

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1943.

A B I L L

To amend the law with respect to the effect of death in relation to causes of action; to make certain provisions in relation to actions of tort and in relation to rights against third parties; to amend the law with respect to proceedings against, and contributions between, tort-feasors; to make certain provisions in relation to charges upon insurance moneys payable as indemnity for liability to pay damages or compensation; to amend the law in relation to actions for the recovery of damages; and for purposes connected therewith.

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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 5 the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Law Reform (Miscellaneous Provisions) Act, 1943." Short title and division into Parts.

10 (2) This Act is divided into Parts as follows :—

PART I.—PRELIMINARY—s. 1.

PART II.—SURVIVAL OF CAUSES OF ACTION AFTER DEATH—s. 2.

15 PART III.—ALTERNATIVE DEFENDANTS AND THIRD PARTY PROCEDURE—ss. 3-5.

PART IV.—CONTRIBUTION BETWEEN TORT-FEASORS—s. 6.

PART V.—ATTACHMENT OF INSURANCE MONEYS—s. 7.

20 PART VI.—INJURY ARISING FROM MENTAL OR NERVOUS SHOCK—ss. 8, 9.

PART II.

SURVIVAL OF CAUSES OF ACTION AFTER DEATH.

2. (1) Subject to the provisions of this section, on the death of any person after the commencement of this 25 Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate: Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from 30 the other or to claims under section fifty-two of the Matrimonial Causes Act, 1899, as amended by subsequent Acts, for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the 35 damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages;

(b)

Effect of death on certain causes of action. 24 and 25, Geo. V, c. 41, s. 1.

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- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
- 5 (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in
- 10 respect of funeral expenses may be included.
- (3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—
- 15 (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) the cause of action arose not earlier than six months before his death and proceedings are
- 20 taken in respect thereof not later than six months after his personal representative took out representation.
- (4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action
- 25 would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against him before his death such cause of action in respect of that act or
- 30 omission as would have subsisted if he had died after the damage was suffered.
- (5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the
- 35 dependants of deceased persons by the Compensation to Relatives Act of 1897, as amended by subsequent Acts, and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Act as so amended

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amended as it applies in relation to other causes of action not expressly excepted from the operation of subsection one of this section.

PART III.

5 **ALTERNATIVE DEFENDANTS AND THIRD PARTY PROCEDURE.**

3. (1) In an action of tort in any court the following provisions shall have effect:—

Special provisions in relation to certain actions of tort.

10 (a) All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly or severally or in the alternative; and judgment or verdict and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

cf. Ord. No. 16 (Eng.), r. 4.

15 (b) It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

20

cf. *Ibid.* r. 5.

25 (c) Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

cf. *Ibid.* r. 7.

30 (d) No action shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

cf. *Ibid.* r. 11.

(e)

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(e) The plaintiff may unite in the same action several causes of action, but if it appear to the court that any such causes of action cannot be conveniently tried or disposed of together, the court may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

cf. Ord. No. 18 (Eng.), r. 1.

(2) The jurisdiction conferred on a court by paragraph (b) or paragraph (e) of subsection one of this section may be exercised by a judge of the court sitting either in court or in chambers, or in the case of a court of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, by any stipendiary or police magistrate or any two justices.

4. (1) Any court shall have power to grant in an action to any defendant in respect of any right claimed or alleged by him all such relief relating to or connected with the original subject of the cause or matter, claimed in like manner against any other person, whether already a party to the cause or matter or not, who has been duly served with notice in writing of the claim pursuant to rules of court or any order of the court, as might properly have been granted against that person if he had been made a defendant to an action duly instituted by the same defendant for the like purpose.

Third Parties. cf. 15 and 16 Geo. V, c. 49, s. 39.

(2) Every person served with any such notice as aforesaid shall thenceforth be deemed a party to the cause or matter with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant.

5. (1) Rules of court not inconsistent with this Part may be made prescribing all matters which are necessary or convenient to be prescribed for carrying out the objects and intentions of this Part.

Rules of court.

(2) All rules of court made for the purposes referred to in subsection one of this section shall—
 (a) be published in the Gazette;
 (b) take effect from the date of publication or from a later date to be specified in the rules of court;
 (c)

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5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules of court have been laid before such House disallowing any rule of court or part thereof, such rule of court or part shall thereupon cease to have effect.

(3) The power to make rules of court conferred by this section may be exercised—

- 15 (a) in relation to proceedings in the Supreme Court, by a majority of the judges of the Supreme Court;
- (b) in relation to proceedings in the District Courts, by a majority of the District Court judges;
- 20 (c) in relation to proceedings in courts of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, by the Governor.

