

STATUTE OF FRAUDS AND LIMITATIONS OF 1867⁽¹⁾ (QUEENSLAND, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF PAPUA.

An Act to consolidate and amend the Laws relating to Frauds and the Limitation of Actions.

31 Vic. No. 22.
STATUTE OF
FRAUDS AND
LIMITATIONS
OF 1867.

Preamble
repealed by
No. 3 of 1914,
s. 2 and First
Schedule.

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BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

(1) The *Statute of Frauds and Limitations of 1867* of Queensland, in its application to the Territory of Papua, comprises the original *Statute of Frauds and Limitations of 1867* of Queensland, referred to in Part I of the following Table, as amended by the Ordinances of the Territory of Papua referred to in Part II of the following Table:—

TABLE.
PART I.—ACT OF THE STATE OF QUEENSLAND.

Citation of Act.	Ordinance by which adopted.	Date on which adoption took effect.
<i>Statute of Frauds and Limitations of 1867</i> (31 Vic. No. 22) ^(a)	<i>The Courts and Laws Adopting Ordinance (Amended) of 1889</i> ^(a)	23.11.1889 (Supplement to British N.G. Govt. Gaz. of 23.11.1889)

(a) Continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*.

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov.	Date of reservation by Lieut.-Gov.	Date on which assent of Gov.-Gen. in Council published in Papua Govt. Gaz.	Date on which came into operation.
<i>Partnership Ordinance, 1912</i> (No. 39 of 1912)	16.7.1912 ^(b)	—	—	23.12.1912 (Papua Govt. Gaz. of 23.12.1912)
<i>Ordinances Revision Ordinance, 1913</i> (No. 3 of 1914)	—	14.8.1913	4.2.1914	4.2.1914 (Papua Govt. Gaz. of 4.2.1914)
<i>Sale of Goods Ordinance, 1927</i> (No. 3 of 1927)	9.6.1927 ^(c)	—	—	7.3.1928 (Papua Govt. Gaz. of 7.3.1928)

(b) No notice of non-disallowance by Gov.-Gen. in Council has been published in Papua Govt. Gaz.

(c) Notice of non-disallowance by Gov.-Gen. in Council published in Papua Govt. Gaz. of 17.12.1927.

LIMITATION OF ACTIONS—

INTERPRETATION.

1. No part of Australia nor any island adjacent thereto (being part of the dominions of Her Majesty) shall be deemed to be beyond seas within the meaning of this Act.

Australia and the adjacent islands not to be deemed beyond seas.

STATUTE OF FRAUDS.

2. All leases estates interests of freehold or terms of years or any uncertain interest of in to or out of any messuages lands tenements or hereditaments made or created by livery and seisin only or by parol and not put in writing and signed by the parties so making or creating the same or their agents thereunto lawfully authorised by writing shall have the force and effect of leases or estates at will only and shall not either in law or equity be deemed or taken to have any other or greater force or effect any consideration for making any such parol lease or estates or any former law or usage to the contrary notwithstanding.

Parol leases and interest of freehold shall have the force of estates at will only.

Imp. 29 Car. II. c. 3, s. 1.

3. Except nevertheless all leases not exceeding the term of three years from the making thereof whereupon the rent reserved to the landlord during such term shall amount unto two third parts at the least of the full improved value of the thing demised.

Except leases not exceeding three years &c.

Imp. *Ib.* s. 2.

4. No leases estates or interests either of freehold or terms of years or any uncertain interest of in to or out of any messuages lands tenements or hereditaments shall be assigned granted or surrendered unless it be by deed or note in writing signed by the party so assigning granting or surrendering the same or their agents thereunto lawfully authorised by writing or by act and operation of law.

No leases or estates of freehold shall be granted or surrendered by word.

Imp. *Ib.* s. 3.

5. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate (2) or whereby to charge the defendant upon any special promise to answer for the debt default or miscarriages of another person (3) or to charge any person upon any agreement made upon consideration of marriage (4) or upon any contract or sale of lands tenements or hereditaments or any interest in or concerning them (5) or upon any agreement that is not to be performed within the space of one year from the making thereof (6) unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised.

Promises and agreements by parol.

Imp. *Ib.* s. 4.

6. No special promise made by any person after the twenty-fifth day of August one thousand eight hundred and sixty-four to answer for the debt default or miscarriage of another person being in writing and signed by the party to be charged therewith

Consideration for guarantee need not appear by writing.

Imp. 19 & 20 Vic. c. 97, s. 3.

or some other person by him thereunto lawfully authorised shall be deemed invalid to support an action suit or other proceeding to charge the person by whom such promise shall have been made by reason only that the consideration of such promise does not appear in writing or by necessary inference from a written document.

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Section 7 repealed by No. 39 of 1912, s. 4 and Schedule.

Section 8 repealed by No. 3 of 1927, s. 4 and Schedule.

