

LAW REFORM (MISCELLANEOUS PROVISIONS) BILL.

Schedule of the Amendments referred to in Council's Message of 23rd March, 1944.

No. 1.—Page 2, clause 2. *After line 33 insert—*

(d) shall not include any damages for the pain or suffering of that person or for any bodily or mental harm suffered by him or for the curtailment of his expectation of life.

No. 2.—Page 4, clause 2. *After line 3 insert—*

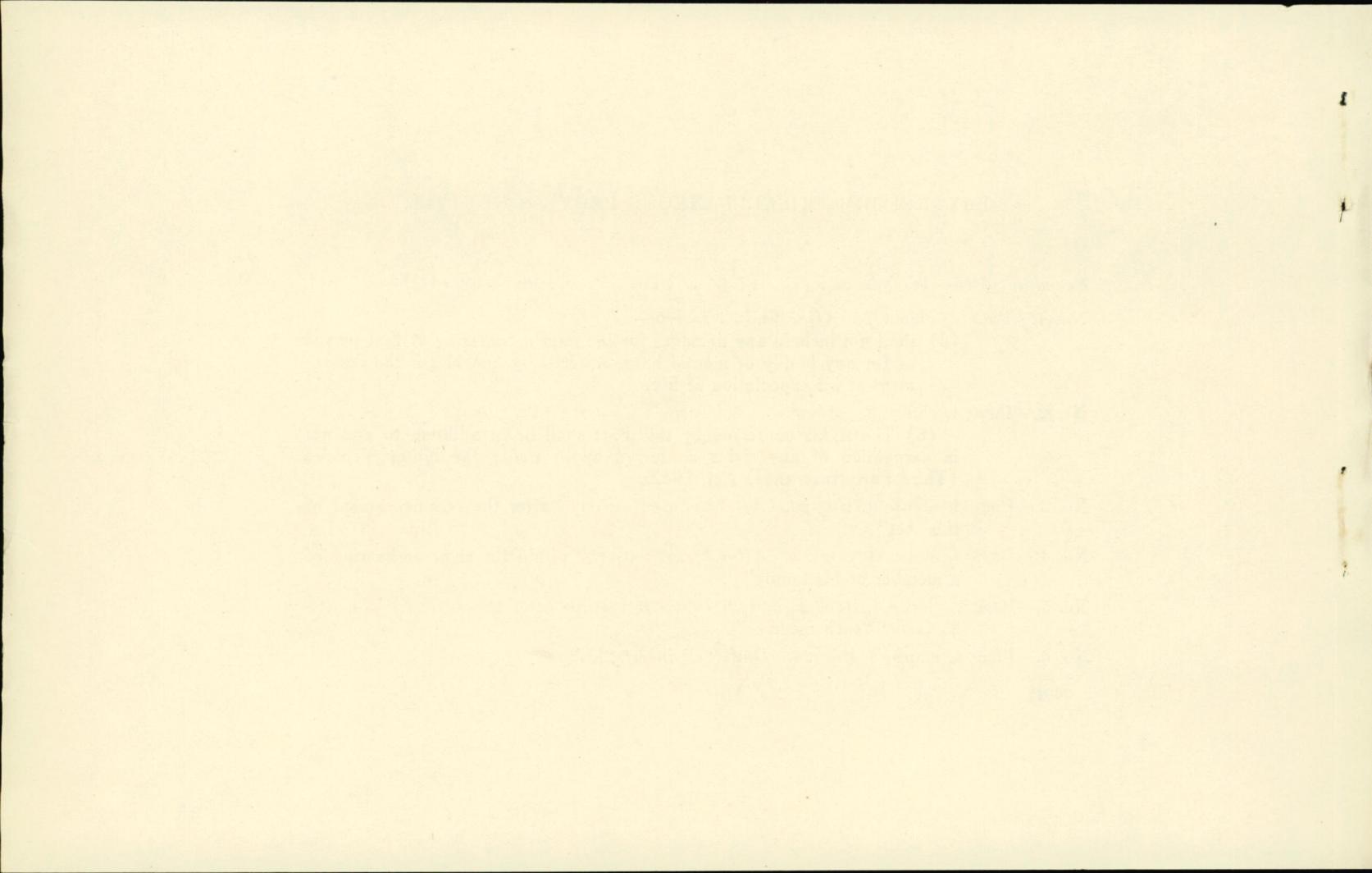
(6) The rights conferred by this Part shall be in addition to and not in derogation of any rights conferred by or under the Motor Vehicles (Third Party Insurance) Act, 1942.

No. 3.—Page 4, clause 4, line 20. *After "caused" insert "after the commencement of this Act"*

No. 4.—Page 4, clause 4, line 22. *After "peril" insert "within the sight or hearing of a member of his family"*

No. 5.—Page 4, clause 4, lines 25 and 26. *Omit all words after the word "by" on line 25 insert "such member"*

No. 6.—Page 4, clause 4, line 28. *Omit "a" insert "his"*



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 2 March, 1944.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

W. K. CHARLTON,
Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, 23rd March, 1944.

New South Wales.



