

1950

c 207 Limitations Act

Ontario

© Queen's Printer for Ontario, 1950

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/rso>

Bibliographic Citation

Limitations Act, RSO 1950, c 207

Repository Citation

Ontario (1950) "c 207 Limitations Act," *Ontario: Revised Statutes*: Vol. 1950: Iss. 2, Article 86.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1950/iss2/86>

CHAPTER 207

The 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 any 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. 1937, c. 118, s. 1.

PART I

REAL PROPERTY

2. Nothing in this Act shall interfere 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. 1937, c. 118, s. 2.

3.—(1) No entry, distress, or action shall be made or brought on behalf of His 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 60 years next after the right to make such entry or distress or to bring such action shall have first accrued to His Majesty.

Application
of certain
sections to
Crown.

(2) Subsections 1 to 3, 5 to 7, and 9 to 12 of section 5 and sections 6, 8 to 11 and 13 to 15 shall apply to rights of entry, distress or action asserted by or on behalf of His Majesty. R.S.O. 1937, c. 118, 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 10 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 10 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 the same. R.S.O. 1937, c. 118, 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 the same being in the actual possession of such other person, the lapse of 10 years shall 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 20 years from the time such possession was taken.

(5) Where 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 \$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 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 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 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

In the case of a tenant at will.

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.

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 the same 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 the same 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 which have determined, been in the possession or receipt of the profits of the land, or in receipt of the rent.

R.S.O. 1937, c. 118, s. 5.

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.

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

(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 which 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 which has been limited or taken effect after or in defeasance of such estate or interest in possession. R.S.O. 1937, c. 118, 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. 1937, c. 118, s. 7.

When right of action devolves to administrator.

Effect of mere entry

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. 1937, c. 118, s. 8.

Continual claim.

9. 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. R.S.O. 1937, c. 118, s. 9.

Descent cast, discontinuance, warranty, etc.

10. No descent cast, discontinuance or warranty, which has happened or been made since the 1st day of July, 1834, or which may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. R.S.O. 1937, c. 118, 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. 1937, c. 118, 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. 1937, c. 118, 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 acknowledgement was given at the time of giving the same, 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. 1937, c. 118, s. 13.

14. The receipt of the rent payable by any lessee, shall, Effect of receipt of rent. 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. 1937, c. 118, s. 14.

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, shall be extinguished. Extinguishment of right at the end of the period of limitation. R.S.O. 1937, c. 118, s. 15.

16. Nothing in sections 1 to 15 shall apply 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. Waste or vacant land of Crown excepted. R.S.O. 1937, c. 118, s. 16.

ARREARS OF RENT, AND INTEREST

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 shall not apply to an action for redemption brought by a mortgagor or any person claiming under him. Exception as to action for redemption. R.S.O. 1937, c. 118, s. 17.

18. Where any 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 any person entitled to a subsequent mortgage or other encumbrance on the same land, the person entitled to the subsequent mortgage or encumbrance may recover Exception in favour of subsequent mortgagee when a prior mortgagee has been in possession.

in the action the arrears of interest which 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. 1937, c. 118, s. 18.

MORTGAGES AND CHARGES ON LAND

Limitation where a mortgagee 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 10 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 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 10 years next after the time at which the acknowledgment, or the last of the acknowledgments if more than one, was given. R.S.O. 1937, c. 118, s. 19.

Acknowledgement 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, shall be as effectual as if the same had been given to all such mortgagors or persons. R.S.O. 1937, c. 118, 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, shall be 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 shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons 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 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 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. 1937, c. 118, s. 21.

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 10 years next after the last payment of any part of the principal money or interest secured by the mortgage, although more than 10 years have elapsed since the time at which the right to make such entry or bring such action first accrued. R.S.O. 1937, c. 118, s. 22.

Limitation where mortgage in arrear.

