

Acts reprinted pursuant to the Amendments Incorporation
Act, 1937

LANDLORD AND TENANT (CONTROL OF RENTS)
ACT, 1942-1951

WRONGS ACT, 1936-1951

With notes of judicial decisions affecting sections of the reprinted Acts

The Landlord and Tenant (Control of Rents) Act, 1942-1955, including all amendments passed to the end of 1955 and notes of judicial decisions, is reprinted in the Annual Volume, 1955, at page 324.



LANDLORD AND TENANT (CONTROL OF RENTS) ACT, 1942-1951.

BEING

LANDLORD AND TENANT (CONTROL OF RENTS) ACT, 1942, No. 33
OF 1942 [ASSENTED TO 26TH NOVEMBER, 1942.]

AS AMENDED BY

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1946, No. 38 OF 1946 [ASSENTED TO 19TH DECEMBER, 1946.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1947, No. 30 OF 1947 [ASSENTED TO 4TH DECEMBER, 1947.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1948, No. 5 OF 1948 [ASSENTED TO 13TH AUGUST, 1948.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1949, No. 9 OF 1949 [ASSENTED TO 13TH OCTOBER, 1949.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT (No. 2), 1949, No. 63 OF 1949 [ASSENTED TO 8TH DECEMBER, 1949.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1950, No. 50 OF 1950 [ASSENTED TO 7TH DECEMBER, 1950.]

AND

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1951, No. 51 OF 1951 [ASSENTED TO 13TH DECEMBER, 1951.]

An Act to provide for the control during the present war of the rents of premises used for the purposes of residence, and for incidental and other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I.

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Landlord and Tenant (Control of Rents) Act, 1942-1951."

Short title
and com-
mencement.

REPRINT OF ACT. Pursuant to section 46 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, the Parts, sections, subsections, paragraphs, subparagraphs, and other subdivisions of this reprinted Act have been re-numbered in numerical or alphabetical order, as the case may require, and all cross references in the reprinted Act have been corrected in conformity with the renumbering.

(2) This Act shall come into operation on a day to be fixed by proclamation.

Arrangement
of Act.

Amended by
30, 1947,
s. 3, by 5,
1948, s. 2,
and by 4,
1949, ss.
16, 18.

2. The provisions of this Act are arranged as follows:—

PART I.—Preliminary.

PART II.—Administration.

PART III.—Control of rents.

PART IV.—Control of rents of caravans.

PART V.—Recovery of possession of premises.

PART VI.—Protected persons.

PART VII.—Control of rents of hotel premises.

PART VIII.—Miscellaneous.

Repealing
provision.

3. The Increase of Rent (War Restrictions) Act, 1939, the Increase of Rent (War Restrictions) Act Amendment Act, 1940, and the Increase of Rent (War Restrictions) Act Amendment Act, 1941, are repealed.

Interpreta-
tion.

Amended by
38, 1946,
s. 2 (2), and
by 5, 1948,
s. 4 (2).

4. (1) In this Act, unless the context otherwise requires—

“dwelling-house” means any premises leased for the purpose of residence, and includes—

(a) any part of any premises leased separately for the purposes of residence;

(b) any part of any premises leased separately for the purposes of residence the lease of which provides for the use by the lessee of any other part of the premises or any fittings therein;

(c) the premises of any lodging-house;

(d) any premises a substantial part of which is leased for the purpose of residence and the remaining part of which is leased for the purpose of being used as a shop, store-room, workshop, stable, or any similar purpose:

s. 1. (2) This Act was proclaimed to commence on 1st January, 1943: *Gazette* 3rd December, 1942, p. 1089.

s. 4. H. A. WARNER PROPRIETARY LIMITED v. WILLIAMS AND OTHERS (1946) 73 C.L.R. 421. A tenancy at will at common law is sufficient to constitute a “lease” as defined in the corresponding regulation of the National Security (Landlord and Tenant) Regulations. If a person who is in fact a servant is in part remunerated for his services by being allowed to occupy a house, he is *prima facie* a tenant.

