

Bill No. 21 of 1935.

A BILL RESPECTING THE LIMITATIONS
OF ACTIONS.

NOTE.

This Bill was drafted and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in 1931, and 1932.

The Bill is a codification of the general law relating to the limitation of time within which an action of any particular kind may be brought.

In this Province the greater part of the law on this subject now in force is to be found in the Statutes of the English Parliament in force in this Province by adoption: the only statute of this Province relating to limitations of actions is *The Limitations of Actions Act*, being Chapter 90 of the Revised Statutes: that Act deals only with actions relating to real property.

The draft in general follows the existing law as explained in a long series of judicial decisions.

The substantial alterations in the law made by the Bill are in respect of the periods of time fixed within which actions must be brought.

Those periods are set out for actions generally in section 3; for proceedings to enforce charges on land, in section 12; for proceedings under mortgages of real and personal property, in sections 32 and 33; for proceedings under agreements for the sale of land, in sections 35 and 36, and for proceedings under conditional sale agreements, in section 39.

The periods prescribed by *The Limitations Act, 1623* (21 Jac. 1, c. 16) are 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 periods prescribed by *The Civil Procedure Act, 1833* (3 & 4 Will. IV, c. 42) and by *The Real Property Limitations Act* (3 & 4, Will. IV, c. 27) are 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)		
debt for a copyhold fine		
debt for an escape		
debt for money levied on <i>fi. fa.</i>		
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 years for action for principal moneys (charged on land) secured by mortgage	}	3 & 4 Will. IV, c. 27, ss. 40-42.
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 to be 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.

A comparison of the periods fixed by the Bill with the periods fixed by the above mentioned Acts will show a general shortening.

Part II of the Bill (sections 12 to 16) contains special provisions relating to the time for taking proceedings to enforce charges on land.

Part IV of the Bill fixes the time within which a proceeding must be taken to enforce rights under a mortgage of land or personal property.

Part V fixes the times within which proceedings may be taken under agreements for sale of land.

Part VI fixes the time within which proceedings may be taken under conditional sale agreements of chattels.

Part VII relates to actions by beneficiaries against trustees.

Section 41 provides that no action by a beneficiary against his trustee for property held on an express trust or in respect of any breach of that trust shall be barred.

Section 42 puts a trustee in the position of an ordinary person with reference to claims against him which are not founded upon fraud or fraudulent breach of trust on his part.

Part VII contains explanatory provisions of general application designed to avoid difficulties of interpretation which might otherwise arise in applying the prescribed limitations.

Section 47 prevents time from running against any person under a disability.

Section 48 makes provision for actions against persons out of the Province when the cause of action arose, and section 49 makes provision for actions against persons under joint contractual liability.

Section 50 provides that the Act shall apply to all causes of action whether the same arose before or after the coming into force of the Act, and further provides with regard to actions which might but for the Act have been brought after the expiration of the period of six months after its coming into force, such actions will be barred after the expiration of that period: where an action would have been barred by the law as it stood immediately prior to the commencement of the Act, that action is barred as if that law were still existing.

R. ANDREW SMITH,
Legislative Counsel.

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

BILL

No. 21 of 1935.

An Act respecting the Limitation of Actions.

(Assented to _____, 1935.)

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 Actions Act, 1935.*"

INTERPRETATION.

- 2.** In this Act, unless the context otherwise requires—
- (a) "Action" means any civil proceeding, including any civil proceeding by or against the Crown;
 - (b) "Assurance" means any transfer, deed or instrument, other than a will, by which land may be conveyed or transferred;
 - (c) "Disability" means disability arising from infancy or unsoundness of mind;
 - (d) "Heirs" includes the persons entitled beneficially to the real estate of a deceased intestate;
 - (e) "Land" includes all corporeal hereditaments, and any share or any freehold or leasehold estate or any interest in any of them;
 - (f) "Mortgage" includes charge, "mortgagor" includes chargor, and "mortgagee" includes chargee;
 - (g) "Proceedings" includes action, entry, taking of possession, distress and sale proceedings under an order of a court or under a power of sale contained in a mortgage or conferred by statute;
 - (h) "Rent" means a rent service or rent reserved upon a demise;
 - (i) "Rent charge" includes all annuities and periodical sums of money charged upon or payable out of land.

