

VICTORIA.



ANNO OCTAVO

ELIZABETHÆ SECUNDÆ REGINÆ.

No. 6539.

An Act to amend the Law relating to Frustrated Contracts.

[29th September, 1959.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title.

1. This Act may be cited as the *Frustrated Contracts Act 1959*.

Interpretation.

2. In this Act unless inconsistent with the context or subject-matter—

"Court."

Comp. U.K.
1943 ch. 40 s. 3
(2).

"Court", in relation to any matter, means the court or arbitrator by or before whom the matter falls to be determined.

"Time of discharge."

"Time of discharge", in relation to any contract, means the time at which the contract becomes impossible of performance or is otherwise frustrated or at which it is avoided by the operation of section twelve of the *Goods Act 1958*.Adjustment of
rights and
liabilities of
parties to
frustrated
contracts.Comp. U.K.
1943 ch. 40 s. 1.3. (1) Where a contract becomes impossible of performance or is otherwise frustrated or where a contract is avoided by the operation of section twelve of the *Goods Act 1958* and the parties thereto are for that reason discharged from the further performance of the contract, the following provisions in this section shall, subject to the provisions of section four of this Act, have effect in relation thereto.

(2) All

(2) All sums paid or payable to any party in pursuance of the contract before the time of discharge shall, in the case of sums so paid, be recoverable and in the case of sums so payable cease to be so payable :

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in or for the purpose of the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or (as the case may be) recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has by reason of anything done by any other party thereto in or for the purpose of the performance of the contract obtained a valuable benefit (other than a payment of money to which sub-section (2) of this section applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any) not exceeding the value of the said benefit to the party obtaining it as the court considers just having regard to all the circumstances of the case and in particular—

- (a) the amount of any expenses incurred before the time of discharge by the benefited party in or for the purpose of the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under sub-section (2) of this section ; and
- (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration or avoidance of the contract.

(4) In estimating for the purposes of the foregoing provisions of this section the amount of any expenses incurred by any party to the contract the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

(5) In considering whether any sum ought to be retained or recovered under the foregoing provisions of this section by any party to the contract the court shall not take into account any sums which have by reason of the circumstances giving rise to the frustration or avoidance of the contract become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated or avoided contract or by or under any enactment.

(6) Where

(6) Where any party has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person whether a party to the contract or not, the court may if in all the circumstances of the case it considers it just to do so treat for the purposes of sub-section (3) of this section any benefit so conferred as a benefit obtained by the party who has assumed the obligations as aforesaid.

Application of
this Act.
Comp. U.K.
1943 ch. 40 s. 2.

4. (1) This Act shall apply to contracts, whether made before or after the commencement of this Act, in respect of which the time of discharge is after the commencement of this Act but not to contracts in respect of which the time of discharge is before the said commencement.

(2) This Act shall apply to contracts to which the Crown is a party in like manner as it applies to contracts between subjects.

(3) Where any contract to which this Act applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate or would but for the said provision operate to frustrate or avoid the contract or is intended to have effect whether such circumstances arise or not the court shall give effect to the said provision and shall only give effect to section three of this Act to such extent (if any) as appears to the court to be consistent with the said provision.

(4) Where it appears to the court that a part of any contract to which this Act applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated or avoided and shall treat section three of this Act as applicable only to the remainder of that contract.

(5) This Act shall not apply—

(a) to any charter-party, except a time charter-party or a charter-party by way of demise, or to any contract (other than a charter-party) for the carriage of goods by sea ; or

(b) to any contract of insurance save as is provided by sub-section (5) of section three of this Act.

As to nature of
action and
appropriate
limitation
period.

No. 6295 Pt. II.

5. All actions and proceedings to recover moneys under this Act shall be deemed to be founded on simple contract and subject to the provisions of Part II. of the *Limitation of Actions Act 1958* the cause of action shall be deemed to have first accrued at the time of discharge.
