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# A Proposal for Contribution Among Joint Tortfeasors in Ohio\*

George Neff Stevens

FROM *Talmadge v. The Zanesville and Maysville Road Company*,<sup>1</sup> decided in 1842, to *Maryland Casualty Company v. Gough*,<sup>2</sup> decided in 1946, the Supreme Court of Ohio has acknowledged and affirmed the general principle that there is no right of contribution among joint tortfeasors. It has applied the rule to cases involving intentional torts where the parties acted in concert,<sup>3</sup> to cases involving concurring or concurrent negligence<sup>4</sup> and to cases involving claims for indemnification.<sup>5</sup> But, it has limited the

application of the rule by holding that, in cases where an injury is inflicted by the concurrent negligence of two or more persons acting separately and the liability of the tortfeasors as among themselves is primary and secondary, such tortfeasors are not "joint" tortfeasors and cannot be joined in the

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same lawsuit.<sup>6</sup> The reason for this distinction was clearly set forth in the court's opinion in *Larson v. The Cleveland Railway Co.*:

In cases where there is such primary and secondary liability for the identical wrong, the party who is secondarily liable has a right of indemnification from the party primarily liable, in case the former is obliged to

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\*This proposal was prepared by the writer as chairman of a subcommittee, composed also of H. Walter Stewart of Cleveland and Paul T. Mahon of Kenton, for the Ohio State Bar Association's Judicial Administration and Legal Reform Committee, of which Henry G. Binns of Columbus is chairman.

<sup>1</sup> 11 Ohio 197 (1842).

<sup>2</sup> 146 Ohio St. 305, 65 N.E.2d 858 (1946).

<sup>3</sup> *Talmadge v. Zanesville & Maysville Road Co.*, 11 Ohio 197 (1842) (trespass to personal property); *Davis v. Gelhaus*, 44 Ohio St. 69, 4 N.E. 593 (1886) (conversion of public funds) and *Maryland Casualty Co. v. Gough*, 146 Ohio St. 305, 65 N.E.2d 858 (1946) (conversion of funds).

<sup>4</sup> *Pennsylvania Co. v. West Penn. Ry.*, 110 Ohio St. 516, 144 N.E. 51 (1924); *Royal Indemnity Co. v. Becker*, 122 Ohio St. 582, 173 N.E. 194 (1930); *U.S. Casualty Co. v. Indemnity Insurance Co. of North America*, 129 Ohio St. 391, 195 N.E. 850 (1935); *The Automobile Ins. Co. of Hartford, Conn., v. Pa. Road*

respond in damages. *He would lose such right if joinder is permitted since, in the absence of statute, there is no right of indemnification or contribution as between joint tort-feasors who are in pari delicto.* (Italics added)

However, this is as far as the Ohio Supreme Court has gone in giving relief to date. The suggestion that the rule of no contribution among joint tortfeasors was not of universal application and that it applied only to cases where the persons have wantonly and knowingly engaged in doing a wrong, suggested in *Acheson v. Miller*,<sup>8</sup> rejected as dictum in *Royal Indemnity Company v. Becker*,<sup>9</sup> has been revived, but only to the extent above indicated.

The unfairness of the rule of no contribution among joint tortfeasors, at least in the negligence cases, is apparent. It is aggravated by the fact that the injured party, as master of his lawsuit, can place all or a disproportionate part of the loss on one or more of the tortfeasors either by pursuing one or more alone or, after obtaining a joint judgment against all, by executing against one or more, to the complete exoneration of the rest. The Ohio Supreme Court, as noted, has rather recently given protection to a limited group of tortfeasors by holding that they are not "joint" tortfeasors.<sup>10</sup> But reform through the overruling of long-established precedent, through the drawing of fine distinctions, and through limitation of joinder procedures, is slow, costly and frequently confusing. Recognizing this, and that reform was needed, nineteen states have attempted to meet the problem by legislation.<sup>11</sup>

Co., 133 Ohio St. 449, 14 N.E.2d 613 (1938); and Mass. Bonding and Ins. Co. v. Dingle-Clark Co., 142 Ohio St. 346, 52 N.E.2d 340 (1943).

