

1980

c 240 Limitations Act

Ontario

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CHAPTER 240

Limitations Act

1. In this Act,

Interpre-
tation

- (a) "action" includes an information on behalf of the Crown and any civil proceeding;
- (b) "assurance" means a deed or instrument, other than a will, by which land may be conveyed or transferred;
- (c) "land" includes messuages and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency;
- (d) "rent" includes all annuities and periodical sums of money charged upon or payable out of land. R.S.O. 1970, c. 246, s. 1.

PART I

REAL PROPERTY

2. Nothing in this Act interferes with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act. R.S.O. 1970, c. 246, s. 2.

Refusing
relief
because of
acquiescence
or otherwise

3.—(1) No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty.

Limitation
where the
Crown
interested

Application
of certain
sections to
Crown

(2) Subsections 5 (1), (2), (3), (5), (6), (7), (9), (10), (11) and (12) and sections 6, 8 to 11 and 13 to 15 apply to rights of entry, distress or action asserted by or on behalf of Her Majesty. R.S.O. 1970, c. 246, s. 3.

Limitation
where the
subject
interested

4. No person shall make an entry or distress, or bring an action to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom he claims, or if the right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing it. R.S.O. 1970, c. 246, s. 4.

When right
accrues on
dispossession

5.—(1) Where 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 the land, or in receipt of the rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession, or at the last time at which any such profits or rent were so received.

On death

(2) Where the person claiming such land or rent claims the estate or interest of a deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, the right shall be deemed to have first accrued at the time of such death.

On alienation

(3) Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by an assurance 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 receipt of the rent, and no person entitled under the assurance has been in possession or receipt, the right shall be deemed to have first accrued at the time at which the person so claiming or the person, through whom he claims, became entitled to such possession or receipt by virtue of the assurance.

As to land
not cultivated
or improved

(4) In the case of land granted by the Crown of which the grantee, his heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon or cultivating some part thereof, and of which some other

person not claiming to hold under such grantee has been in possession, such possession having been taken, while the land was in a state of nature, then unless it is shown that the grantee or person claiming under him while entitled to the land had knowledge of it being in the actual possession of such other person, the lapse of ten years does not bar the right of the grantee or any person claiming under him to bring an action for the recovery of the land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained, but no action shall be brought or entry made after twenty years from the time such possession was taken.

(5) Where a 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 \$4 or upwards is reserved, and the rent reserved by the lease has been received by some person wrongfully claiming to be entitled to the land or rent in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to the land or rent, subject to the lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

Where rent reserved by lease in writing has been wrongfully received

(6) Where a 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 the 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 was received, whichever last happened.

Where tenancy from year to year

(7) Where a 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 to bring an action to recover the land or rent, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after the commencement of the tenancy, at which time the tenancy shall be deemed to have determined.

In the case of a tenant at will

Case of mortgagor or *cestui que trust*—

(8) No mortgagor or *cestui que trust* shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of subsection (7).

In case of forfeiture or breach of condition

(9) Where 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, such right shall be deemed to have first accrued when the forfeiture was incurred or the condition broken.

Where advantage of forfeiture is not taken by remainder man

(10) Where 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 to bring an action to recover the land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when it became an estate or interest in possession as if no such forfeiture or breach of condition had happened.

In case of future estates

(11) Where the estate or interest claimed is 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 the land, or the receipt of the rent, in respect of such estate or interest, 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.

Further provision for cases of future estates

(12) 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 it became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held or the profits thereof or the rent have been received, notwithstanding that the person claiming the land or rent, or some person through whom he claims, has, at any time before to the creation of the estate or estates that have determined, been in the possession or receipt of the profits of the land, or in receipt of the rent. R.S.O. 1970, c. 246, s. 5.

Limitation in case of future estates when person entitled to the particular estate out of possession, etc.

6.—(1) If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of the land, or in receipt of the 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 ten years

next after the time when the right to make an entry or distress, or to bring an action for the recovery of the land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer.

(2) If the right of any such person to make such entry or distress, or to bring any such action, has been barred, 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 the land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any entry or distress, or bring any action, to recover the land or rent.

The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate

(3) Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period that is applicable in such case, and such person has, at any time during such 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 by any person claiming through him, to recover the land or rent in respect of such other estate, interest, right or possibility, unless in the meantime the land or rent has been recovered by some person entitled to an estate, interest or right that has been limited or taken effect after or in defeasance of such estate or interest in possession. R.S.O. 1970, c. 246, s. 6.