ANNO OCTAVO

GEORGII VI REGIS.

Act No. , 1944.

An Act to amend the law with respect to the effect of death in relation to causes of action; to amend the law in relation to actions for the recovery of damages; 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
5 the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Law Reform (Miscellaneous Provisions) Act, 1944."

36021 27—

(2) Short title and division into Parts.

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

Law Reform (Miscellaneous Provisions).

(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.

5 PART III.—INJURY ARISING FROM MENTAL OR NERVOUS SHOCK—ss. 3, 4.

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 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 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 damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages;
- 25 (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;
- 30 (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 respect of funeral expenses may be included;
- 35 (d) shall not include any damages for the pain or suffering of that person or for any bodily or mental harm suffered by him or for the curtailment of his expectation of life.

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

(3)

Law Reform (Miscellaneous Provisions).

(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—

- 5 (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 twelve months before his death and proceedings are
10 taken in respect thereof not later than twelve months after his personal representative took out representation:

Provided that the fact that the cause of action arose earlier than twelve months before such death shall not,
15 of itself, be a bar to the maintenance of such proceedings where the court in which the proceedings are taken is satisfied that sufficient cause has been shown or that, having regard to all the circumstances of the case, it would be reasonable to allow such proceedings to con-
20 tinue; but nothing in this proviso shall affect the operation of any statute of limitation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person
25 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 omission as would have subsisted if he had died after
30 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 dependants of deceased persons by the Compensation to Relatives Act of 1897, as amended by subsequent
35 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

Law Reform (Miscellaneous Provisions).

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

(6) The rights conferred by this Part shall be in addition to and not in derogation of any rights conferred by or under the Motor Vehicles (Third Party Insurance) Act, 1942.

PART III.

INJURY ARISING FROM MENTAL OR NERVOUS SHOCK.

- 10 **3.** (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.**
- 15 (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. **cf. Act No. 18 of 1939 (S.A.), s. 6.**
- 20 **4.** (1) The liability of any person in respect of injury caused after the commencement of this Act by an act, neglect or default by which any other person is killed, injured or put in peril within the sight or hearing of a member of his family shall extend to include liability for injury arising wholly or in part from mental or nervous shock sustained by any member of the family of the person so killed, injured or put in peril such member. **Extension of liability in certain cases.**
- 25 (2) In this section—
- 30 “Member of a his family” means the husband, wife, parent, child, brother, sister, half-brother or half-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.
- 35 “Child” includes son, daughter, grandson, granddaughter, stepson, stepdaughter and any person to whom another stands in loco parentis.

No. , 1943

A BILL

To amend the law with respect to the effect of death in relation to causes of action; to amend the law in relation to actions for the recovery of damages; and for purposes connected therewith.

[MR. MCKELL;—18 November, 1943.]

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."

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(2) Short title and division into Parts.

Law Reform (Miscellaneous Provisions).

(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.

5 PART III.—INJURY ARISING FROM MENTAL OR NERVOUS SHOCK—ss. 3, 4.

PART II.

SURVIVAL OF CAUSES OF ACTION AFTER DEATH.

10 **2.** (1) Subject to the provisions of this section, on the death of any person after the commencement of this 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

15 seduction or for inducing one spouse to leave or remain apart from 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.

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

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

(a) shall not include any exemplary damages;

25 (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;

30 (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 respect of funeral expenses may be included.

(3)

Law Reform (Miscellaneous Provisions).

(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—

- 5 (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 twelve months before his death and proceedings are
10 taken in respect thereof not later than twelve months after his personal representative took out representation:

Provided that the fact that the cause of action arose earlier than twelve months before such death shall not,
15 of itself, be a bar to the maintenance of such proceedings where the court in which the proceedings are taken is satisfied that sufficient cause has been shown or that, having regard to all the circumstances of the case, it would be reasonable to allow such proceedings to con-
20 tinue; but nothing in this proviso shall affect the operation of any statute of limitation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person
25 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 omission as would have subsisted if he had died after
30 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 dependants of deceased persons by the Compensation to Relatives Act of 1897, as amended by subsequent
35 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

Law Reform (Miscellaneous Provisions).

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 INJURY ARISING FROM MENTAL OR NERVOUS SHOCK.

3. (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
10 mental or nervous shock.

Personal injury arising from mental or nervous shock.

(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.

cf. Act No. 18 of 1939 (S.A.), s. 6.

15 **4.** (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
20 mental or nervous shock sustained by any member of the family of the person so killed, injured or put in peril.

Extension of liability in certain cases.

(2) In this section—

25 “Member of a family” means the husband, wife, parent, child, brother, sister, half-brother or half-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.

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