a right to make an entry or distress, or to bring an action for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid, shall make any such entry or distress, or bring any such action to recover such land or rent.

An administrator to claim as if he obtained the estate without interval after the death of deceased.

3 & 4 Will. IV.,
c. 27, s. 6.
Victoria, No.
3754, s. 280.

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

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

3 & 4 Will. IV.,
c. 27, s. 7.

9. 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, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued, either at the determination of such tenancy or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.

Victoria, No.
3754, s. 281.

Provided always that 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.

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

3 & 4 Will. IV.,
c. 27, s. 8.
Victoria, No.
3754, s. 282.

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

11. 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 at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

Where rent amounting to 20s. reserved by a lease has been wrongfully received no right to accrue on determination of the lease.

3 & 4 Will. IV.,
c. 27, s. 9.
Victoria, No.
3754, s. 283.

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

A mere entry not to be deemed possession.

3 & 4 Will. IV.,
c. 27, s. 10.
Victoria, No.
3754, s. 284.

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

No right to be preserved by continual claim.

3 & 4 Will. IV.,
c. 27, s. 11.
Victoria, No.
3754, s. 285.

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

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

3 & 4 Will. IV.,
c. 27, s. 12.
Victoria, No.
3754, s. 286.

15. When any acknowledgment of the title of the person entitled to any land or rent has been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment has been given shall be deemed, according to the meaning of this Act, to have been the possession

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

3 & 4 Will. IV.,
c. 27, s. 14.
Victoria, No.
3754, s. 288.

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 the right of such last-mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

16. If at the time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities herein-after mentioned (that is to say) infancy, coverture (except in the case of a married woman entitled to make such entry or distress, or bring such action), idiocy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of twelve years, or six years (as the case may be), hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within six years next after the time at which the person to whom such right shall first have accrued shall have ceased to be under such disability, or shall have died (whichever of those two events shall have first happened).

17. The time within which any such entry may be made, or any such action may be brought as aforesaid, shall not in any case be extended or enlarged by reason of the absence beyond the seas* during all or any part of that time of the person having the right to make such entry, or to bring such action, or of any person through whom he claims.

18. No entry, distress, or action shall be made or brought by any person who at the time at which his right to make any entry or distress, or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within thirty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such thirty years, or although the term of six years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

In cases of infancy, etc., six years to be allowed from the termination of the disability or previous death.
42 Vict., No. 6, s. 3.
37 and 38 Vict., c. 57 (Impl.), s. 3.
Victoria, No. 3754, s. 289.
See M.W.P. Act, 1892, ss. 1, 5, 12.

No time to be allowed for absence beyond seas.
42 Vict., No. 6, s. 4.
37 and 38 Vict., c. 57 (Impl.), s. 4.

Thirty years utmost allowance for disabilities.
42 Vict., No. 6, s. 5.
37 and 38 Vict., c. 57 (Impl.), s. 5.
Victoria, No. 3754, s. 290.

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

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

3 & 4 Will. IV., c. 27, s. 18.

42 Vict., No. 6, s. 9.

Victoria, No. 3754, s. 291.

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

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

3 & 4 Will. IV., c. 27, s. 20.

Victoria, No. 3754, s. 292.

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

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

3 & 4 Will. IV., c. 27, s. 21.

Victoria, No. 3754, s. 293.

22. 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, which is applicable in such case, for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest, or right which such tenant in tail might lawfully have barred, shall make an entry or distress or bring an action to recover such land or rent but within the period during which, if such

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

3 & 4 Will. IV., c. 27, s. 22.

Victoria, No. 3754, s. 294.

tenant in tail had so long continued to live, he might have made such entry or distress or brought such action.

Possession under an assurance by a tenant in tail. 42 Vict., No. 6, s. 6. 37 and 38 Vict., c. 57 (Impl.), s. 6. Victoria, No. 3754, s. 295.

23. When a tenant in tail of any land or rent shall have made an assurance thereof which shall not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance at the time of the execution thereof, or at any time afterwards, be 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 shall have taken effect after or in defeasance of the estate tail) shall continue to be in such possession or receipt for the period of twelve years next after the commencement of the time at which such assurance, if 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 such estate or 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.