A. E. TERRY'S MOTORS LTD. v. RINDER (1948) S.A.S.R. 167. Where approximately one-sixth of the area of premises was used as a residence and the remainder for business purposes, held that the part of the premises used as a residence was not a substantial part of the premises.

PRICE v. MAYMAN (1948) S.A.S.R. 241. Held that, in the particular circumstances, a particular transaction could operate (if at all) only as an assignment.

“lease” includes every contract for the letting or subletting of any premises, whether the contract is made orally, in writing, or by deed, and includes a contract for the letting or subletting of any premises together with the use of furniture or other goods and also includes a contract for the letting or subletting of any premises together with the supply or provision of any domestic service, but does not include any lease arising under an attornment clause in a mortgage or in an agreement for the sale and purchase of land:

Amended by 5, 1948, s. 3 (a), and by 9, 1949, s. 2 (a).

“lessor” and “lessee” mean the parties to a lease and respectively include—

Amended by 5, 1948, s. 3 (b), (c), and (d).

- (a) a mesne lessor and mesne lessee;
- (b) a sub-lessor and a sub-lessee; and
- (c) in respect of premises which are subject to a mortgage, a mortgagee who enters or has entered into possession of the premises under the mortgage and a person who was the lessee of the premises under the mortgagor immediately prior to the mortgagee entering into possession:

“local court” means a local court of full jurisdiction consisting solely of a Local Court Judge or a special magistrate:

Amended by 5, 1948, s. 3 (e).

“rates” means any charges levied by the Minister of Works or by any municipal council or district council:

Amended by 38, 1946, s. 2 (1).

“rent” means the actual rent payable under a lease, and includes—

Amended by 9, 1949, s. 2 (b).

- (a) the value to the lessor of any covenants, conditions or other provisions of, or relating to, the lease to be performed by the lessee other than covenants, conditions, and provisions usually entered into by a lessee;
- (b) any rates or taxes (other than excess water rates) payable by the lessee in respect of the premises to which the lease relates;
- (c) any amount payable by the lessee to the lessor for the use of any furniture or other goods or the supply or provision of any domestic service in connection with the letting of the premises to which the lease relates;

- (d) any amount payable by the lessee to the lessor in respect of the supply of any electricity, gas, water, fuel, or other domestic commodity in connection with the letting of the premises to which the lease relates or in respect of any sanitary service for such premises;
- (e) any amount payable by the lessee to the lessor for the use of any fittings in the premises to which the lease relates or, if the lease relates to a part of any premises, any amount payable by the lessee to the lessor for the use of any fittings in any other part of the premises; and
- (f) if the lease relates to a part of any premises, any amount payable by the lessee to the lessor for the use of any other part of the premises:

“shared accommodation” means any premises to which this Act applies—

- (a) which form part of other premises; and
- (b) which are leased for the purpose of residence; and
- (c) the lessee of which, under the terms of the lease, uses any habitable room in common with the lessor or with another lessee:

“tax” includes any tax, whether on land or income derived from land, which is imposed by any Act of the State or the Commonwealth:

“trust” means the South Australian Housing Trust constituted under the South Australian Housing Trust Act, 1936-1940.

(2) For the purpose of this Act, “lessee” includes a person who remains in possession of premises after the termination of his lease of the premises, and “lessor” has a corresponding meaning.

Inserted by
5, 1948,
s. 3 (f), and
substituted
by 51, 1951,
s. 2.

Inserted by
9, 1949,
s. 2 (c).

s. 4. (2) *BENGER V. HEGARTY AND GARDINER. BENGER V. HEGARTY AND WHITTENBURY* (1950) S.A.S.R. 293. Where a lease was made of a hotel and shops and the shops were sublet by the lessee and, at the termination of the lease, a fresh lease of the hotel and shops was granted to another lessee but the lessee and the sub-lessee refused to give up possession of the shops, held that the lessee and the sub-tenants, being persons remaining in possession of the shops after the termination of the head lease and sub-tenancies respectively, were “lessees” within the meaning of section 4 (2) and were protected by section 42.

PART I.

5. (1) This Act shall apply to any premises (including any part of any premises which is separately leased), other than—

Premises to which Act is to apply.

Substituted by 5, 1948, s. 4 (1).

