

BILL No. 24 OF 1925.

A BILL RESPECTING LIMITATION OF ACTIONS.

NOTE.

It may be said that this Bill is a codification of the various statutes that have been passed with regard to limitation of actions since the time of Queen Elizabeth.

Two tables are appended: one showing the general effect of the statutes in question, and another table showing the connection of the provisions of the Bill with the Imperial Statutes and the Statutes in Ontario, British Columbia, and Manitoba.

The major changes may be stated in general terms as follows:

1. The periods of limitation in respect of real property have been changed from twelve years and six to ten years and five.
2. Special provision is made in case of vacant lands of which actual possession has never been taken. (Sec. 4(4).)
3. The principle of English law long acted on, and clearly laid down in Atkinson & Horsell's contract [1912] 2 Ch. Sec. 1, has been embodied in section 11 (2).
4. Special provision is made as to waste or vacant land of the Crown, highways and lands vested in municipal corporations under tax proceedings. (Sec. 13.)
5. The periods of limitation in the case of personal actions have been changed generally in the direction of shortening them, and the old names of actions have been discarded. (Sec. 30.)

Reference to Table A will make the differences clear.

The effect of several cases has been embodied in the Statutes, amongst which mention may be made of *Grant v. Ellis*, 9 M. & W. 113 (Sec. 3); *Thompson v. Thompson*, 6 A. & E. 721, (Sec. 4(7)); *James v. Salter*, 3 Bing. N.C. 544, (Sec. 4 (11)); *re Lloyd*, [1903] 1 Ch. 385, (Sec. 14 (2)); *re McCallum*, [1901] 1 Ch. 143, (Sec. 22).

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(This note does not form any part of the Bill, and is offered merely as a partial explanation of some of its provisions.)

TABLE A.

LIMITATION OF ACTIONS.

The short substance of the 21 Jac. I, c. 16, s. 3, being arranged in a table of times, is as follows:

Six years for trespass <i>quare clausum fregit</i> (lands)	}	Torts
trespass <i>de bonis asportatis</i> (goods)		
detinue		
trover (goods, including title-deeds)		
replevin		
case, other than for slander (tort or contract)	}	Contracts
account		
debt (on simple contract)		
debt for rent (parol-letting)		
Four years for trespass to the person	}	Torts
assault		
menace		
battery		
wounding		
imprisonment		
Two years for case (being for slander)		

The short substance of the 3 & 4 Will. IV, c. 42, s. 3, and of the 3 & 4 Will. IV, c. 27, ss. 40-42, is as follows:

Twenty years for debt for rent (letting by deed)	}	3 & 4 Will. IV, c. 42, s. 3.
debt or covenant (on any bond or other specialty) (3)		
debt on recognizance		
<i>Scire facias</i> on recognizance		
debt on award (where submission is by specialty)		
Six years for debt on award (where submission is not by specialty)	}	3 & 4 Will. IV c. 27 ss. 40-42.
debt for a copyhold fine		
debt for an escape		
debt for money levied on fi.fa.		
Two years for action for penalty (under statute) by the "party grieved" (a "common informer" having but one year, 31 Eliz. c. 5, s. 5).	}	
Twenty (1) years for action for principal moneys (charged on land)		
secured by mortgage		
judgment		
or lien		
for action for legacy	}	
Six years for action for arrears of dower		
for arrears of rent		
for arrears of interest (money charged on land)		
for arrears of interest on legacy		

The joint effect of the statutes 3 & 4 Will. IV. c. 27 and 37 & 38 Vict. c. 57 may be stated as follows:

(1) that an action of ejectment (to recover the possession of land or to recover a rent of inheritance) must be brought within twelve years;

(2) that (in the case of a mortgage of land) the action of foreclosure or for redemption must be brought within twelve years;

(3) that the action to realize a charge on land, or a lien or mortgage on land, must be brought within twelve years;

(4) that an action on a judgment (whether amounting to a charge on land or not) must be brought within twelve years;

(5) that an action for the recovery of a legacy (whether charged on land or not) must be brought within twelve years;

(6) that an action to recover arrears of rent must be brought within six years;

(7) that an action to recover the arrears of interest on a land charge, or on a legacy, must be brought within six years; and

(8) that an action to recover arrears of dower must be brought within six years.

TABLE B.