Bar of right to future estates acquired after bar of particular estate

7. For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose property he has been 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. R.S.O. 1970, c. 246, s. 7.

When right of action devolves to administrator

8. 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. R.S.O. 1970, c. 246, s. 8.

Effect of mere entry

9. No continual or other claim upon or near any land preserves any right of making an entry or distress or of bringing an action. R.S.O. 1970, c. 246, s. 9.

Continual claim

Descent
cast, discon-
tinuance
warranty,
etc.

10. No descent cast, discontinuance or warranty, that has happened or been made since the 1st day of July, 1834, or that may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. R.S.O. 1970, c. 246, s. 10.

Possession of
one coparcener,
etc.

11. Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common has or have been in possession or receipt of the entirety, or more than his or their undivided share or shares of the land, or of the profits thereof, or of the 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 the last-mentioned person or persons or any of them. R.S.O. 1970, c. 246, s. 11.

Possession of
relations

12. Where a relation of the persons entitled as heirs to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. R.S.O. 1970, c. 246, s. 12.

Effect of
acknowledgment in
writing

13. Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to him or to his agent, signed by the person in possession or in receipt of the profits of the land, or in the receipt of the rent, such possession or receipt of or by the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgment was given at the time of giving it, and the right of the last-mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover the land or rent, shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given. R.S.O. 1970, c. 246, s. 13.

Effect of
receipt of
rent

14. The receipt of the rent payable by a 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. R.S.O. 1970, c. 246, s. 14.

Extinguishment of
right at the
end of the
period of
limitation

15. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any action, the right and title of such person to the land or

rent, for the recovery whereof such entry, distress or action, respectively, might have been made or brought within such period, is extinguished. R.S.O. 1970, c. 246, s. 15.

16. Nothing in sections 1 to 15 applies to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any road allowance heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance or highway is vested in the Crown or in a municipal corporation, commission or other public body, but nothing in this section shall be deemed to affect or prejudice any right, title or interest acquired by any person before the 13th day of June, 1922. R.S.O. 1970, c. 246, s. 16.

Waste or vacant land of Crown excepted

17.—(1) 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, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action but within six years next after the same respectively has become due, or next after any acknowledgment in writing of the same has been given to the person entitled thereto or his agent, signed by the person by whom the same was payable or his agent.

Maximum of arrears of rent or interest recoverable

(2) This section does not apply to an action for redemption brought by a mortgagor or a person claiming under him. R.S.O. 1970, c. 246, s. 17.

Exception as to action for redemption

18. Where a prior mortgagee or other encumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action is brought by a person entitled to a subsequent mortgage or other encumbrance on the same land, the person entitled to the subsequent mortgage or encumbrance may recover in the action the arrears of interest that have become due during the whole time that the prior mortgagee or encumbrancer was in such possession or receipt, although the time may have exceeded the term of six years. R.S.O. 1970, c. 246, s. 18.

Exception in favour of subsequent mortgagee when a prior mortgagee has been in possession

19. Where a mortgagee has 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 to redeem the mortgage but within ten 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, has been given to the mortgagor or to some person claiming his estate, or to

Limitation where a mortgagee in possession

the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him, and in such case no such action shall be brought but within ten years next after the time at which the acknowledgment, or the last of the acknowledgments if more than one, was given. R.S.O. 1970, c. 246, s. 19.

Acknowledgment to one of several mortgagors

20. Where there are more mortgagors than one or more persons than one claiming through the mortgagor or mortgagors, the acknowledgment, if given to any of such mortgagors or persons, or his or their agent, is as effectual as if it had been given to all such mortgagors or persons. R.S.O. 1970, c. 246, s. 20.

Acknowledgment to one of several mortgagees

21. Where there are more mortgagees than one or more persons than one claiming the estate or interest of the mortgagee or mortgagees, the acknowledgment, signed by one or more of such mortgagees or persons, is effectual only as against the person or persons so signing, 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 does 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 as have given the acknowledgment are 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 are entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money that bears the same proportion to the whole of the mortgage money as the value of the divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage. R.S.O. 1970, c. 246, s. 21.

Limitation where mortgage in arrear

22. Any person entitled to or claiming under a mortgage of land may make an entry or bring an action to recover the land at any time within ten years next after the last payment of any part of the principal money or interest secured by the mortgage, although more than ten years have elapsed since the time at which the right to make such entry or bring such action first accrued. R.S.O. 1970, c. 246, s. 22.