<sup>8</sup> *Royal Indemnity Co. v. Becker*, 122 Ohio St. 582, 173 N.E. 194 (1930); U.S. Casualty Co. v. Indemnity Ins. Co. of North America, 129 Ohio St. 391, 195 N.E. 850 (1935); The Automobile Ins. Co. of Hartford, Conn. v. Pa. Road Co., 133 Ohio St. 449, 14 N.E.2d 613 (1938); and Md. Casualty Co. v. Gough, 146 Ohio St. 305, 65 N.E.2d 858 (1946).

<sup>9</sup> *Larson v. The Cleveland Ry.*, 142 Ohio St. 20, 50 N.E.2d 163 (1943); Massachusetts Bonding and Insurance Company v. The Dingle-Clark Co., 142 Ohio St. 346, 52 N.E.2d 340 (1943); Maryland Casualty Co. v. Frederick Co., 142 Ohio St. 605, 53 N.E.2d 795 (1944) and Albers v. The Great Central Transport Corp., 145 Ohio St. 129, 60 N.E.2d 669 (1945).

<sup>10</sup> 143 Ohio St. 20 at p. 35.

<sup>11</sup> 2 Ohio St. 203 (1853).

<sup>12</sup> 122 Ohio St. 582, 173 N.E. 194 (1930).

<sup>13</sup> For an excellent discussion of the distinction between joint torts as a matter of substantive law and joinder of tortfeasors as a matter of procedure, see Editorial Note by Edward K. Halaby, *Joinder, in Ohio, of Persons Primarily and Secondarily Liable for Torts*, 19 U. OF CIN. L. REV. 358 (1950).

<sup>14</sup> ARK. STAT. ANN. (1947) §§ 34-1001 through 34-1009; Laws of Del. (1949) Ch. 151 §§ 1 through 10; GA. CODE ANN. (1933) §§ 105-2011, 105-2012, and 37-303; KY. REV. STAT. (Baldwin 1943) § 412.030; LA. CIVIL CODE (Dart. 1945)

In evaluating the success of a piece of legislation in bringing about reform, it is necessary to know what reform was contemplated. But, given an end, the value of a particular statute as a means can be readily determined. With this in mind, a look at the provisions in these nineteen states above mentioned may be helpful.

Assume that one of the evils which should be eliminated is the power of the injured party to cast the loss by chance, caprice or even collusion upon one or more of several tortfeasors.<sup>12</sup> A statute which limits the right of contribution to cases in which a *joint judgment* has been obtained against two or more persons<sup>13</sup> gives only partial relief, for the injured person may exercise his option to sue only one or more of several tortfeasors. It is submitted that the statute should provide that the right of contribution is available whether the injured person brings his action against one, or more, or all of the alleged joint tortfeasors.<sup>14</sup>

Assume that the next problem to be decided is the extent to which relief by way of contribution should be given. Should relief be given only to negligent tortfeasors or should intentional tortfeasors also be granted the right of contribution? What about those guilty of "wanton misconduct," or of "wilful misconduct"? The Supreme Court of Ohio, in *Tighe v. Diamond*,<sup>15</sup> distinguishes "wilful tort" from "wanton misconduct," both from "wilful misconduct" and all three from "negligence." It is suggested that although distinctions of this sort look good on paper, they are very difficult to apply to the facts of a given case. There would seem to be no good

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Art. 2104; ANN. CODE OF MD. (Flack 1947 Cum. Supp.) Art. 50 §§ 21 through 30; MICH. STAT. ANN. (1938) §§ 27.1401, 27.1683(1), (2), (3), (4); MO. REV. STAT. ANN. (1942) § 3658; N. MEX. STAT. ANN. (1941) §§ 21-118 through 21-125; N.Y.C.P.A. (Gilbert's Bliss 1941) § 211-a; GEN. STAT. OF N. CAR. (1943) § 1-240; OKLA. STAT. ANN. (1936) § 831; 12 PA. STAT. ANN. (Purdon Cum Supp. 1947) § 2081; R. I. PUB. LAWS 1940, Ch. 940 §§ 1 through 10; Session Laws of S. Dak. (1945) Ch. 167 §§ 1 through 11; ANN. TEX. STAT. (Vernon 1950) Title 42 Art. 2212; CODE OF VA. (1950) § 8-627; W. VA. CODE OF 1943 § 5482; WIS. STAT. (1947) §§ 113.01 through 113.10, 272.59 and 272.61.