BILL No. 24 Limitation of Actions.	IMPERIAL ACTS.	ONTARIO ACT. Ch. 75, R.S.O. 1914.	B. C. ACT Ch. 145, R.S. B.C. 1924.	MANITOBA ACT. Ch. 116, R.S. M. 1913
Sec. 2 a.	.....	Sec. 2 a.		
b.	.....	b.		
c.	.....	c.		
d.	3-4 W.IV.c.27,s.1	d.		
e.	3-4 W.IV.c.27,s.1	e.		
Sec. 3	37-38 V.c.57,s.1 (Time reduced)	Sec. 5	Sec. 16	Sec. 4
Sec. 4 (1,2,3)	3-4 W.IV.c.27,s.3	Sec. 6 (1,2,3)	Sec. 17 (1,2,3)	Sec. 5 (a,b,c)
(4)	.....	Sec. 6 (4)	.....	.....
(5)	3-4 W.IV.c.27,s.9	(5)	Sec. 23	Sec. 5 (d)
(6)	3-4 W.IV.c.27,s.8	(6)	Sec. 22	(e)
(7)	3-4 W.IV.c.27,s.7	(7)	Sec. 21	(f)
(8)	.....	(8)	Sec. 21	(2)
(9)	3-4 W.IV.c.27,s.3	(9)	Sec. 17 (5)	(g)
(10)	3-4 W.IV.c.27,s.4	(10)	Sec. 18	(h)
(11)	3-4 W.IV.c.27,s.3	(11)	Sec. 17 (4)	(i)
(12)	37-38 V.c.57,s.2	(12)	Sec. 19	(j)
Sec. 5 (1)	37-38 V.c.57,s.2	Sec. 7	.....	Sec. 6
(2)	37-38 V.c.57,s.2	Sec. 7	.....	Sec. 7
(3)	3-4 W.IV.c.27,s.20	Sec. 7	Sec. 32	Sec. 8
Sec. 6	3-4 W.IV.c.27,s.6	Sec. 8	Sec. 20	Sec. 9
Sec. 7 (1)	3-4 W.IV.c.27,s.10	Sec. 9 (1)	Sec. 24	Sec. 10
(2)	3-4 W.IV.c.27,s.11	.....	Sec. 25	Sec. 11
Sec. 8	3-4 W.IV.c.27,s.12	Sec. 12 omitting "coparceners"	Sec. 26	Sec. 13
Sec. 9	3-4 W.IV.c.27,s.14	Sec. 14	Sec. 28	Sec. 15
Sec. 10	3-4 W.IV.c.27,s.35	Sec. 15	Sec. 42	Sec. 16
Sec. 11 (1)	3-4 W.IV.c.27,s.34	Sec. 16	Sec. 41	Sec. 17
Sec. 11 (2)	English law: rule in Atkinson's and Hor- sell's contract.			
Sec. 12	.....	Sec. 37	.....	Sec. 34
Sec. 13	.....	Sec. 17	.....	.....
		Note: Alberta sec- tion includes lands vested in municipal corporations by vir- tue of tax enforce- ment proceedings.		
Sec. 14 (1)	3-4 W.IV.c.27,s.42	Sec. 18 (1)	Sec. 45	Sec. 18
(2)	.....	(2)	.....	.....
Sec. 15	3-4 W.IV.c.27,s.42	Sec. 19	Sec. 45	Sec. 19
Sec. 16	37-38 V.c.57,s.7	Sec. 20	Sec. 40 (1)	Sec. 20
Sec. 17	37-38 V.c.57,s.7	Sec. 21	(2)	Sec. 21
Sec. 18	37-38 V.c.57,s.7	Sec. 22	(3)	Sec. 22
Sec. 19	7 W.IV. and 1 V.c.28	Sec. 23	Sec. 48	Sec. 23
Sec. 20 (1)	37-38 V.c.57,s.8	Sec. 24	Sec. 43	Sec. 24
Sec. 21	37-38 V.c.57,s.10	Sec. 25	.....	Sec. 25
Sec. 22	3-4 W.IV.c.27,s.26	Sec. 32	Sec. 38	Sec. 31
Sec. 23	3-4 W.IV.c.27,s.26	Sec. 33	Sec. 38	Sec. 32
Sec. 24	37-38 V.c.57,s.3	Sec. 40	Sec. 29	Sec. 35
Sec. 25	37-38 V.c.57,s.5	Sec. 41	Sec. 30	Sec. 36
Sec. 26	3-4 W.IV.c.27,s.18	Sec. 42	Sec. 31	Sec. 37
Sec. 27	.....	Sec. 46	.....	.....
	(Ch.220 RSA 1922 s. 54)			
Sec. 28	51-52 V.c.59,s.1 (3)	Sec. 47	.....	.....
	51-52 V.c.59,s.8			
Sec. 29 (1)	3-4 W.IV.ch.27,s.25	Sec. 48	Sec. 37	Sec. 30
(2)	36-37 V.c.66	.....	.....	.....
Sec. 30 a.	3-4 W.IV.c.42,s.3	Sec. 49 (a)	Sec. 50	.....
b.	3-4 W.IV.c.42,s.3	(b)	Sec. 50	.....
c.	3-4 W.IV.c.42,s.3	(c)	Sec. 50	.....
d.	37-38 V.c.57,s.8	.....	.....	.....
e.	21 Jac. I.c.16	Sec. 49 (j)	Sec. 3	.....
f.	3-4 W.IV.c.27,s.26	.....	.....	.....
g.	21 Jac. I.c.16	Sec. 49 (i)	Sec. 3	.....
h.	3-4 W.IV.c.42,s.3	(h)	.....	.....
i.	31 Eliz. c.5	(l)	.....	.....
j.	.....	.....	.....	.....