PART I.

LIMITATION PERIODS.

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

- (a) Actions for penalties imposed by any statute brought by any informer suing for himself alone or for the

Crown as well as for 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.

- (b) Actions for penalties, damages or sums of money in the nature of penalties given by any statute to the Crown or the person aggrieved, or partly to one and partly to the other, within two years after the cause of action arose.
 - (c) Actions of defamation, whether libel or slander, within two years of the publication of the libel or the speaking of the slanderous words, or where special damage is the gist of the action, within two years after the occurrence of such damage.
 - (d) Actions for trespass to the person, assault, battery, wounding or other injury to the person, whether arising from an unlawful act or from negligence, or for false imprisonment, or for malicious prosecution or for seduction within two years after the cause of action arose.
 - (e) Actions for trespass or injury to real property or chattels, whether direct or indirect, and whether arising from an unlawful act or from negligence, or for the taking away, conversion or detention of chattels, within six years after the cause of action arose.
 - (f) Actions for the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether on a recognizance, bond, covenant or other specialty or on a simple contract, express or implied, and actions for an account or for not accounting, within six years after the cause of action arose.
 - (g) Actions grounded on fraudulent misrepresentation, within six years from the discovery of the fraud.
 - (h) Actions grounded on accident, mistake or other equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action.
 - (i) Actions on a judgment or order for the payment of money, within ten years after the cause of action therein arose.
 - (j) Any other action not in this Act or any other Act specifically provided for, within six years after the cause of action arose.
- (2) Nothing in this section shall extend to any action where the time for bringing the action is by statute specially limited.

4. When the existence of a cause of action has been concealed by the fraud of the person setting up this Part or Part II as a defence, the cause of action shall be deemed to have arisen when the fraud was first known or discovered.

5. No claim in respect of an item in an account which arose more than six years before the commencement of the action shall be enforceable by action by reason only of some other claim in respect of another item in the same account having arisen within six years next before the commencement of the action.

DISABILITIES.

6. If a person entitled to bring any action mentioned in paragraphs (c) to (i) (inclusive), of subsection (1) of section 3 is under disability at the time the cause of action arises, he may bring the action within the time hereinbefore limited with respect to such action or at any time within two years after he first ceased to be under disability.

ACKNOWLEDGMENTS AND PART PAYMENT.

7.—(1) Whenever any person who is, or would have been but for the effluxion of time, liable to an action for the recovery of money as a debt, or his agent in that behalf—

- (a) conditionally or unconditionally promises his creditor or the agent of the creditor in writing signed by the debtor or his agent to pay the debt; or
- (b) gives a written acknowledgment of the debt signed by the debtor or his agent to his creditor or the agent of the creditor; or
- (c) makes a part payment on account of the principal debt or interest thereon, to his creditor or the agent of the creditor—

then an action to recover any such debt may be brought within six years from the date of the promise, acknowledgment or part payment, as the case may be, notwithstanding that the action would otherwise be barred under the provisions of this Act.

(2) A written acknowledgment of a debt or a part payment on account of the principal debt or interest thereon shall have full effect whether or not a promise to pay can be implied therefrom and whether or not it is accompanied by a refusal to pay.

8. Where there are two or more joint debtors, joint contractors, joint obligors or joint covenantors, or executors or administrators of any debtor, contractor, obligor or covenantor, no such joint debtor, joint contractor, joint obligor or joint 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.

9. In actions commenced against two or more such joint debtors, joint contractors, joint obligors or joint covenantors, or 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, joint obligors or joint covenantors, 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 is entitled to recover, and for the other defendant or defendants against the plaintiff.

10. 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.

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

PART II.

CHARGES ON LAND, LEGACIES, ETC.