Limitation where money charged upon land and legacies

23.—(1) No action shall be brought to recover out of any land or rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of the land or rent, or to recover any legacy, whether it is or is not charged upon land, but within ten years next after a present right

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

(2) Notwithstanding subsection (1), a lien or charge created by the placing of an execution or other process against land in the hands of the sheriff or other officer to whom it is directed, remains in force so long as the execution or other process remains in the hands of the sheriff or officer for execution and is kept alive by renewal or otherwise. R.S.O. 1970, c. 246, s. 23. Execution against land

24. No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent 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. R.S.O. 1970, c. 246, s. 24. Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same

25. Subject to section 26, no action of dower shall be brought but within ten years from the death of the husband of the doweress, notwithstanding any disability of the doweress or of any person claiming under her. R.S.O. 1970, c. 246, s. 25. Limitation of action of dower

26. Where a doweress has, after the death of her husband, actual possession of the land of which she is dowable, either alone or with an heir or devisee of, or a person claiming by devolution from her husband, the period of ten years within which her action of dower is to be brought shall be computed from the time when such possession of the doweress ceased. R.S.O. 1970, c. 246, s. 26. Time from which right to bring action of dower to be computed

27. No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action for a longer period than six years next before the commencement of such action. R.S.O. 1970, c. 246, s. 27. Maximum of arrears of dower recoverable

28. In every case of a concealed fraud, the right of a person to bring an action for the recovery of any land or rent of which he or any person through whom he claims may have Cases where fraud remains concealed

been deprived by the fraud shall be deemed to have first accrued at and not before the time at which the fraud was or with reasonable diligence might have been first known or discovered. R.S.O. 1970, c. 246, s. 28.

Case of *bona fide* purchaser for value without notice

29. Nothing in section 28 enables any owner of land or rent to bring an action for the recovery of the land or rent, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of the fraud, and who, at the time that he made the purchase did not know, and had no reason to believe, that any such fraud had been committed. R.S.O. 1970, c. 246, s. 29.

Limitation in case of profits

30. No claim that may be made lawfully at the common law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or of any person, except such matters or things as are hereinafter specially provided for, and except rent and services, where the profit or benefit has been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, shall be defeated or destroyed by showing only that the profit or benefit was first taken or enjoyed at any time prior to the period of thirty years, but nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and when the profit or benefit has been so taken and enjoyed for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was taken and enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1970, c. 246, s. 30.

Right of way easement, etc.

31. No claim that may be made lawfully at the common law, by custom, prescription or grant, to any way or other easement, or to any water course, or the use of any water to be enjoyed, or derived upon, over or from any land or water of the Crown or being the property of any person, when the way or other matter as herein last before-mentioned has 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 the way or other matter was first enjoyed at any time prior to the period of twenty years, but, nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and where the way or other matter as herein last before-mentioned has been so enjoyed for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1970, c. 246, s. 31.

32. Each of the respective periods of years mentioned in sections 30 and 31 shall be deemed and taken to be the period next before some action wherein the claim or matter to which such period relates was or is brought into question, and no act or other matter shall be deemed an interruption within the meaning of those sections, unless the same has been submitted to or acquiesced in for one year after the person interrupted has had notice thereof, and of the person making or authorizing the same to be made. R.S.O. 1970, c. 246, s. 32.

How period to be calculated, and what acts deemed an interruption

33. No person shall acquire a right by prescription to the access and use of light or to the access and use of air to or for any dwelling-house, work-shop or other building, but this section does not apply to any such right acquired by twenty years use before the 5th day of March, 1880. R.S.O. 1970, c. 246, s. 33.

Right to access and use of light by prescription abolished

34. In the cases mentioned in and provided for by this Act, of claims to ways, water courses or other easements, 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 is applicable to the case and to the nature of the claim. R.S.O. 1970, c. 246, s. 34.

Necessity for strict proof

35. No easement in respect of wires or cables attached to property or buildings or passing through or carried over such property or buildings shall be deemed to have been acquired or shall hereafter be acquired by prescription or otherwise than by grant from the owner of the property or buildings. R.S.O. 1970, c. 246, s. 35.

