

LIMITATION BILL

EXPLANATORY NOTE

1. This Bill consolidates and amends the general Acts which deal with the limitation of the main classes of civil actions and a number of other enactments which prescribe special periods of limitation for special classes of actions. It does not affect criminal proceedings; and leaves untouched a number of special provisions relating to the limitation of civil actions, mainly where the limitation provision is contained in the enactment which created the right of action or where it can be more conveniently referred to if left where it now appears.

2. The Bill follows substantially the Limitation Act, 1939, of the United Kingdom, and references are given in the margin to the corresponding provisions of that Act. Where the Bill differs from the United Kingdom Act the differences are mainly the result of differences between circumstances in New Zealand and those in England. *Clauses 6 and 16 (2)* of the Bill have been included to cover the special problems in New Zealand relating to Land Transfer land, land of the Crown, and Maori customary land. The provisions of the United Kingdom Act relating to advowsons, tithes, and dower have been omitted from the Bill as having no application in New Zealand. The period of limitation under *clause 7 (1)* in respect of land of the Crown has been left at sixty years; and a corresponding provision in respect of the Crown is provided under *clause 9 (2) (a)*. Section 15 of the U.K. Act, which provides for administration to date back to the date of death for the purposes of the Act, is omitted because the point is covered in New Zealand by section 4 (2) of the Administration Act, 1908. Other modifications worthy of mention occur in *clause 9 (2)*, where the use of the expression "term of years absolute" has been avoided as it is a technical term having a special statutory meaning in England; and in *clause 10 (2)*, which required modification because subsections (2) and (3) of the corresponding United Kingdom section were drafted against the background of special statutory provisions regarding the vesting of settled land.

3. The Bill provides for the repeal of a number of enactments relating to the limitation of actions against public and local authorities, and sets out, in *clause 23*, general rules applicable to every action against the Crown or any such authority. The existing provisions vary very much both in their wording and in the periods of limitation which they prescribe.

4. *Clause 4 (7)* is new and provides for the limitation of actions in respect of death or bodily injury. It is in accordance with recommendations in a report made in 1949 by a Committee set up in England to consider certain questions relating to the limitation of actions.

5. The First Schedule to this Note contains a brief summary of this Bill and compares the new periods of limitation with those prescribed by the Limitation Act, 1939 (U.K.), and those at present in force in New Zealand.

6. As an indication of the nature of the special provisions relating to the limitation of civil actions which are left untouched by this Bill, references are given to a number of the provisions in the Second Schedule to this Note.

FIRST SCHEDULE

SUMMARY OF THE BILL

Clauses 1 and 2: Short Title and commencement; interpretation.

PART I

Part I prescribes periods of limitation for different classes of action as shown in the following table, which indicates also the present New Zealand periods, and the periods prescribed by the Limitation Act, 1939 (U.K.):—

| Clause of Bill. | Type of Action. | Limitation Period in Bill. | Present New Zealand Period and Authority. | Period Prescribed by Limitation Act, 1939 (U.K.). |
|-----------------|--|---|--|--|
| 4 (1) (a) | Actions founded on simple contract or on tort | 6 years | Generally 6 years; but 4 years in the case of assault and false imprisonment; and 2 years in the case of slander actionable <i>per se</i> (Limitation Act, 1623, s. 3) | 6 years. |
| 4 (1) (b) | Actions to enforce a recognizance | 6 years | 20 years (Civil Procedure Act, 1833, s. 3) | 6 years. |
| 4 (1) (c) | Actions to enforce an award where the submission is not by a deed | 6 years | 6 years (Civil Procedure Act, 1833, s. 3) | 6 years. |
| 4 (1) (d) | Actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture | 6 years | 20 years (Civil Procedure Act, 1833, s. 3) | 6 years. |
| 4 (2) | Actions for an account .. | 6 years | 6 years (Judicature Act, 1908, s. 77) | 6 years. |
| 4 (3) | Action upon a deed .. | 12 years | 20 years (Civil Procedure Act, 1833, s. 3) | 12 years. |
| 4 (4) | Action upon a judgment | 12 years | 20 years for principal; 6 years for interest (Real Property Limitation Act, 1833, ss. 40 and 42) | 12 years. |
| 4 (5) | Action to recover penalty or forfeiture or sum by way of penalty or forfeiture | 2 years | Usually 2 years (31 Eliz., c. 5, s. 5; Civil Procedure Act, 1833, s. 3) | 2 years. |
| 4 (6) | Action to have will declared invalid on ground of want of testamentary capacity or undue influence | 12 years | 12 years (Judicature Act, 1908, s. 95) | .. |
| 4 (7) | Action in respect of death or bodily injury | 2 years, but may be extended to 6 years | Generally 6 years (Limitation Act, 1623, s. 3) | 6 years, under general provision <i>re tort</i> . |
| 4 (8) | Action to recover seamen's wages | 6 years | Generally 6 years (Limitation Act, 1623, s. 3) | 6 years. |
| 4 (9) | Claim for specific performance, injunction, or other equitable relief | Act not to apply except in so far as it may be applied by analogy | Bill does not alter present position | As in Bill. |
| 5 (1) | Successive conversions .. | 6 years from original conversion | No limit (<i>Clayton v. Le Roy</i> , [1911] 2 K.B. 1031) | As in Bill. |
| 7 (1) | Actions by Crown to recover land | 60 years | 60 years (Crown Suits Act, 1769, s. 1) | 60 years in case of foreshore and 30 years in other cases. |