In actions of debt or upon the case no acknowledgment shall be deemed sufficient unless it be in writing or by part payment. Imp. 9 Geo. IV. c. 14, s. 1.

9. In actions of debt or upon the case grounded upon any simple contract no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of this or any statute of limitations or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby

Joint contractors.

and where there shall be two or more joint contractors or executors or administrators of any contractor no such joint contractor executor or administrator shall lose the benefit of such enactments so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed 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 executors or administrators if it shall appear at the trial or otherwise that the plaintiff though barred by this or any statute of limitations as to one or more of such joint contractors or 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 and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover and for the other defendant or defendants against the plaintiff.

Proviso for the case joint contractors.

10. In reference to the provisions of the next preceding section and of the fourteenth section of this Act an acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby duly authorised to make such acknowledgment or promise shall have the same effect as if such writing had been signed by such party himself.

Provisions of the preceding section extended to acknowledgments by agents. Imp. 19 & 20 Vic. c. 97, s. 13.

LIMITATION OF ACTIONS—

Indorsements
of payments.
Imp. 9 Geo. IV.
c. 14, s. 3.

11. No indorsement or memorandum of any payment written or made upon any promissory note bill of exchange or other writing by or on the behalf of the party to whom such payment shall be made shall be deemed sufficient proof of such payment so as to take the case out of the operation of this or any statute of limitations.

Confirmation
of promises
made by
infants.
Imp. 1b. s. 5.

12. No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification after full age of any promise or simple contract made during infancy unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

Representations
of character.
Imp. 1b. s. 6.

13. No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character conduct credit ability trade or dealings of any other person to the intent or purpose that such other person may obtain credit money or goods thereupon unless such representation or assurance be made in writing signed by the party to be charged therewith.

Memorandums
exempted from
stamps.
Imp. 1b. s. 8.

14. No memorandum or other writing made necessary by the ninth tenth twelfth and thirteenth sections of this Act shall be deemed to be an agreement within the meaning of any statute relating to the duties of stamps.

Simple contract
debts alleged by
way of set-off.
Imp. 1b. s. 4.

15. This and every statute of frauds or limitations shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set-off on the part of any defendant either by plea notice or otherwise.

STATUTE OF LIMITATIONS.

The limitation
of certain
personal actions.
Imp. 21 Jac. I.
c. 16, s. 3.

16. All actions of trespass *quare clausum fregit* all actions of trespass detinue action sur trover and replevin for taking away of goods and cattle all actions of account and upon the case all actions of debt grounded upon any lending or contract without specialty all actions for debt for arrearages of rent and all actions of assault menace battery wounding and imprisonment or any of them shall be commenced and sued within the time and limitation hereafter expressed and not after that is to say

the said actions upon the case (other than for slander) and the said actions for account and the said actions for trespass debt detinue and replevin for goods or cattle and the said action of trespass *quare clausum fregit* within six years next after the cause of such actions or suits and not after and

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the said actions of trespass of assault battery wounding imprisonment or any of them within four years next after the cause of such actions or suits and not after and

the said actions upon the case for words within two years next after the words spoken and not after.

17. All suits and actions in the Court of Admiralty for seamen's wages shall be commenced and sued within six years next after the cause of such suit or actions shall accrue and not after.

Seamen's wages must be sued for within six years after cause of action accrued.

Imp. 4 Anne c. 16, s. 17.

18. No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage judgment or lien or otherwise charged upon or payable out of any land or rent at law or in equity or any legacy but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same unless in the meantime some part of the principal money or some interest thereon shall have been paid or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent to the person entitled thereto or his agent and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment or the last of such payments or acknowledgments if more than one was given.

Money charged upon land and legacies to be deemed satisfied at the end of twenty years if there shall be no interest paid or acknowledgment in writing in the meantime.

Imp. 3 & 4 Wm. IV. c. 27, s. 40.

19. After the thirty-first day of December eighteen hundred and sixty-seven no suit or other proceeding shall be brought to recover the personal estate or any share of the personal estate of any person dying intestate possessed by the legal personal representative of such intestate but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same unless in the meantime some part of such estate or share or some interest in respect thereof shall have been accounted for or paid or some acknowledgment of the right thereto shall have been given in writing signed by the person accountable for the same or his agent to the person entitled thereto or his agent and in such case no such action or suit shall be brought but within twenty years after such accounting payment or acknowledgment or the last of such accountings payments or acknowledgments if more than one was made or given.

Claims to estates of intestates.

Imp. 23 & 24 Vic. c. 38, s. 13.

20. No arrears of dower nor any damages on account of such arrears shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

No arrears of dower to be recovered for more than six years.

Imp. 3 & 4 Wm. IV. c. 27, s. 41.

LIMITATION OF ACTIONS—

No arrears of rent or interest to be recovered for more than six years.

Imp. 3 & 4 Wm. IV. c. 27, s. 42.

