

ELIZABETH II



1971 CHAPTER 43

An Act to extend in certain cases the time limit for bringing legal proceedings where damages are claimed which consist of or include damages for personal injuries or in respect of a person's death, and to amend accordingly the Limitation Act 1963; to provide that in assessing damages for widows in actions arising from the death of their husbands, remarriage and prospects of remarriage shall be left out of account; to repeal section 19 of the Administration of Justice Act 1965; and for purposes connected therewith. [1st July 1971]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

LIMITATION OF ACTIONS

- 1.—(1) In the following provisions of the Limitation Act 1963, that is to say—
- (a) section 1(3) (which enables certain actions that would otherwise be statute-barred to be brought if the plaintiff was ignorant of the relevant facts until a date which was not earlier than twelve months before the action was brought); and
 - (b) section 8(3) (which makes corresponding provision for Scotland),

Extension of time-limits under ss. 1 and 8 of Act of 1963. 1963 c. 47.

for the words from “until a date which” to the end there shall be substituted the words “until a date which was not earlier than three years before the date on which the action was brought”.

(2) Sections 7(2) and 13(2) of the said Act of 1963 (which become unnecessary in consequence of subsection (1) of this section) are hereby repealed.

Extension of
time-limits
for certain
actions brought
after death of
injured person.
1963 c. 47.
1934 c. 41.

2.—(1) For section 3 of the Limitation Act 1963 (under which the extended time-limit provided by section 1 of that Act is not available for actions brought by virtue of the Law Reform (Miscellaneous Provisions) Act 1934 or the Fatal Accidents Acts more than twelve months after the death of the injured person) there shall be substituted the sections set out in Part I of Schedule 1 to this Act.

1939 c. 21.
1846 c. 93.

(2) In section 7(4) of the said Act of 1963 after the words “section 2(1) of the Limitation Act 1939” there shall be inserted the words “or so much of section 3 of the Fatal Accidents Act 1846 as requires actions under that Act to be commenced within three years after the death of the deceased”.

(3) In section 8 of the said Act of 1963 (extension of time-limit for certain actions in Scotland), at the end of subsection (2) there shall be added the words “not being an action to which section 9 of this Act applies”; and for section 9 of the said Act of 1963 (actions in Scotland in respect of death of injured person) there shall be substituted the section set out in Part II of Schedule 1 to this Act.

Transitional
provisions.

3. Schedule 2 to this Act shall have effect as respects the application of this Part of this Act in relation to causes and rights of action which accrued before the commencement of this Act.

PART II

DAMAGES FOR WIDOWS

Assessment
of damages
for widows.

4.—(1) In assessing damages payable to a widow in respect of the death of her husband in any action under the Fatal Accidents Acts 1846 to 1959 there shall not be taken into account the remarriage of the widow or her prospects of remarriage.

1954 c. 36.

(2) In the application of subsection (1) of this section to Scotland, for the words “in respect of the death of her husband in any action under the Fatal Accidents Acts 1846 to 1959” there shall be substituted the words “in any action in respect of which the right of action accrued on the death of her husband in consequence of personal injuries (as defined in section 6 of the Law Reform (Limitation of Actions, &c.) Act 1954) sustained by him”.

5.—(1) Section 19 of the Administration of Justice Act 1965 (widows' damages in Fatal Accidents Acts claim to be subject to control of court if claim also made on behalf of infant) is hereby repealed. Abolition of control of widows' damages. 1965 c. 2.

(2) Any money which by virtue of the said section 19 is in court at the commencement of this Act shall, if the person entitled thereto is not under disability and makes an application in that behalf to the court, be paid out to that person.

(3) The repeal by this section of the said section 19 shall not affect section 31 of the said Act of 1965 (which enables the Parliament of Northern Ireland to enact provisions corresponding to those of the said section 19).

PART III

GENERAL

6.—(1) This Act may be cited as the Law Reform (Miscellaneous Provisions) Act 1971. Short title, commencement and extent.

(2) This Act shall come into operation at the expiration of the period of one month beginning with the date on which it is passed.

(3) Except for section 5(3) this Act does not extend to Northern Ireland.

SCHEDULES

Section 2.

1963 c. 47.

SCHEDULE 1

AMENDMENTS OF LIMITATION ACT 1963

PART I

SECTIONS SUBSTITUTED FOR SECTION 3

Extension of
time-limits
for certain
actions brought
after death of
injured person.
1934 c. 41.

3.—(1) The provisions of this section shall have effect in relation to—

(a) any such action as is mentioned in section 1(2) of this Act, being an action in respect of one or more causes of action surviving for the benefit of the estate of a deceased person by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 ; and

(b) any action brought by virtue of the Fatal Accidents Acts for damages in respect of a person's death,

and, in relation to an action falling within paragraph (a) of this subsection, shall have effect to the exclusion of sections 1 and 2 of this Act.