12.—(1) No proceedings shall be taken to recover any rent charge or any sum of money secured by any mortgage or otherwise charged upon or payable out of any land or rent charge or to recover any legacy, whether it is or is not charged upon land, or to recover the personal estate or any share of the personal estate of any person dying intestate and possessed by his personal representative, but within ten years next after a present right to recover the same accrued to some person capable of giving a discharge therefor, or a release thereof, unless prior to the expiry of such ten years some part of the rent charge, sum of money, legacy or estate or share or some interest thereon has been paid by a person bound or entitled to make a payment thereof or his agent in that behalf to a person entitled to receive the same or his agent, or some acknowledgment in writing of the right to such rent charge, sum of money, legacy, estate or share signed by any person so bound or entitled or his agent in that behalf has been given to a person entitled to receive the same 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) In the case of a reversionary interest in land, no right to recover the sum of money charged thereon shall be deemed to accrue until the interest has fallen into possession.

13. No proceedings shall be taken to recover any sum of money payable under an agreement for the sale of land but within ten years after a present right to recover the same

accrued to some person entitled to receive the same, or capable of giving a release thereof, unless prior to the expiry of such ten years some part of the sum of money or some interest thereon has been paid by a person bound or entitled to make a payment thereof or his agent in that behalf to a person entitled to receive the same or his agent, or some acknowledgment in writing of the right to receive such sum of money signed by any person so bound or entitled or his agent in that behalf has been given to a person entitled to receive the same 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.

14.—(1) No arrears of rent, or of interest in respect of any sum of money to which the immediately preceding section applies or any damages in respect of such arrears shall be recovered by any proceeding, but within six years, next after a present right to recover the same accrued to some person capable of giving a discharge therefor or a release thereof unless, prior to the expiry of such six years, some part of the arrears has been paid by a person bound or entitled to make a payment thereof or his agent in that behalf to a person entitled to receive the same or his agent or some acknowledgment in writing of the right to the arrears signed by a person so bound or entitled or his agent in that behalf has been given to a person entitled to receive the arrears or his agent, and in such case no proceeding shall be taken but within six years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given.

(2) Subsection (1) shall not apply to an action for redemption or similar proceedings brought by a mortgagor or by any person claiming under him.

15. Where any prior mortgagee has been in possession of any land within one year next before an action is brought by any person entitled to a subsequent mortgage on the same land, the person entitled to the subsequent mortgage may recover in such action the arrears of interest which have become due during the whole time the prior mortgagee was in such possession or receipt, although that time may have exceeded such term of six years.

16.—(1) No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent charge, though 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.

(2) The preceding subsection shall not operate so as to affect any claim of a *cestui que trust* against his trustee for property held on an express trust.

PART III.

LAND.

RIGHT TO TAKE PROCEEDINGS.

GENERAL PRINCIPLE.

17. No person shall take proceedings to recover any land but within ten years next after the time at which the right to do so first accrued to some person through whom he claims (hereinafter called "predecessor") or if such right did not accrue to a predecessor then within ten years next after the time at which such right first accrued to the person taking the proceedings (hereinafter called "claimant").

SPECIAL CASES.

Dispossession, etc.

18. Where the claimant or a predecessor has in respect of the estate or interest claimed been in possession of the land or in receipt of the profits thereof and has while entitled thereto been dispossessed or has discontinued such possession or receipt the right to take proceedings to recover the land 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 were so received.

Succession on Death.

19. Where the claimant claims the estate or interest of a deceased predecessor who was in possession of the land or in receipt of the profits thereof in respect of the same estate or interest at 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 to take proceedings to recover the land shall be deemed to have first accrued at the time of the death of the predecessor.

Alienation.

20. Where the claimant claims in respect of an estate or interest in possession, granted, appointed or otherwise assured to him or a predecessor by a person being in respect of the same estate or interest in the possession of the land or in receipt of the profits thereof and no person entitled under the assurance has been in such possession or receipt the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the claimant or his predecessor became entitled to such possession or receipt by virtue of the assurance.

Forfeiture.

21. Where the claimant or the predecessor becomes entitled by reason of forfeiture or breach of condition, then the right to take proceedings to recover the land shall be deemed to have first accrued whenever the forfeiture was incurred or the condition was broken.