| Clause of Bill. | Type of Action. | Limitation Period in Bill. | Present New Zealand Period and Authority. | Period Prescribed by Limitation Act, 1939 (U.K.). |
|-----------------|---|--|--|---|
| 7 (2) | Actions by any other person to recover land | 12 years, with further period where right first accrued to the Crown | 20 years (Real Property Limitation Act, 1833, s. 2) | As in Bill. |
| 16 (1) | Actions to redeem land . . | 12 years | 20 years (Property Law Act, 1908, s. 70 (1)) | 12 years. |
| 19 | Actions to recover arrears of rent | 6 years | 20 years (Real Property Limitation Act, 1833, s. 2) | 6 years. |
| 20 (1) | Actions to recover principal sum secured by a mortgage, or proceeds of sale of land | 12 years | 20 years (Real Property Limitation Act, 1833, s. 40) | 12 years. |
| 20 (2) | Foreclosure actions in respect of mortgaged personal property | 12 years | No corresponding provision | 12 years. |
| 20 (4) | Actions to recover arrears of interest on mortgages | 6 years | 6 years (Real Property Limitation Act, 1833, s. 42) | 6 years. |
| 21 | Actions to recover trust property | 6 years in most cases | 6 years in most cases (Trustee Act, 1908, s. 94) | 6 years in most cases. |
| 22 | Actions claiming personal estate of a deceased person | 12 years ; and 6 years for interest | 20 years and 6 years (Real Property Limitation Act, 1833, ss. 40 and 42) | As in Bill. |
| 23 | Actions against Crown and public and local authorities | 1 year with provision for extension up to 6 years in all cases | Varying periods mainly between 3 months and 1 year under enactments repealed by <i>Second</i> Schedule to Bill | 1 year. |

Part I also contains the following provisions :—

Clause 3 : *Part I* is to be subject to the provisions of *Part II* relating to disability, acknowledgment, fraud, &c.

Clause 5 (2) : The title of the owner of converted goods is extinguished after the expiration of the period prescribed for bringing an action for conversion or wrongful detention.

Clause 6 : This contains overriding provisions relating to land of the Crown, Maori customary land, and Land Transfer land.

Clauses 8 to 14 : These clauses set out the times when certain rights and causes of action are deemed to accrue. *Clause 14* sets out the time at which the cause of action arises in connection with a claim for contribution or indemnity. There is no corresponding provision in the U.K. Act, but the clause is included to meet difficulties revealed by the decision in the case of *Merlihan v. Pope, Limited* (1946) K.B. 166.

Clause 15 : This provides that where a disentailing assurance relating to entailed land is defective the defect will be cured by 12 years adverse possession.

Clause 17 : No right of action is to be preserved by formal entry or continual claim.

Clause 18 : This provides for the extinction of the title to land after the expiration of the period prescribed by the Bill for bringing an action to recover the land. This clause must be read subject to *clause 6*.

PART II

Part II provides for the extension of the limitation periods in case of disability, acknowledgment, part payment, fraud, and mistake. Sections 79 to 81 of the Judicature Act, 1908, are being repealed, and absence beyond the seas is not being made a ground for extending the limitation periods.

PART III

Clause 29: This repeats provisions previously contained in section 18 of the Arbitration Amendment Act, 1938, regarding the application of the Bill and other limitation enactments to arbitrations.

Clauses 30 and 31: These contain provisions as to set-off, counterclaim, and acquiescence.

Clause 32: This provides for the application of the Bill to the Crown.

Clause 33: This provides that the Bill is not to apply to actions and arbitrations for which a period of limitation is prescribed by any other enactment, and that any reference in any enactment to any of the United Kingdom enactments specified in the *First Schedule* shall be construed as a reference to the proposed new Act.

Clause 34: This makes provision as to actions already barred and pending actions.

Clause 35: This provides for repeals and amendments.

Second Schedule: In addition to making consequential amendments and repeals, this extends the period of limitation under section 8 of the Deaths by Accident Compensation Act, 1908, to two years, and enables the Court to extend the period to six years. It also amends section 17 (1) (c) of the Law Reform Act, 1936, in view of the decision in the case of *Merlihan v. Pope, Limited* (1946) K.B. 166, so as to enable a tortfeasor to recover contribution from any other tortfeasor who is, or would if sued *in time* have been, liable in respect of the same damage.

SECOND SCHEDULE

LIMITATION ENACTMENTS WHICH ARE NOT BEING REPEALED OR AMENDED

1913, No. 4—

The Copyright Act, 1913, s. 13. (Reprint of Statutes, Vol. II, p. 11.)

1910, No. 38—

The Destitute Persons Act, 1910, s. 8 (5). (Reprint of Statutes, Vol. II, p. 901.)

1928, No. 16—

The Divorce and Matrimonial Causes Act, 1928, s. 29. (Reprint of Statutes, Vol. III, p. 877.)

1908, No. 60—

The Family Protection Act, 1908, s. 33 (9). (Reprint of Statutes, Vol. III, p. 299.)

1949, No. 33—

The Law Reform (Testamentary Promises) Act, 1949, s. 6.

1925, No. 24—

The Industrial Conciliation and Arbitration Act, 1925, s. 146. (Reprint of Statutes, Vol. III, p. 1006.)

1922, No. 39—

The Workers' Compensation Act, 1922, ss. 26 and 27. (Reprint of Statutes, Vol. V, p. 619.)

1931, No. 31—

The Maori Land Act, 1931, s. 287. (Reprint of Statutes, Vol. VI, p. 211.)

1928, No. 21—

The Public Works Act, 1928, s. 45. (Reprint of Statutes, Vol. VII, p. 647.)

1933, No. 17 (Local)—

The Waimakariri River Improvement Amendment Act, 1933, s. 16.

1925, No. 30—

The Rating Act, 1925, s. 77. (Reprint of Statutes, Vol. VII, p. 1007.)

1928, No. 13—

The Property Law Amendment Act, 1928, s. 3. (Reprint of Statutes, Vol. VII, p. 1143.)

1908, No. 178—

The Shipping and Seamen Act, 1908, s. 98 (2). (Reprint of Statutes, Vol. VIII, p. 301.)

1912, No. 53—

The Shipping and Seamen Amendment Act, 1912, s. 9. (Reprint of Statutes, Vol. VIII, p. 455.)

1933, No. 29—

The Companies Act, 1933, s. 358.

1947, No. 16—

The Magistrates' Courts Act, 1947, s. 80.