No suit in equity to be brought after the time when the plaintiff might have brought an action at law. 3 & 4 Will. IV., c. 27, s. 24. Victoria, No. 3754, s. 296.

24. No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate, interest, or right in or to the same as he claims therein in equity.

In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser. 3 & 4 Will. IV., c. 27, s. 25. Victoria, No. 3754, s. 297.

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

Time for recovering charge and arrears of interest not to be enlarged by express trusts for raising same.

26. No action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of

interest in respect of any sum of money or legacy so charged or payable, and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.*

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

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

29. When a mortgagee shall have 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 bring any action or suit to redeem the mortgage, but within twelve years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption shall have 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.

In such case no such action or suit shall be brought, but within twelve years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given; and when there shall be more than one mortgagor or more than one person claiming through the mort-

42 Vict., No. 6, s. 11.

37 and 38 Vict., c. 57 (Impl.), s. 10.*

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

3 & 4 Will. IV., c. 27, s. 26.

Victoria, No. 3754, s. 298.

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

3 & 4 Will. IV., c. 27, s. 27.

Victoria, No. 3754, s. 299.

Mortgagor to be barred at end of 12 years from the time when the mortgagee took possession or from the last written acknowledgment.

42 Vict., No. 6, s. 7.

37 and 38 Vict., c. 57 (Impl.), s. 7.

Victoria, No. 3754, s. 300.

* This section was enacted by Section 11 of the Real Property Limitation Act, 1878. See Supreme Court Act, 1880, Section 8 (2) by which it is enacted that no claim of a *cestui que trust* against his trustee for property held on an express trust, or for breach of such trust, shall be barred by any statute of limitations, the Trustee Act, 1900, Section 13 (Section 47 of this Act), and Lewin on Trusts, 13th edition, pages 916, 917, 941, and 942. See also Section 25 (2) of the Supreme Court Act, 1935.

gagor or mortgagors, 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:

Provided that where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors 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:

Provided also that where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be 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 or mortgagors 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 shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

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

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

32. (1.) No action or suit or other proceeding shall be brought 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, or any legacy,

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

3 & 4 Will. IV., c. 27, s. 34.

Victoria, No. 3754, s. 301.

Receipt of rent to be deemed receipt of profits.

3 & 4 Will. IV., c. 27, s. 35.

Victoria, No. 3754, s. 302.

Money charged upon land and legacies to be deemed satisfied at the end of 12 years if no interest paid nor acknowledgment given.

but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same; unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment or the last of such payments or acknowledgments (if more than one) was made or given.

42 Vict., No. 6,
s. 8.
37 and 38 Vict.,
c. 57 (Impl.),
s. 8.
Victoria, No.
3754, s. 304.

(2.) This section extends to an action or suit on a covenant by a mortgagor in a mortgage deed, or on a collateral bond by the mortgagor securing the mortgage debt; and to an action on a covenant in a deed to secure the payment of a rentcharge.*

33. Subject to, and except as enacted by section forty-seven of this Act, no action or suit or other proceeding shall be brought to recover the estate, or any share of the estate of any person dying intestate from the legal representative of such intestate, but within twelve years next after the present right to receive the same has accrued to some person capable of giving a discharge for or release of the same; unless in the meantime some part of such estate or share, or some interest in respect thereof has been accounted for or paid, or some acknowledgment of the right thereto has been given in writing signed by the person accountable for the same or his agent to the person entitled thereto or his agent; and in such case no such action or suit shall be brought but within twelve years next after such accounting, payment, or acknowledgment, or the last of such accountings, payments, or acknowledgments (if more than one) was made or given.

Claims to estate
of intestates.
Cf. 23 & 24 Vict.,
c. 38, s. 13.
(Adopted by 31
Vict., No. 8.)
P. L. Act, 1928,
s. 304 (Victoria).*

34. No arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit, but within six years next after the same respectively have become due, or next after an acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent:

No arrears of
rent or interest
to be recovered
for more than
six years.
3 & 4 Will. IV.,
c. 27, s. 42.
Victoria, No.
3754, s. 205.

