

Compensation to Relatives (Amendment) Bill, 1925.

MEMORANDUM.

THE Bill amends the Compensation to Relatives Act, 1897, under which in certain circumstances an action for damages may be brought against a person whose wrongful act neglect or default has caused the death of another. The provisions of the Act date back to 1847, when in substance they were copied from the English Fatal Accidents Act, 1846 (Lord Campbell's Act). The English Act has been amended by two Acts, in 1864 and 1908, and some defects and difficulties have been disclosed by the cases that have come before the courts.

The Bill gets rid of the decision that funeral expenses cannot be recovered under the Act, and prevents damages from being cut down on the ground that insurance moneys or moneys from a superannuation or provident fund or from a friendly society or trade union have become payable on the death of the deceased person: clause 2 (1).

Compensation for all relatives entitled may be paid into court in one sum: clause 2 (2), 6A.

The relatives may themselves bring the action if there is no executor or administrator, or where there is one, if he does not bring the action within six months: clause 2 (2), 6B.

The right to compensation is not to be lost by the death of the wrongdoer, and an action may be brought against his executor or administrator: clause 2 (2), 6C.

Where an action is tried before a judge without a jury, or is not brought in the Supreme Court, the wording of the Act is to be read accordingly: clause 2 (2), 6D; clause 2 (3).

It is made clear that the Act applies whether the cause of action arises within or outside the State, and whether the wrongdoer, the deceased person, or the relatives are British subjects or not. The Act is to apply to actions commenced before or after the Bill: clause 2 (2), 6E.

, 1925.

J. B. PEDEN,
Commissioner for Law Reform.

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1925.

A BILL

To amend the Compensation to Relatives Act, 1897, and certain other Acts; and for purposes connected therewith.

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:—

1. (1) This Act may be cited as the "Compensation Short title. to Relatives (Amendment) Act, 1925."

Compensation to Relatives (Amendment).

(2) This Act shall be read with the Compensation to Relatives Act, 1897, in this Act referred to as the Principal Act.

Amendment of Act 1897 No. 31, s. 3.

2. (1) The Principal Act is amended by inserting after the figure "3" at the commencement of section three the figure "(1)," and by inserting at the end of the section the following new subsections :—

Exclusion of Clark v. London General Omnibus Co. (1906) 2 K.B. 648.

(2) In any such action the expenses of the funeral of the deceased person may be recovered.

8 Edw. VII, c. 7.

(3) In assessing damages in any such action there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of insurance or out of any superannuation, provident, or like fund, or by way of benefit from a friendly society, benefit society, or trade union.

New sections. 6A, 6B, 6C, 6D, and 6E.

(2) The Principal Act is amended by inserting after section six the following new sections :—

Payment into court, 27 and 28 Vic., c. 95, s. 2.

6A. (1) In every such action the defendant may pay money into court as a compensation in one sum to all persons entitled under this Act for the wrongful act neglect or default without specifying the shares into which the sum is to be divided by the jury.

(2) If the sum paid in is not accepted, and if an issue is taken by the plaintiff as to its sufficiency, and the jury think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

(3) No portion of the sum paid in shall be paid out of court except under the order of a judge.

Alternative action. Ibid. s. 1.

6B. (1) Where there is no executor or administrator of the person deceased, or where his executor or administrator does not bring an action under this Act within six months after the death of the person deceased, the person or any one or more of the persons for whose benefit the action might be brought by such an executor or administrator may bring the action.

5 (2) Any action so brought shall be for the benefit of the same person or persons and shall be subject to the same provisions and procedure, as nearly as may be, as if it were brought by such an executor or administrator.

6c. (1) Every action and cause of action under this Act shall survive notwithstanding the death of the wrongdoer. Survival of action.

10 (2) If the wrongdoer dies before action and within twelve months after the death of the person deceased, an action under this Act may be brought against the executor or administrator of the wrongdoer notwithstanding the expiry of such twelve months, provided that the action is brought within 15 six months after the grant of probate or administration.

20 (3) Any damages recovered against the executor or administrator shall be payable in like order of administration as the debts of the wrongdoer. 5 Vic. No. 9, s. 30.

25 6d. Where an action under this Act is tried before a judge without a jury, the provisions of this Act with respect to a jury and to the verdict of a jury shall be construed as applying to a judge and to the judgment of a court, as the case may be. Action before judge without jury.

30 6e. (1) This Act applies whether the subject-matter of the complaint arises within or outside New South Wales, and whether the wrongdoer, the person whose death has been caused, or any other person concerned was or is a British subject or not. Application of Act.

(2) This Act applies to actions commenced either before or after the commencement of the Compensation to Relatives (Amendment) Act, 1925.

35 (3) The Principal Act is amended by inserting after the figure "7" at the commencement of section seven the figure "(1)," by inserting at the end of the section the following words:—"and the word 'declaration' shall include any statement of the cause of action" Amendment of Act 1897 No. 31, s. 7.

4

Compensation to Relatives (Amendment).

action appropriate to the court in which the action is brought," and the following new subsections:—

1919 No. 6,
s. 7.

(2) In this Act "administrator" means administrator within the meaning of the Wills, Probate and Administration Act, 1898, and includes the public trustee acting as collector of an estate under an order to collect. 5

(3) In this Act "executor" means the executor to whom probate has been granted and includes an executor by right of representation. 10