1939 c. 21.

(2) Section 2(1) of the Limitation Act 1939 shall not afford any defence to an action falling within subsection (1)(a) or (b) of this section, in so far as it relates to a cause of action in respect of which—

(a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this subsection ; and

(b) the requirements of section 3B(1) of this Act are fulfilled.

1846 c. 93.

(3) So much of section 3 of the Fatal Accidents Act 1846 as requires actions under that Act to be commenced within three years after the death of the deceased shall not afford any defence to an action falling within subsection (1)(b) of this section, in so far as it relates to a cause of action in respect of which—

(a) the court has, before the commencement of the action, granted leave for the purposes of this subsection ; and

(b) the requirements of section 3B(2) of this Act are fulfilled.

(4) Nothing in subsection (2) or (3) of this section shall be construed as excluding or otherwise affecting—

(a) any defence which, in any action falling within subsection (1)(a) or (b) of this section, may be available by virtue of any enactment other than section 2(1) of the Limitation Act 1939 or so much of section 3 of the Fatal Accidents Act 1846 as aforesaid (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law or equity ; or

(b) the operation of any enactment or rule of law or equity which, apart from those subsections, would enable such

an action to be brought after the end of the period of three years from the date on which the cause of action accrued or the death of the deceased, as the case may be.

(5) In the application of this Part of this Act to an action brought by virtue of the Fatal Accidents Acts—

- (a) any reference to a cause of action to which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased could (but for his death) have maintained an action and recovered damages ; and
- (b) any reference to establishing a cause of action shall be construed as a reference to establishing that the deceased could (but for his death) have maintained an action and recovered damages in respect thereof.

(6) In this section and section 3B of this Act “the deceased” means the person referred to in subsection (1)(a) or (b) of this section, as the case may be.

3A.—(1) Any application for the leave of the court for the purposes of subsection (2) or (3) of section 3 of this Act shall be made *ex parte*, except in so far as rules of court may otherwise provide in relation to applications which are made for the purposes of subsection (2) of that section after the commencement of the relevant action. Applications for leave of court for purposes of s. 3.

(2) Where such an application is made for the purposes of subsection (2) of section 3 of this Act before the commencement of any relevant action, or for the purposes of subsection (3) of that section, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff it appears to the court that, if such an action were brought forthwith and the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 2(1) of the Limitation Act 1939 or so much of section 3 of the Fatal Accidents Act 1846 as is mentioned in the said subsection (3) ; and 1939 c. 21.
1846 c. 93.
- (b) to fulfil the requirements of subsection (1) or, as the case may be, of subsection (2) of section 3B of this Act in relation to that cause of action.

(3) Where such an application is made for the purposes of subsection (2) of section 3 of this Act after the commencement of a relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 2(1) of the Limitation Act 1939 ; and

SCH. 1

(b) to fulfil the requirements of section 3B(1) of this Act in relation to that cause of action,

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had occurred on such a date as (apart from section 3 of this Act) to afford a defence under section 2(1) of the Limitation Act 1939.

1939 c. 21.

(4) No appeal shall lie from any decision of the Court of Appeal on an appeal against a decision on an application under this section.

(5) In this section “relevant action”, in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required.

Requirements
referred to in
ss. 3 and 3A.

3B.—(1) The requirements of this subsection are fulfilled in relation to a cause of action if—

(a) it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were outside the knowledge (actual or constructive) of the deceased at all times until his death or until a date less than three years before his death; and

(b) either—

(i) the action was brought not later than three years after the death of the deceased; or

(ii) it is proved that the said facts of a decisive character were at all times outside the knowledge (actual or constructive) of each relevant person until a date which was not earlier than three years before the date on which the action was brought.

(2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of each relevant person until a date which was not earlier than three years before the date on which the action was brought.

(3) In subsection (1) of this section, in its application to an action falling within section 3(1)(a) of this Act, “relevant person” means any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative in relation to settled land; and for the purposes of that subsection regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(4) In subsection (1) of this section in its application to an action falling within section 3(1)(b) of this Act and in subsection (2) of this section, “relevant person” means, subject to subsection (5) of this section, any person for whose benefit the action is brought.

(5) Where, in determining whether the requirements of subsection (1) or (2) of this section are fulfilled in the case of an action falling

within section 3(1)(b) of this Act (whether on an application under section 3A of this Act or when that question subsequently falls to be determined), it appears to the court that those requirements would be fulfilled if any person had not been included among those for whose benefit the action is brought, the court shall—

- (a) determine that question as if he had not been so included ;
but
- (b) direct that, in so far as the action is brought for the benefit of that person, subsection (2) or, as the case may be, subsection (3) of section 3 of this Act shall not operate to displace any defence there mentioned,

and those subsections shall have effect accordingly.