* See *Sutton v. Sutton*, 22 Ch., Div. 511; *Fearnside v. Flint*, 22 Ch., Div. 579; *In re Powers*, 30 Ch., Div. 291; *In re Frisby*, 43 Ch., Div. 106; and *Shaw v. Crompton* (1910), 2 K.B. 370.

Provided nevertheless that where any prior mortgagee or other incumbrancer has been in possession of any land, or in receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years.

Provided also, that this section is subject to paragraphs (d) and (e) of subsection (1) of section thirty-eight of this Act.

35. It shall and may be lawful for any person entitled to or claiming under any mortgage of land (being land within the definition contained in section three of this Act) to make an entry or bring an action or suit to recover such land at any time within twelve years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twelve years may have elapsed since the time at which the right to make such entry or bring such action or suit shall have first accrued, anything herein notwithstanding.

36. Notwithstanding any law or statute law now or heretofore in force, the right, title, or interest of the Crown to or in any land shall not be, and shall be deemed not to have been in any way affected by reason of any possession of such land adverse to the Crown.

37. (1.) All actions, suits, and other proceedings for any forfeiture upon any statute penal whereby the forfeiture or benefit is limited to His Majesty, or His Majesty, his heirs and successors, shall be commenced within two years after the offence committed.

(2.) All actions, suits, and other proceedings for any forfeiture upon any statute penal whereby the forfeiture or benefit is limited to His Majesty, or His Majesty, his heirs and successors, and to any person who prosecutes in that behalf, shall be commenced by any such person within one year after the offence committed, and in default thereof may be commenced by His Majesty, his heirs and successors at any time within two years after that year ended.

Mortgagees may bring actions to recover land within twelve years after last payment of principal or interest.
42 Vict., No. 6, s. 10.

7 Will. IV. and 1 Vict., c. 28.
Victoria, No. 3754, s. 306.

No title by adverse possession against Crown.
9 Geo. III. c. 16.
Victoria, No. 3754, s. 275.

Actions on penal Statutes.
31 Eliz., c. 5, s. 5.
Victoria, No. 3782, s. 81.

(3.) All actions, suits, and other proceedings for any forfeiture upon any statute penal whereby the forfeiture or benefit is limited to any person who shall prosecute in that behalf, shall be commenced by such person within one year after the offence committed.

(4.) Any action, suit, or other proceeding brought after such times respectively shall be void and of no effect.

38. (1.) Subject to the preceding sections of this Act and as hereinafter provided, actions, suits, or other proceedings as herein set out shall and may be commenced within the time herein expressed after the cause of such actions, suits, or other proceedings respectively:—

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|--|---------------------------------|
| (a) (i) Actions for penalties, damages, or sums given by any enactment to the party grieved; | 3 and 4 Will. IV., c. 42, s. 3. |
| (ii) Actions for slander, when the words are actionable <i>per se</i> :
Two years. | 21 James I., c. 16, s. 3. |
| (b) Actions for trespass to the person, menace, assault, battery, wounding, or imprisonment:
Four years. | 21 James I., c. 16, s. 3. |
| (c) (i) Actions of debt upon any award where the submission is not by specialty; | 3 and 4 Will. IV., c. 42, s. 3. |
| (ii) Actions of account or for not accounting, and suits for such accounts, as concern the trade of merchandise between merchant and merchant, their factors and servants; | 19 and 20 Vict., c. 97, s. 9. |
| (iii) Actions of account other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants; | 21 James I., c. 16, s. 3. |
| (iv) Actions in the nature of actions for trespass <i>quare clausum fregit</i> , trespass to goods, detinue, or trover; | 21 James I., c. 16, s. 3. |
| (v) All other actions founded on any simple contract, including a contract implied in law; | <i>Ibid.</i> |
| (vi) All other actions founded on tort: and | <i>Ibid.</i> |
| (vii) All other actions in the nature of actions on the case:
Six years. | <i>Ibid.</i> |
| (d) Actions of debt for rent upon a covenant in an indenture of demise:
Twelve years. | |

Limitation of time for commencing other actions and suits.
Victoria, No. 3783, ss. 80, 82.

