

1 ELIZ. II. No. 42, 1952. *Law Reform, Etc., Act*

- those provisions specify periods of time) before the expiration of three years from the date of the proclamation taking the land;
- (b) That the failure of the claimant to make his claim for compensation under this Act within one year from the passing of **“ The Land Acts and Other Acts Amendment Act of 1951,”* was solely due to the fact that neither he nor, if any solicitor or agent was acting for him in respect of such claim, that solicitor or agent knew of the amendments made by that lastmentioned Act to this Act; and
- (c) That the amount of compensation to be paid to the claimant has not been agreed upon between him and the constructing authority by whom or which the land was taken.”

WRONGS.

An Act to Amend the Law Relating to Proceedings against, and Contribution between, Tortfeasors, to Amend the Law Relating to Contributory Negligence, and to Amend the Law Relating to the Division of Chattels belonging to Persons Jointly or in Undivided Shares, and for purposes connected therewith.

1 ELIZ. II.
NO. 42.
THE LAW
REFORM
(TORTFEASORS
CONTRIBUTION,
CONTRIBUTORY
NEGGLIGENCE,
AND
DIVISION OF
CHATTELS)
ACT OF
1952.

[ASSENTED TO 4TH DECEMBER, 1952.]

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

PART I.—PRELIMINARY.

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PRELIMINARY.

1. This Act may be cited as *“ The Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act of 1952.”* Short title

†2. This Act shall come into operation on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette*, which date is herein referred to as the commencement of this Act. Commence-
ment of Act.

* 15 G. 6 No. 11.

† Commenced 12 Jan. 1953 (Proc. Gaz. 10 Jan. 1953, p. 223).

Parts of Act.

3. This Act is divided into Parts, as follows :—

- PART I.—PRELIMINARY ;
- PART II.—PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN, TORTFEASORS ;
- PART III.—CONTRIBUTORY NEGLIGENCE ;
- PART IV.—DIVISION OF CHATTELS.

Interpretation.

4. In this Act the following expressions shall have the meanings hereby respectively assigned to them, that is to say :—

Court.

“ Court ”—Means, in relation to any claim, the Court or arbitrator by or before whom the claim falls to be determined ;

Damage.

“ Damage ”—Includes loss of life and personal injury ;

Dependant.

“ Dependant ”—Means any person for whose benefit an action could be brought under section twelve of **“The Common Law Practice Acts, 1867 to 1940”* ;

Fault.

“ Fault ”—Means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence.

PART II.—
PROCEEDINGS
AGAINST,
AND
CONTRIBUTION
BETWEEN,
TORTFEASORS.**PART II.—PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN, TORTFEASORS.**

Proceedings against, and contribution between, joint and several tortfeasors.

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

- (a) Judgment recovered against any tortfeasor 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 tortfeasor in respect of the same damage ;
- (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

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PART II.—
 PROCEEDINGS
 AGAINST,
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 TION
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 TORTFEASORS.

the estate, or of the wife, husband, parent, or child of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors 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 tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor 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.

6. In any proceedings for contribution under this Part of this Act 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.

Amount of contribution and power of the Court.

7. Where one spouse suffers, as the result partly of the fault of the other spouse and partly of the fault of any other person, damage in respect of which the spouse at fault is not liable to the spouse suffering the damage, nevertheless that other person may recover, under and by virtue of this Part II. of this Act, the contribution which would be recoverable by him if the spouse so at fault were, in respect of that damage, liable to the spouse suffering it.

Contribution from joint tortfeasor spouse.

Where a spouse is, at the time of the act or omission giving rise to the claim for contribution as aforesaid, indemnified by a contract of insurance or other agreement for indemnity against damage, for which he or she is legally liable, resulting from that act or omission, that contract or agreement shall (notwithstanding any term or provision thereof expressly or by implication limiting his or her right to indemnity thereunder, and notwithstanding that he or she is not legally liable for the damage resulting from the act or omission giving rise to the claim for contribution) be deemed to indemnify him or her against liability for the amount of the contribution recoverable against him or her under and by virtue of this Part II. of this Act, excepting that such a contract or agreement indemnifying him or her for a sum less than the amount of such contribution shall be deemed to so indemnify him to the extent only of that lesser sum.

Construction
 for the
 purposes of
 Part II.

8. For the purposes of this Part of this Act—

- (a) The expressions “parent” and “child” shall have the same meanings as they have for the purposes of **“The Common Law Practice Acts, 1867 to 1940”*; and
- (b) The reference in this Part of this Act to “the judgment first given” shall, in a case where that judgment 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.

Savings.

9. Nothing in this Part of this Act shall—

- (a) Apply with respect to any tort committed before the commencement of this Act; or
- (b) Affect any criminal prosecution against any person in respect of any wrongful act; or
- (c) Except as provided in section seven of this Act, render enforceable any agreement for indemnity which would not have been enforceable if this Act had not been passed.

* 31 V. No. 17 and amending Acts.

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PART III.—CONTRIBUTORY NEGLIGENCE.

Apportionment of liability in case of contributory negligence.

10. (1.) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage :

Provided that—

- (a) This subsection shall not operate to defeat any defence arising under a contract ;
- (b) Where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2.) Where damages are recoverable by any person by virtue of subsection one of this section subject to such reduction as is therein mentioned, the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3.) Part II. of this Act shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection one of this section in respect of the damage suffered by any person.

(4.) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under section 15D of **The Common Law Practice Acts, 1867 to 1940*," the damages recoverable would be reduced under subsection one of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under section twelve of the said **The Common Law Practice Acts, 1867 to 1940*," shall be reduced to a proportionate extent.

* 31 V. No. 17 and amending Acts.

(5.) Where, in any case to which subsection one of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the **Statute of Frauds and Limitations of 1867*," or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6.) Where any case to which subsection one of this section applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

Provisions as
to workers
and
employers.

11. (1.) Where, within the time limited by †*The Workers' Compensation Acts, 1916 to 1952*," for making application for compensation under those Acts, an action is brought to recover damages independently of the said Acts in respect of an injury giving rise to a claim for such compensation, and it is determined in that action that—

- (a) Damages are recoverable independently of the said Acts subject to such reduction as is mentioned in subsection one of section ten of this Act; and
- (b) There is a liability to pay compensation under the said Acts,

subclause one of clause twenty-three of the Schedule to the said Acts (which enables the Court, on the dismissal of an action to recover damages independently of the said Acts, to assess and award compensation under the said Acts) shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with the said subclause one of clause twenty-three, no damages shall be recoverable in the said action.

(2.) Where a worker or his dependant has recovered compensation under †*The Workers' Compensation Acts, 1916 to 1952*," in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of

* 31 V. No. 22.

† 6 G. 5 No. 35 and amending Acts.

1952.

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CONTRIBUTORY
NEGLIGENCE.

section ten of this Act from some person other than the employer (hereinafter referred to as “the third party”), any right conferred by clause twenty-four of the Schedule to the said Acts on the Insurance Commissioner to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the compensation recovered by the worker or his dependant as bears to the total amount of compensation so recovered the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the worker had not been at fault.

12. Part III. of this Act shall not apply to any ^{Saving.} case where the acts or omissions giving rise to the claim occurred before the commencement of this Act.

PART. IV—DIVISION OF CHATTELS.

PART IV.—
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13. Where any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a moiety or upwards may apply to the Supreme Court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the Supreme Court or a Judge thereof may make such order and give any consequential directions as it or he thinks fit. ^{Power to direct division of chattels.}