

CHAPTER 81

PRESCRIPTION

Ordinances Nos. 22 of 1871. 2 of 1889. AN ORDINANCE TO AMEND THE LAWS REGULATING THE PRESCRIPTION OF ACTIONS.

[1st January. 1872.]

Short title. 1. This Ordinance may be cited as the Prescription Ordinance. Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute. Saving in case of reversioners and remainder men.

Interpretation. 2. In this Ordinance, unless the context otherwise requires— " immovable property " shall be taken to include all shares and interests in such property, and all rights, easements, and servitudes thereunto belonging or appertaining.

Term of prescription for lands or immovable property. 3. Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgement of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. And in like manner, when any plaintiff shall bring his action, or any third party shall intervene in any action for the purpose of being quieted in his possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish his claim in any other manner to such land or other property, proof of such undisturbed and uninterrupted possession as hereinbefore explained, by such plaintiff or intervenient, or by those under whom he claims, shall entitle such plaintiff or intervenient to a decree in his favour with costs: 4. It shall be lawful for any person who shall have been dispossessed of any immovable property otherwise than by process of law, to institute proceedings against the person dispossessing him at any time within one year of such dispossession, And on proof of such dispossession within one year before action brought, the plaintiff in such action shall be entitled to a decree against the defendant for the restoration of such possession without proof of title ; Possessory action may be brought within one year of ouster.

5. No action shall be maintainable for the recovery of any sum due upon any hypothecation or mortgage of any property, or upon any bond conditioned for the payment of money, or the performance, of any agreement or trust, or the payment of penalty, unless the same be commenced, in the case of an instrument payable at, or providing for the performance of its condition within, a definite time, within ten years from the expiration of such time, and in all other cases within ten years from the date of such instrument of mortgage or hypothecation, or of last payment of interest thereon, or of the breach of the condition. Provided that nothing herein contained shall be held to affect the other requirements of the law as respects possessory cases,

Mortgage debt or bond prescribed after ten years.

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Term in case of partnership deeds, written promise, contract, bargain, agreement, or security, or upon promissory note, bill of exchange, &c.

6. No action shall be maintainable upon any deed for establishing a partnership, or upon any promissory note or bill of exchange, or upon any written promise, contract, bargain, or agreement, or other written security not falling within the description of instruments set forth in section 5, unless such action shall be brought within six years from the date of the breach of such partnership deed or of such written promise, contract, bargain, or agreement, or other written security, or from the date when such note or bill shall have become due, or of the last payment of interest thereon.

Term in cases of action to recover goods, rent, money lent, Ac., without written security.

7. No action shall be maintainable for the recovery of any movable property, rent, or mesne profit, or for any money lent without written security, or for any money paid or expended by the plaintiff on account of the defendant, or for money received by defendant for the use of the plaintiff, or for money due upon an account stated, or upon any unwritten promise, contract, bargain, or agreement, unless such action shall be commenced within three years from the time after the cause of action shall have arisen.

Term in case for goods sold, shop bill, book debt, or work and labour.

8. No action shall be maintainable for or in respect of any goods sold and delivered, or for any shop bill or book debt, or for work and labour done, or for the wages of artisans, labourers, or servants, unless the same shall be brought within one year after the debt shall have become due.

Term in cases for damages.

9. No action shall be maintainable for any loss, injury, or damage, unless the same shall be commenced within two years from the time when the cause of action shall have arisen.

Term in case of actions not hereinbefore provided for.

10. No action shall be maintainable in respect of any cause of action not hereinbefore expressly provided for, or expressly exempted from the operation of this Ordinance, unless the same shall be commenced within three years from the time when such cause of action shall have accrued.

Claims in reconvencion not to be allowed where action is barred.

11. No claim in reconvencion or by way of set-off shall be allowed or maintainable in respect of any claim or demand after the right to sue in respect thereof shall be barred by any of the provisions hereinbefore contained.

12. In any of the forms of action referred to in sections 5, 6, 7, 8, 10, and 11 of this Ordinance, no acknowledgment or promise by words only shall be deemed evidence of a new or continuing contract, whereby to take the case out of the operation of the enactments contained in the said sections, or any of them, or to deprive any party of the benefit thereof, unless such acknowledgment shall be made or contained by or in some writing to be signed by the party chargeable, or by some agent duly authorized to enter into such contract on his behalf; and that where there shall be two or more joint contractors, or heirs, executors, or administrators of any contractor, no such joint contractor, or heir, executor, or administrator shall lose the benefit of the said enactments, or any of them, by reason of any written acknowledgment or promise made by any other or others of them :

No acknowledgment to take a case out of the operation of this Ordinance unless in writing.

Provided always that nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever;

Provided also that in actions to be commenced against two or more such joint contractors, or heirs, executors, or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by any of the provisions contained in the said sections as to one or more of such joint contractors, heirs, executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise, or otherwise, judgment may be given for the plaintiff as to such defendant or defendants against whom he shall recover and for the other defendant or defendants against the plaintiff.

13. Provided nevertheless, that if at the time when the right of any person to sue for the recovery of any immovable property - shall have first accrued, such person shall have been under any of the disabilities hereinafter mentioned, that is to say—

Proviso in case of disabilities with reference to claims for land.

- (a) infancy,
- (b) idiocy,

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- (c) unsoundness of mind,
- (d) lunacy, or
- (e) absence beyond the seas,

this Ordinance, notwithstanding the disability of any adverse claimant.

then and so long as such disability shall continue the possession of such immovable property by any other person shall not be taken as giving such person any right or title to the said immovable property, as against the person subject to such disability or those claiming under him, but the period of ten years required by section 3 of this Ordinance shall commence to be reckoned from the death of such last-named person, or from the termination of such disability, whichever first shall happen ; but no further time shall be allowed in respect of the disabilities of any other person;

14. Provided also, that if at the time when the right of action in respect of any of the causes referred to in sections 5, 6, 7, 8, 10, and 11 of this Ordinance shall accrue, the person so entitled to sue shall be subject to any of the said hereinbefore mentioned disabilities, then the several periods of limitation hereinbefore provided shall not commence to run until the removal of such disability or the death of such person, whichever first shall happen ; but no further time shall be allowed in respect of the disability of any other person.

Proviso in case of disabilities affecting claims other than those for lands.

Provided also that the adverse and undisturbed possession for thirty years of any immovable property by any person claiming the same, or by those under whom he claims, shall be taken as conclusive proof of title in manner provided by section 3 of

15. Nothing herein contained shall in any way affect the rights of the State, or shall be taken to apply to any proceedings in any action for divorce, or to any case in which special provision has been or may hereafter be made for regulating and determining the period within which actions may be commenced against any public officer or other person.

This Ordinance not to affect State or causes matrimonial.-