See 3 and 4 Will.
IV., c. 42, s. 3.

- (e) (i) Subject to sections four and thirty-two of this Act, and to paragraph (d) of this subsection, actions of covenant or of debt upon any bond or other speciality; and
- (ii) actions in the nature of actions of debt or *scire facias* upon any recognisance:

Twenty years.

Arrears of interest not recoverable after six years.

Victoria, No.
3783, s. 83.

Provided that, subject to the first proviso to section thirty-four, no arrears of interest in respect of any sum of money, whether payable under a covenant or otherwise, or any damages in respect of such arrears, shall be recovered by any action, suit, or other proceeding, but within six years next after the same respectively became due, or next after an acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person chargeable or his agent duly authorised.

19 and 20 Vict.
c. 97, s. 9.

Victoria, No.
3783, s. 82 (2).

(2.) In actions or suits falling within paragraphs (ii) and (iii) of subsection (1) (c) no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be free from the restriction imposed by such subsection 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 or suit.

Victoria, No.
3783, s. 82 (3).

(3.) In this section the word "actions" means such actions as are in the nature of actions at common law, but in references to this section contained in the succeeding sections of this Act, the word "action" shall be construed as including "actions" or "actions and suits" or "actions, suits, and other proceedings" where any of such meanings is necessary in order to give a complete reference to the matters set out in subsection (1) of this section.

Victoria, No.
3783, s. 80.

(4.) This section shall not apply to any action, suit, or other proceeding the time for commencing which is limited by the preceding sections of this Act.

Except absence beyond seas.
19 and 20 Vict.
c. 97, s. 10.

39. No person entitled to any action with respect to which the period of limitation within which the same may be brought, is fixed by section thirty-eight of this Act, shall be entitled to any time within which to commence such action beyond the period so fixed, by reason only of such person being beyond the seas at the time such cause of action accrued; or in the cases in which imprisonment was a disability by reason of such person being imprisoned at the time when the cause of action accrued.

40. If any person entitled to any such action as is referred to in subsection (1) of section thirty-eight was at the time of the cause of action accrued within the age of twenty-one years or insane, then such person may commence the same within such time as is before limited after being of full age or sane as if that was the time at which the cause of action accrued.

Persons under disability allowed time from removal of disability.

3 and 4 Wm.

IV., c. 42, s. 4.

21 James I., c.

16, s. 4.

Victoria, No.

3783, s. 84.

41. If any person against whom there is any such cause of action as is referred to in subsection (1) of section thirty-eight was at the time the cause of action accrued beyond the seas, the party entitled to such action may commence the same within such time as is before limited after the return of such person from beyond the seas as if that was the time at which the cause of action accrued.

Extension of time where person liable is beyond the seas.

4 and 5 Anne,

c. 3, s. 19.

Victoria, No.

3783, s. 85.

42. No part of the Commonwealth of Australia, or of any Territory of the Commonwealth, or Territory governed by the Commonwealth under a mandate, shall be deemed to be beyond the seas within the meaning of that expression in this Act.

Meaning of expression "beyond the seas."

of Victoria, No.

3783, s. 86.

43. When any such cause of action as is referred to in subsection (1) of section thirty-eight has accrued against two or more joint debtors, the person having such cause of action shall not be entitled to any additional time within which to sue one or more of such joint debtors who was or were not beyond the seas by reason only that some one or more of such joint debtors was or were at such time beyond the seas; and such person so entitled shall not be barred from commencing against one or more of such last-mentioned joint debtors after his or their return from beyond the seas by reason only that judgment has already been recovered against one or more of such first-mentioned joint debtors.

No extension of time against a joint debtor not beyond the seas.

19 and 20 Vict.,

c. 97, s. 11.

Victoria, No.

3783, s. 87.

