

LAW REFORM (MISCELLANEOUS PROVISIONS) ACT.

Act No. 33, 1946.

An Act to make certain provisions in relation to actions of tort and in relation to rights against third parties; to amend the law with respect to proceedings against, and contributions between, tort-feasors; to make certain provisions in relation to charges upon insurance moneys payable as indemnity for liability to pay damages or compensation; and for purposes connected therewith. [Assented to, 21st May, 1946.]

George VI.
No. 33, 1946.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Law Reform (Miscellaneous Provisions) Act, 1946."

Short title
and
division
into Parts.

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No. 33, 1945.

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—s. 1.

PART II.—ALTERNATIVE DEFENDANTS AND THIRD PARTY PROCEDURE—ss. 2-4.

PART III.—CONTRIBUTION BETWEEN TORT-FEASORS—s. 5.

PART IV.—ATTACHMENT OF INSURANCE MONEYS—s. 6.

PART II.

ALTERNATIVE DEFENDANTS AND THIRD PARTY PROCEDURE.

Special provisions in relation to certain actions of tort.

2. (1) In an action of tort in any court the following provisions shall notwithstanding anything contained in any Act which regulates the procedure and practice of the court, have effect:—

cf. Ord. No. 16 (Eng.), r. 4.

(a) All persons may be joined as defendants against whom the right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly or severally or in the alternative where if separate actions were brought against such persons any common question of law or fact would arise, and judgment or verdict and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

cf. *Ibid.* r. 5.

(b) It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

cf. *Ibid.* r. 7.

(c) Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties. (d)

- { (d) No action shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. **No. 33, 1946.**
cf. Ord. No. 16 (Eng.), r. 11.
- { (e) The plaintiff may unite in the same action several causes of action, but if it appear to the court that any such causes of action cannot be conveniently tried or disposed of together, the court may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof. cf. Ord. No. 18 (Eng.), r. 1.

(2) The jurisdiction conferred on a court by paragraph (b) or paragraph (e) of subsection one of this section may be exercised by a judge of the court sitting either in court or in chambers, or in the case of a court of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, by any stipendiary or police magistrate or any two justices.

3. (1) Any court shall have power to grant to any defendant in respect of any right claimed or alleged by him all such relief relating to or connected with the original subject of the cause or matter, claimed in like manner against any other person, whether already a party to the cause or matter or not, who has been duly served with notice in writing of the claim pursuant to rules of court or any order of the court, as might properly have been granted against that person if he had been made a defendant to an action duly instituted by the same defendant for the like purpose. Third parties. cf. 15 and 16 Geo. V, c. 49, s. 39.

(2) Every person served with any such notice as aforesaid shall thenceforth be deemed a party to the cause or matter with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant.

4. (1) Rules of court not inconsistent with this Part may be made prescribing all matters which are necessary or convenient to be prescribed for carrying out the objects and intentions of this Part. Rules of court.

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(2) All rules of court made for the purposes referred to in subsection one of this section shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules of court;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules of court have been laid before such House disallowing any rule of court or part thereof, such rule of court or part shall thereupon cease to have effect.

(3) The power to make rules of court conferred by this section may be exercised—

- (a) in relation to proceedings in the Supreme Court, by a majority of the judges of the Supreme Court;
- (b) in relation to proceedings in the District Courts, by a majority of the District Court judges;
- (c) in relation to proceedings in courts of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, by the Governor.

PART III.

CONTRIBUTION BETWEEN TORT-FEASORS.

Proceedings
against and
contribution
between
joint and
several
tort-feasors.
cf. 25 and
26 Geo. V,
c. 30, s. 6.

5. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

- (a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;

(b)

- (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, brother, sister, half-brother, half-sister, parent or child, of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;
- (c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section—

- (a) the expressions "parent" and "child" have the same meanings as they have for the purposes of the Compensation to Relatives Act of 1897, as amended by subsequent Acts; and
- (b) the reference in this section to "the judgment first given" shall, in a case where that judgment

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is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

- (a) apply with respect to any tort committed before the commencement of this Part; or
- (b) affect any criminal proceedings against any person in respect of any wrongful act; or
- (c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

PART IV.

ATTACHMENT OF INSURANCE MONEYS.

Amount of liability to be charge on insurance moneys payable against that liability.
cf. N.Z. Act No. 31, 1936, s. 9.

6. (1) If any person (hereinafter in this Part referred to as the insured) has, whether before or after the commencement of this Act, entered into a contract of insurance by which he is indemnified against liability to pay any damages or compensation, the amount of his liability shall on the happening of the event giving rise to the claim for damages or compensation, and notwithstanding that the amount of such liability may not then have been determined, be a charge on all insurance moneys that are or may become payable in respect of that liability.

(2) If, on the happening of the event giving rise to any claim for damages or compensation as aforesaid, the insured (being a corporation) is being wound up, or if any subsequent winding-up of the insured (being a corporation) is deemed to have commenced not later than the happening of that event, the provisions of subsection one of this section shall apply notwithstanding the winding-up.

(3) Every charge created by this section shall have priority over all other charges affecting the said insurance moneys, and where the same insurance moneys are subject to two or more charges by virtue of this Part those

those charges shall have priority between themselves in the order of the dates of the events out of which the liability arose, or, if such charges arise out of events happening on the same date, they shall rank equally between themselves. No. 33, 1946.

(4) Every such charge as aforesaid shall be enforceable by way of an action against the insurer in the same way and in the same court as if the action were an action to recover damages or compensation from the insured; and in respect of any such action and of the judgment given therein the parties shall, to the extent of the charge, have the same rights and liabilities, and the court shall have the same powers, as if the action were against the insured:

Provided that, except where the provisions of subsection two of this section apply, no such action shall be commenced in any court except with the leave of that court. Leave shall not be granted in any case where the court is satisfied that the insurer is entitled under the terms of the contract of insurance to disclaim liability, and that any proceedings, including arbitration proceedings, necessary to establish that the insurer is so entitled to disclaim, have been taken.

(5) Such an action may be brought although judgment has been already recovered against the insured for damages or compensation in respect of the same matter.

(6) Any payment made by an insurer under the contract of insurance without actual notice of the existence of any such charge shall to the extent of that payment be a valid discharge to the insurer, notwithstanding anything in this Part contained.

(7) No insurer shall be liable under this Part for any greater sum than that fixed by the contract of insurance between himself and the insured.

(8) Nothing in this section shall affect the operation of any of the provisions of the Workers' Compensation Act, 1926-1945, or the Motor Vehicles (Third Party Insurance) Act, 1942.