Easements not acquired for carrying wires and cables

36. If at the time at which the right of a person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is under the disability of minority, mental deficiency, mental incompetency or unsoundness of mind, such person, or the person claiming through him, notwithstanding that the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action, to recover the land or rent at any time within five years next after the time at which the person to whom the right first accrued ceased to be under any such disability, or died, whichever of those two events first happened. R.S.O. 1970, c. 246, s. 36.

Persons under disability at the time when the right of action accrues

37. 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

Utmost allowance for disabilities

or rent first accrued was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which the right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of the twenty years, or although the term of five years from the time at which he ceased to be under any such disability or died, may not have expired. R.S.O. 1970, c. 246, s. 37.

Succession of disabilities

38. Where a 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 first accrues, and dies without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover the land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover the land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. R.S.O. 1970, c. 246, s. 38.

Persons under disability when right accrues

39. The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in sections 30 to 35, is a minor, mentally defective person, mentally incompetent person, of unsound mind, or tenant for life, or during which any action has been pending and has been diligently prosecuted, shall be excluded in the computation of the period mentioned in such sections, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. R.S.O. 1970, c. 246, s. 39.

Exclusion of terms of years, etc., from computation in certain cases

40. Where any land or water upon, over or from which any such way or other easement, water course or use of water has been enjoyed or derived, has been 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 period of forty years mentioned in section 31, if the claim is, within three years next after the end or sooner determination of such term, resisted by any person entitled to any reversion expectant on the determination thereof. R.S.O. 1970, c. 246, s. 40.

Exception as to lands of the Crown not duly surveyed and laid out

41. Nothing in sections 30 to 35 supports or maintains any claim to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or to any way or other easement, or to any water course or the use of any water to be enjoyed or derived upon, over or from any land or water of the

Crown, unless the land, way, easement, water course or other matter lies and is situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by authority of the Crown. R.S.O. 1970, c. 246, s. 41.

PART II

TRUSTS AND TRUSTEES

42. This Part applies to a trust created by an instrument or an Act of the Legislature heretofore or hereafter executed or passed. R.S.O. 1970, c. 246, s. 42. Application
of Part II

43.—(1) In this section, “trustee” includes an executor, an administrator, a trustee whose trust arises by construction or implication of law as well as an express trustee, and a joint trustee. Interpre-
tation

(2) In an action against a trustee or a person claiming through him, except where the claim is founded upon a fraud or fraudulent breach of trust to which the trustee was 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 use, the following paragraphs apply: Actions
against
trustees

1. All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee.
2. If the action 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 is entitled to the benefit of, and is at liberty to plead, the lapse of time as a bar to such action in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

Effect of judgment upon rights of beneficiaries

(3) 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 the action and this section had been pleaded. R.S.O. 1970, c. 246, s. 43.

When right accrues in case of express trust

44.—(1) Where land or rent is vested in a trustee upon an express trust, the right of the *cestui que trust* or a person claiming through him to bring an action against the trustee or a person claiming through him to recover the 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 the 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.

Claim of *cestui que trust* against trustee

(2) Subject to section 43, no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations. R.S.O. 1970, c. 246, s. 44.

PART III

PERSONAL ACTIONS

Limitation of time for commencing particular actions

45.—(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned,

- (a) an action for rent, upon an indenture of demise;
 - (b) an action upon a bond, or other specialty, except upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1894;
 - (c) an action upon a judgment or recognizance,
- within twenty years after the cause of action arose,
- (d) an action upon an award where the submission is not by specialty;
 - (e) an action for an escape;
 - (f) an action for money levied on execution; or
 - (g) an action for trespass to goods or land, simple contract or debt grounded upon any lending or contract

without specialty, debt for arrears of rent, detinue, replevin or upon the case other than for slander,

within six years after the cause of action arose,

- (h) an action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, within two years after the cause of action arose;
- (i) an action upon the case for words, within two years after the words spoken;
- (j) an action for assault, battery, wounding or imprisonment, within four years after the cause of action arose;
- (k) an action upon a covenant contained in an indenture of mortgage or any other instrument made on or after the 1st day of July, 1894, to repay the whole or part of any moneys secured by a mortgage, within ten years after the cause of action arose or within ten years after the date upon which the person liable on the covenant conveyed or transferred his interest in the mortgaged lands, whichever is later in point of time;
- (l) an action by a mortgagee against a grantee of the equity of redemption under section 19 of the *Mortgages Act*, within ten years after the cause of action arose; R.S.O. 1980, c. 296
- (m) an action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.