Words struck out by Statutes Revision Committee are shown in italics within bold brackets or in roman enclosed in panel; words inserted are shown in black, or in roman with rule down side.

Hon. Mr. Webb

LIMITATION

ANALYSIS

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| <p>Title.</p> <p>1. Short Title and commencement.</p> <p>2. Interpretation.</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION</p> <p>3. Part I to be subject to provisions of Part II relating to disability, acknowledgment, fraud, &c.</p> <p><i>Actions of Contract and Tort and Certain Other Actions</i></p> <p>4. Limitation of actions of contract and tort, and certain other actions.</p> <p>5. Limitation in case of successive conversions, and extinction of title of owner of converted goods.</p> <p><i>Actions to Recover Land and Rent, and Accrual of Rights and Causes of Action</i></p> <p>6. Application of Act to land of the Crown, Maori customary land, and land subject to the Land Transfer Act, 1915.</p> <p>7. Limitation of actions to recover land.</p> <p>8. Accrual of right of action in case of present interests in land,</p> | <p>9. Accrual of right of action in case of future interests.</p> <p>10. Provisions in case of settled land and land held on trust.</p> <p>11. Accrual of right of action in case of forfeiture or breach of condition.</p> <p>12. Accrual of right of action in case of certain tenancies.</p> <p>13. Right of action not to accrue or continue unless there is adverse possession.</p> <p>14. Accrual of cause of action on claim for contribution or indemnity.</p> <p>15. Cure of defective disentailing assurance.</p> <p>16. Limitation of redemption actions.</p> <p>17. No right of action to be preserved by formal entry or continual claim.</p> <p>18. Extinction of title after expiration of period.</p> <p>19. Limitation of actions to recover rent.</p> <p><i>Actions to Recover Money Secured by a Mortgage or Charge or to Recover Proceeds of the Sale of Land</i></p> <p>20. Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land.</p> |
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| <p><i>Actions in Respect of Trust Property or the Personal Estate of Deceased Persons</i></p> <p>21. Limitation of actions in respect of trust property.</p> <p>22. Limitation of actions claiming personal estate of a deceased person.</p> <p><i>Actions Against the Crown and Public and Local Authorities, &c.</i></p> <p>23. Protection of persons acting in execution of statutory or other public duty.</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">EXTENSION OF LIMITATION PERIODS IN CASE OF DISABILITY, ACKNOWLEDGMENT, PART PAYMENT, FRAUD, AND MISTAKE</p> <p style="text-align: center;"><i>Disability</i></p> <p>24. Extension of limitation period in case of disability.</p> <p><i>Acknowledgment and Part Payment</i></p> <p>25. Fresh accrual of action on acknowledgment or part payment.</p> | <p>26. Formal provisions as to acknowledgments and part payments.</p> <p>27. Effect of acknowledgment or part payment on persons other than the maker or recipient.</p> <p style="text-align: center;"><i>Fraud and Mistake</i></p> <p>28. Postponement of limitation period in case of fraud or mistake.</p> <p style="text-align: center;">PART III</p> <p style="text-align: center;">GENERAL</p> <p>29. Application of Act and other limitation enactments to arbitrations.</p> <p>30. Provisions as to set-off or counterclaim.</p> <p>31. Acquiescence.</p> <p>32. Application to the Crown.</p> <p>33. Savings for other limitation enactments.</p> <p>34. Provisions as to actions already barred and pending actions.</p> <p>35. Repeals and amendments. Schedules.</p> |
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A BILL INTITULED

Title. AN ACT to Consolidate and Amend Certain Enactments Relating to the Limitation of Actions and Arbitrations.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

1. This Act may be cited as the Limitation Act, 1950, and shall come into force on the first day of [July] January, nineteen hundred and fifty-[one] two. 10

Interpretation.

Cf. Limitation Act, 1939 (2 & 3 Geo. VI, c. 21), s. 31 (U.K.)

2. (1) In this Act, unless the context otherwise requires,—

“ Action ” means any proceeding in a Court of law other than a criminal proceeding:

“ Arbitration ”, “ award ”, and “ submission ” 15 have the same meanings respectively as in the Arbitration Act, 1908;

See Reprint of Statutes, Vol. I, p. 346

5 “Land” includes corporeal hereditaments and rentcharges, and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held upon trust for sale, but save as aforesaid does not include any incorporeal hereditament:

10 “Parent” has the same meaning as in the Deaths by Accident Compensation Act, 1908, as for the time being extended by any other enactment:

See Reprint
of Statutes,
Vol. VI, p. 427

“Personal estate” and “personal property” do not include chattels real:

15 “Rent” includes a rentcharge and a rent service;

“Rentcharge” means any annuity or periodical sum of money charged upon or payable out of land, except a rent service or interest on a mortgage on land:

20 “Ship” includes every description of vessel used in navigation not propelled by oars:

“Trust” and “trustee” have the same meanings respectively as in the Trustee Act, 1908, as for the time being extended by any other enactment.

Ibid.,
Vol. VIII,
p. 873

25 (2) For the purposes of this Act, a person shall be deemed to be under a disability while he is an infant or of unsound mind.

30 (3) For the purposes of the *last preceding* subsection but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is detained or kept in custody (otherwise than as a voluntary boarder) under any provision of the Mental Defectives Act, 1911.

Ibid.,
Vol. V, p. 743

35 (4) A person shall be deemed to claim through another person if he became entitled by, through, under, or by the act of that other person to the right claimed, and any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be deemed to claim through the person so entitled:

40 Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor.

(5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rent-charges, to distrain for arrears of rent; and references to the bringing of such an action shall include refer- 5
ences to the making of such an entry or distress.

(6) References in this Act to the possession of land shall, in the case of rentcharges, be construed as references to the receipt of rent; and references to the date of dispossession or discontinuance of possession 10
of land shall, in the case of rentcharges, be construed as references to the date of the last receipt of rent.

