

Wrongs (Survival) Bill, 1925.

MEMORANDUM.

THE Bill amends and consolidates the law with respect to actions for wrongs, where either the person injured or the wrongdoer dies.

At common law the rule was that an action for a wrong dies with either party. In the case of injuries to property the rule has been largely displaced by exceptions. In the case of personal injuries the rule is still in force, though certain remedies are now given by the Compensation to Relatives Act, 1897, and the Workmen's Compensation Act, 1916, and amending Acts.

There does not seem to be any sound reason why an action for a wrong should die in the case of personal injuries merely because the person injured or the wrongdoer dies.

The provisions of the Bill apply to all injuries, whether personal or otherwise. These provisions are on similar lines to the provisions now in force in the case of injuries to property.

Under clause 4, where an action is commenced during the lifetime of both parties, the action may be continued notwithstanding the death of either party. If the wrongdoer dies, the injured person may recover compensation for pain and suffering as well as pecuniary damage. If the person injured dies, his executor or administrator may recover pecuniary damage.

Under clause 5, where the person injured has died before action, his executor or administrator may recover pecuniary damage.

Under clause 6, where the wrongdoer has died before action, the person injured may recover compensation for pain and suffering as well as pecuniary damage. Where both the wrongdoer and the person injured have died, the executor or administrator of the person injured may recover pecuniary damage.

J. B. PEDEN,

Commissioner for Law Reform.

November, 1925.

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. 1925.

A BILL

To amend and consolidate the law relating to actions for wrongs committed during the life of a person since deceased; to repeal the Act 4 Edward III, chapter 7, so far as the same is in force in New South Wales; to repeal certain provisions of the Act 5 Victoria, number 9; 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. This Act may be cited as the "Wrongs (Survival) Act, 1925." Short title.

Wrongs (survival).

2. The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed. Repeal Schedule.

3. In this Act, unless the contrary intention appears— Interpretation.

“Action” includes proceedings before an arbitrator.

“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.

“Executor” means the executor to whom probate has been granted, and includes an executor by right of representation.

“Injury” means any injury whether in respect of property or person or otherwise.

“Pecuniary damage” does not include pain or suffering or injury to feelings.

4. Where an action for a tort is commenced during the joint lifetime of the person injured and the wrongdoer, the action shall survive as regards any pecuniary damage, notwithstanding the death of the person injured, and as regards any damage, whether pecuniary or otherwise, notwithstanding the death of the wrongdoer. Action in lifetime of person injured and wrongdoer.

5. (1) An action for a tort may be brought by an executor or administrator of the person injured as provided in this section. Death of person injured.

(2) The action shall only be maintained in respect of an injury which was committed within six months before the death of the person injured, and for which he might have maintained the like action, provided that in the case of fraud or other wilful wrongdoing, the action may be maintained in respect of any injury which was committed before that time, if the existence of the cause of action was not known before that time to the person injured. cf. 5 Vic. No. 9, s. 30.

(3) The action shall be brought within twelve months after the death of the person injured.

(4) In any such action pecuniary damage only may be recovered.

6. (1) An action for a tort may be brought against an executor or administrator of the wrongdoer as provided in this section. Death of wrongdoer. cf. 5 Vic. No. 9, s. 30.

(2)

Wrongs (survival).

(2) The action shall only be maintained in respect of an injury which was committed within six months before the death of the wrongdoer, provided that in the case of fraud or other wilful wrongdoing the action may be maintained in respect of an injury which was committed before that time, if the existence of the cause of action was not known before that time to the person injured or to his executor or administrator.

(3) The action shall be brought within six months after the grant of probate or administration.

(4) In any such action any damage, whether pecuniary or otherwise, may be recovered by the person injured.

If the action is brought or maintained by his executor or administrator, pecuniary damage only may be recovered.

7. (1) Any damages recovered by an executor or administrator in any action to which this Act applies shall form part of the personal estate of the person injured.

Damages recovered by or against an executor or administrator. cf. 5 Vic. No. 9, s. 30.

(2) Any damages recovered against an executor or administrator in any action to which this Act applies shall be payable in like order of administration as the debts of the wrongdoer.

8. (1) This Act applies to actions commenced either before or after the commencement of this Act.

Application of Act.

(2) Nothing in this Act shall affect any cause of action for which an action may be maintained under the common law, or under any other Act not being an Act hereby repealed.

SCHEDULE.

Reference to Act.	Subject or Short Title.	Extent of Repeal.
4 Edward III, c. 7 (as in force in New South Wales).	Actions by executors for trespass to goods and chattels.	The whole Act.
5 Vict. No. 9.	An Act for the further amendment of the law, and for the better advancement of justice.	Section 30.