

THE SECOND SCHEDULE.

(Section 15.)

FIRST COLUMN.	SECOND COLUMN.
Section Amended.	How Amended.
11	By omitting from subsection (1) the words "any collector or".
14	By omitting from subsection (2) the words "a collector or"; and by omitting from that subsection the words "collector or" (second occurring).
16	By omitting from subsection (2) the words "a collector" and substituting the words "an assessor"; and by omitting from that subsection the words "pay at the same time to the collector the duty payable in respect of such excess" and substituting therefor the words "cause the duty payable in respect of the excess to be impressed thereon".
21	By omitting from subsection (3) the word "collector" and substituting therefor the word "assessor".
21	By omitting from subsection (4) the words "a collector" and substituting therefor the words "an assessor".
21	By omitting from subsection (5) the words "a collector" and substituting therefor the words "an assessor".
21	By omitting subsections (2) and (3).
21	By omitting from subsection (1) the words "A collector" and substituting therefor the words "An assessor".
21	By omitting from subsection (2) the words "a collector" and substituting therefor the words "an assessor".
21	By omitting from subsection (4) the words "a collector" and substituting therefor the words "the Commissioner".
24	By omitting the words "a collector" and substituting therefor the words "the Commissioner".

TORTFEASORS AND CONTRIBUTORY NEGLIGENCE.

No. 14 of 1954.

AN ACT to amend the law relating to proceedings against, and contributions between, tortfeasors and the law relating to contributory negligence.

[28 April, 1954.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title.

1 This Act may be cited as the *Tortfeasors and Contributory Negligence Act 1954*.

2 In this Act, unless the contrary intention appears—

Interpretation.

- “action” includes a counterclaim and proceedings by way of arbitration;
- “court”, used in relation to a claim, means the court before which the claim falls to be determined, and, except in subsections (6) and (7) of section three, includes an arbitrator before whom the claim falls to be determined;
- “damage” includes loss of life and personal injury;
- “dependant” means a person for whose benefit an action could be brought under the *Fatal Accidents Act 1934*;
- “employer” means an employer within the meaning of the *Workers’ Compensation Act 1927*;
- “fault” means negligence, breach of statutory duty, or any other act or omission that gives rise to a liability in tort or would, but for this Act, give rise to the defence of contributory negligence;
- “plaintiff” includes a defendant who counterclaims;
- “worker” means a worker within the meaning of the *Workers’ Compensation Act 1927*.

3—(1) Where damage is suffered by a person as the result of a tort (whether a crime or not)—

Proceedings against, and contribution between, tortfeasors.
25 & 26 Geo. 6, c. 30 (Imp.), s. 6. No. 5382 (Vic.), s. 2. No. 2267 of 1936 (S.A.), s. 24.
No. 33 of 1946 (N.S.W.), s. 5. No. 23 of 1947 (W.A.), s. 7, 1936, No. 31 (N.Z.), s. 17, 1937, c. 115 (Ontario) ss. 2 (1), (3), 2A.

- (a) judgment recovered against a tortfeasor who is liable in respect of that damage is not a bar to an action against any other person who would, if sued by the person by whom the damage was suffered at the time when the cause of action arose, have been liable as a joint tortfeasor in respect of the same damage;
- (b) if more actions than one are 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 a dependant, of that person, against tortfeasors who are 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 is not entitled to costs unless the court is of the opinion that there was reasonable ground for bringing the action;
- (c) a tortfeasor who is liable in respect of that damage may recover contribution from any other tortfeasor who is, or would, if sued by the person by whom the damage was suffered at

the time when the cause of action arose, have been, liable in respect of the same damage (whether as a joint tortfeasor or otherwise) but so that no person is entitled to recover contribution under this section from a person who is entitled to be indemnified by him in respect of the liability in respect of which the contribution is payable;