(7) In Part II of this Act references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and references to the date of the accrual of a right of action shall— 15
20

(a) In the case of an action for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed:

(b) In the case of an action upon a judgment, be 25
construed as references to the date on which the judgment became enforceable:

(c) In the case of an action to recover arrears of rent or interest, or damages in respect thereof, be construed as references to the date on which 30
the rent or interest became due.

(8) For the purposes of this Act a period of limitation which is prescribed by any of the enactments mentioned in the *Second* Schedule to this Act (as amended by this Act) shall not be deemed to be 35
prescribed by this Act.

PART I

PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION

Part I to be subject to provisions of Part II relating to disability, acknowledgment, fraud, &c.

Cf. U.K. Act, s. 1

3. The provisions of this Part of this Act shall have effect subject to the provisions of Part II of this Act, 40
which provide for the extension of the periods of limitation in the case of disability, acknowledgment, part payment, fraud, and mistake.

Actions of Contract and Tort and Certain Other Actions

4. (1) Except as otherwise provided in this Act, the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say,—
- 5 (a) Actions founded on simple contract or on tort:
 (b) Actions to enforce a recognizance:
 (c) Actions to enforce an award, where the submission is not by a deed:
 10 (d) Actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.
- (2) An action for an account shall not be brought
 15 in respect of any matter which arose more than six years before the commencement of the action.
- (3) An action upon a deed shall not be brought after the expiration of twelve years from the date on which the cause of action accrued:
- 20 Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.
- (4) An action shall not be brought upon any judgment **which has been obtained subsequent to the commencement of this Act** after the expiration of twelve years from the date on which the judgment became enforceable **or on any judgment which has been obtained before the commencement of this Act after the expiration of twenty years from the date on which the judgment became enforceable**; and no arrears of interest in respect
 25 of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.
- (5) An action to recover any penalty or forfeiture,
 30 or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued:

Limitation of actions of contract and tort, and certain other actions.

Cf. ibid., s. 2

Provided that for the purposes of this subsection the expression "penalty" shall not include a fine to which any person is liable on conviction of a criminal offence.

*Cf. s. 95,
Judicature
Act, 1908.
(Reprint of
Statutes,
Vol. II, p. 87)*

(6) An action to have any will of which probate has been granted, or in respect of which letters of administration with the will annexed have been granted, declared or adjudicated to be invalid on the ground of want of testamentary capacity in the testator or on the ground of undue influence shall not be brought after the expiration of twelve years from the date of the granting of the probate or letters of administration. 5 10

(7) An action in respect of the [*death of or*] bodily injury to any person shall not be brought after the expiration of two years from the date on which the cause of action accrued: 15

Provided that application may be made to the Court, after notice to the intended defendant, for leave to bring such an action at any time within six years after the date on which the cause of action accrued; and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the delay in bringing the action was occasioned by mistake or by any other reasonable cause **or that the intended defendant was not materially prejudiced in his defence or otherwise by the delay.** 20 25

1948, No. 10

(8) Subject to the provisions of section four of the Shipping and Seamen Amendment Act, 1948, subsection *one* of this section shall apply to an action to recover seamen's wages, but save as aforesaid this section shall not apply to any cause of action within the Admiralty jurisdiction of the Supreme Court which is enforceable *in rem*. 30

(9) This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed or amended by this Act, or ceasing to have effect by virtue of this Act, has heretofore been applied. 35 40

5. (1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.
- 10 (2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid expires without his having commenced action to
- 15 recover possession of the chattel, the title of that person to the chattel shall be extinguished.
- (3) Nothing in this section shall affect the provisions of subsection one of section twenty-six of the Sale of Goods Act, 1908.
- 20 *Actions to Recover Land and Rent, and Accrual of Rights and Causes of Action*
6. (1) Subject to the provisions of the *next succeeding* subsection, nothing in this Act shall apply to any Maori land which is customary land within the
- 25 meaning of the Maori Land Act, 1931.
- (2) This Act shall be subject to the Land Transfer Act, 1915, the Land Act, 1948, sections one hundred and fifteen and five hundred and fifty-four of the Maori Land Act, 1931, and section twelve of the Public Works
- 30 Amendment Act, 1935, so far as it is inconsistent with anything contained in those enactments.
- (3) Nothing in this Act shall affect the right of His Majesty to any minerals (including uranium, petroleum, and coal).
- 35 7. (1) No action shall be brought by the Crown to recover any land after the expiration of sixty years from the date on which the right of action accrued to the Crown or to some person through whom the Crown claims.
- 40 (2) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or to some person through whom he claims;

Limitation in case of successive conversions, and extinction of title of owner of converted goods.
Cf. U.K. Act, s. 3

See Reprint of Statutes, Vol. VIII, p. 112

Application of Act to land of the Crown, Maori customary land, and land subject to the Land Transfer Act, 1915.
Ibid., Vol. VI, p. 103; Vol. VII, p. 1162
1948, No. 64
1935, No. 27

Limitation of actions to recover land.
Cf. U.K. Act, s. 4

Provided that, if the right of action first accrued to the Crown, the action may be brought at any time before the expiration of the period during which the action could have been brought by the Crown, or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires. 5

Accrual of
right of action
in case of
present
interests in
land.
Cf. U.K. Act,
s. 5

8. (1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance. 10

(2) Where any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death. 15 20

(3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, by a person who, at the date when the assurance took effect, was in possession of the land or, in the case of a rentcharge created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect. 25 30

Accrual of
right of action
in case of
future
interests.
Cf. *ibid.*, s. 6

9. (1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest or otherwise. 35 40

(2) If the person entitled to the preceding estate or interest was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest—

(a) After the expiration of sixty years from the date on which the right of action accrued to the Crown where the Crown is entitled to the succeeding estate or interest; or

10 (b) In any other case, after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

15 (3) The foregoing provisions of this section shall not apply where the preceding estate or interest is a leasehold interest other than one which is determinable with life or lives or with the cesser of a determinable life interest.

20 (4) The foregoing provisions of this section shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.