PART IV.**25 CONTRIBUTION BETWEEN TORT-FEASORS.**

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

30 (a) judgment recovered against any tort-feasor 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 tort-feasor in respect of the same damage;

35 (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 the estate, or of the wife, husband, parent or child, of that person, against tort-feasors liable in respect

Proceedings against and contribution between joint and several tort-feasors. cf. 25 and 26 Geo. V, c. 30, s. 6.

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5 respect of the damage (whether as joint tort-
 feorsors or otherwise) the sums recoverable
 under the judgments given in those actions by
 way of damages shall not in the aggregate ex-
 ceed 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
 10 the court is of opinion that there was reason-
 able ground for bringing the action;

(c) any tort-feasor liable in respect of that damage
 may recover contribution from any other tort-
 feasor who is, or would if sued have been, liable
 in respect of the same damage, whether as a
 15 joint tort-feasor or otherwise, so, however, that
 no person shall be entitled to recover contribu-
 tion 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.

20 (2) In any proceedings for contribution under this
 section 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
 25 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.

(3) For the purposes of this section—

30 (a) the expressions "parent" and "child" have the
 same meanings as they have for the purposes of
 the Compensation to Relatives Act of 1897, as
 amended by subsequent Acts; and

35 (b) the reference in this section to "the judgment
 first given" shall, in a case where that judgment
 is reversed on appeal, be construed as a refer-
 ence 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
 40 that judgment as so varied.

(4)

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(4) Nothing in this section shall—

- (a) apply with respect to any tort committed before the commencement of this Part; or
- (b) affect any criminal proceedings against any person in respect of any wrongful act; or
- (c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

PART V.

ATTACHMENT OF INSURANCE MONEYS.

7. (1) If any person (hereinafter in this Part referred to as the insured) has, whether before or after the commencement of this Act, entered into a contract of insurance by which he is indemnified against liability to pay any damages or compensation, the amount of his liability shall, on the happening of the event giving rise to the claim for damages or compensation, and notwithstanding that the amount of such liability may not then have been determined, be a charge on all insurance moneys that are or may become payable in respect of that liability.

Amount of liability to be charge on insurance moneys payable against that liability.
cf. N.Z. Act No. 31, 1936, s. 9.

(2) If, on the happening of the event giving rise to any claim for damages or compensation as aforesaid, the insured (being a corporation) is being wound up, or if any subsequent winding-up of the insured (being a corporation) is deemed to have commenced not later than the happening of that event, the provisions of subsection one of this section shall apply notwithstanding the winding-up.

(3) Every charge created by this section shall have priority over all other charges affecting the said insurance moneys, and where the same insurance moneys are subject to two or more charges by virtue of this Part those charges shall have priority between themselves in the order of the dates of the events out of which the liability arose, or, if such charges arise out of events happening on the same date, they shall rank equally between themselves.

(4)

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(4) Every such charge as aforesaid shall be enforceable by way of an action against the insurer in the same way and in the same court as if the action were an action to recover damages or compensation from the insured; and in respect of any such action and of the judgment given therein the parties shall, to the extent of the charge, have the same rights and liabilities, and the court shall have the same powers, as if the action were against the insured:

10 Provided that, except where the provisions of subsection two of this section apply, no such action shall be commenced in any court except with the leave of that court.

(5) Such an action may be brought although judgment has been already recovered against the insured for damages or compensation in respect of the same matter.

(6) Any payment made by an insurer under the contract of insurance without actual notice of the existence of any such charge shall to the extent of that payment be a valid discharge to the insurer, notwithstanding anything in this Part contained.

(7) No insurer shall be liable under this Part for any sum beyond the limits fixed by the contract of insurance between himself and the insured.

25 (8) Nothing in this section shall affect the operation of any of the provisions of the Workers' Compensation Act, 1926-1942, or the Motor Vehicles (Third Party Insurance) Act, 1942.

PART VI.

30 INJURY ARISING FROM MENTAL OR NERVOUS SHOCK.

8. (1) In any action for injury to the person caused after the commencement of this Act, the plaintiff shall not be debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

Personal injury arising from mental or nervous shock. cf. Act No. 18 of 1939 (S.A.), s. 6.

(2)

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(2) In determining any question of liability for injury to the person caused before the commencement of this Act, no regard shall be paid to the fact that this section has been enacted, or to the provisions hereof.

5 9. (1) The liability of any person in respect of injury caused by an act, neglect or default by which any other person is killed, injured or put in peril, shall extend to include liability for injury arising wholly or in part from mental or nervous shock sustained by any member **10** of the family of the person so killed, injured or put in peril.

Extension of liability in certain cases.

(2) In this section—

15 “Member of a family” means the husband, wife, parent, child, brother or sister of the person in relation to whom the expression is used.

“Parent” includes father, mother, grandfather, grandmother, stepfather, stepmother and any person standing in loco parentis to another.

20 “Child” includes son, daughter, grandson, granddaughter, stepson, stepdaughter and any person to whom another stands in loco parentis.