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 10 years next after a present right to receive the same 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 has been paid, or some acknowledgment in writing of the right thereto signed by the person by whom the same 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 10 years after the payment or acknowledgment, or the last of the payments or acknowledgments if more than one, was made or given.

Limitation where money charged upon land and legacies.

(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, shall remain 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. 1937, c. 118, 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. 1937, c. 118, s. 24.

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

DOWER

Limitation of action of dower.

25. Subject to section 26, no action of dower shall be brought but within 10 years from the death of the husband of the dowress, notwithstanding any disability of the dowress or of any person claiming under her. R.S.O. 1937, c. 118, s. 25.

Time from which right to bring action of dower to be computed.

26. Where a dowress 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 10 years within which her action of dower is to be brought shall be computed from the time when such possession of the dowress ceased. R.S.O. 1937, c. 118, s. 26.

Maximum of arrears of dower recoverable.

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. 1937, c. 118, s. 27.

ESTATES TAIL

Limitation in case of those whose rights tenant in tail could have barred.

28. Where 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 limited by this Act, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which the tenant in tail might lawfully have barred. R.S.O. 1937, c. 118, s. 28.

Case where tenant in tail has died during period of limitation.

29. Where a tenant in tail of any land or rent, entitled to recover the same, has died before the expiration of the period applicable in such case for making an entry or distress or bringing an action to recover the land or rent, no person claiming any estate, interest or right which the tenant in tail might lawfully have barred, shall make an entry or distress, or bring an action, to recover the land or rent, but within the period during which, if the tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. R.S.O. 1937, c. 118, s. 29.

Where possession under an assurance by a tenant in tail does not bar the remainders.

30. Where a tenant in tail of any land or rent has made an assurance thereof, which does not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person is by virtue of the assurance, at the time of the execution thereof, or at any time afterwards, in possession or receipt of the profits of the land, or in the receipt of the rent, and the same person, or any other person, other than a person entitled to such possession or receipt in respect

of an estate which has taken effect after or in defeasance of the estate tail, continues or is in such possession or receipt for the period of 10 years next after the commencement of the time at which the assurance, if it had then been executed by the tenant in tail, or the person who would have been entitled to his estate tail if the assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates, then, at the expiration of the period of 10 years, the 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. R.S.O. 1937, c. 118, s. 30.

CONCEALED FRAUD

31. In every case of a concealed fraud the right of any 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 been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud was or with reasonable diligence might have been first known or discovered. R.S.O. 1937, c. 118, s. 31.

Cases where fraud remains concealed.

32. Nothing in section 31 shall enable 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. 1937, c. 118, s. 32.

Case of bona fide purchaser for value without notice.

PRESCRIPTION IN CASE OF EASEMENTS

33. No claim which may be lawfully made 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 30 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 30 years, but nevertheless the claim may be defeated in any other way by which the same is now liable to be defeated, and when the profit or benefit has been so taken and enjoyed for the full period of 60 years, the right thereto shall be deemed absolute and indefeasible, unless it appears

Limitation in case of profits.

that the same was taken and enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1937, c. 118, s. 33.

Right of way easement, etc.

34. No claim which may lawfully be made 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 20 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 20 years, but, nevertheless the claim may be defeated in any other way by which the same 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 40 years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1937, c. 118, s. 34.

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

35. Each of the respective periods of years mentioned in sections 33 and 34 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. 1937, c. 118, s. 35.

Right to access and use of light by prescription abolished.

36. 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 shall not apply to any such right acquired by 20 years use before the 5th day of March, 1880. R.S.O. 1937, c. 118, s. 36.

Necessity for strict proof.

37. 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. 1937, c. 118, s. 37.

38. 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. 1937, c. 118, s. 38.

Easements not acquired for carrying wires and cables.

DISABILITIES AND EXCEPTIONS
IN CASES OF LAND OR RENT

39. If at any 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, first accrues, as herein mentioned, such person is under the disability of infancy, 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. 1937, c. 118, s. 39.

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

40. 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 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. 1937, c. 118, s. 40.