<sup>12</sup> See, for example, *Pennsylvania Co. v. West Penn. Ry.*, 110 Ohio St. 516, 144 N.E. 51 (1924).

<sup>13</sup> See, for example, GA. CODE ANN. (1933) § 37-303; LA. CIVIL CODE (Dart 1945) Art. 2104; MICH. STAT. ANN. (1938) § 27.1683(1); MO. REV. STAT. ANN. (1942) § 3658; N.Y.C.P.A. (Gilbert's Bliss 1941) § 211-a; OKLA. STAT. ANN. (1936) § 831; ANN. TEX. STAT. (Vernon 1950) Title 42 Art. 2212; W. VA. CODE OF 1943 § 5482; WIS. STAT. (1947) §§ 272.59 and 272.61.

<sup>14</sup> See, for example, ARK. STAT. ANN. (1947) § 34-1001; Laws of Del. (1949) Ch. 151 § 1; KY. REV. STAT. (Baldwin 1943) § 412.030; ANN. CODE OF MD. (Flack 1947 Cum Supp.) Art. 50 § 21; N. MEX. STAT. ANN. (1941) § 21-118; GEN. STAT. OF N. CAR. (1943) § 1-240; 12 PA. STAT. ANN. (Purdon Cum. Supp. 1947) § 2081; R. I. PUB. LAWS 1940, Ch. 940 § 1; Session Laws of S. Dak. (1945) Ch. 167 § 1; CODE OF VA. (1950) § 8-627.

<sup>15</sup> 149 Ohio St. 520, 80 N.E.2d 122 (1948).

reason to deny the right of contribution to the parties who have committed an intentional tort and in the same jurisdiction permit contribution among joint obligors who have deliberately breached a contractual obligation, or among joint tortfeasors who have been guilty of "wanton" or "wilful" misconduct. On the other extreme, if contribution among joint tortfeasors is to be limited to "negligence" cases, as defined in the *Tighe* case, the value of the reform as a public measure is certainly limited. Of the nineteen states which have dealt with the problem, only two limit contribution among tortfeasors to mere acts of negligence involving no moral turpitude.<sup>16</sup> The other seventeen states allow contribution among joint tortfeasors regardless of the nature of the tort involved.<sup>17</sup> It is submitted that this is the proper solution of the problem. No one is hurt by the broader inclusion and it might even be argued that the possibility of contribution might act as a deterrent to those who might otherwise connive to commit a wilful tort.

Assuming that the people of Ohio are in accord with the assumptions above made, it is recommended that the Uniform Contribution Among Tortfeasors Act, with certain modifications, additions and deletions as hereinbelow set forth, be recommended to the legislature for adoption as the means of accomplishing the ends desired.

### AN ACT

To Provide For Contribution Among Tortfeasors, Release of Tortfeasors, and to Make Uniform the Laws with Reference Thereto.

Section 1. Joint Tortfeasors and Injured Person Defined.—For the purposes of this Act the term:

a. "Joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them.

b. "Injured Person" means any person having a claim in tort for injury to person or property.

Comment: Subsection *a* is from the Uniform Act; subsection *b* is a clarification added by Maryland to the Uniform Act when adopted by that state.<sup>18</sup>

Section 2. Right of Contribution; Accrual, Limitations and Joinder; Pro Rata Share; Indemnity.—

(1) The right of contribution exists among joint tortfeasors.

<sup>16</sup> KY. REV. STAT. (Baldwin 1943) § 412.030 and CODE OF VA. (1950) § 8-627.

