

ACT 6 OF 1861

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PRESCRIPTION

Amending the law regarding the period of time by the lapse of which certain suits and actions become barred by prescription.

[29th May, 1894]

Short title.

1. This Act may be cited as the Prescription Act.

Interpretation.

2. In this Act, unless inconsistent with the context, "period of prescription" means the period of time by the lapse of which a suit or action becomes barred.

Action for liquid debts.

3. Except as hereinafter is excepted, no suit or action upon any bill of exchange, promissory note or other liquid document of debt of such a nature as to be capable of sustaining a claim for provisional sentence shall be capable of being brought at any time after the expiration of eight years from the time when the cause of action upon such liquid document first accrues: Provided that nothing in this Act contained shall extend to or affect any mortgage bond, general or special, or any judgment of any Court in Basutoland or elsewhere.

Suits and actions to which preceding section applies.

4. The provisions of the last preceding section shall extend and apply to the respective suits and actions following, that is to say—

- (a) for money due for goods sold and delivered;
- (b) for money lent by the plaintiff to the defendant;
- (c) for money paid by the plaintiff for the use of the defendant;
- (d) for money had and received by the defendant for the use of the plaintiff (including the *condictio indebiti*);
- (e) for rent upon any lease or contract for hire;
- (f) for money claimed upon or by virtue of an admission of an amount due upon an account stated as settled;
- (g) for money due upon an award of arbitrators;
- (h) for money due as the purchase money of immovable property;
- (i) for money claimed for work and labour done and materials provided for the same; and
- (j) for money claimed upon or by virtue of any policy of assurance.

5. No suit or action—

- (a) for the fees or for the fees and disbursements of advocates, attorneys, public notaries, conveyancers, land surveyors or persons practising any branch of the medical profession; or
- (b) for the amount of any baker's, butcher's, tailor's or dressmaker's or boot and shoemaker's bill or account; or
- (c) for the salary or wages of any merchant's clerk or other person employed in any merchant's or dealer's store, counting-house or shop; or
- (d) for the wages as a servant of any person coming under the definition of the term "servant" given in the Masters and Servants Act;⁽¹⁾

Prescription of three years established in certain cases.

shall (except as hereinafter excepted) be capable of being brought at any time after the expiration of three years from the time when the cause of action in any such case as aforesaid first accrued:

Provided that—

- (i) as often as any acknowledgment of or promise in writing to pay any such debt as is in this section mentioned has been made or given at any time before the expiration of such term of three years, then such debt may be sued for at any time within eight years from the date of such acknowledgment or promise, or, in case such acknowledgment or promise specifies some future time for the payment of the debt, then within eight years from the date at which the said debt became, by or according to the tenor or effect of such acknowledgment or promise, due and payable; and
- (ii) nothing in this section contained shall prevent the application to any such debt as is in this section mentioned of any of the provisions of section *eight* of this Act.

6. If at the time when any such cause of action as is in sections *three*, *four* and *five* of this Act mentioned first accrued, the person to whom the same accrued was a minor, or under coverture, or of unsound mind, or absent from Basutoland, then such person or the person claiming through him may, notwithstanding that the period of prescription hereinbefore limited in regard to such cause of action has expired, bring a suit or action upon such cause of action at any time within eight years or three years (as the case may be) next after the time at which the person to whom such cause of action first accrued ceases to be under any such disability as aforesaid or has died, whichever of these two events has first happened.

How in regard to minors or persons under legal disability.

⁽¹⁾ Act 15 of 1856—Title XXI.

This Act not to prevent a judicial interruption of term of prescription.

7. Nothing in this Act contained shall extend to alter the existing law relative to the effect of a judicial interpellation by the creditor of his debtor in staying or interrupting the course of any incompleated period of prescription, which law shall apply in all respects to any period of prescription by this Act established.

Questions as to the effect of an acknowledgment of debt in taking the case out of the operation of this Act.

8. In any suit or action in Basutoland in which any question arises concerning the effect, if any, of any acknowledgment of debt or any promise to pay any debt, or any payment of interest on any debt, or any part-payment of the principal of any debt made by any person whomsoever, whether the person sought to be charged in such suit or action or not, in taking any cause of action out of the operation of this Act, such question shall be judged of and determined in Basutoland in like manner and by the same rules and principles as it would be judged of and determined in the Supreme Court of Judicature in England if the effect of the same acknowledgment, promise, or payment were in question at the same time in that court.

Simple endorsement of payment not sufficient to take the case out of the operation of this Act.

9. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other liquid document, by or on behalf of the party to whom such payment is to be made, shall be deemed to be sufficient proof of such payment so as to take the case out of the operation of this Act.

Prescription may affect certain items of claim and not the others.

10. If any suit or action is brought for the amount or balance of an account containing any number more than one of items or matters of claim of such a nature as are in this Act mentioned, no claim in respect of an item or matter which arose at a date beyond the period of prescription by this Act established shall be claimable by reason only of some other matter of claim comprised in the same account having first arisen within the said period.

Absence from Basutoland.

11. If at the time when any such cause of action as is in this Act mentioned first accrued the person against whom such cause of action had arisen was absent from Basutoland, then the person to whom such cause of action so accrued shall have the same time after the return of such other person to Basutoland within which to bring his action as by this Act he would have had after such cause of action first accrued, if the person against whom the same had arisen had then been within Basutoland.

12. Where any such cause of action as is in this Act mentioned lies against two or more joint debtors, the person to whom such cause of action has accrued shall not be entitled to any time beyond the time fixed by this Act within which to commence any action or suit for enforcing such cause of action against any one or more of such joint debtors who was or were not absent from Basutoland at the time when such cause of action first accrued, by reason only that some one or more of such joint debtors was or were at the time such cause of action so accrued absent from Basutoland:

How in case of joint debtors when one is absent from Basutoland.

Provided that the plaintiff in any such last-mentioned action shall not be barred from maintaining an action against the joint debtor or joint debtors who was or were absent from Basutoland at the time the cause of such action accrued after his or their return to Basutoland, by reason only that judgment for such cause of action was already recovered against one or more of such joint debtors who was not or were not absent from Basutoland at the time in that behalf aforesaid.

13. Nothing in this Act contained shall be construed so as to deprive any court in Basutoland of any power which it may now by law possess to take into consideration as matter of evidence in any suit or action pending in such court any lapse of time shorter than the period of prescription established by this Act, and to give such weight to such evidence as it may, under the particular circumstances of the case, appear to be entitled to.

Power of court to judge of shorter terms of prescription not affected.

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