
LIMITATION ACT, 1935-1954.

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SCHEDULE.

Repeals.

WESTERN AUSTRALIA.

LIMITATION.

26° Geo. V., No. XXXV.

No. 35 of 1935¹.

(Affected by Act No. 113 of 1965.)

[As amended by Act:

No. 73 of 1954², assented to 14th January, 1955,
and reprinted pursuant to the Amendments Incorporation Act,
1938.]

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

1. This Act may be cited as the *Limitation Act*, 1935-1954, and shall come into force on a day to be fixed by proclamation.

Short title.
Amended by
No. 73 of
1954, s. 1.

2. The Acts mentioned in the First Schedule to this Act, to the extent thereby expressed to be repealed, are hereby repealed.

Repeal.
Amended by
No. 73 of
1954, s. 3.

3. In this Act unless inconsistent with the context or subject matter—

Interpreta-
tion.

“Action” means a civil proceeding commenced, in the Supreme Court by writ or in such

¹ Came into operation 14th April, 1936; see G.G. 9/4/36, p. 527.

² Came into operation 1st March, 1955; see G.G. 18/2/55, p. 343.

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.

3 & 4 Will.
IV., c. 27,
s. 1.

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

Victoria No.
3754, s. 274.

“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.

“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.

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.

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.

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.

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:—

(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.

In the case of an estate in possession.

On dis-
possession.

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

On abate-
ment or
death.

(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.

On aliena-
tion.

(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

In case of
future
estates.

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.

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.

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.

Provision for case of future estates.

42 Vict., No. 6, s. 2. 37 and 38 Vict., c. 57 (Impi.), s. 2.

Victoria, No. 3754, s. 279.

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:

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.

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.

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.

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.

Victoria, No. 3754, s. 281.

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.

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).

Where rent amounting to \$2 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.

Amended by Act No. 113 of 1965, s. 8.

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 two dollars 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.

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 acknowledgement 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 acknowledgement has been given shall be deemed, accordingly to the meaning of this Act, to have been the possession or receipt of or by the person to whom

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 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.

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.

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 hereinafter 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).

No time to be allowed for absence beyond seas.

42 Vict., No. 6, s. 4.

37 and 38 Vict., c. 57 (Impl.), s. 4.

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 seas¹ 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.

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.

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

¹ See Section 42.

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.

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. 5, 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.

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.

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.

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.

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 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.

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.

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.

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.

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.

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.

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

42 Vict. No. 6, s. 11.

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

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

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.

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.

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.

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.

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.

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 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:

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.

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.

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.

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.

42 Vict., No. 6, s. 8.

37 and 38 Vict., c. 57 (Impl.), s. 8.

Victoria, No. 3754, s. 304.

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, 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.

(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 rent charge.

Claims to estate of intestates.

Cf. 23 & 24 Vict., c. 38, s. 13.

(Adopted by 31 Vict., No. 8.)

P. I. Act, 1928, s. 304 (Victoria).

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.

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. 305.

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

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.

shall have first accrued, anything herein notwithstanding.

No title by
adverse
possession
against
Crown.

9 Geo. III.,
c. 16.

Victoria, No.
3754, s. 275.

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.

Actions on
penal
Statutes.

31 Eliz.,
c. 5, s. 5.

Victoria, No.
3783, s. 81.

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.

(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.

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

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:—

- (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 *per se*: 21 James I., c. 16, s. 3.

Two years.

- (b) Actions for trespass to the person, menace, assault, battery, wounding, or imprisonment: 21 James I., c. 16, s. 3.

Four years.

- (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 *quare clausum fregit*, 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; *Ibid.*
- (vi) All other actions founded on tort; and *Ibid.*
- (vii) All other actions in the nature of actions on the case: *Ibid.*

Six years.

- (d) Actions of debt for rent upon a covenant in an indenture of demise:

Twelve years.

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 specialty; 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.
3733, s. 33.

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 reference 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.

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.

Except absence beyond seas.

19 and 20 Vict., c. 97, s. 10.

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".

cf. 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

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.

