

CHAPTER 296

Prescription Act

Title. **1.** This Act may be cited as the *Prescription Act*. R.S. 1948, c. 263, s. 10.

Claims to right of common and other profits a *prendre* not to be defeated after thirty years' enjoyment by showing the commencement; after sixty years' enjoyment the right to be absolute, unless had by consent and agreement.

2. No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of the Crown, or any land of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except rent and services, shall, where such right, profit, or benefit has been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless the claim may be defeated in any other way by which the same is now liable to be defeated; and when the right, profit, or benefit has been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. [2 & 3 Will. 4, c. 71, s. 1]; R.S. 1948, c. 263, s. 1.

In claims of right-of-way or other easements, the periods to be twenty years and forty years.

3. No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of the Crown, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless the claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. [2 & 3 Will. 4, c. 71, s. 2]; R.S. 1948, c. 263, s. 2.

Prescriptive right to light.

4. No person shall acquire a right by prescription to the access and use of light to or for any building; but this section does not apply to any such right that has been acquired before the twelfth day of March,

1906, nor affect the rights of the parties to any proceeding pending at the said date in which such question has arisen before the said date. R.S. 1948, c. 263, s. 3.

Prescriptive
right to air.

5. No person shall acquire or be deemed heretofore to have acquired a right by prescription to the access and use of air to or for any building, or to the access to air for purposes of the ventilation of any building or for any other purposes; but this section does not affect any right acquired before the twelfth day of March, 1906. R.S. 1948, c. 263, s. 4.

Before-men-
tioned periods
to be deemed
those next
before suits
for claims to
which such
periods relate.

6. Each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate has been or is brought into question, and no act or other matter shall be deemed to be an interruption, within the meaning of this Statute, unless the same has been or is submitted to or acquiesced in for one year after the party interrupted had or has notice thereof, and of the person making or authorizing the same to be made. [2 & 3 Will. 4, c. 71, s. 4]; R.S. 1948, c. 263, s. 5.

Allegations
in actions
on the case,
actions for
trespass,
and other
pleadings.

7. In all actions and suits or other proceedings wherein the party claiming may now by law allege his right generally, without averring the existence of the right from time immemorial, the general allegation shall still be deemed sufficient, and if the same is denied, all and every the matters in this Act mentioned and provided which shall be applicable to the case are admissible in evidence to sustain or rebut the allegation; and in all pleadings to actions of trespass and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it is sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done; and if the other party intends to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact or of law, not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation. [2 & 3 Will. 4, c. 71, s. 5]; R.S. 1948, c. 263, s. 6.

No presump-
tion to be
allowed in
support of
claims herein
provided for.

8. In the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to

the nature of the claim. [2 & 3 Will. 4, c. 71, s. 6]; R.S. 1948, c. 263, s. 7.

Computation
of periods in
respect of per-
sons under
disability.

9. The time during which any person otherwise capable of resisting any claim to any of the matters before mentioned has been or is an infant, idiot, non compos mentis, or tenant for life, or during which any action or suit has been pending, and which has been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible. [2 & 3 Will. 4, c. 71, s. 7]; R.S. 1948, c. 263, s. 8.

What time to
be excluded
in computing
the term of
forty years
appointed
by this Act.

10. When any land or water upon, over, or from which any such way or other convenient watercourse or use of water has been or is enjoyed or derived hath been or is held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim is within three years next after the end or sooner determination of such term resisted by any person entitled to any reversion expectant on the determination thereof. [2 & 3 Will. 4, c. 71, s. 8]; R.S. 1948, c. 263, s. 9.