

Laws of Her Majesty's Province of Newfoundland, passed in the year 1850.

13 Victoria – Chapter 6

An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the remedies for trying the rights thereto. (Passed 30th April, 1865.)

Be it enacted, by the Governor, Council and Assembly of Newfoundland, in Legislative Session convened, and by the authority of the same, 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 free-hold or chattel interest, or held according to any other tenure; and the word “rent” shall extend to all services and suits for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land; and the person through whom another 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 executor, administrator, legatee, husband, assignee, appointee, or otherwise; and the word “person” shall extend to a body politic or corporate 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 after the first day of July, one thousand eight hundred and fifty, no person shall make an entry or distress, or bring an action to recover any land, or rent, but within twenty years next after the time at which the right to make such entry or distress, 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 distress, or to bring such action, shall have first accrued to the person making or bringing the same. Provided always, that it shall and may be lawful for any person entitled to or claiming under any mortgage of land, to make an entry or bring an action at law, or suit in equity, to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued.

III. And be it further enacted, That in the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, 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 rent, 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 or in receipt of such rent, 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 or rent were or was so received; and when the person claiming such land or rent 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 or rent 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, or in receipt of the rent, 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, or the receipt of such rent 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 rent, 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 distress or to bring an action to recover any land or rent 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 or rent shall not have been recovered by virtue of such right, 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 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 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, 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, or such rent 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, or in receipt of such rent.

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, 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 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 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, 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 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, or in receipt of any rent 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 or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of 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 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 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 distress, or of bringing an action.

XII. And be it further enacted, That when any one or more of several persons entitled to any land or rent as 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, 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.

XIII. Provided always, and be it further enacted, That when any acknowledgment of the title of the person entitled to any land or rent 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, or in receipt of such rent, 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 distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at anti not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

XIV. Provided always, and be it further enacted, That if at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent snail 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 hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent 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).

XV. Provided nevertheless, and be it further enacted, That no entry, distress, or action shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent 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 after 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 often years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

XVI. Provided always, and be it further enacted, That when any person shall be 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 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 distress, or to bring an action to recover such land or rent beyond the said period of twenty 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, 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.

XVII. And be it further enacted, That by the terms “beyond seas” in this Act, shall be meant any place beyond the limits of the Government of Newfoundland.

XVIII. And be it further enacted, That when the right of any person to make an entry or distress, or bring an action to recover any land or rent to which he may have been entitled, for an estate or interest in possession, shall have been barred by the determination of the period hereinbefore 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 or rent, no entry, distress, or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest,

right or possibility, unless in the mean time such land or rent shall have been covered 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.

XIX. And be it further enacted, That after the said first day of July, one thousand eight hundred and fifty, no person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress, 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.

XX. Provided always, and be it further enacted, That when any land or rent 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 other 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 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.

XXI. 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 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 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 or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, 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.

XXII. 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.

XXIII. And be it further enacted, That when a mortgagee shall have 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 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 mean time 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, or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money, or land, or rent; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgement shall be 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 shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

XXIV. And be it further enacted, That after the said first day of July one thousand eight hundred and fifty, 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 or rent, 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.

XXV. And be it further enacted, That after the said first day of July one thousand eight hundred and fifty, no arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent: Provided nevertheless, that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be 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 or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years: Provided that nothing herein contained shall be construed to repeal or alter the provision of the first section of an Act passed in the twelfth year of Her Majesty's reign, entitled " An Act for the limitation of personal actions at law, and for rendering a written memorandum necessary to the validity of certain promises and engagements."

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

XXVII. 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.

XXVIII. And be it further enacted, That this Act shall not be construed to extend to or affect any action or suit commenced and pending before the passing thereof.