Para. (a) amended by 9, 1949, s. 3 (a).

(a) premises which are for the time being used, or which are ordinarily used, as any grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm, or apiary;

(b) any dwelling-house situated on any land used as a grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm, or apiary and which is ordinarily used for the occupation of seasonal workers employed as such upon that land;

Inserted by 9, 1949, s. 3 (b).

* * * * *

Para. repealed by 9, 1949, s. 3 (d).

(d) any premises ordinarily leased for holiday purposes only: Provided that if any premises ordinarily leased for holiday purposes only are leased for other than holiday purposes, the premises shall, whilst so leased, not be deemed to be premises ordinarily leased for holiday purposes: Provided further that if any premises are leased to any person and the letting continues for a period exceeding eight weeks the premises shall, whilst so let to that person after the expiration of the period of eight weeks, not be deemed to be premises ordinarily leased for holiday purposes;

Amended by 9, 1949, s. 3 (d).

(e) any premises, or the premises included in any class of premises, declared by proclamation to be premises or a class of premises, as the case may be, to which this Act shall not apply.

(2) The provisions of Part I. and Part VII. of this Act shall apply to premises in respect of which a publican's licence is in force under the Licensing Act, 1932-1945, but no other provisions of this Act shall apply to those premises.

Inserted by 9, 1949, s. 3 (e).

(3) This Act shall apply to any premises (including any part of any premises which is separately leased) in respect of which a billiard-table licence is in force under the Licensing Act, 1932-1945.

Inserted by 9, 1949, s. 3 (e).

s. 5. MARCH v. NEUMANN (1945) S.A.S.R. 167. Where farm property including a farmhouse was let and on the expiration of the term of the tenancy there was a holding over the farmhouse only, held that there was a tenancy at sufferance and that the farmhouse was not "prescribed premises" within the meaning of the National Security (Landlord and Tenant) Regulations.

PART I.

Inserted by
9, 1949,
s. 3 (e).

(4) Except as provided by subsections (2) and (3), this Act shall not apply to any premises licensed under the Licensing Act, 1932-1945.

(5) The Governor may from time to time by proclamation declare that this Act or any Part of this Act shall not apply to any premises or class of premises described in the proclamation and this Act or Part of this Act, as the case may be, shall not apply accordingly. The Governor may by proclamation revoke or from time to time vary any such proclamation.

Amended by
9, 1949,
s. 3 (f), and
by 51, 1951,
s. 3.

(6) In this Act, the term "premises to which this Act applies" shall include a reference to all premises other than premises to which this Act does not apply by virtue of paragraphs (a), (b), (d), or (e) of subsection (1) of this section or of subsection (4) of this section or of subsection (1) or (2) of section 6. The term also includes a reference to any part of any premises which is separately leased and to any land or appurtenances leased with any premises or part of premises.

Exemptions
from Act.

6. (1) The provisions of this Act shall not apply—

(a) to any premises let by the Government of the Commonwealth or the State or any instrumentality of any such Government;

(b) to any premises let by any municipal council or district council; or

(c) to any premises let by the trust.

Inserted by 9,
1949, s. 4 (a).

(2) The provisions of this Act shall not apply—

(a) with respect to any lease of premises (not being a dwelling-house) entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, with a lessee who, at the time of the said passing, was not the lessee of those premises nor with respect to any subsequent lease of those premises (whether entered into with such a lessee or otherwise);

(b) with respect to any lease in writing of premises (not being a dwelling-house) the term of which is for two years or more and which is entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951,

Inserted by
51, 1951,
s. 4 (a).

with a lessee who, at the time of the said passing, was the lessee of those premises nor with respect to any subsequent lease of those premises (whether entered into with such a lessee or otherwise).

(3) The provisions of this Act relating to the control of rents shall not apply to any premises during the time any notice fixing the maximum rental thereof is in force under Part VII. of the Housing Improvement Act, 1940.

Amended by 9, 1949, s. 4 (c).

(4) The provisions of this Act relating to the control of rents shall not apply with respect to the rent payable under and in accordance with the provisions of any lease in writing the term of which is for twenty-one years or more and the term of which commenced before the third day of September, nineteen hundred and thirty-nine.