<sup>17</sup> Arkansas, Delaware, Georgia, Louisiana, Maryland, Michigan, Missouri, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, West Virginia and Wisconsin. For statutory citation, see footnote 10 *supra*.

<sup>18</sup> ANN. CODE OF MD. (Flack 1947 Cum. Supp.) Art. 50 § 21.

(2) A joint tortfeasor is not entitled to a money judgment for contribution until he has, by payment, discharged the common liability, or has paid more than his pro rata share thereof. A right of action for contribution shall accrue to such joint tortfeasor against any one or more joint tortfeasors by payment discharging the common liability, or by each payment of more than his pro rata share thereof; provided, however, that no tortfeasor so sued shall be compelled to pay an amount greater than his pro rata share of the entire judgment. In determining the pro rata share of each joint tortfeasor, only solvent tortfeasors shall be considered.

Comment: The first sentence of subsection 2 comes from the Uniform Act. The first part of the second sentence should make quite clear the legislative intent that more than one cause of action for contribution may arise where a joint tortfeasor is called upon to pay more than his share as a result of several separate executions or garnishment procedures against him. The proviso of the second sentence limits the right of contribution against any joint tortfeasor to his pro rata share.<sup>19</sup> This provision, therefore, places the burden of collecting contribution from joint tortfeasors solely on those who have paid more than their pro rata shares to the judgment creditor. The third sentence establishes a rule of procedure for the guidance of the court in determining the pro rata share of each joint tortfeasor.<sup>20</sup>

(3) This Act and specifically the provisions of subsection 2 of Section 2 shall not impair or limit any right of indemnity among tortfeasors under existing law.

Comment: This provision is an amplified version of Section 6 of the Uniform Act. It should make clear the legislative intent that the enactment of a pro rata contribution statute does not and is not intended to destroy the right to indemnity existing under present Ohio law in cases where, as among the tortfeasors, liability is primary or secondary, as for example in the *Larson* case above mentioned.<sup>21</sup>

Subsection 4 of Section 2 of the Uniform Act provides that the relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares. This provision has been adopted by three states.<sup>22</sup> The fairness of

<sup>19</sup> Such a provision is found in the following states: LA. CIVIL CODE (Dart 1945) Art. 2104; MICH. STAT. ANN. (1938) § 27.1683(1); N.Y.C.P.A. (Gilbert's Bliss 1941) § 211-a; and ANN. TEX. STAT. (Vernon 1950) Title 42 Art. 2212.

<sup>20</sup> Such a provision is found in LA. CIVIL CODE (Dart 1945) Art. 2104; GEN. STAT. OF N. CAR. (1943) § 1-240 (which also excludes nonresidents who cannot be forced under execution of the court to contribute); and ANN. TEX. STAT. (Vernon 1950) Title 42 Art. 2212.

<sup>22</sup> 142 Ohio St. 20, 50 N.E.2d 163 (1943).

such a provision is patent. Although omitted from the proposed act, it is hoped that this idea will be incorporated into the Ohio law in the not too distant future.

(4) An action for contribution shall be commenced within two years after the cause of action sued upon accrues under subsection 2 hereof.

Comment: The obvious purpose of this subsection is to establish a statute of limitations for each separate claim for contribution.<sup>23</sup>

(5) Where two or more causes of action for contribution have accrued prior to the commencement of an action on one of them, all of such actions brought against any one or more joint tortfeasor must be joined; if not so joined, action on such additional accrued cause or causes of action against such joint tortfeasors so sued shall be forever barred.

Comment: Compulsory joinder of *accrued* claims for contribution in an action against any one or more joint tortfeasors will prevent unnecessary multiplicity of actions by forcing the settlement of all outstanding claims between the parties to the action in a single suit.

It is suggested that no provision be made requiring compulsory joinder of joint tortfeasors. Such a requirement might work considerable hardship on the tortfeasor who has been forced to pay more than his pro rata share where one or more of the joint tortfeasors were not available for or subject to suit for any of many reasons.