25 (5) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

30 (6) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming

through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

Provisions in case of settled land and land held on trust. Cf. U.K. Act, s. 7

10. (1) Subject to the provisions of subsection *one* 5
of section *twenty-one* of this Act, the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as they apply to legal estates, and accordingly a right of action to recover 10
the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the 15
land.

See Reprint of Statutes, Vol. VIII, p. 200

(2) Where any land is held by any trustee (including a trustee who is also tenant for life, or who, by virtue of the Settled Land Act, 1908, has also the powers of a tenant for life) upon trust, including a trust for sale, 20
and the period prescribed by this Act for the bringing of an action to recover the land by the trustee has expired, the estate of the trustee shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in 25
the proceeds of sale either has not accrued or has not been barred by this Act, but if and when every such right of action has been so barred, the estate of the trustee shall be extinguished.

(3) Where any settled land is vested in a tenant 30
for life or a person having the statutory powers of a tenant for life or any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the tenant for life or person having the powers of a tenant for life or trustees on behalf of any 35
person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act, notwithstanding that the right of action of the tenant for life or person having the powers of a tenant for life or trustees 40
would, apart from this provision, have been barred by this Act.

(4) Where any settled land or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds 45

of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is
 5 vested as tenant for life, person having the powers of a tenant for life, or trustee, or to any person entitled to a beneficial interest in the land or the proceeds of sale.

11. A right of action to recover land by virtue of
 10 of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Accrual of right of action in case of forfeiture or breach of condition.

Cf. U.K. Act, s. 8

Provided that, if such a right has accrued to a person entitled to an estate or interest in reversion or
 15 remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession.

12. (1) A tenancy at will or a tenancy determinable
 20 at the will of either of the parties by one month's notice in writing shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accord-
 25 ingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date on which it is determined or deemed to be determined as aforesaid:

Accrual of right of action in case of certain tenancies.

Cf. *ibid.*, s. 9

Now

30 Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(2) A tenancy from year to year or other period
 35 without a lease in writing (but not a tenancy to which the *last preceding* subsection applies) shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled
 40 to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently
 been received in respect of the tenancy, the right of
 action shall be deemed to have accrued on the date of
 45 the last receipt of rent.

(3) Where any person is in possession of land by virtue of a lease in writing by which a rent at a rate of not less than twenty shillings a year is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last mentioned person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

(4) Subsections *one* and *three* of this section shall not apply to any tenancy at will or lease granted by the Crown.

Right of action not to accrue or continue unless there is adverse possession.
Cf. U.K. Act, s. 10

13. (1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as adverse possession), and, where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued, and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse possession.

(3) For the purposes of this section,—

(a) Possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be deemed to be adverse possession of the rentcharge; and

(b) Receipt of rent under a lease by a person wrongfully claiming, as mentioned in subsection *three* of the last preceding section, the land in reversion shall be deemed to be adverse possession of the land.

14. For the purposes of any claim for a sum of money by way of contribution or indemnity, however the right to contribution or indemnity arises, the cause of action in respect of the claim shall be deemed to have accrued at the first point of time when everything has happened which would have to be proved to enable judgment to be obtained for a sum of money in respect of the claim.

Accrual of cause of action on claim for contribution or indemnity.

15. Where a person entitled in remainder to an entailed interest in any land has made an assurance thereof which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar the last mentioned estates and interests only, and any person takes possession of the land by virtue of the assurance, and that person or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of twelve years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail and such estates and interests as aforesaid, then, at the expiration of that period, the assurance shall operate, and be deemed always to have operated, to bar the issue in tail and those estates and interests.

Cure of defective disentailing assurance.
Cf. U.K. Act, s. 11

16. (1) Notwithstanding anything contained in section seventy of the Property Law Act, 1908, or in any other enactment, when a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming through him.

Limitation of redemption actions.
Cf. *ibid.*, s. 12
See Reprint of Statutes, Vol. VII, p. 1102

(2) This section shall not apply in respect of any land that is subject to the Land Transfer Act, 1915.

Ibid., p. 1162

17. For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

No right of action to be preserved by formal entry or continual claim.
Cf. U.K. Act, s. 13

Extinction of title after expiration of period.
Cf. U.K. Act, s. 16

Limitation of actions to recover rent.
Cf. *ibid.*, s. 17

Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land.
Cf. *ibid.*, s. 18

18. Subject to the provisions of section *ten* of this Act, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

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19. No action shall be brought, or distress made, to recover arrears of rent or damages in respect thereof, after the expiration of six years from the date on which the arrears became due.

Actions to Recover Money Secured by a Mortgage or Charge or to Recover Proceeds of the Sale of Land 10

20. (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of the sale of land (not being the proceeds of the sale of land held upon trust for sale), after the expiration of twelve years from the date when the right to receive the money accrued. 15

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued: 20

Provided that, if after that date the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which his possession discontinued. 25

(3) The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on any personal property subject to the mortgage or charge shall not be deemed to accrue so long as the property subject to the mortgage or charge comprises any future interest or any life insurance policy which has not matured or been determined. 30 35

(4) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land, or to recover damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due: 40

Provided that—

(a) Where a prior mortgagee or other incumbrancer has been in possession of the property charged, and an action is brought within one year of the discontinuance of that possession by the subsequent incumbrancer, he may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof, notwithstanding that the period exceeded six years:

(b) Where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

(5) This section shall not apply to any mortgage or charge on a ship.

Actions in Respect of Trust Property or the Personal Estate of Deceased Persons

21. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) In respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) To recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Limitation of actions in respect of trust property.

Cf. U.K. Act, s. 19; Trustee Act, 1908, s. 94, Reprint of Statutes, Vol. VIII, p. 907

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

Limitation of actions claiming personal estate of a deceased person.
Cf. U.K. Act, s. 20

22. Subject to the provisions of subsection *one* of the *last preceding* section, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

Actions Against the Crown and Public and Local Authorities, &c.