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.

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

9 Geo. IV., c. 14.

Victoria, No. 3723, s. 38.

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.

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.

(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).

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).

(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.

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).

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

Limitation to apply to counter-claim and set-off.

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

Victoria, No. 3783, s. 90.

apply if the defendant had instituted an action against the plaintiff or plaintiffs in respect of the same matter.

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.

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:—

- (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.

Actions Against Public Authorities.

47A. (1) Notwithstanding the foregoing provisions of this Act but subject to the provisions of subsections (2) and (3) of this section, no action shall be brought against any person (excluding the Crown) for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority, or in respect of any neglect or default in the execution of the Act, duty or authority, unless—

Protection of persons acting in execution of statutory or other public duty.

Cf. U.K. Acts 56 and 57 Vict. c. 81; 2 and 3 Geo. 6 c. 21, s. 21; N.Z. No. 65 of 1950, s. 23.

Added by No. 73 of 1954, s. 4.

- (a) the prospective plaintiff gives to the prospective defendant, as soon as practicable after the cause of action accrues, notice in writing giving reasonable information of the circumstances upon which the proposed action will be based and his name and address and that of his solicitor or agent, if any; and
- (b) the action is commenced before the expiration of one year from the date on which the cause of action accrued,

and for the purposes of this section, where the act, neglect, or default is a continuing one, no cause of

action in respect of the act, neglect, or default accrues until the act, neglect or default ceases but the notice required by paragraph (a) of this subsection may be given and an action may thereafter be brought while the act, neglect or default continues.

(2) A person may consent in writing to the bringing of an action against him at any time before the expiration of six years from the date on which the cause of action accrued whether or not the notice as required by subsection (1) of this section has been given.

(3) (a) Notwithstanding the foregoing provisions of this section application may be made to the Court which would but for the provisions of this section have jurisdiction to hear the action, for leave to bring an action at any time before the expiration of six years from the date on which the cause of action accrued, whether or not notice as required by subsection (1) of this section has been given to the prospective defendant.

(b) Where the Court considers that the failure to give the required notice or the delay in bringing the action as the case may be, was occasioned by mistake or by any other reasonable cause or that the prospective defendant is not materially prejudiced in his defence or otherwise by the failure or delay, the Court may if it thinks it is just to do so, grant leave to bring the action, subject to such conditions as it thinks it is just to impose.

(c) Before an application is made under the provisions of paragraph (a) of this subsection, the party intending to make the application shall give notice in writing of the proposed application and the grounds on which it is to be made to the prospective defendant, at least fourteen days before the application is made.

Interpre-
tation.

(4) (a) In this section "person" includes a body corporate, Crown agency or instrumentality of the Crown created by an Act or an official or person

nominated under an Act as a defendant on behalf of the Crown.

(b) This section is to be construed so as not to affect the provisions of the Crown Suits Act, 1947.

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

Crown not affected, except as expressly provided.

48A. (1) The enactments specified in the Second Schedule to this Act are amended in the manner indicated in the Schedule and an enactment as so amended may be cited showing the figure representing the year of its passing and the figures, "-1954".

Second Schedule repeal.

Added by No. 73 of 1954, s. 5.

(2) The provisions of any Act which enact that in an action to which section forty-seven A of this Act applies,

(a) the action is to be commenced within a particular time; or

(b) notice of action is to be given within a particular time or otherwise,

are repealed.

49. Except as provided in section forty-seven A of this Act, 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.

Exception of cases provided for by other Acts. Victoria, No. 3783, s. 80. Amended by No. 73 of 1954, s. 6.

FIRST SCHEDULE.

Amended by No. 73 of 1954, s. 7.

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.

SECOND SCHEDULE.

S.48A.
Added by
No. 73 of
1954, s. 8.

