



ANNO DECIMO ET UNDECIMO

VICTORIÆ REGINÆ.

C A P. V.

An Act for shortening the time of Prescription in certain cases, and for other purposes therein mentioned.

[9th July, 1847.]

WHEREAS by the Law of Upper Canada the title to matters that have been long enjoyed, is subject to some cases to be defeated by shewing the commencement of such enjoyment, to the great inconvenience of and injury to parties having had such long enjoyment : For remedy thereof, Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That no claim which may be lawfully made at the Common Law by custom, prescription or grant to any profit or benefit to be taken and enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs or Successors, or of any Ecclesiastical or Lay person or body corporate, except such matters or things as are herein specially provided for, and except rent and services, shall, where such profit or benefit shall have been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by shewing only that such profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated ; and when such profit or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

Preamble.

Certain claims not to be defeated by shewing only that the enjoyment began more than 30 years ago.

And if enjoyed for 60 years, they shall be indefeasible. Exception.

II. And be it enacted, That no claim which may lawfully be made at the Common Law by custom, prescription or grant to any way or other easement, or to any water-course, or the use of any water to be enjoyed or derived upon, over or from any land or water of Our said Lady the Queen, Her Heirs or Successors, or being the property of any Ecclesiastical or lay person or body corporate when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by shewing only that such way or other matter was first enjoyed

Right of way or water not to be defeated by shewing only that it begun more than 20 years ago.

at

If enjoyed for 40 years, to be indefeasible. Exception.

at any time prior to such period of twenty years, but nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated, and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

Access and use of light enjoyed for 20 years to be indefeasible. Exception.

III. And be it enacted, That when the access and use of light to or for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

How the terms shall be calculated; and what acts only shall be an interruption to the prescription.

IV. And be it enacted, That each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate, shall have been or shall be brought into question; and that no act or other matter shall be deemed an interruption within the meaning of this Statute, unless the same shall have been, or shall be, submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made.

What allegation by the party claiming shall be sufficient.

What proof admitted for or against such allegation.

Plea of sufficient term of enjoyment, substituted for time immemorial.

Matter of exception to the effect of such term to be specially pleaded.

V. And be it enacted, That in all actions upon the case and other pleadings wherein the party claiming may now by law allege his right generally without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this Act mentioned and provided which shall be applicable to the case shall be admissible in evidence to sustain or rebut such allegation; and that in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee as is now usually done: and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement or other matter hereinbefore mentioned, or on any cause or matter of fact or of law, not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

No presumption admissible on proof of enjoyment for a shorter period than that required for prescription.

Time during which a party could not act to be computed against him.

VI. And be it enacted, That in the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favor or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim: Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or may be an infant, idiot, *non compos mentis*, *feme-covert*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted until abated by the death of any

any party or parties thereto shall be excluded in the computation of the period hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

VII. Provided also and be it enacted, That when any land or water upon, over or from which any such way or other convenient water-course or run of water shall have been or shall be enjoyed or derived, or shall be held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such term shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end, or sooner determination of such term, be resisted by any person entitled to any reversion expectant on the determination thereof.

Terms of years &c. excluded from computation, in certain cases.

VIII. Provided also and be it enacted, That nothing in this Act shall extend to support or maintain or be construed to support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs and Successors, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of Our said Lady the Queen, Her Heirs and Successors, unless such land, way, easement or water-course or other matter shall lie and be situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by proper authority.

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

IX. And whereas it is expedient to make further provision for the limitations of actions and suits relating to real property: Be it enacted, That when the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same, shall have been barred by reason of the same not having been made or brought within the period limited by the Act of the Parliament of Upper Canada, passed in the fourth year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to amend the law respecting Real Property, and to render the proceedings for recovering possession thereof in certain cases less difficult and expensive*, which shall be applicable in such case, no such entry, distress 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.

Prescription under Act of U. C. 4 W. 4. c. 1, against the tenant in tail, to be in certain cases valid against those whose rights he could have barred.

X. And be it enacted, That when a tenant in tail of any land or rent entitled to recover the same shall have died before the expiration of the period limited in the said Act, passed in the fourth year of His late Majesty's Reign, which shall be applicable in such case for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall make an entry or distress or bring an action to recover such land or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action.

Term elapsed in such cases during the life of the tenant in tail to be computed against those whose rights he could have barred.

XI. And be it enacted, That when a tenant in tail of any land or rent shall have made an assurance thereof, which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance at the time of the execution thereof or at any time afterwards, be in possession

Effect of an assurance by a tenant in tail and possession for 20 years, in certain cases.

OR

or in receipt of the profits of such land or in the receipt of such rent, and the same person or any other person whatsoever, (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail,) shall continue or be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance if it had been executed by such tenant in tail or the person who would have been entitled to his estate tail, if such assurance had not been executed, would without the consent of any other person have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years, such assurance shall be and be deemed to have been effectual, as against any person claiming any estate, interest or right to take effect after or in defeasance of such estate tail.

Local extent
and com-
mencement of
this Act.

XII. And be it enacted, That this Act shall extend only to that part of this Province formerly Upper Canada, and shall commence and take effect on the first day of January now next ensuing.

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