Protection of persons acting in execution of statutory or other public duty.
Cf. *ibid.*, s. 21

23. (1) No action shall be brought against any person (including the Crown) for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty, or authority, unless—

- (a) Notice in writing [*specifying the cause of action*] giving reasonable information of the circumstances upon which the proposed action will be based and the name and address of the prospective plaintiff and of his solicitor or agent (if any) in the matter is given by the prospective plaintiff to the prospective defendant as soon as practicable after the accrual of the cause of action; and
- (b) The action is commenced before the expiration of one year from the date on which the cause of action accrued:

Provided that, where the act, neglect, or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect, or default has ceased:

Provided also that the notice required by paragraph (a) of this subsection may be given while the act, neglect, or default continues:

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- 5 | Provided further that any such person may consent to the bringing of such an action at any time within six years after the date on which the cause of action accrued, whether or not notice has been given to the intended defendant as aforesaid.
- 10 | (2) Notwithstanding the foregoing provisions of this section, application may be made to the Court, after notice to the intended defendant, for leave to bring such an action at any time within six years after the date on which the cause of action accrued, whether or not notice
- 15 | has been given to the intended defendant under the *last preceding* subsection; and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the failure to give the notice or the
- 20 | delay in bringing the action, as the case may be, was occasioned by mistake or by any other reasonable cause, **or that the intended defendant was not materially prejudiced in his defence or otherwise by the failure or delay.**
- 25 | (3) Where notice has to be given to the Crown under this section it shall be given to the Solicitor-General, and may be so given by leaving it at his office in Wellington or by sending it by post in a registered letter addressed to him at his said office.
- 30 | (4) Except as provided in the *last preceding* subsection, where any notice has to be given under this section, it may be given either—
- (a) By delivering it to the person to whom it has to be given; or
- 35 | (b) By leaving it at the usual or last known place of abode in New Zealand of that person; or
- (c) By sending it by post in a registered letter addressed to that person at his usual or last known place of abode in New Zealand.
- 40 | (5) Where a notice is sent by post in manner prescribed by subsection *three* of this section or by paragraph (c) of the *last preceding* subsection, it shall be deemed to have been given at the time at which the letter would have been delivered in the ordinary course of
- 45 | post.
- (6) The foregoing provisions of this section shall not apply to any criminal proceeding, **or to any action commenced by the Audit Office under the Public Revenues Act, 1926, the Local Authorities (Members' Contracts) Act, 1934, or any other Act.**
- 50

PART II

EXTENSION OF LIMITATION PERIODS IN CASE OF DISABILITY,
ACKNOWLEDGMENT, PART PAYMENT, FRAUD, AND MISTAKE*Disability*

Extension of
limitation
period in case
of disability.
Cf. U.K. Act,
s. 22

24. If, on the date when any right of action accrued 5
for which a period of limitation is prescribed by or may
be prescribed under this Act the person to whom it
accrued was under a disability,—

(a) In the case of any action to which section *twenty-*
three of this Act applies, or of any other action 10
in respect of the death of or bodily injury to
any person, or of any action to recover a
penalty or forfeiture or sum by way thereof
by virtue of any enactment where the action
is brought by an aggrieved party, the right 15
of action shall be deemed to have accrued on
the date when the person ceased to be under a
disability or died, whichever event first
occurred; or

(b) In any other case the action may be brought 20
before the expiration of six years from the
date when the person ceased to be under a
disability or died, whichever event first
occurred,—

notwithstanding that, in any case to which either of the 25
foregoing paragraphs of this section applies, the period
of limitation has expired:

Provided that—

(c) This section shall not affect any case where the
right of action first accrued to some person 30
(not under a disability) through whom the
person under a disability claims;

(d) When a right of action which has accrued to
a person under a disability accrues, on the
death of that person while still under a 35
disability, to another person under a disability,
no further extension of time shall be allowed
by reason of the disability of the second
person;

(e) No action to recover land or money charged on 40
land shall be brought by virtue of this section
by any person after the expiration of thirty

years from the date on which the right of action accrued to that person or some person through whom he claims;

- 5 (f) This section shall not apply to any action to which section *twenty-three* of this Act applies, unless the plaintiff proves that the person under a disability was not, at the time when the right of action accrued to him, in the custody of a parent; and
- 10 (g) This section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action is brought by an aggrieved party.

15 *Acknowledgment and Part Payment*

25. (1) Where there has accrued any right of action to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—

From accrual of action on acknowledgment or part payment.
Cf. U.K. Act, s. 23

- 20 (a) The person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or
- (b) In the case of a foreclosure or other action by a mortgagee, the person in possession as
- 25 aforesaid or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest,—
- the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last
- 30 payment.

(2) The *last preceding* subsection shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom

35 time is running under section *fifteen* of this Act, and on the making of the acknowledgment that section shall cease to apply to the land.

(3) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land which is not subject

40 to the Land Transfer Act, 1915, and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land

See Reprint of Statutes, Vol. VII, p. 1162

in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment.

(4) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:

Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

Formal provisions as to acknowledgments and part payments.

Cf. U.K. Act, s. 24

26. (1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the *last preceding* section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

Effect of acknowledgment or part payment on persons other than the maker or recipient.

Cf. *ibid.*, s. 25

27. (1) An acknowledgment of the title to any land or mortgaged personalty by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall bind only him and his successors and shall not bind any other mortgagee or his successors, and, where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to

any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

(4) Where there are two or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged as aforesaid, the acknowledgment shall be deemed to have been made to all the mortgagors.

(5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person:

15 Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.

(6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:

25 Provided that a payment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

(7) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person, or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.

40 (8) In this section the expression "successor" in relation to any mortgagee or person liable in respect of any debt or claim means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or

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bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

Fraud and Mistake

Postponement
of limitation
period in case
of fraud
or mistake.
Cf. U.K. Act,
s. 26

28. Where, in the case of any action for which a period of limitation is prescribed by this Act, either— 5

- (a) The action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or
- (b) The right of action is concealed by the fraud of any such person as aforesaid; or 10
- (c) The action is for relief from the consequences of a mistake,—

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it: 15

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which— 20

- (d) In the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; 25
or
- (e) In the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made. 30

PART III

GENERAL

Application of
Act and other
limitation
enactments to
arbitrations.