Title of Act.	Number of Section or Schedule affected.	Nature of Amendment.
Abattoirs Act, 1909-1952.	Section 26.	By repealing the section.
Agriculture Protection Board Act, 1950-1953.	Section 24.	By repealing subsections (1) and (2) of the section.
Albany Harbour Board Act, 1926.	Section 37.	By repealing the section.
Bunbury Harbour Board Act, 1909.	Section 37.	By repealing the section.
Child Welfare Act, 1947-1952.	Section 147.	By repealing the section.
Country Areas Water Supply Act, 1947-1951.	Section 117.	By repealing the section.
Country Towns Sewerage Act, 1948-1951.	Section 115.	By repealing the section.
Dairy Cattle Improvement Act, 1922-1932.	Section 14.	By repealing subsection (2) of the section.
Eastern Goldfields Transport Board Act, 1946-1951.	Section 46.	By repealing the section.
Fauna Protection Act, 1950.	Section 24.	By repealing subsection (2) of the section.
Fremantle Harbour Trust Act, 1902-1952.	Section 40.	By repealing the section.
Government Railways Act, 1904-1954.	Section 37.	By repealing subsections (1) and (2) of the section.
Health Act, 1911-1952.	Section 364.	By repealing the section.
Interpretation Act, 1918-1948. (Reprinted Vol. 6 Reprinted Acts of the Parliament of Western Australia.)	The Second Schedule.	By substituting for the words "notice in writing of any action about to be commenced for anything done under this Act shall be given to the defendant one month at least before the commencement of the action, and" in lines two to five inclusive of Section G the words "where an action is commenced against any one of such persons for anything done under this Act," By deleting the words "and unless such action is commenced within three months after the cause of action or of complaint shall have arisen" in lines eleven to thirteen inclusive of Section H.
Justices Act, 1902-1948.	Sections 227, 228, 229 and 231.	By repealing the sections.
Land Drainage Act, 1925-1941.	Section 163.	By repealing the section.
Licensing Act, 1911-1953.	Section 247.	By repealing the section.
Local Court Act, 1904-1953.	Section 27.	By repealing the section.
Lunacy Act, 1903-1950.	Section 178.	By repealing subsections (2), (3) and (4) of the section.
Main Roads Act, 1930-1952.	Section 30.	By repealing the section.
McNess Housing Trust Act, 1930-1948.	Section 26.	By repealing subsections (2), (3), (4), (5) and (6) of the section.
Metropolitan Water Supply, Sewerage and Drainage Act, 1909-1951.	Section 162.	By repealing the section.
Municipal Corporations Act, 1906-1953.	Sections 518 and 519.	By repealing the sections.
Noxious Weeds Act, 1950-1953.	Section 42.	By repealing the section.
Potato Growing Industry Trust Fund Act, 1947-1951.	Section 28.	By repealing subsection (2) of the section.

SECOND SCHEDULE—*continued.*

Title of Act.	Number of Section or Schedule affected.	Nature of Amendment.
Prisons Act, 1903-1918.	Section 76.	By repealing the section.
Rights in Water and Irrigation Act, 1914-1951.	Section 76.	By repealing the section.
Road Districts Act, 1919-1951.	Section 349.	By repealing the section.
Rural and Industries Bank Act, 1944-1953.	Section 107.	By repealing subsection (2) of the section.
State Electricity Commission Act, 1945-1952.	Section 61.	By repealing the section.
State Housing Act, 1946-1954.	Section 77.	By deleting all words after the word "thereof" in line nine to the end of the section.
Supreme Court Act, 1935-1950.	Section 161.	By repealing subsection (2) of the section.
The Criminal Code.	Section 739.	By substituting for the words "An Action or" in line one the word "A". By repealing all words after the word "otherwise" in line five.
Town Planning and Development Act, 1928-1953.	Section 5A.	By repealing subsection (2) of the section.
Transfer of Land Act, 1893-1950.	Section 211.	By deleting the words "against the Registrar or" in lines three and four of the section.
Water Boards Act, 1904-1953.	Section 157.	By repealing the section.
Western Australian Government Tramways and Ferries Act, 1948-1953.	Section 27.	By repealing the section.
Western Australian Marine Act, 1948-1953.	Section 210.	By repealing subsections (2) and (3) of the section.