FUTURE ESTATES.

Owner of Particular Estate in Possession.

22. Where the estate or interest claimed has been 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 of the land or is in receipt of the profits thereof in respect of such estate or interest, the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the estate or interest 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 have been received notwithstanding the claimant or the predecessor has at any time previously to the creation of the estate or estates which has determined been in the possession of the land or in receipt of the profits thereof.

Owner of Particular Estate Out of Possession.

23. If the person last entitled to any particular estate on which any future estate or interest was expectant was not in possession of the land or in receipt of the profits thereof at the time when his interest determined, no proceedings to recover the land shall be taken 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 take proceedings 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 these two periods is the longer.

Settlement while Statute is Running.

24. If the right to take proceedings to recover the land has been barred, no proceedings shall be taken by any person afterwards claiming to be entitled to the same land in respect of any subsequent estate or interest under any will or assurance executed or taking effect after the time when a right to take proceedings first accrued to the owner of the particular estate whose interest has so determined.

Successive Estates in Same Person.

25. When the right of any person to take proceedings to recover any land to which he may have been entitled for an estate or interest in possession entitling him to take proceedings has been barred by the determination of the period which is applicable in such case, and such person has at any time during the said period been entitled to any other estate, interest, right or possibility in reversion, remainder or otherwise in or to the same land no proceedings shall be taken by him or any person claiming through him to recover the land in respect of such other estate, interest, right or possibility, unless in the meantime the land has been recov-

ered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of the estate or interest in possession.

Forfeiture.

26. When the right to take proceedings to recover any land first accrued to a claimant or a predecessor by reason of any forfeiture or breach of condition, in respect of an estate or interest in reversion or remainder and the land has not been recovered by virtue of such right, the right to take proceedings shall be deemed to have first accrued at the time when the estate or interest became an estate or interest in possession.

LANDLORD AND TENANT.

Wrongful Receipt of Rent.

27. Where any person is in possession of any land, or in receipt of the profits thereof by virtue of a lease in writing, by which a rent amounting to the yearly sum or value of four dollars or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to the land 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 claimant or his predecessor to take proceedings to recover the land 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 wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

Tenancy from Year to Year.

28. Where any person is in possession of any land or in receipt of the profits thereof as tenant from year to year, or other period, without any lease in writing, the right of the claimant or his predecessor to take proceedings to recover the land shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time (prior to his right to take proceedings being barred under any other provisions of this Act) when any rent payable in respect of such tenancy was received by the claimant or his predecessor or the agent of either whichever last happens.

Tenancy at Will.

29.—(1) Where any person is in possession of any land or in receipt of the profits thereof as tenant at will, the right of the claimant or his predecessor to take proceedings to recover the land, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration

of one year next after its commencement, at which time, if the tenant was then in possession, the tenancy shall be deemed to have been determined.

(2) No mortgagor or *cestui que trust* under an express trust shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of this section.

CONCEALED FRAUD.

30.—(1) In every case of concealed fraud of 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 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.

(2) Nothing in subsection (1) shall enable any owner of land to bring an action for the recovery of such land, 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.

ACKNOWLEDGMENTS OF TITLE.

31. When any acknowledgment in writing of the title of a person entitled to any land signed by the person in possession of the land or in receipt of the profits thereof or his agent in that behalf has been given to him or his agent prior to his right to take proceedings to recover the land having been barred under the provisions of this Act, then the 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 such acknowledgment 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 take proceedings 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.

PART IV.

MORTGAGES OF REAL AND PERSONAL PROPERTY.

Redemption.

32.—(1) When a mortgagee or a person claiming through a mortgagee has obtained the possession of any property real or personal comprised in a mortgage or is in

receipt of the profits of any land therein comprised 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 or a person claiming through the mortgagee obtained such possession or first received any such profits unless prior to the expiry of such ten years an acknowledgment in writing of the title of the mortgagor or of his right to redeem is given to the mortgagor or some person claiming his estate or interest or to the agent of such mortgagor or person signed by the mortgagee or the person claiming through him or the agent in that behalf of either of them; and in that case, the action shall not 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.

