

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1836. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1836.

6 William IV – Chapter 43

An Act for the limitation of actions and suits relating to real property and for simplifying the remedies for trying the rights thereto. Passed 16th March 1836.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the words and expressions hereinafter mentioned which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, (that is to say): the word "land" shall extend to messuages and all other corporeal hereditaments whatsoever, and also to any share, estate or interest in them or any of them, whether the same shall be a freehold or chattel interest; and the person through whom another person is said to claim shall mean any person by, through or under, or by the act of whom, the person so claiming became entitled to the estate or interest claimed as heir, issue in tail, tenant by the curtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and the word "person" shall extend to a body politic, corporate or collegiate, and to a class of creditors or other persons, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

II. And be it further enacted, That no person shall make an entry or bring an action to recover any land but within twenty years next after the time at which the right to make such entry or to bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or to bring such action shall have first accrued to the person making or bringing the same.

III. And be it further enacted, That in the construction of this Act, the right to make an entry or bring an action to recover any land shall be deemed to have first accrued at such time as hereinafter is mentioned, (that is to say): when the person claiming such land, or some person through whom he claims, shall in respect of the estate or interest claimed have been in possession or in receipt of the profits of such land, and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt, then such right 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 or was so received; and when the person claiming such land shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land shall claim in respect of an estate or interest in possession granted,

appointed or otherwise assured by any instrument (other than a will) 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, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land in respect of such estate or interest, then 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; and when the person claiming such land, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

IV. Provided always, That when any right to make an entry or to bring an action to recover any land by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder, and the land shall not have been recovered by virtue of such right, the right to make an entry or bring an action to recover such land shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

V. Provided also, That a right to make an entry or to bring an action to recover any land, shall be deemed to have first accrued in respect of an estate or interest in reversion at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held or the profits thereof shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land.

VI. And be it further enacted, That for the purposes of this Act an administrator claiming the estate or interest of the deceased person of whose chattels he shall be 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.

VII. And be it further enacted, That when any person shall be in possession or in receipt of the profits of any land 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 bring an action to recover such land 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 such tenancy shall be deemed to have determined: Provided always, that no mortgagor or cestuique trust shall be deemed to be a tenant at will, within the meaning of this, clause, to his mortgagee or trustee.

VIII. And be it further enacted, That when any person shall be in possession or in receipt of the profits of any land, 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 bring an action to recover such land shall be deemed to have first accrued at the determination of the first of such years or other period, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

IX. And be it further enacted, That when any person shall be in possession or in receipt of the profits of any land by virtue of a lease in writing, by which a rent amounting to the yearly sum of twenty shillings or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land in reversion immediately expectant on the determination of such lease, and no payment in respect to the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land subject to such lease, or of the person through whom he claims, to make an entry 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 wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

X. And be it further enacted, That 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.

XI. And be it further enacted, That no continual or other claim upon or near any land shall preserve any right of making an entry or of bringing an action.

XII. And be it further enacted, That when any one or more of several persons entitled to any land as coparceners, joint tenants or tenants in common, shall 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, 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, 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.

XIII. Provided always, and be it further enacted, That when any acknowledgment of the title of the person entitled to any land shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, then such possession or receipt of or by the person by whom such acknowledgment shall have been 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 shall have been given at the time of giving the same, and the right of such last mentioned person or any person claiming through him to make an entry or to bring an action to recover such land 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.

XIV. Provided also, and be it further enacted, That when no such acknowledgment as aforesaid shall have been given before the time appointed for this Act to take effect, and the possession or receipt of the profits of the land shall not at the time of this Act taking effect have been adverse to the right or title of the person claiming to be entitled thereto, then such person or the person claiming through him may, notwithstanding the period of twenty years herein before limited shall have expired, make an entry or bring an action to recover such land at any time within five years next after the time appointed for this Act to take effect.

XV. Provided always, and be it further enacted, That if at the time at which the right of any person to make an entry or bring an action to recover any land shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, (that is to say,) infancy, coverture, idiotcy, lunacy, unsoundness of mind or absence beyond seas, then such person or the person claiming through him may, notwithstanding the period of twenty years herein before limited shall have expired, make an entry or bring an action to recover such land at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability or shall have died, (which shall have first happened).