Cf. U.K. Act,
s. 27; 1938,
No. 6, s. 18

29. (1) This Act and any other enactment relating to the limitation of actions shall apply to arbitrations as they apply to actions. 35

(2) Notwithstanding any term in a submission to the effect that no cause of action shall accrue in respect of any matter required by the submission to be referred until an award is made under the submission, the 40

cause of action shall, for the purposes of this Act and of any other such enactment (whether in their applications to arbitrations or to other proceedings), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the submission.

(3) For the purposes of this Act and of any such enactment as aforesaid, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the submission provides that the reference shall be to a person named or designated in the submission, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice as aforesaid may be served either—

- (a) By delivering it to the person on whom it is to be served; or
- (b) By leaving it at the usual or last known place of abode in New Zealand of that person; or
- (c) By sending it by post in a registered letter addressed to that person at his usual or last known place of abode in New Zealand,—

as well as in any other manner provided in the submission; and, where a notice is sent by post in manner prescribed by paragraph (c) of this subsection, service thereof shall be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the Supreme Court orders that an award be set aside, or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by this Act or any such enactment as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under an Act of Parliament as well as to an arbitration pursuant to a submission, and subsections *three* and

four of this section shall have effect, in relation to an arbitration under an Act, as if for the references to the submission there were substituted references to such of the provisions of the Act or of any order, scheme, rules, regulations, or by-laws made thereunder as relate to the arbitration. 5

Provisions as to set-off or counterclaim.
Cf. U.K. Act, s. 28

30. For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded. 10

Acquiescence.
Cf. *ibid.*, s. 29

31. Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Application to the Crown.
Cf. *ibid.*, s. 30

32. Save as in this Act otherwise expressly provided and without prejudice to the provisions of section *thirty-three* thereof, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects: 15

See Reprint of Statutes, Vol. VII, p. 100

Provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon or to any forfeiture proceedings under the Customs Acts within the meaning of section three of the Customs Act, 1913, as from time to time extended by any other enactment, or to any proceedings in respect of the forfeiture of a ship. 20

Savings for other limitation enactments.
Cf. U.K. Act, s. 29

33. (1) This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment, or to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by any other enactment. 30

(2) Any reference in any enactment to any of the enactments specified in the *First* Schedule to this Act or to any provision of any such enactment shall be construed as a reference to the corresponding provision of this Act. 35

Provisions as to actions already barred and pending actions.
Cf. *ibid.*, s. 33

34. Nothing in this Act shall—
(a) Enable any action to be brought which was barred before the commencement of this Act by an enactment repealed or amended by this Act or ceasing to have effect by virtue of this Act, except in so far as the cause of action 40

or right of action may be revived by an acknowledgment or part payment made in accordance with the provisions of this Act; or

- 5 (b) Affect any action or arbitration commenced before the commencement of this Act or the title to any property which is the subject of any such action or arbitration.

10 **35.** (1) The enactments specified in the *First* Schedule to this Act shall at the commencement of this Act cease to have effect in New Zealand.

Repeals and amendments.
Cf. U.K. Act, s. 34 (4)

(2) The enactments specified in the *Second* Schedule to this Act are hereby amended in the manner indicated in that Schedule.

SCHEDULES

Schedules.

FIRST SCHEDULE

Section 35 (1)

UNITED KINGDOM ENACTMENTS CEASING TO HAVE EFFECT IN NEW ZEALAND

- 31 Eliz., c. 5—
An Act Concerning Informers.
- 21 Jas. I, c. 16—
The Limitation Act, 1623.
- 4 & 5 Anne, c. 3—
An Act for the amendment of the Law and the better Advancement of Justice: Sections 17 to 19.
- 9 Geo. III, c. 16—
The Crown Suits Act, 1769.
- 9 Geo. IV, c. 14—
The Statute of Frauds Amendment Act, 1828: Sections 1 to 4.
- 3 & 4 Will. IV, c. 27—
The Real Property Limitation Act, 1833.
- 3 & 4 Will. IV, c. 42—
The Civil Procedure Act, 1833: Sections 3 to 7.

SECOND SCHEDULE

Section 35 (2)

NEW ZEALAND ENACTMENTS AMENDED

| Title of Act. | Number of Section Affected. | Nature of Amendment. |
|--|--------------------------------------|--|
| 1902 (Local), No. 15— The Dunedin District Drainage and Sewerage Act 1900 Amendment Act, 1902 | Sections 30 and 31 .. | By repealing these sections. |
| 1907 (Local), No. 30— The Christchurch District Drainage Act, 1907 | Sections 75 and 76 .. | By repealing these sections. |
| 1908, No. 34— The Crown Suits Act, 1908 (Reprint of Statutes, Vol. II, p. 560) | Sections 26 and 37 .. | By repealing these sections. |
| <i>Struck out</i> | | |
| 1908, No. 39— The Deaths by Accident Compensation Act, 1908 (Reprint of Statutes, Vol. VI, p. 430) | Section 8 | By repealing the section and substituting the following section :— “ 8. (1) Not more than one action shall lie for the same subject matter of complaint, and every such action shall be commenced within two years after the date of the death of the person deceased : “ Provided that application may be made to the Court, after notice to the intended defendant, for leave to commence such an action at any time within six years after the date of the death of the person deceased ; and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the delay in commencing the action was occasioned by mistake or by any other reasonable cause. “ (2) Nothing in this section shall affect section <i>twenty-three</i> of the Limitation Act, 1950.” |
| 1908, No. 65— The Fisheries Act, 1908 .. (Reprint of Statutes, Vol. III, p. 381) | Section 97 | By repealing subsection (1). |
| 1908, No. 68— The Gaming Act, 1908 .. (Reprint of Statutes Vol. III, p. 543) | Section 73 Section 74 | By repealing this section. By omitting the words “ action or ”, and by inserting, after the word “ soever ”, the words “ (other than an action within the meaning of the Limitation Act, 1950) ”. |
| 1908, No. 89— The Judicature, Act 1908 .. (Reprint of Statutes, Vol. II, p. 60) | Sections 77 to 82, 93, and 95 | By repealing these sections. |
| 1908, No. 96— The Land Drainage Act, 1908 (Reprint of Statutes, Vol. IV, p. 466) | Sections 54, 55, and 56 | By repealing these sections. |
| 1908, No. 116— The Medical Act, 1908 .. (Reprint of Statutes, Vol. V, p. 668) | Section 38 | By repealing this section. |
| 1908, No. 152— The Property Law Act, 1908 (Reprint of Statutes, Vol. VII, p. 1102) | Section 70 | By repealing the proviso to subsection (1). |
| 1908, No. 183— The State Fire Insurance Act, 1908 (Reprint of Statutes, Vol. IV, p. 43) | Section 18 | By repealing paragraph (c). |