21. No arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent or in respect of any legacy or any damages in respect of such arrears of rent or interest shall be recovered by any distress action or suit but within six years next after the same respectively shall have become due or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto or his agent signed by the person by whom the same was payable or his agent

Provided nevertheless that where any prior mortgagee or other encumbrancer shall have been in possession of any land or in the receipt of the profits thereof within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other encumbrance on the same land the person entitled to such subsequent mortgage or encumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or encumbrancer was in such possession or receipt as aforesaid although such time may have exceeded the said term of six years.

Limitation of certain actions of debt &c.

Imp. 3 & 4 Wm. IV. c. 42, s. 3.

22. All actions of debt for rent upon any indenture of demise
- all actions of covenant or debt upon any bond or other specialty and
 - all actions of debt or *scire facias* upon any recognizance and
 - all actions of debt upon any award where the submission is not by specialty or for money levied under *feri facias* and
 - all actions for penalties damages or sums given to the party grieved by any law now or hereafter in force in this colony

shall be commenced and sued within the time and limitation hereinafter expressed but not afterwards that is to say

the said actions of debt for rent or covenant or debt upon any bond or other specialty and actions of debt or *scire facias* upon recognizance within twenty years after the cause of such actions

the said actions by the party grieved within two years after the cause of such actions and

the said other actions within six years after the cause of such actions

Provided that nothing herein contained shall extend to any actions given by an Act or statute where the time for bringing such action is or shall be thereby specially limited.

23. If any person entitled to any such action or *scire facias* shall be at the time the cause of action accrued within the age of twenty-one years *femme covert* or *non compos mentis* then such person shall be at liberty to commence the same action within such times after being of full age discoverd of sound memory as other persons having no such impediment should have done and if any person against whom there shall be any such cause of action shall be at the time such action accrued beyond sea then the party entitled to any such cause of action shall be at liberty to bring the same against such person within such times as are before limited after the return of such person from beyond sea.

Infants and persons beyond sea &c.
Imp. 3 & 4 Wm. IV. c. 42, s. 4.

24. If any acknowledgment shall have been made either by writing signed by the party liable under any such indenture specialty or recognizance or his agent or by part payment or satisfaction on account of the principal or interest due thereon it shall be lawful for the person entitled to such actions to bring his action for the money remaining unpaid and so acknowledged within twenty years after such acknowledgment or part payment or satisfaction or in case any person entitled to such action shall at the time of such acknowledgment be under disability as aforesaid or the party making such acknowledgment shall then be beyond sea then within twenty years after such disability shall have ceased or such party shall have returned from beyond sea as the case may be and in answer to a plea of this Act the plaintiff in any such action may reply such acknowledgment and that such action was brought within such time as aforesaid.

Proviso as to acknowledgments.
Imp. 17. s. 5.

25. All actions of account or for not accounting and suits for such accounts as concern the trade of merchandise between merchant and merchant their factors or servants shall be commenced and sued within six years after the cause of such actions or suits and no claim in respect of a matter which arose more than six years before the commencement of any action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit.

Limitation of actions for merchants' accounts.
Imp. 19 & 20 Vic. c. 97, s. 9.

26. In reference to the enactments of the sixteenth and twenty-second sections of this Act when there shall be two or more co-contractors or co-debtors whether bound or liable jointly only or jointly and severally or executors or administrators of any contractor no such co-contractor or co-debtor executor or administrator shall lose the benefit of the said enactments or any of them so as to be chargeable in respect or by reason only of payment of any principal interest or other money by any other or others of such co-contractors or co-debtors executors or administrators.

Part payment by one contractor &c. not to prevent bar by limitation in favour of another contractor &c.
Imp. 17. s. 14.

LIMITATION OF ACTIONS—

Absence beyond seas or imprisonment of a creditor not to be a disability.
Imp. 19 & 20 Vic. c. 97, s. 10.

27. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same may be brought is fixed by the sixteenth seventeenth eighteenth nineteenth twentieth twenty-first and twenty-second sections of this Act shall be entitled to any time within which to commence and sue such action or suit beyond the period so fixed for the same by the enactments aforesaid by reason only of such persons or some one or more of such persons being at the time such cause of action or suit accrued beyond the seas or by reason of such person or some one or more of such persons being imprisoned at the time such cause of action or suit accrued.

Period of limitation to run as to joint debtors in the colony though some are beyond seas.
Judgment recovered against joint debtors in the colony to be no bar to proceeding against others beyond seas after their return.
Imp. 1b. s. 11.

28. Where any cause of action or suit with respect to which the period of limitation is fixed in the said last-mentioned sections lies against two or more joint debtors the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond the seas at the time the cause of action or suit accrued after his or their return from beyond the seas by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond the seas at the time aforesaid.

COMMENCEMENT AND SHORT TITLE.

Commencement of Act.
Short title.

29. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Statute of Frauds and Limitations of 1867.*"⁽¹⁾

(1) See footnote (1) printed on p. 2819.