XVI. Provided nevertheless, and be it further enacted, That no entry or action shall be made or brought by any person who, at the time at which his right to make an entry or to bring an action to recover any land shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next alter the time at which such right shall have 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 forty years, or although the term of ten years from the date at which he shall have ceased to be under any such disability, or have died, shall not have expired.

XVII. Provided always, and be it further enacted, That when any person shall be under any of the disabilities herein before mentioned at the time at which his right to make an entry or to bring an action to recover any land shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or to bring an action to recover such land beyond the said period of twenty years next after the right of such person to make an entry or to bring an action to recover such land shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

XVIII. And be it further enacted, That no part of the British Provinces of Nova Scotia, (including Cape Breton), Lower Canada, Upper Canada, Prince Edward Island and Newfoundland, nor of the United States of America, shall be deemed to be beyond seas within the meaning of this Act.

XIX. And be it further enacted, That when the right of any person to make an entry or bring an action to recover any land to which he may have been entitled for an estate or interest in possession shall have been barred by the determination of the period herein before limited, which shall be applicable in such case, and such person shall at any time during the said period have been

entitled to any other estate, interest, right or possibility in reversion, remainder or otherwise in or to the same land, no entry or action shall be made or brought by such person or any person claiming through him to recover such land in respect of such other estate, interest, right or possibility, unless in the meantime such land shall have been recovered by some person entitled to an estate, interest or right, which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

XX. And be it further enacted, That when the right of a tenant in tail of any land to make an entry or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period herein before limited, which shall be applicable in such case, no such entry or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred.

XXI. And be it further enacted, That when a tenant in tail of any land entitled to recover the same shall have died before the expiration of the period hereinbefore limited, which shall be applicable in such case, for making an entry or bringing an action to recover such land, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall make an entry or bring an action to recover such land but within the period during which if such tenant in tail had so long continued to live he might have made such entry or brought such action.

XXII. And be it further enacted, That no person claiming any land in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions herein before contained he might have made an entry or brought an action to recover the same respectively if he had been entitled at law to such estate, interest or right in or to the same as he shall claim therein in equity.

XXIII. Provided always, and be it further enacted, That when any land shall be vested in a trustee upon any express trust, the right of the cestuique trust or any person claiming through him to bring a suit against the trustee or any person claiming through him to recover such land, shall be deemed to have first accrued according to the meaning of this Act at and not before the time at which such land shall have 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.

XXIV. And be it further enacted, That in every case of a concealed fraud the right of any person to bring a suit in equity 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 shall or with reasonable diligence might have been first known or discovered; provided that nothing in this clause contained shall enable any owner of lands to have a suit in equity for the recovery of such lands or for setting aside any conveyance of such lands on account of fraud against any bona fide purchaser 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.

XXV. Provided always, and be it further enacted, That nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of Courts of Equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Act.

XXVI. And be it further enacted, That when a mortgagee shall have obtained the possession or receipt of the profits of any land comprised in his mortgage, the mortgagor or any person claiming through him shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption shall have been given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing signed by the mortgagee or the person claiming through him; and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given; and when there shall be more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, such 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; but where there shall be more than one mortgagee, or more than one person 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 party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land 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; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part, of the land 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 on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land shall bear to the value of the whole of the land comprised in the mortgage.

XXVII. And be it further enacted, That at the determination of the period limited by this Act to any person for making an entry of bringing any action or suit, the right and title of such person to the land, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be distinguished.

XXVIII. And be it further enacted, That the receipt of the rent payable by any 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.

XXIX. And be it further enacted, That no writ of right or writ in nature of a writ of right, and no other action real or mixed (except a writ of right of dower, or writ of dower *unde nihil habet*, or an

ejectment), shall be brought after the thirty first day of December one thousand eight hundred and thirty six.

XXX. And be it further enacted, That no action or suit, or other proceeding, shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the mean time some part of the principal money or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent, to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was given.

XXXI. And be it further enacted, That no arrears of dower nor any damages on account of such arrears, shall be recovered or obtained by any action Or suit for a longer period than six years next before the commencement of such action or suit.

XXXII. And be it farther enacted, That this Act shall commence and take effect on the first day of January one thousand eight hundred and thirty seven.