44. (1.) Except as expressly provided in this Act, nothing in section thirty-eight contained shall take away or lessen the effect of any acknowledgment or promise, or of any acknowledgment by part payment or satisfaction on account of principal or interest due, and except as aforesaid any such acknowledgment or promise shall have the same effect as if this Act had not been passed.

Effect of acknowledgment, etc., preserved except in certain cases.

9 Geo. IV., c. 14.

Victoria, No.

3783, s. 88.

Indorsements of payments by creditor on bills of exchange not sufficient.

(2.) No indorsement or memorandum of any part payment or satisfaction written or made upon any bill of exchange, cheque, or promissory note by or on behalf of the person to whom such part payment or satisfaction is made, shall be deemed sufficient proof of such payment or satisfaction to take the case out of the operation of subsection (1) of section thirty-eight.

Acknowledgment not sufficient unless in writing.
9 Geo. IV., c. 14, s. 1.
19 and 20 Vict., c. 97, s. 13.

(3.) In actions in the nature of actions founded upon simple contract, no acknowledgment or promise by words shall be deemed sufficient evidence of any new or continuing contract whereby to take any case out of the operation of section thirty-eight, or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing signed by the party chargeable, or by his agent duly authorised; and where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of section thirty-eight so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person.

Effect of acknowledgment in actions of covenant, etc., under section thirty-eight.
3 and 4 Will. IV., c. 42, s. 5.

Victoria, No. 3783, s. 88 (4)

(4.) In actions of debt for rent upon an indenture of demise, in actions of covenant or debt upon any bond or other speciality, and in actions of debt or *scire facias* upon any recognisance, if any acknowledgment has been made either by some writing signed by the party chargeable or his agent duly authorised, or by part payment or satisfaction, the person entitled to such action may commence his action for the money remaining unpaid, and so acknowledged within the time prescribed by section thirty-eight after such acknowledgment, or in case the person entitled to such action at the time of such acknowledgment is under disability as aforesaid, or the party making such acknowledgment is then beyond the seas, then within the prescribed time after such disability has ceased or such party has returned from beyond the seas (as the case may be).

Part payment by one contractor not to prevent bar in favour of another.
19 and 20 Vict., c. 97, s. 14.
Victoria, No. 3783, s. 88 (5).

(5.) Where there are two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor, or administrator shall lose the benefit of section thirty-eight so as to be

chargeable in respect or by reason only of payment of any principal, interest, or other money by any other or others of them.

45. In actions against any two or more defendants, whether co-contractors or co-debtors or not, if it appears that the plaintiff, though barred as to one or more of such defendants is not barred as to any other or others of them, judgment may be given for the plaintiff as to the defendant or defendants against whom he is entitled and for the other defendant or defendants against the plaintiff.

Judgment may be recovered against some co-defendants.
9 Geo. IV., c. 14, s. 1.
Victoria, No. 3783, s. 89.

46. The provisions of this Act shall apply to any counter-claim or set-off alleged by the defendant in all cases, and to the like extent, and for the same purpose in, to, or for which they respectively would apply if the defendant had instituted an action against the plaintiff or plaintiffs in respect of the same matter.

Limitation to apply to counter-claim and set-off.
9 Geo. IV., c. 14, s. 4.
Victoria, No. 3783, s. 90.

47. (1.) In any action or other proceeding against a trustee or any person claiming through him, or in reference to any trust, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his own use, the following provisions shall apply:—

Trustees may plead Statute of Limitations in certain cases.
64 Vict., No. 17, s. 13.
51 and 52 Vict., c. 59, s. 8.
Victoria, No. 3792, s. 67.

(a) All rights and privileges conferred by this Act or any statute of limitations shall be enjoyed in the like manner and to the like extent as would have been the case if the trustee or person claiming through him had not been a trustee or person claiming through him.

(b) If the action or other proceeding is brought to recover money or other property and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him (otherwise than as a trustee or person claiming through a trustee) in an action of debt for money had and received; but so nevertheless that the statute or

bar by lapse of time shall run against a married woman entitled in possession to her separate use, whether with or without a restraint upon anticipation; but shall not begin to run against any beneficiary until the interest of such beneficiary is an interest in possession.