(d) a tortfeasor may recover contribution or indemnity from another tortfeasor who is, or would, if sued by the person by whom the damage was suffered at the time when the cause of action arose, have been, liable in respect of the same damage by settling with the person by whom the damage was suffered and thereafter commencing or continuing an action against the other tortfeasor, in which case the first-mentioned tortfeasor shall satisfy the court that the amount of the settlement was reasonable, and if the court finds that the amount of the settlement was excessive it may fix the amount at which the claim should have been settled; and

(e) where, but for this paragraph, a tortfeasor who is liable in respect of that damage is unable to recover contribution under this section from another person because the other person is the husband or wife of the person by whom the damage was suffered, that tortfeasor may recover contribution under this section from that other person to the same extent as he could have recovered contribution under this section if the person by whom the damage was suffered were not the wife or husband of that other person.

(2) In proceedings for contribution under this section, the amount of the contribution that is recoverable from a person shall be such amount 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, for the purposes of this section, the court has power to exempt a person from liability to make contribution, or to direct that the contribution to be recovered from a person shall amount to a complete indemnity.

(3) A release of, or accord with, one joint tortfeasor granted or made by a person by whom damage is suffered—

(a) does not discharge another joint tortfeasor unless the release so provides; and

(b) relieves the joint tortfeasor to whom it is granted or with whom it is made from liability to make contribution to another joint tortfeasor,

and has effect to reduce the claim of the person by whom damage is suffered—

- (c) in the amount of the consideration paid for the release or accord;
- (d) in any amount or proportion by which the release or accord provides that the total claim of that person shall be reduced; or
- (e) to the extent that the joint tortfeasor to or with whom the release or accord is granted or made would have been liable to make contribution to another joint tortfeasor if that person's total claim had been paid by the other joint tortfeasor,

whichever is the greatest.

(4) For the purposes of this section, the taking out of court of money that has been paid in by a tortfeasor shall be deemed to be an accord and satisfaction with him, and the amount of money so taken out shall be deemed to be the amount of the consideration paid for the accord.

(5) Notwithstanding any provisions of any enactment requiring notice of damage or injury to be given, or notice of an intended action to be given, or limiting the time within which an action may be brought, proceedings for contribution under this section may, although notice of damage or injury, or notice of an intended action, as the case may be, has not been given, or the time so limited has expired, be commenced at any time within the period of twelve months (or within such extended period as may be allowed pursuant to subsection (6) of this section) after the writ in the original action was served on the person seeking to recover contribution.

(6) A judge, commissioner of a court of requests, or justice, or any other person constituting or presiding over a court of competent jurisdiction, on the application of a person seeking to recover contribution under this section, may, in his discretion and subject to such conditions (if any) as he may impose, extend the period within which proceedings for recovery of contribution shall be commenced, notwithstanding that the period prescribed in subsection (5) of this section may have expired, if he is satisfied that the person from whom contribution is sought to be recovered will not be prejudiced in his defence by reason of the extension.

(7) Execution for the recovery of contribution under this section shall not be issued without the leave of a judge, commissioner of a court of requests, or justice, or any other person constituting or presiding over a court of competent jurisdiction, and upon application for leave under this subsection the judge, commissioner, justice, or other person may direct that payment to the original plaintiff shall be sufficient satisfaction of the judgment for contribution.

(8) Nothing in this section—

- (a) affects any criminal proceedings against a person in respect of a wrongful act; or
- (b) renders enforceable an agreement for indemnity that would not have been enforceable if this section had not been enacted.

(9) A reference in this section 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 that is not so reversed, and, in a case where a judgment is varied on appeal, shall be construed as a reference to that judgment as so varied.

Apportionment of liability in case of contributory negligence.

8 & 9 Geo. 6, c. 28 (Imp.), s. 1. No. 5594 (Vic.), s. 3. No. 2267 of 1936 (S.A.) s. 27a. No. 23 of 1947 (W.A.), s. 3. 1947, No. 3 (N.Z.), s. 3.