SECOND SCHEDULE—continued
NEW ZEALAND ENACTMENTS AMENDED—continued

| Title of Act. | Number of Section Affected. | Nature of Amendment. |
|--|-----------------------------|--|
| 1908, No. 187— The Stock Act, 1908 .. (Reprint of Statutes, Vol. I, p. 338) | Section 86 | By repealing this section. |
| 1908, No. 200— The Trustee Act, 1908 .. (Reprint of Statutes, Vol. VIII, p. 907) | Section 94 | By repealing this section. |
| 1913, No. 63— The Customs Act, 1913 .. (Reprint of Statutes, Vol. VII, p. 175) | Section 282 and 283 .. | By repealing these sections. |
| 1914, No. 32— The Local Railways Act, 1914 (Reprint of Statutes, Vol. VII, p. 967) | Section 99 | By repealing this section. |
| 1915, No. 35— The Land Transfer Act, 1915 (Reprint of Statutes, Vol. VII, p. 1227) | Section 195.. .. | By omitting the words “coverture, infancy, unsoundness of mind, or absence from New Zealand”, and substituting the words “infancy or unsoundness of mind”. |
| 1920 (Local), No. 15— The Christchurch Tramway District Act, 1920 | Section 51 | By repealing paragraphs (b) and (c). |
| 1921-22 (Local), No. 17— The Auckland Electric Power Board Act, 1921-22 | Section 95 | By repealing this section. |
| 1925, No. 38— The Electric Power Boards Act, 1925 (Reprint of Statutes, Vol. III, p. 56) | Section 127.. .. | By repealing this section. |
| 1927, No. 22— The Counties Amendment Act, 1927 (Reprint of Statutes, Vol. V, p. 276) | Section 14 | By repealing this section. |
| 1927, No. 37— The Justices of the Peace Act, 1927 (Reprint of Statutes, Vol. II, p. 457) | Sections 354 and 355 | By repealing these sections. |
| 1928, No. 4— The Orchard and Garden Diseases Act, 1928 (Reprint of Statutes, Vol. I, p. 142) | Section 21 | By repealing this section. |
| 1928, No. 12— The Post and Telegraph Act, 1928 (Reprint of Statutes, Vol. VI, p. 909) | Section 142.. .. | By repealing this section. |
| 1928, No. 44— The Auckland Transport Board Act, 1928 | Section 74 | By repealing this section. |

SECOND SCHEDULE—continued
NEW ZEALAND ENACTMENTS AMENDED—continued

| Title of Act. | Number of Section Affected. | Nature of Amendment. |
|---|---|---|
| 1933, No. 30— The Municipal Corporations Act, 1933 | Section 361 .. | By repealing this section. |
| 1936, No. 31— The Law Reform Act, 1936 .. | Section 3 (3) (b) .. Section 17 (1) (c) .. | By omitting the words “ [later] earlier than twelve months ”, and substituting the words “ [later] earlier than two years ”. By inserting, after the word “ sued ”, the words “ in time ”. |
| 1936, No. 50— The Hospitals Amendment Act, 1936 | Section 2 .. | By repealing subsection (2). |
| 1938, No. 3— The Municipal Corporations Amendment Act, 1938 | Section 35 .. | By repealing this section. |
| 1938, No. 6— The Arbitration Amendment Act, 1938 | Section 18 .. Section 18 (4) .. | By repealing subsections (1), (2), (7), and (8). By omitting the words “ of this section and for the purposes of the Statutes of Limitation as applying to arbitrations and ”. |
| 1941, No. 12— The Soil Conservation and Rivers Control Act, 1941 | Section 162 .. | By repealing this section. |
| 1941 (Local), No. 7— The Auckland Centennial Memorial Park Act, 1941 | Section 51 .. | By repealing this section. |
| 1944, No. 30— The Milk Act, 1944 .. | Section 91 .. | By repealing this section. |
| 1944 (Local), No. 7— The Hawke's Bay Crematorium Act, 1944 | Section 37 .. | By repealing this section. |
| 1944 (Local), No. 8— The Auckland Metropolitan Drainage Act, 1944 | Section 67 .. | By repealing this section. |
| 1945, No. 28— The New Zealand National Airways Act, 1945 | Section 32 .. | By repealing this section. |
| 1946, No. 2— The Nassella Tussock Act, 1946 | Section 64 .. | By repealing this section. |
| <i>Struck out</i> | | |
| 1947, No. 13— The Police Force Act, 1947 .. | Section 39 .. | By repealing subsections (1) and (2). |
| 1947, No. 16— The Magistrates' Courts Act, 1947 | Section 108 .. | By repealing subsections (1) and (2). |
| 1948 (Local), No. 11— The Hutt Valley Drainage Act, 1948 | Section 66 .. | By repealing this section. |
| 1950, No. 34— The Harbours Act, 1950 .. | Section 263 .. | By repealing this section. |