(2.) No beneficiary as against whom there would be a good defence by virtue of this section shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or proceeding and this section had been pleaded.

(3.) For the purposes of this section the expression "trustee" includes an executor or administrator, who for such purposes is included in the term trustee, and includes a trustee whose trust arises by construction or implication of law as well as an express trustee, and the provisions of this section relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

(4.) This section shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute.

48. Except as therein expressly provided, the preceding provisions of this Act do not bind or affect the Crown.

49. Nothing in this Act shall apply to any action, suit, or other proceeding the time for commencing which is limited by any enactment specially limiting the time for commencing any action, suit, or other proceeding thereunder.*

* See Crown Suits Act, 1898, s. 37; Municipal Corporations Act, 1906, s. 514; Road Districts Act, 1919-1935, s. 348; Main Roads Act, 1930, s. 29; Water Boards Act, 1904, s. 157; Metropolitan Water Supply, Sewerage, and Drainage Act, 1909, s. 162; Goldfields Water Supply Act, 1902, s. 120; Government Railways Act, 1904, s. 37; Government Tramways Act, 1912, s. 13; Public Works Act, 1902, s. 36; Land Drainage Act, 1925, s. 163; Fremantle Harbour Trust Act, 1902, s. 40; Albany Harbour Board Act, 1926, s. 37; Bunbury Harbour Board Act, 1909, s. 37; Health Act, 1911-1926, s. 316; Lunacy Act, 1903-1920, s. 75; Transfer of Land Act, 1893, s. 212; Employers' Liability Act, 1894, s. 10; Agricultural Bank Act, 1934, s. 74.

See also Mortgagees' Rights Restriction Act, 1931, s. 13. (Period of suspension of mortgagees' rights not to be taken into account in computing time.) 3 and 4 Will. IV., c. s. 2 (adopted by 6 Will. IV., No. 4), action by personal representative for injuries to estate of deceased person, or against personal representative for wrong done by deceased to another in respect of his property; 9 and 10 Vict., No. 92 (Lord Campbell's Act), adopted by 12 Vict., No. 21. By the Farmers' Debts Adjustment Act, 1930-34, Section 9, the period of a stay order is not taken into account in computing time.

Crown not affected, except as expressly provided.

Exception of cases provided for by other Acts.

Victoria, No. 3783, s. 80.

SCHEDULE.

Date.	Title.	Extent of Repeal.
3 and 4 Will. IV., c. 27 (adopted by 6 Will. IV., No. 4)	An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto	The whole.
3 and 4 Will. IV., c. 42 (adopted by 6 Will. IV., No. 4)	An Act for the further amendment of the Law and for the better advancement of Justice	Sections 3 to 5 inclusive.*
19 and 20 Vict., c. 97 (adopted by 31 Vict., No. 8)	The Mercantile Law Amendment Act, 1860	Sections 9 to 15, inclusive.
42 Vict., No. 6	... The Real Property Limitation Act., 1878	The whole.

*Sections 2 and 6 of 3 and 4 Will. IV., c. 42, are not repealed.

By Section 2 it is enacted as follows:—

And whereas there is no remedy provided by law for injuries to the real estate of any person deceased, committed in his lifetime, nor for certain wrongs done by a person deceased in his lifetime to another in respect of his property, real or personal; for remedy thereof be it enacted, that an action of trespass or trespass on the case, as the case may be, may be maintained by the executors or administrators of any person deceased for any injury to the real estate of such person committed in his lifetime, for which an action might have been maintained by such person, so as such injury shall have been committed within six calendar months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person, and the damages when recovered shall be part of the personal estate of such person; and further, that an action of trespass, or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased for any wrong committed by him in his lifetime to another in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person.

By Section 6 it is enacted as follows:—

And nevertheless be it enacted, that 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 bill, that in all such cases the party plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, but not after.

With reference to this section and its application in the case of the death of a plaintiff or defendant, see Halsbury, Volume 19, paragraphs 131 and 396, and Darby and Bosanquet's Statutes of Limitations, 2nd Ed., page 574. See also R.S.C. Order XVII.