4—(1) Where a person suffers damage as the result partly of his own fault and partly of the fault of any other person, a claim in respect of that damage is not 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; but—

- (a) this subsection does not operate to defeat a defence arising under a contract; and
- (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 a person by virtue of subsection (1) of this section subject to such a reduction as is mentioned in that subsection, the court shall find and record the total damages that would have been recoverable if the claimant had not been at fault.

(3) Section three applies in any case where two or more persons are liable or would, if they had all been sued by the person by whom the damage was suffered at the time when the cause of action arose, have been liable by virtue of subsection (1) of this section in respect of the damage suffered by any person.

(4) Where a person dies as the result partly of his own fault and partly of the fault of any other person, and accordingly if an action were brought for the benefit of the estate under the *Administration and Probate Act 1935* the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of the person under the *Fatal Accidents Act 1935* shall be reduced to a proportionate extent.

(5) Where, in a case to which section three or subsection (1) of this section applies, one of the persons at fault or his personal representative avoids liability to another person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he is not entitled to recover damages or contribution from that other person or personal representative.

(6) Where a case to which subsection (1) of this section applies is tried with a jury, the jury shall determine the total damages that, apart from any limitation of liability provided by any contract or prescribed by any enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

(7) A reference in this section to the fault of a person shall be construed as including a reference to a fault for which that person is vicariously liable.

(8) This section has effect notwithstanding anything contained in any enactment passed before the commencement of this Act whereby a person is debarred from recovering damages or from taking an action for the recovery of damages in respect of any damage or injury that he caused, or to which he contributed, by his own negligence.

5—(1) Where, within the time limited for taking proceedings under the *Workers' Compensation Act 1927*, an action is brought to recover damages independently of that Act in respect of an injury or disease giving rise to a claim for compensation under that Act, and it is determined in that action that—

Provisions as
to workers
and employers.
Imp. s. 2.
Vic. s. 4.
W.A. s. 6.
N.Z. s. 4.

- (a) damages are recoverable independently of that Act subject to such a reduction as is mentioned in subsection (1) of section four of this Act; and
- (b) the employer would have been liable to pay compensation under the *Workers' Compensation Act 1927*,

section nine of that Act applies in all respects as if the worker had failed in that action, and, if the claimant chooses to have compensation assessed in accordance with subsection (4) of that section, no damages are recoverable in that action.

(2) Subsection (1) of this section applies, with the necessary adaptations, in a case where compensation is recoverable under a scheme that is certified under section twelve of the *Workers' Compensation Act 1927* if the scheme applies section nine of that Act or contains any provisions similar to the provisions of that section.

(3) Where a worker or the personal representative or a dependant of a worker has recovered compensation under the *Workers' Compensation Act 1927* or under a scheme that is certified under section twelve of that Act in respect of an injury caused in circumstances that would give a right to recover reduced damages in respect thereof by virtue of section four of this Act from some person other than the employer, paragraph II of section ten of that Act shall be deemed to apply with the necessary adaptations, but so that the sum that is recoverable by way of indemnity is reduced in the same proportion as the damages would be reducible under subsection (1) of section four of this Act.

Savings.

Imp. s. 5.
Vic. s. 5.
S.A. s. 27b.
W.A. s. 9.
N.Z. s. 5.

6—(1) Nothing in this Act affects the operation of subsection (11) of section eleven of the *Supreme Court Civil Procedure Act 1932*, and that subsection has effect as if this Act had not been enacted.

(2) This Act does not apply to a case where the act or omission giving rise to a claim occurred before the commencement of this Act.

Act binds the
Crown.

10 & 11 Geo.
6, c. 44
(Imp.), s. 4.

7 This Act binds the Crown.

MINERS' PENSIONS.

No. 15 of 1954.

AN ACT to amend the *Miners' Pensions Act 1944*.
[28 April, 1954.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title,
citation, and
commence-
ment.

1—(1) This Act may be cited as the *Miners' Pensions Act 1954*.

(2) The *Miners' Pensions Act 1944*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall be deemed to have commenced on the twenty-ninth day of October 1953.