PART II

SECTION SUBSTITUTED FOR SECTION 9

9.—(1) Section 6(1) of the Law Reform (Limitation of Actions, &c.) Act 1954 shall not afford any defence to an action to which this section applies, in so far as the action relates to any right of action in respect of which the requirements of subsection (3) of this section are fulfilled.

Extension of
time-limits
for certain
actions brought
in Scotland
after death of
injured person.
1954 c. 36.

(2) This section applies to any action of damages in Scotland where the damages claimed consist of, or include, damages or solatium in respect of personal injuries sustained by the pursuer or any other person, being an action brought by or on behalf of a person to whom a right of action has (apart from subsection (5) of this section) accrued on the death of another person (in this section referred to as “the deceased”) in consequence of personal injuries sustained by the deceased.

(3) The requirements of this subsection are fulfilled in relation to a right of action if—

- (a) it is proved that the material facts relating to the right of action were or included facts of a decisive character which were outside the knowledge (actual or constructive) of the deceased at all times until his death or until a date less than three years before his death ; and

(b) either—

(i) the action was brought not later than three years after the death of the deceased ; or

(ii) it is proved that the said facts of a decisive character were at all relevant times outside the knowledge (actual or constructive) of each relevant person until a date which was not earlier than three years before the date on which the action was brought.

(4) In subsection (3) of this section “relevant person” means—

- (a) in relation to an action in respect of a right of action forming part of the estate of a deceased person, any person who is or has been a personal representative of the deceased, including an executor who has not been confirmed as such ; and for the purposes of this paragraph regard shall be had to any knowledge acquired by any such person while a personal representative or previously ;

SCH. 1

(b) in relation to an action brought by or on behalf of a relative in respect of which the right of action was (apart from subsection (5) of this section) the death of the deceased, any person by whom or on whose behalf the action is brought:

Provided that where, in determining whether the requirements of this paragraph are fulfilled in the case of any such action as aforesaid, it appears to the court that those requirements would be fulfilled if any person had not been included among those by whom or on whose behalf the action is brought, the court shall—

(i) determine that question as if he had not been so included ; but

(ii) direct that, in so far as the action is brought by or on behalf of that person, subsection (1) of this section shall not operate to displace any defence there mentioned, and the said subsection (1) shall have effect accordingly.

(5) In relation to an action falling within this section—

(a) the death of the deceased shall not, and

(b) any circumstances falling within subsection (6) of this section shall,

be regarded for the purposes of this Part of this Act as constituting a right of action.

(6) The circumstances referred to in paragraph (b) of subsection (5) of this section include any circumstances which would have constituted a right of action in relation to an action brought by the deceased before his death in respect of the personal injuries which caused his death.

(7) Subsection (4) of section 8 of this Act shall have effect in relation to an action to which this section applies as it has effect in relation to an action to which that section applies.

Section 3.

SCHEDULE 2

TRANSITIONAL PROVISIONS RELATING TO PART I OF THIS ACT

1. Subject to the provisions of this Schedule, Part I of this Act shall have effect in relation to causes of action which accrued before, as well as causes of action which accrue after, the commencement of this Act, and shall have effect in relation to any cause of action which accrued before the commencement of this Act notwithstanding that an action in respect thereof has been commenced and is pending at the commencement of this Act.

1963 c. 47.

2. In the application of section 2 of the Limitation Act 1963 to an action which is pending at the commencement of this Act, subsection (3) of that section shall have effect with the omission of the words from “and it also appears” to the end.

3. In their application to an action which is pending at the commencement of this Act—

(a) section 3 of the said Act of 1963 as set out in Schedule 1 to this Act shall have effect with the omission in subsection (3)(a) of the words “before the commencement of the action” ;

(b) section 3A of that Act as set out in that Schedule shall have effect— SCH. 2

(i) with the omission in subsection (1) of the words “for the purposes of subsection (2) of that section” and in subsection (3) of the words from “and it also appears” to the end; and

(ii) as if subsection (3) applied (subject to the necessary modifications) to an application made for the purposes of subsection (3) of the said section 3 as well as to an application made for the purposes of subsection (2) of that section.

4. For the purposes of this Schedule an action shall not be taken to be pending at any time after a final order or judgment has been made or given therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly sections 1 and 2 of this Act shall not have effect in relation to a cause of action in respect of which a final order or judgment has been made or given before the commencement of this Act.

5. In the application of this Schedule to Scotland, paragraphs 2 and 3 do not apply, and for any reference to a cause of action there shall be substituted a reference to a right of action, and for any reference to an order or judgment being made or given there shall be substituted a reference to an order or decree being made or pronounced.

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