Inserted by 50, 1950, s. 2.

(5) If, after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, the lessor and the lessee under any lease of any premises (not being a dwelling-house) agree in writing as to the amount of the rent thereof, then (whether the rent of the premises has been determined under this Act or otherwise) the provisions of this Act relating to the control of rents shall not apply with respect to the rent payable under that lease or under any subsequent lease of those premises (whether entered into by the parties aforesaid or otherwise).

Inserted by 51, 1951, s. 4 (b).

(6) Nothing in this Act shall be deemed to apply to or affect any covenant in any mortgage whereby the mortgagor attorns tenant to the mortgagee.

* * * * *

Section repealed by 38, 1946, s. 8 (2).

8. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any enactment of this Act would, but for this section, have been construed in excess of that power it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power.

Construction of Act.

PART II.

PART II.

ADMINISTRATION.

Administration of Act.

9. The provisions of this Act shall be administered by the trust.

Protection of members of trust.

10. (1) No matter or thing done by the trust or by any member, officer, inspector, or servant of the trust or by any other person whomsoever acting under the direction or authority of the trust or of this Act shall, if the matter or thing was done *bona fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

(2) Any expense incurred by the trust or any such member, officer, inspector, servant or person acting as aforesaid shall be deemed to be an expense authorized by this Act.

Appointment of officers.

11. (1) The trust may appoint such officers, inspectors, and servants as are necessary for the administration of this Act.

(2) Any such officer, inspector, or servant shall not, as such, be subject to the Public Service Act, 1936-1941.

(3) With the approval of the Minister administering any department of the public service, the trust may, for the purposes of the administration of this Act, employ or use the services of any person employed in that department upon any terms and conditions which are agreed upon between that Minister and the trust. Notwithstanding subsection (2), any such person shall continue for all purposes to be a member of the public service.

Expenses of administration.

12. The moneys necessary for the administration and the expenses of this Act shall be paid out of moneys provided by Parliament for the purpose.

PART III.

PART III.

CONTROL OF RENTS.

Pegging of rents.
Amended by 5, 1948, s. 5.

13. (1) Notwithstanding any term, condition or covenant in any lease in force at any time after the passing of this Act, the rent payable by the lessee of any premises (being a dwelling-house) to which this Act applies, in respect of

any period after the passing of this Act and during the continuance of this Act shall, unless the rent is fixed by the trust or a local court as provided by this Act, not exceed the following rent:—

- i. If the premises were let at the first day of August, nineteen hundred and forty-two, the rent shall not exceed the rent lawfully payable in respect thereof at the first day of August, nineteen hundred and forty-two:
- ii. If the premises were not let at the first day of August, nineteen hundred and forty-two, the rent shall not exceed the rent lawfully payable in respect thereof under the lease whereby the premises were first let after the first day of August, nineteen hundred and forty-two.

(2) Notwithstanding any term, condition, or covenant in any lease in force at any time after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1948, the rent payable by the lessee of any premises (other than a dwelling-house) to which this Act applies, in respect of any period after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1948, and during the continuance of this Act shall, unless the rent is fixed by the trust or a local court as provided by this Act, not exceed the following rent:—

Inserted by
5, 1948,
s. 5 (b), and
amended by
3, 1949, s. 5.

- i. If the premises were let at the thirtieth day of June, nineteen hundred and forty-eight, the rent shall not exceed the rent lawfully payable in respect thereof at the thirtieth day of June, nineteen hundred and forty-eight: Provided that if (whether before or after the said day) the lessor and the lessee of any such premises from time to time agree in writing that the rent of the premises shall be any other amount, the rent shall not exceed the amount of the rent so agreed upon;
- ii. If the premises were not let at the thirtieth day of June, nineteen hundred and forty-eight, the rent shall not exceed the rent lawfully payable in respect thereof under the lease whereby the premises were first let after the thirtieth day of June, nineteen hundred and forty-eight: Provided that if the lessor and the lessee of any such premises from time to time agree in writing that the rent of the premises shall be any other amount, the rent shall not exceed the amount of the rent so agreed upon.

