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An Ordinance to amend the Laws regulating the Prescription of Actions.

Preamble.

WHEREAS it is expedient to amend the Laws now in force regulating the Prescription of Actions: **IT IS THEREFORE ENACTED BY THE GOVERNOR OF CEYLON**, with the advice and consent of the Legislative Council thereof, as follows:—

Repeal of former Ordinance.

1. THE Ordinance No. 8 of 1834, entitled "*An Ordinance to assimilate, amend and consolidate the laws now in force in different parts of the Island, regulating the prescription of Actions,*" is hereby repealed, except so far as respects all rights which shall have accrued, liabilities which shall have been incurred, and all proceedings or matters which shall have taken place before this Ordinance shall come into force,

2. IN the interpretation of this Ordinance, the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction:—

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Interpretation Clause.

THE expression "immoveable property" shall be taken to include all shares and interests in such property, and all rights, easements and servitudes thereunto belonging or appertaining.

Immoveable 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 immoveable 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 acknowledgment 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 immoveable 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. 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.

Term of prescription for lands or immoveable property.

Saving in case of reversioners, and remainder men.

4. IT shall be lawful for any person who shall have been dispossessed of any immoveable 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. PROVIDED that nothing herein contained shall be held to affect the other requirements of the law as respects possessory cases.

Possessory action may be brought within one year of ouster.

5. EVERY judgment, decree, or order of any Court shall be deemed to have been satisfied after the expiration of ten years from the time when such judgment, decree, or order shall have been finally pronounced, unless such judgment, decree, or order shall have been duly revived, or unless some writ, warrant, or other process of law shall have been issued to enforce the same, in which case the said period of ten years shall be reckoned from the time when such revival shall have been decreed, or from the last time when such writ, warrant, or process shall have been issued, as the case may be.

Judgments prescribed after ten years.

6. 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.

Mortgage debt or Bond prescribed after ten years.

7. 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 the 6th Section, 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 case of partnership deeds, written promise, contract, bargain, agreement or security, or upon promissory note, bill of exchange, &c.

8. NO action shall be maintainable for the recovery of any moveable 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.

Terms in cases of action to recover goods, rent, money lent, &c., without written security.

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

Term in cases for damages.

Term in case of actions not hereinbefore provided for.

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

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

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

Proviso.

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

Act not to affect Crown or causes Matrimonial.

9. 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.

10. 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.

11. 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.

12. NO claim in reconvention 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.

13. IN any of the forms of action referred to in Sections 6, 7, 8, 9, 11, and 12, 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. 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.

14. PROVIDED nevertheless, that if at the time when the right of any person to sue for the recovery of any immoveable property shall have first accrued, such person shall have been under any of the disabilities hereinafter mentioned, that is to say: infancy, idiotcy, unsoundness of mind, lunacy, or absence beyond the seas, then and so long as such disability shall continue, the possession of such immoveable property by any other person shall not be taken as giving such person any right or title to the said immoveable property, as against the person subject to such disability or those claiming under him, but the period of ten years required by the 3rd Section 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. PROVIDED also, that the adverse and undisturbed possession for thirty years of any immoveable 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 the 3rd Section of this Ordinance, notwithstanding the disability of any adverse claimant.

15. PROVIDED also, that if at the time when the right of action in respect of any of the causes referred to in Sections 6, 7, 8, 9, 11, and 12, 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.

16. NOTHING herein contained shall in any way affect the rights of the Crown, 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.

17. THAT this Ordinance shall come into operation on the first day of January, 1872.

Passed in Council, the Twenty-second day of December, One thousand Eight hundred and Seventy-one.

JAMES SWAN,
Clerk to the Council.

Assented to by His Excellency the Governor, the Twenty-third day of December, One thousand Eight hundred and Seventy-one, and published by his order.

HENRY T. IRVING,
Colonial Secretary.

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Ordinance when to come
into operation.