(6) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

Section 3. Judgment Against One Tortfeasor. — The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasors.

Section 4. Release; Effect on Injured Person's Claim. — A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides, but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

<sup>23</sup> 3 ARK. STAT. ANN. (1949) § 34-1002(4) (which adds "solely for the purpose of determining their rights of contribution among themselves, each remaining severally liable to the injured person for the whole injury as at common law."); Laws of Delaware (1949) Ch. 151 Sec. 2(4); Session Laws of S. Dak. (1945) Ch. 167 § 2(4).

<sup>24</sup> Michigan has established a six month period for such claims, while Rhode Island gives two years. MICH. STAT. ANN. (1938) § 27.1683(4); and R. I. PUB. LAWS 1945 Ch. 1635(2).

Comment: The Commissioner's Note to this provision in the Uniform Act reads:

"This Section is intended to change the common-law view under which a release given by an injured person to one of two or more tortfeasors automatically releases the others. Since this result may be avoided anyhow by giving a covenant not to sue instead of a release, it was thought wise to obviate what must frequently be considered a technical pitfall by an injured person who releases one or two or more joint tortfeasors for a certain sum, presumably approximately the released person's share of the damage, intending to pursue his claim against the others. The direct bearing which this change has on contribution among tortfeasors, in view of such releases and partial settlements, is apparent.

"The second clause of this Section is included simply to emphasize the fact that a release of one tortfeasor will benefit the others by reducing the claim against them in the amount of the consideration paid therefor, or in the amount or proportion by which the release provides that the total claim shall be reduced, whichever is larger."

Since the Ohio cases have shown a tendency to retreat from the common law rule, this provision merely speeds up a reform that has been in the making for some time.<sup>24</sup>

Section 5. Release; Effect on Right of Contribution.—A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors.

Section 6. When Defendant May Bring in Third Party; Third Party Practice; and Motion Practice. —

(1) A defendant in a tort action who seeks indemnity or contribution from a person, not a party, who is, or may be, liable as a joint tortfeasor to him, for all or part of the plaintiff's claim, may, without notice to the plaintiff, before filing his answer, and with notice after filing his answer, move the court for leave, as a third-party plaintiff, to file a third party petition and cause summons to be served upon such person, and if the motion is granted and the summons and the third-party petition are served, such person, called the third-party defendant, shall make his defense thereto in the same manner as defenses are made to the original petition.

<sup>24</sup> See, for example, *Adams Express Co. v. Beckwith*, 100 Ohio St. 348, 126 N.E. 300 (1919).



The third-party defendant may assert against the plaintiff any defenses which the defendant has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the defendant.

The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the defendant; and the third-party defendant thereupon shall assert his defense thereto in the same manner as defenses are made by an original defendant to the original petition, and, in addition, such third-party defendant so proceeded against by the plaintiff, may proceed under this rule against any person, not a party to the action, who is, or may be, liable as a joint tortfeasor to him for all or part of the claim asserted in the action against him.

(2) When a counterclaim is asserted against a plaintiff he may cause a third party to be brought in under circumstances which under this Section would entitle a defendant to do so.

(3) A pleader may either (a) state as a cross-claim against a co-party any claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or (b) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tortfeasors one of whom has discharged the judgment by payment or has paid more than his pro rata share thereof. If relief can be obtained as provided in this Subsection no independent action shall be maintained to enforce the claim for contribution.

(4) The court may render such judgments, one or more in number, as may be suitable under the provisions of this Act.

Comment: The basis of subsection 1 of Section 6 is Federal Rule 14 as amended by the Supreme Court of the United States on December 27, 1946. The modifications and additions limit its users to contribution and indemnity in tort actions. Subsection 1 of Section 7 of the Uniform Contribution Among Tortfeasors Act, which provided for third-party practice was based upon the original version of Federal Rule 14. Experience with the original form of Rule 14 proved it to be too broad. Courts held that the plaintiff need not amend his complaint to state a claim against a third-party defendant if he did not wish to do so. Under the amended version, plaintiff may, but is not required to, join third-party defendants. If the plaintiff does assert a claim against the third-party defendant, such third-party defendant should have the right to bring in other joint tortfeasors. Provision for this possibility is made in subsection (1) of Section 6.