(2) Where there is more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, the acknowledgment, if given to any of the mortgagors or persons or his or their agent, shall be as effectual as if the same had been given to all the mortgagors or persons.

(3) Where there is more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees, an acknowledgment signed by one or more of such mortgagees or persons or his or their agent in that behalf shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or property by, through 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 undivided or divided part of the money or property.

(4) Where such of the mortgagees or persons aforesaid as have given such acknowledgment are entitled to a divided part of the property 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 property 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 property bears to the value of the whole of the property comprised in the mortgage.

FORECLOSURE OR SALE.

33. No mortgagee or person claiming through a mortgagee shall take any proceedings for foreclosure or sale under any mortgage of real or personal property or to recover the property mortgaged but within ten years next after the right to take the proceedings first accrued to the mort-

gagee, or if the right did not accrue to the mortgagee, then within ten years after the right first accrued to a person claiming through the mortgagee.

34. When any person bound or entitled to make payment of the principal money or interest secured by a mortgage of property real or personal or his agent in that behalf, at any time prior to the expiry of ten years from the accrual of the right to take proceedings for foreclosure or sale or to take proceedings to recover the property, pays any part of such money or interest to a person entitled to receive the same, or his agent, the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or the last of the payments, if more than one, was made, or if any acknowledgment of the nature described in section 30 was given at any time prior to the expiry of ten years from the accrual of the right to take proceedings, then at the time at which the acknowledgment or the last of the acknowledgments, if more than one, was given.

PART V.

AGREEMENTS FOR THE SALE OF LAND.

35.—(1) No purchaser of land or any person claiming through him shall bring any action in respect of the agreement for the sale thereof but within ten years after the right to bring the action first accrued to the purchaser, or if the right did not accrue to the purchaser, then within ten years after the right first accrued to a person claiming through the purchaser.

(2) When any person bound or entitled to make payment of the purchase money or his agent in that behalf, at any time prior to the expiry of ten years from the accrual of the right to bring the action pays any part of the money payable under the agreement of sale to a person entitled to receive the same, or his agent, or if any acknowledgment in writing of the right of the purchaser or person claiming through him to the land, or to make such payment, was given prior to the expiry of such ten years to the purchaser or person claiming through him or to the agent of such purchaser or person signed by the vendor or the person claiming through him or the agent in that behalf of either of them, then the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or the last of the payments, if more than one, was made, or the time at which the acknowledgment or the last of the acknowledgments, if more than one, was given.

36. No vendor of land or person claiming through him shall take any proceedings for cancellation, determination or rescission of the agreement for the sale of the land or for foreclosure or sale thereunder or to recover the land but

within ten years after the right to take the proceedings first accrued to the vendor, or if the right did not accrue to the vendor, then within ten years after the right first accrued to a person claiming through the vendor.

37. When any person bound or entitled to make payment of the purchase money or his agent in that behalf, at any time prior to the expiry of ten years from the accrual of the right to take the proceedings mentioned in the last preceding section, pays any part of the money payable under the agreement of sale to a person entitled to receive the same, or his agent, or if at any time prior to the expiry of such ten years, any acknowledgment in writing of the right of the vendor or person claiming through him to the land or to receive the payment was given to the vendor or person claiming through him or to the agent of such vendor or person signed by the purchaser or the person claiming through him or the agent in that behalf of either of them, then the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or last of the payments, if more than one, was made, or the time at which the acknowledgment or last of the acknowledgments, if more than one, was given.

PART VI.

CONDITIONAL SALES OF GOODS.

38. In this part unless the context otherwise requires—

- (a) "Buyer" means the person who buys or hires goods by a conditional sale.
- (b) "Conditional Sale" means (a) any contract for the sale of goods under which possession is or is to be delivered to the buyer and the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition; or (b) any contract for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon full compliance with the terms of the contract;
- (c) "Goods" means all chattels personal other than things in action or money, and includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale, or under the contract of sale;
- (d) "Seller" means the person who sells or lets to hire goods by a conditional sale.