(3) Any rent in excess of the rent provided to be paid by subsection (1) or subsection (2) shall, notwithstanding any change in the ownership or occupation of the premises or any agreement to the contrary, be irrecoverable.

(4) Where the rent of any premises is fixed by virtue of this section, the lessee may, by notice in writing given to the lessor, require him to furnish to the lessee a statement in writing as to what is the rent so fixed as aforesaid. If the lessor fails within fourteen days to furnish a statement as aforesaid he shall be guilty of an offence and liable to a penalty not exceeding ten pounds and if the lessor wilfully furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(5) Nothing in this section shall affect the operation of any determination of the trust or order of a local court under this Act fixing the rent of any premises to which this Act applies.

Application
to fix rent.
Amended by
33, 1946, s. 3.

14. (1) The lessor or the lessee under any lease of any premises to which this Act applies may, from time to time, make application in writing to the trust to fix the rent of the premises to which the lease relates.

(2) The trust shall thereupon cause the premises to be inspected for the purpose of fixing the rent thereof. The trust shall give prior notice to the lessor and the lessee or to his solicitor or agent of an occasion upon which the premises are to be so inspected and stating the day and approximate time at which the premises are to be so inspected.

(3) The trust may, of its own motion, and from time to time, cause any premises to which this Act applies to be inspected for the purpose of fixing the rent thereof.

Determination
of rent.

15. After inspection is made as aforesaid of any premises to which this Act applies and after making such inquiries and obtaining such reports as the trust considers necessary, the trust shall provisionally determine the rent of the premises.

Notice of
determination
of rent.
Amended by
51, 1951, s. 5.

16. After determining the rent of any premises as aforesaid the trust shall give notice in writing of its determination to the lessor and lessee of the premises. If the premises in respect of which the rent is so determined are not premises which are part of other premises leased separately the trust shall, in the notice aforesaid, supply information indicating

such part of the rent provisionally determined as has been fixed after having regard to the matters stated in paragraphs (i) and (j) of subsection (1) of section 21.

17. (1) Within fourteen days after notice aforesaid is given to any lessor or lessee, the lessor or lessee, as the case may be, may by notice in writing given to the trust and to the other party to the lease, object to the amount of the rent so determined by the trust. Every such notice of objection shall contain particulars of the objection. After the receipt by the other party to the lease of the notice of objection that party may, at any time within twenty-one days after the notice aforesaid of the determination is given to him, by notice in writing given to the trust and to the party to the lease by whom the objection is made, make reply to the particulars stated in the objection. The trust may extend the time within which any such objection or reply may be given. In any case it thinks fit, the trust may hear any oral representations relating to any objection or reply made by the lessor or lessee or by some person on his behalf.

Objection to determination.
Amended by 51, 1951, s. 6.

(2) The trust, on hearing or considering any objection or reply, shall not be bound by any rules of evidence or procedure but may inform itself in such manner as it thinks fit.

(3) After considering any objection or reply the trust shall finally determine the rent of the premises.

18. (1) If no objection is made as provided by section 17, the trust shall, after the expiration of fourteen days after giving notice as provided by section 16, make a determination fixing the rent of the premises at the amount previously determined by the trust, and shall publish notice thereof in the *Gazette*.

Publication of determination of trust.

Every such determination shall take effect from a date (which shall be a date not earlier than fourteen days after notice was given to the lessor and lessee under section 16) fixed by the trust and stated in the notice thereof.

(2) If any objection is made as provided by section 17, the trust shall, after considering every such objection, make a determination fixing the rent of the premises and shall publish notice thereof in the *Gazette*. Every such determination shall take effect from a date fixed by the trust and stated in the notice thereof. Such date may be any date not earlier than fourteen days after notice was given to the lessor and lessee under section 16.

(3) The trust shall give notice in writing to the lessor and the lessee of every determination made under this section. If the rent fixed by the determination of the trust under

Amended by 51, 1951, s. 7 (a).

PART III.

this section is fixed in respect of premises which are not premises which are part of other premises leased separately, and the said rent differs from the rent provisionally determined under section 15, the trust, in the notice required to be given under this section, shall supply information indicating such part of the rent fixed under this section as has been fixed after having regard to the matters stated in paragraphs (i) and (j) of subsection (1) of section 21.

