

WESTERN AUSTRALIA

ANNO QUADRAGESIMO SECUNDO

VICTORIÆ REGINÆ

No. 6

An Act for the further limitations of Actions and Suits relating to Real Property.

[Assented to 3rd July, 1878.]

WHEREAS it is expedient further to limit the times within which Actions or Suits may be brought for the recovery of Land or Rent, and of charges thereon: Be it enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, as follows:—

Imperial Acts, 37 & 38 Vic., c. 57; 3 & 4 W. 4, c. 27; 7 W. 4; 1 Vic., c. 28

1. After the commencement of this Act, no person shall make an entry or distress, or bring an action or suit, 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 or suit, 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 or suit, shall have first accrued to the person making or bringing the same.

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

2. A right to make an entry or distress, or to bring an action or suit, 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

Provision for case of future estates

Real Property—Limitation of Actions and Suits

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

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 the receipt of the profits of such land, or in receipt of such rent: but 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 or suit 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 or suit, 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; and if the right of any such person to make such entry or distress, or to bring any such action or suit, 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 or suit, 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 or suit, to recover such land or rent.

In cases of infancy, coverture, or lunacy at the time when the right of action accrues then six years to be allowed from the termination of the disability or previous death

3. If at the time at which the right of any person to make an entry or distress, or to bring an action or suit, to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned (that is to say) infancy, coverture, 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 or suit 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).

No time to be allowed for absence beyond seas

4. The time within which any such entry may be made, or any such action or suit may be brought as aforesaid, shall not in any case after the commencement of this Act be extended or enlarged by reason of the absence beyond 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 suit, or of any person through whom he claims.

Thirty years utmost allowance for disabilities

5. No entry, distress, action, or suit 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 or suit 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

Real Property—Limitation of Actions and Suits

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.

6. 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 whosoever (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 or 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.

In case of possession under an assurance by a tenant in tail which shall not bar the remainders they shall be barred at the end of twelve years after that period, at which the assurance if then executed would have barred them

7. 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; and 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 mortgagor 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; but 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; and 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,

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

Real Property—Limitation of Actions and Suits

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.

Money charged upon land and legacies to be deemed satisfied at the end of twelve years if no interest paid nor acknowledgment given in writing in the meantime

8. 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 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 given.

Act to be read with 3 & 4 Wm. 4, c. 27 (Ordinance 6 Wm. 4, No. 4), of which certain parts are repealed and other parts to be read in reference to alteration by this Act

9. From and after the commencement of this Act, all the provisions of the Act of the Imperial Parliament, passed in the session of the third and fourth years of the reign of his late Majesty King William the Fourth, chapter twenty-seven (adopted by the Ordinance 6 Wm. 4, No. 4), except those contained in the several sections thereof next 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 were substituted in such Act for the provisions contained in the sections thereof numbered two, five, sixteen, seventeen, twenty-three, twenty-eight, and forty, respectively (which several sections, from and after the commencement of this Act, shall be repealed), and as if the term of six years had been mentioned, instead of the term of ten years, in the section of the said Act numbered eighteen, and the period of twelve years had been mentioned in the said section eighteen instead of the period of twenty years.

Mortgages within the definition in 3 & 4 Wm. 4, c. 27, s. 1, may bring actions to recover land within twelve years after last payment of principal or interest

10. 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 the first section of the said Act (3 & 4 Wm. 4, cap. 27) to make an entry or bring an action at law or suit in equity to recover such land at any time within twelve years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twelve years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued, anything in the said Act notwithstanding.

7 Wm. 4 & 1 Vic., c. 28

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

11. After the commencement of this Act 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 pay-

Real Property—Limitation of Actions and Suits

able, 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.

12. This Act may be cited as the 'Real Property Limitation Act, 1878.'

Short title

13. This Act shall commence and come into operation on the first day of September, 1878.

Commencement
of Act

H. ST. GEORGE ORD,
GOVERNOR.