Utmost allowance for disabilities.

41. Where 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 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. 1937, c. 118, s. 41.

Succession of disabilities.

IN CASES OF EASEMENTS

Persons under disability when right accrues.

42. The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in sections 33 to 38, is an infant, 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. 1937, c. 118, s. 42.

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

43. 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 34, 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. 1937, c. 118, s. 43.

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

44. Nothing in sections 33 to 38 shall support or maintain 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. 1937, c. 118, s. 44.

PART II

TRUSTS AND TRUSTEES

Application of Part II.

45. This Part shall apply to a trust created by an instrument or an Act of the Legislature heretofore or hereafter executed or passed. R.S.O. 1937, c. 118, s. 45.

Interpretation.

46.—(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.

(2) In an action against a trustee or any person claiming through him, except where the claim is founded upon any 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 shall apply:

Actions
against
trustees.

(a) 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.

(b) 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 shall be entitled to the benefit of, and be 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.

(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. 1937, c. 118, s. 46 (1-3).

Effect of
judgment
upon rights
of
beneficiaries.

47.—(1) Where 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 an action against the trustee or any 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.

When right
accrues
in case of
express trust.

(2) Subject to section 46, 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

Claim of
*cestui que
trust* against
trustee.

barred by any statute of limitations. R.S.O. 1937, c. 118, s. 47.

PART III

PERSONAL ACTIONS

Limitation
of time for
commencing
particular
actions.

48.—(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;
- (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 18 of *The Mortgages Act*, within ten years after the cause of action arose; Rev. Stat., c. 239.

(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. R.S.O. 1937, c. 118, s. 48 (1); 1939, c. 25, s. 1; 1949, c. 51, s. 1.

(2) Nothing in this section shall extend to any action where the time for bringing the action is by any statute specially limited. Where time specially limited. R.S.O. 1937, c. 118, s. 48 (2).

49. 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 which arose more than six years before the commencement of the action shall be 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, &c. R.S.O. 1937, c. 118, s. 49.

50. Where a person entitled to bring any action mentioned in either section 48 or 49 is at the time the cause of action accrues an infant, mental defective, mental incompetent or of unsound mind, the period within which the action should be brought shall be reckoned from the date when such person became of full age or of sound mind. In case of disability of plaintiff. R.S.O. 1937, c. 118, s. 50.

51. If a person against whom any cause of action mentioned in sections 48 and 49 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. Non-resident defendants. R.S.O. 1937, c. 118, s. 51.

52.—(1) Where a person has any such cause of action against joint debtors or joint contractors, he shall not be entitled to any time within which to commence such action against any one of them who was within 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. Where some joint debtors have been within and some without 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 within Ontario. R.S.O. 1937, c. 118, s. 52.

ACKNOWLEDGMENTS OR PROMISES

Effect of
written
acknowledg-
ment or part
payment.

53.—(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 20 years, or, in the cases mentioned in clause *k* of subsection 1 of section 48, within 10 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 the same, out of Ontario, then within 20 years, or in the cases aforesaid within 10 years, after the disability has ceased, or the person has returned, as the case may be. R.S.O. 1937, c. 118, s. 53; 1949, c. 51, s. 2.

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 any 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 shall 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. 1939, c. 25, s. 2.

Promise by
words only.

54.—(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,

(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 shall alter, take away or lessen the effect of any payment of any principal or interest by any person. R.S.O. 1937, c. 118, s. 54. Effect of payment of principal or interest.

55. 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 shall lose 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. 1937, c. 118, s. 55. Two or more joint contractors, obligors, covenantors, or executors.

56. 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. 1937, c. 118, s. 56. Judgment where plaintiff is barred as to one or more defendants, but not as to all.

57. No endorsement or memorandum of any payment written or made upon any 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. 1937, c. 118, s. 57. Effect of endorsement, etc., made by the payee.

58. This Part shall apply 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. 1937, c. 118, s. 58. Case of set-off.