BILL No. 24 Limitation of Actions.	IMPERIAL ACTS.	ONTARIO ACT. Ch. 75, R.S.O. 1914.	B. C. ACT Ch. 145, R.S. B.C. 1924	MANITOBA ACT. Ch. 116, R.S. M. 1913.
Sec. 31	11-12 V.c.43,s.11	.....	.....	.....
Sec. 32	English law: rule in Jay v. Johnstone			
Sec. 33	3-4 W.IV.c.42,s.3	Sec. 49 (2)	.....	.....
Sec. 34	19-20 V.c.97,s.9	Sec. 50	Sec. 4	.....
Sec. 35	3-4 W.IV.c.42,s.4	Sec. 51	Sec. 51	.....
Sec. 36	9 Geo. IV.c.14,s.1	Sec. 54 & 55	Sec. 52	.....
	19-20 V.c.97,s.13			
Sec. 37	9 Geo. IV.c.14,s.1	Sec. 56	Sec. 53	.....
Sec. 38	9 Geo. IV.c.14,s.1	Sec. 57		.....
Sec. 39	9 Geo. IV.c.14,s.3	Sec. 58	Sec. 14	.....
Sec. 40	9 Geo. IV.c.14,s.4	Sec. 59		.....
Sec. 41	.....	.....	.....	.....
Sec. 42	3-4 W.IV.c.27,s.27	Sec. 3	.....	Sec. 33
Sec. 43	(Alta. 1923,ch.5,s.48)	.....	.....	.....
Sec. 44 (1,2)	.....	.....	.....	.....
Sec. 45	.....	.....	.....	.....

21 Jac. I. c.16 is The Limitation Act, 1623.
 9 Geo. IV, c.14 is The Statute of Frauds Amendment Act, 1828.
 3-4 W. IV. c.42 is The Civil Procedure Act, 1833.
 3-4 W. IV. c.27 is The Real Property Limitations Act, 1833.
 7 W. IV. 1 V. c.28 is The Real Property Limitation Act, 1837.
 11-12 V. c.43 is The Summary Jurisdiction Act, 1848.
 19-20 V. c.97 is The Mercantile Law Amendment Act, 1856.
 37-38 V. c.57 is The Real Property Limitation Act, 1874.
 51-52 V. c.59 is The Trustees Act, 1888.

Re Manitoba Statute—This is an Act respecting Limitation of Suits relating to real property only.

The Saskatchewan Statute re Limitation of Actions is Ch. 47, R.S.S. 1920, and contains only the provisions of Ch. 90, R.S.A. 1922.

BILL

No. 24 of 1925.

An Act respecting the Limitation of Actions.

(Assented to _____, 1925.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE.

1. This Act may be cited as "*The Limitation of Action Act, 1925.*"

INTERPRETATION.

2. In this Act—

- (a) "Action" shall include an information on behalf of the Crown and any civil proceedings;
- (b) "Assurance" shall mean any transfer, deed or instrument, other than a will, by which land may be conveyed or transferred;
- (c) "Heirs" shall include the persons entitled beneficially to the real estate of a deceased intestate;
- (d) "Land" shall include messuages and all other hereditaments, whether corporeal or incorporeal, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any freehold estate, any possibility, right or title of entry or action, and any other interest now or formerly capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency; and
- (e) "Rent" shall include all annuities and periodical sums of money charged upon or payable out of land, but when used in the expression "land or rent" shall not mean a rent service or rent reserved upon a lease for years.

PART I.

REAL PROPERTY.

3. No person shall make an entry or distress, or bring an action to recover or obtain possession of 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 such 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 the same.