Third-party defendants against whom the plaintiff asserts no claim do not require this protection because of the Proviso in Section 2 (2) of the proposed Act.

The advantages of impleader, or third-party, practice are obvious. As stated in the Commissioners' Note to Section 7 of the Uniform Act,—"In this way, the interests of justice may be promoted by obviating the necessity of a separate action for contribution [or indemnity]. It should be noted that this Section does not affect in any way the substantive law of contribution [or indemnity] concerning the accrual of a cause of action for contribution [or indemnity] as set forth in Subsection 2 of Section 2, above. It merely provides for a litigation, in advance, of those issues upon which the claim for a money judgment for contribution [or indemnity] will ultimately depend."

The biggest objection to impleader—that the defendant can force a plaintiff to join additional defendants—has been eliminated. The plaintiff may do so, but he is not required to do so under this proposal.

There is another very important reason why an impleader, or third-party, practice as hereinabove suggested should be adopted in Ohio. Your attention is directed to *Maryland Casualty Co. v. Frederick Co.*<sup>25</sup> The facts show a single injury resulting from the concurrent negligence of two parties acting separately. The injured person elected to sue only one, got a judgment and collected. This action was by the judgment debtor for indemnity on the theory that where judgment in a tort action is had against a person secondarily or vicariously liable, and such person has paid the judgment, he has a right of indemnity against the person primarily liable for the tort. The court opened with the statement that "This court is committed to the legal principle that there can be no contribution among joint tortfeasors," proceeded to recognize the validity of plaintiff's theory of recovery, drew a distinction between joint and concurrent torts, and supported the plaintiff's right to indemnity on such facts, *provided that the party secondarily liable when sued fully and fairly informs the party primarily liable of the claim and the pendency of the action and gives such party full opportunity to defend or participate in the defense.*

The court does not say how this is to be accomplished. Ohio has no impleader statute, and the *Larson* case, above mentioned, decided at the same term of court, held that if plaintiff tried to join such parties as here found, there would be a misjoinder!

<sup>25</sup> 142 Ohio St. 605, 53 N.E.2d 795 (1944).

Of the nineteen states which have statutes dealing with contribution among joint tortfeasors, nine permit impleader, or third-party, practice.<sup>26</sup> By joining this group of states Ohio would solve a serious procedural problem and, in addition, would take an important step in improving the administration of justice.

It should be noted that the defendant does not have to implead joint tortfeasors. The provision is permissive, not mandatory.<sup>27</sup>

The additional provisions of Section 6 are inserted to round out and make effective the rights established by this Act.

**Section 7. Constitutionality.**—If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**Section 8. Uniformity of Interpretation.**—This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

**Section 9. Short Title.**—This Act may be cited as the Uniform Contribution Among Tortfeasors Act.

**Section 10. Repeal.**—All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.

**Section 11. Time of Taking Effect.**—This Act shall take effect -----.

<sup>26</sup> ARK. STAT. ANN. (1947) § 34-1007; Laws of Del. (1949) Ch. 151 § 7; ANN. CODE OF MD. (Flack 1947 Cum. Supp.) Art. 50 § 27; MO. REV. STAT. ANN. (1943) § 847.20; GEN. STAT. OF N. CAR. (1943) § 1-240; Pa. Rules of Civil Procedure, Rule 2252(a); Session Laws of S. Dak. (1945) Ch. 167 § 7; Texas (by case law); and WIS. STAT. (1947) § 263.15.

<sup>27</sup> For a good case on what must be alleged and proved to enforce contribution, see *City of Charlotte v. Cole*, 223 N. Car. 106, 25 S.E.2d 407 (1943). For a recent collection of cases on the right of defendant in an action for personal injury or death to bring in joint tortfeasors for purpose of asserting a right of contribution, see 11 A.L.R. 2d 228 (1950).