39. No seller shall take any proceedings for the sale of or to recover any goods the subject of a conditional sale but within ten years after the right to take the proceedings first

accrued to the seller or, if the right did not accrue to the seller, then within ten years after the right first accrued to a person claiming through him.

40. When any person bound or entitled to make payment of the price, or his agent in that behalf, at any time prior to the expiry of ten years from the accrual of the right to take the proceedings pays any part of the price or interest to a person entitled to receive the same, or his agent, or if at any time prior to the expiry of such ten years, any acknowledgment in writing of the right of the seller or person claiming through him to the goods or to receive the payment was given to the seller or person claiming through him signed by the buyer or the person claiming through him or the agent in that behalf of either of them, then the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or last of the payments, if more than one, was made, or the time at which the acknowledgment or last of the acknowledgments, if more than one, was given.

PART VII.

TRUSTS AND TRUSTEES.

41. Subject to the other provisions of this Part 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 this Act.

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

- (a) All rights and privileges conferred by this Act 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 limitation provision of this Act 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 same extent as if the claim had been against him in an action for money had and received:

Provided that the limitation provisions of this Act 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.

43. Where any property 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 property, shall be deemed to have first accrued at and not before the time at which it was 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.

PART VIII.

GENERAL.

Possession.

44.—(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.

(3) The receipt of the rent payable by any tenant at will, tenant from year to year or other 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.

Effect of Expiry of Statutory Period.

45. At the determination of the period limited by this Act, to any person for taking proceedings to recover any land, rent charge or money charged on land, the right and title of such person to the land, or rent charge or the recovery of the money out of the land shall be extinguished.

Title of Administrator.

46. For the purposes of Parts II, III and IV, 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.

DISABILITIES.

47.—(1) If at the time at which the right to take any proceedings referred to in Parts II, III or IV first accrued to any person he was under disability, then such person or a person claiming through him may (notwithstanding anything in this Act) take proceedings at any time within six years next after the person to whom the right first accrued first ceased to be under disability or died, whichever event first happened, provided that if he died without ceasing to be under disability, no further time to take proceedings shall be allowed, by reason of the disability of any other person.

(2) Notwithstanding anything in this section, no proceedings shall be taken by a person under disability at the time the right to do so first accrued to him or by any person claiming through him, but within thirty years next after that time.

Defendant out of the Province.

48. In respect of a cause of action as to which the time for taking proceedings is limited by this Act other than those mentioned in paragraphs (a) and (b) of subsection (1) of section 3, if a person is out of the Province at the time a cause of action against him arises within the Province, the person entitled to the action may bring the same within two years after the return of the first mentioned person to the Province or within the time otherwise limited by this Act for bringing the action.

49.—(1) Where a person has any cause of action against joint debtors, joint contractors, joint obligors or joint covenantors, he shall not be entitled to any time within which to commence such action against such of them as were within the Province at the time the cause of action accrued by reason only that one or more of them was at such time out of the Province.

(2) A person having such cause of action shall not be barred from commencing an action against any joint debtor, joint contractor, joint obligor or joint covenantor who was out of the Province at the time the cause of action accrued, after his return to the Province by reason only that judgment has been already recovered against such of the joint debtors, joint contractors, joint obligors or joint covenantors as were at such time within the Province.

Application of Act.

50. 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 provis-

ions of the law existing immediately prior to the coming into force of this Act, shall be barred as if such law were still existing.

51. 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.

Repeal.

52. Sections 2 and 3 of *The Limitation of Actions Act*, being chapter 90 of the Revised Statutes of Alberta, 1922, are hereby repealed.

Interpretation of Act.

53. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

Coming into Force.

54. This Act shall come into force on the day upon which it is assented to.

No. 21.

FIFTH SESSION
SEVENTH LEGISLATURE
25 GEORGE V
1935

BILL

An Act respecting the Limitation
of Actions.

Received and read the

First time

Second time

Third time

HON. MR. LYMBURN

EDMONTON:
W. D. McLEAN, KING'S PRINTER
1935