(2) Nothing in this section extends to any action where the time for bringing the action is by any statute specially limited. Where time specially limited R.S.O. 1970, c. 246, s. 45.

46. Every action of account, or for not accounting, or for such accounts as concerns the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced within six years after the cause of action arose, and no claim in respect of a matter that arose more than six years before the commencement of the action is enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of the action. Actions of account, etc. R.S.O. 1970, c. 246, s. 46.

In case of
disability
of plaintiff

47. Where a person entitled to bring an action mentioned in section 45 or 46 is at the time the cause of action accrues a minor, mental defective, mental incompetent or of unsound mind, the period within which the action may be brought shall be reckoned from the date when such person became of full age or of sound mind. R.S.O. 1970, c. 246, s. 47.

Non-
resident
defendants

48. If a person against whom a cause of action mentioned in section 45 or 46 accrues is at such time out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited after the return of the absent person to Ontario. R.S.O. 1970, c. 246, s. 48.

Where some
joint debtors
have been
within and
some
without
Ontario

49.—(1) Where a person has any such cause of action against joint debtors or joint contractors, he is not entitled to any time within which to commence such action against any one of them who was in Ontario at the time the cause of action accrued, by reason only that some other of them was, at the time the cause of action accrued, out of Ontario.

Effect of
recovery
against one
joint debtor

(2) The person having such cause of action shall not be barred from commencing an action against a joint debtor or joint contractor who was out of Ontario at the time the cause of action accrued, after his return to Ontario, by reason only that judgment has been already recovered against a joint debtor or joint contractor who was at such time in Ontario. R.S.O. 1970, c. 246, s. 49.

Effect of
written
acknowledgment
or part
payment

50.—(1) Where an acknowledgment in writing, signed by the principal party or his agent, is made by a person liable upon an indenture, specialty, judgment or recognizance, or where an acknowledgment is made by such person by part payment, or part satisfaction, on account of any principal or interest due on the indenture, specialty, judgment or recognizance, the person entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within twenty years, or, in the cases mentioned in clause 45 (1) (k), within ten years after the acknowledgment in writing, or part payment, or part satisfaction, or where the person entitled is, at the time of the acknowledgment, under disability as aforesaid, or the person making the acknowledgment is, at the time of making it, out of Ontario, then within twenty years, or in the cases aforesaid within ten years, after the disability has ceased, or the person has returned, as the case may be.

Application
of section

(2) In the case of an action upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1939, or upon a covenant contained in an instrument made on or after the 1st day of July, 1939, to pay the whole

or part of any moneys secured by a mortgage, this section does not apply to part payments on the mortgage made by a person other than the person liable on the covenant or to acknowledgments in writing signed by any person other than the person liable on the covenant. R.S.O. 1970, c. 246, s. 50.

51.—(1) No acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take out of the operation of this Part, any case falling within its provisions respecting actions, Promise by words only

- (a) of account and upon the case;
- (b) on simple contract or of debt grounded upon any lending or contract without specialty; and
- (c) of debt for arrears of rent,

or to deprive any party of the benefit thereof, unless the acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby, or by his agent duly authorized to make the acknowledgment or promise.

(2) Nothing in this section alters, takes away or lessens the effect of any payment of any principal or interest by any person. R.S.O. 1970, c. 246, s. 51. Effect of payment of principal or interest

52. Where there are two or more joint debtors or joint contractors, or joint obligors, or covenantors, or executors or administrators of any debtor or contractor, no such joint debtor, joint contractor, joint obligor, or covenantor, or executor or administrator loses the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed or by reason of any payment of any principal or interest made by any other or others of them. R.S.O. 1970, c. 246, s. 52. Two or more joint contractors, obligors, covenantors, or executors

53. In actions commenced against two or more such joint debtors, joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act, as to one or more of such joint debtors, joint contractors, or executors or administrators is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment, judgment shall be given for the plaintiff as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. R.S.O. 1970, c. 246, s. 53. Judgment where plaintiff is barred as to one or more defendants, but not as to all

Effect of
endorsement,
etc., made by
the payee

54. No endorsement or memorandum of any payment written or made upon a promissory note, bill of exchange or other writing, by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act. R.S.O. 1970, c. 246, s. 54.

Case of
set-off

55. This Part applies to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant. R.S.O. 1970, c. 246, s. 55.