

Western Australia

Prescription Act 1832 (Imp)

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Prescription Act 1832 (Imp)

An Act for shortening the Time of Prescription in certain Cases. ³

Preamble

Whereas the expression 'Time immemorial, or time whereof the memory of man runneth not to the contrary,' is now by the law of England in many cases considered to include and denote the whole period of time from the reign of King Richard the First, whereby the title to matters that have been long enjoyed is sometimes defeated by showing the commencement of such enjoyment, which is in many cases productive of inconvenience and injustice;

for remedy thereof be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

[1.] Claims to right of common and other profits *a prendre*, not to be defeated after 30 years' enjoyment by showing the commencement; after 60 years' enjoyment the right to be absolute, unless had by consent or agreement

[T]hat no claim which may be lawfully made at the common law, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of our sovereign lord the King, his heirs or successors, or any land being parcel of the Duchy of Lancaster or of the Duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be

defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

2. In claims of right of way or other easement the periods to be 20 years and 40 years

And be it further enacted, that no claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said lord the King, his heirs or successors, or being parcel of the Duchy of Lancaster, or of the Duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

[3. Deleted in WA by 1 & 2 Edw VII No. 29 s. 5.]⁴

4. Before-mentioned periods to be deemed those next before suits for claims to which such periods relate

And be it further enacted, that each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorising the same to be made.

5. In actions on the case the claimant may allege his right generally, as at present: In pleas to trespass and other pleadings, where party used to allege his claim from time immemorial, the period mentioned in this Act may be alleged; and exceptions or other matters to be replied specially

And be it further enacted, that in all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this Act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation; and that in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done; and if the other party shall intend to rely on any proviso, exception, incapacity,

disability, contract, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

6. Restricting the presumption to be allowed in support of claims herein provided for

And be it further enacted, that in the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim.

7. Proviso for infants, etc.

Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, *non compos mentis*, feme covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

8. What time to be excluded in computing the term of 40 years appointed by this Act

Provided always, and be it further enacted, that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three

years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

9. Not to extend to Scotland or Ireland

And be it further enacted, that this Act shall not extend to Scotland or Ireland.

10. Commencement of Act

And be it further enacted, that this Act shall commence and take effect on the first day of Michaelmas term now next ensuing.

11. Act may be amended

And be it further enacted, that this Act may be amended, altered, or repealed during this present session of Parliament.

Notes

- ¹ This is a compilation of the *Prescription Act 1832 (Imp)*. The following table contains information about that Act and any previous reprints.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Prescription Act 1832 (Imp)</i> ²	1832 (2 and 3 Will. IV c. 71)	1 Aug 1832	11 Apr 1836 (adopted by <i>Imperial Acts Adopting Act 1836</i>)
<i>Light and Air Act 1902</i> s. 5	1902 (1 and 2 Edw. VII No. 29)	19 Feb 1902	19 Feb 1902

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- ² Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 9). (6 Will. IV No. 4) [Assent 11 April 1836]
- ³ The short title *Prescription Act 1832* 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*, Fourth Edition, Vol 13, p 701.
- ⁴ I.e. section 3 repealed in so far as it was part of the law of WA by the *Light and Air Act 1902*, s. 5 [Assent 19 February 1902].