4.—(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 such land, or in receipt of such 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 such land or rent shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.

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

(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 such assurance has been in such possession or receipt, such 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 such assurance.

(4) In the case of land granted by the Crown, of which the grantee, his successors in title 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 such 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 ten years shall not bar the right of such grantee or any person claiming under him to bring an action for the recovery of such land, but the right to bring an action shall be deemed to have accrued at the time that such knowledge was obtained; but no such action shall be brought or entry made after twenty 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 or value of \$4 or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

(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 such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happens.

(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 distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time and if the tenant was then in possession such tenancy shall be deemed to have been determined.

(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 the next preceding subsection.

(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 such forfeiture was incurred or such condition broken.

(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 such 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.

(11) Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, including therein an executory devise and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, 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.

(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 estates or estate in respect of which such land has been held or the profits thereof or such rent have or has been received, notwithstanding that the person claiming such land or rent, or some person through whom he claims, has, at any time previously to the creation of the estate or estates which have been determined, been in the possession or receipt of the profits of such land, or in receipt of such rent.

5.—(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 such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made and no such action shall be brought by any person becoming entitled in possession to a future estate or interest, but within ten years next after the time when the right to make an entry or distress, or to bring an action for the recovery of such land or rent, 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 to 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 instrument, will or settlement executed or taking effect after the time when the right to make an entry or distress or to bring an action for the recovery of such land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any such entry or distress, or bring any such action, to recover such land or rent.

(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, right, interest 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 such land or rent in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of such estate or interest in possession.

6. 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.

7.—(1) 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.

(2) No continual or other claim upon or near any land shall preserve any right of making an entry or distress or bringing an action.

8. Where any one or more of several persons entitled to any land or rent as 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 such land, or of the profits thereof, or of such rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them.

9. Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to him or his agent, signed by the person in possession or in receipt of the profits of such land, or in the receipt of such rent, such possession or receipt of or by the person by whom such 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 such acknowledgment was given at the time of giving the same, and the right of such last mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time, at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

10. The receipt of the rent payable by any 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.

11.—(1) 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.

(2) Subject to the rights of the Crown and of lessors, any person who, or whose predecessors in title has or have taken possession of such land or rent claiming to hold it as his or their own, and has or have held it for a period of ten years continuously, shall acquire the interest in such land or rent of all persons whose title is extinguished under the provisions of this section, except in so far as he is an expressed trustee for any such person.

12. Notwithstanding any other provision of this Act, no right to the access or use of light, or to any easement, right in gross or profit *a prendre* shall be acquired by any person by prescription or upon the theory of a lost grant, and it shall be deemed that no such right has heretofore been acquired by custom, prescription or a lost grant.

13. Nothing in the foregoing sections shall apply to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any allowance for roads 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 any municipal corporation or other public body, or to any lands vested in any municipal corporation by virtue of tax enforcement or tax recovery proceedings; but nothing in this section contained shall be deemed to affect or prejudice any right, title or interest heretofore acquired by any person.

Arrears of Rent and Interest.

14.—(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 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 of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent.

(2) This section shall not apply to an action for redemption brought by a mortgagor or by any person claiming under him.

15. 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 incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action the arrears of interest which have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt, although such time may have exceeded such term of six years.

Mortgages and Charges on Land.

16. 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 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 such acknowledgment, or the last of such acknowledgments if more than one, was given.

17. Where there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, such acknowledgment, if given to any such mortgagors or persons, or his or their agents, shall be as effectual as if the same had been given to all such mortgagors or persons.

18. Where there are more mortgagees than one, or more persons than one claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the 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 claiming 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 such 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 such divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage.

19. Any person entitled to or claiming under a mortgage may make an entry or bring an action to recover such land, at any time within ten years next after the last payment of any part of the principal money or interest secured by such 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.

20.—(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 such 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 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 ten years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was made or given.

(2) A charge created by the receipt of a copy of an execution or other writ affecting land by a Registrar of Land Titles shall be enforceable only so long as the judgment or order upon which such execution or other writ is enforceable and so long as such execution or other writ is kept alive by renewal or otherwise.

21. 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 or 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.

Concealed Fraud.

22. In every case of a concealed fraud of or in some way imputable to the person setting up this Part as a defence, or of some other person through whom such first mentioned person claims, 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.

23. Nothing in the next preceding section shall enable any owner of land or rent to bring an action for the recovery of such 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 such 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.

Disabilities and Exceptions.

In Cases of Land or Rent.

