

Western Australia

Civil Procedure Act 1833 (Imp)

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Civil Procedure Act 1833 (Imp)

An Act for further Amendment of the Law, and the better Advancement of Justice. ³

[1. Deleted in WA by Act No. 36 of 1935 s. 8.] ⁴

- 2. Executors may bring actions for injuries to the real estates of the deceased; and actions may be brought against executors for an injury to property, real or personal, by their testator**

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.

[3-5. Deleted in WA by Act No. 35 of 1935 s. 2.]⁵

6. The limitation after judgment or outlawry reversed

And nevertheless be it enacted, 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, or if in any of the said actions the defendant shall be outlawed, and shall after reverse the outlawry, 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, or outlawry reversed, and not after.

7. No part of the United Kingdom, etc., to be deemed beyond the seas within the meaning of this Act

And be it further enacted, that no part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any islands adjacent to any of them, being part of the dominions of His Majesty, shall be deemed to be beyond the seas within the meaning of this Act, or of the Act passed in the twenty-first year of the reign of King James the First, intituled *An Act for Limitation of Actions, and for avoiding of Suits in Law*.

[8-30. Deleted in WA by Act No. 36 of 1935 s. 8.]⁴

31. Executors suing in right of the testator to pay costs

And be it further enacted, that in every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the court in which such action is brought, or a judge of any of the said superior courts, shall otherwise order, be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against the plaintiff, and in all other cases in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself; and the defendant shall have judgment for such costs, and they shall be recovered in like manner.

[32-36. Deleted in WA by Act No. 36 of 1935 s. 8.]⁴

37. Executors of lessor may distrain for arrears in his lifetime

And be it further enacted, that it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.⁶

38. Arrears may be distrained for within 6 months after determination of term

And be it further enacted, that such arrearages may be distrained for after the end or determination of such term or lease, at will, in the same manner as if such term or lease had not been ended or determined;

Provided that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due:

Provided also, that all and every the powers and provisions in the several statutes made relating to distresses for rent shall be applicable to the distresses so made as aforesaid.⁷

s. 38

*[39-41. Deleted in WA by 59 Vict. No. 13 s. 27.]*⁸

*[42-45. Deleted in WA by Act No. 36 of 1935 s. 8.]*⁹

Notes

- ¹ This is a compilation of the *Civil Procedure Act 1833 (Imp)*. The following table contains information about that Act and any previous reprints.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Civil Procedure Act 1833 (Imp)</i> ²	1833 (3 and 4 Will. IV c. 42)	14 Aug 1833	11 Apr 1836 (adopted by <i>Imperial Acts Adopting Act 1836</i>)
<i>Arbitration Act 1895</i> s. 27	1895 (59 Vict. No. 13)	11 Sep 1895	11 Sep 1895
<i>Limitation Act 1935</i> s. 2	35 of 1935	7 Jan 1936	14 Apr 1936 (see s. 1 and <i>Gazette</i> 9 Apr 1936 p. 527)
<i>Supreme Court act 1935</i> s. 8	36 of 1935	3 Mar 1936	1 May 1936 (see s. 1 and <i>Gazette</i> 9 Apr 1936 p. 527) Reserved for Royal Assent 7 Jan 1936. Assented: 3 Mar 1936 (see <i>Gazette</i> 3 Apr 1936 p. 484)
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- ² Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 13). (6 Will. IV No. 4) [Assent 11 April 1836]
- ³ The short title *Civil Procedure Act 1833* was given to this Imperial Act by the *Short Titles Act 1896* (UK).
For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 9, p 675.
- ⁴ I.e. s 1 repealed in so far as it was part of the law of WA by the *Supreme Court Act 1935*, s 8 [Commenced 1 May 1936].
- ⁵ I.e. ss 3-5 repealed in so far as they were part of the law of WA by the *Limitation Act 1935*, s 2 [Commenced 14 April 1936].
- ⁶ NB: *Distress for Rent Abolition Act 1936* (WA).
- ⁷ NB: *Distress for Rent Abolition Act 1936* (WA).
- ⁸ I.e. ss 39-41 repealed in so far as they were part of the law of WA by the *Arbitration Act 1895*, s 27 [Assent 11 September 1895]
- ⁹ I.e. ss 42-45 repealed in so far as they were part of the law of WA by the *Supreme Court Act 1935*, s 8 [Commenced 1 May 1936].