24. 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 any of the disabilities hereinafter mentioned, that is to say: infancy, idiocy, lunacy 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 such land or rent at any time within five years next after the time at which the person to whom such right first accrued ceased to be under any such disability, or died, whichever of those two events first happened.

25. 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

such 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 such 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.

26. 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 departs this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, 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.

PART II.

TRUSTS AND TRUSTEES.

27. This part shall apply to a trust created by an instrument or an Act of this Legislature heretofore or hereafter executed or passed.

28.—(1) In this section "trustee" shall include an executor, an administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, and shall also include 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 provisions shall apply:

- (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 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.

29.—(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 such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

(2) Subject to the provisions of the next preceding section 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.

PART III.

PERSONAL ACTIONS.

30. The following actions shall be commenced within but not after the time respectively hereinafter mentioned:

- (a) An action for rent upon an indenture of demise;
- (b) An action upon a bond or other specialty;
- (c) An action upon a recognizance—

within twenty years after the cause of action arose.

- (d) An action on a judgment or order for the payment of money within ten years from the date of the judgment or order;

- (e) An action for injury to the person whether arising from an unlawful act or from negligence or founded upon false imprisonment or malicious prosecution or otherwise howsoever, within two years after the cause of action arose;
- (f) An action grounded upon accident, mistake, misrepresentation, fraud or other equitable ground of relief within three years from the discovery of the ground of action, and in no case but within six years after the cause of action arose except in the case of misrepresentation or fraud concealed by the wrongdoer and then within one year after the discovery of such concealed misrepresentation or fraud, or three years from the discovery of the ground of action, whichever is the longer period;
- (g) An action of defamation, whether libel or slander, within one year of the publication of the libel or the speaking of the slanderous words, or where special damages are alleged, within one year after the happening of such damage;
- (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 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;
- (j) Any other action within six years after the cause of action arose.

31. A complaint or information under any statute of the Province shall be laid within and not after six months after the cause of complaint has arisen, or the offence has been committed.

32. A judgment or order for the payment of money shall not be enforced but within ten years of the date thereof.

33. Nothing in this Act shall extend to any action, complaint or information where the time for bringing the action or laying the complaint or information is by statute specially limited.

34. In the case of an 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, 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 or claim comprised in the same account, having arisen within six years next before the commencement of the action.

35. Where a person entitled to bring any action at the time the action accrues, is an infant, idiot, lunatic or of unsound mind, the period within which such action should be brought shall be reckoned from the date when such person became of full age or of sound mind.

36. Whenever—

- (a) any person who is or would have been but for the effluxion of time liable to an action for debt, or his duly authorized agent, promises his creditor or the agent of the said creditor in writing to pay such debt; or
- (b) a written acknowledgment of such debt is given by the said person or his duly authorized agent to his creditor or the agent of the said creditor, and a promise to pay the amount remaining unpaid can be reasonably inferred from such acknowledgment; or
- (c) a part payment is made on account of any principal or interest to a creditor or his agent by a debtor or his agent acting within the scope of his authority, and a promise to pay the amount remaining unpaid can be reasonably inferred from such part payment—

then such promise or inferred promise shall constitute a new cause of action arising at the date of the promise, acknowledgment or part payment upon which action may thereafter be commenced.

37. 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.

38. 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 to the plaintiff as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff.

39. 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.

40. This Part shall apply to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off or counter-claim on the part of any defendant.

PART IV.

MISCELLANEOUS.

41. The provisions of this Act shall apply to all causes of action whether the same arose before or after the coming into force of this Act, but no action shall be barred merely by its operation until the expiry of six months from its coming into force:

Provided that all actions that would have been barred by effluxion of time during such six months under the provisions of the law existing immediately prior to the coming into force of this Act, shall be barred as if such law were still existing.

42. 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.

43. In calculating the time within which an action or other proceeding must be commenced as fixed by this Act or any other statute, the time during which such action or proceeding was barred by the provisions of *The Drought Area Relief Act* or *The Debt Adjustment Act* shall be excluded from such calculation.

44.—(1) *The Limitation of Actions Act*, being chapter 90 of The Revised Statutes of Alberta, 1922, is hereby repealed.

(2) Section 54 of *The Trustee Act*, being chapter 220 of The Revised Statutes of Alberta, is hereby repealed.

45. This Act shall come into effect on.....

No. 24

FIFTH SESSION
FIFTH LEGISLATURE
15 GEORGE V
1925

BILL
An Act respecting the Limitation
of Actions.

Received and read the

First time.....

Second time.....

Third time.....

EDMONTON:
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A.D. 1925