Inserted by 9, 1949, s. 6.

(4) If the rent fixed in respect of any premises by any determination of the trust is not greater than any rent agreed to be paid by the lessee to the lessor under any lease in writing, then, notwithstanding the provisions of subsections (1) and (2) of this section, the date fixed by the trust as the date from which the determination is to take effect may be any date not earlier than the date from which under the lease in writing the rent was so agreed to be paid.

Inserted by 51, 1951, s. 7 (b).

(5) Notwithstanding any of the foregoing provisions of this section, the trust may, in any case in which it is of opinion that it is just so to do, fix as the date from which any determination of the trust shall take effect, any date not earlier than one month after the day upon which the application was made to the trust for the determination of the rent.

Appeal to local court. Amended by 38, 1946, s. 4.

19. (1) If objection is made as provided by section 17, and the rent of the premises is subsequently fixed by the trust, the lessor or lessee of the premises may, within fourteen days after the publication of the notice in the *Gazette* mentioned in subsection (2) of section 18, or within such extended time as the court for good cause may allow, appeal to the local court of full jurisdiction nearest to the premises from the determination of the trust.

Subsec. (2) repealed by 38, 1946, s. 4 (c).

* * * * *

(3) Whilst any such appeal is pending, the determination of the trust shall continue in force.

Order by local court. Amended by 51, 1951, s. 8.

20. (1) The local court shall hear and inquire into the appeal and shall, by its order, fix the rent of the premises. For the purpose of the appeal the local court may do all such matters and things relating thereto and in the same manner

s. 19. EX PARTE WHITTLE (1944) S.A.S.R. 205. A local court on an appeal from a ruling of the South Australian Housing Trust is entitled to assume that the rent fixed by the Trust is fair and equitable until the appellant shows that it is not.

and to the same extent as it is empowered to do in the exercise of its ordinary jurisdiction, but no costs shall be allowed on any such appeal. On the hearing of the appeal the local court shall not be bound by any rules of evidence or procedure but may inform itself in such manner as it thinks fit. The decision of the local court shall be final and conclusive.

(2) The local court shall, by its order, fix the date from which the order is to take effect. Such date shall be the date from which the determination appealed against came into effect and the order shall take effect from such date.

(3) The clerk of the local court shall transmit a copy of the order to the trust.

(4) The trust shall forthwith publish in the *Gazette* notice of the order and shall give notice in writing of the order to the lessor and the lessee.

21. (1) In fixing the rent under this Act of any premises to which this Act applies, the trust or, as the case may be, local court shall fix such rent as the trust or, as the case may be, local court considers to be fair and equitable, and after having regard to—

Matters to be considered in fixing rent.

- (a) the accommodation provided in the premises and the state of repair and the general condition thereof;
- (b) the neighbourhood in which the premises are situated;
- (c) if the lease relates to a part of any premises, the rent (if any) of the whole of the premises;

s. 21. R. v. LOCAL COURT OF PORT ADELAIDE. EX PARTE WOOD (1943) S.A.S.R. 285. Considerations entering into the fixing of rents on appeals discussed. It is the duty of the court when fixing rents to bring rents into line with the general level of rental values prevailing at the time of fixture of the rents paid. Evidence may be admitted of rents for comparable houses and of the rent obtainable prior to the date (1st September, 1939) when rents were first fixed by Statute and it may be assumed that rental values had been stabilized by the Increase of Rents (War Restrictions) Act, 1939-1941. *Semble*, where buildings have been constructed or altered since 1939, it is fair and equitable to allow a fair return upon the capital actually and reasonably expended. Since this decision subsections (2) and (3) have been enacted.

EX PARTE WHITTLE (1944) S.A.S.R. 205. Upon an appeal to a local court from a decision of the South Australian Housing Trust fixing the rent of a furnished flat, the court is entitled to fix a fair rent for the flat according to the rental at which it could have been let unfurnished in or about September, 1939, and then to make a fair allowance for the use of the furniture. The intendment of the Act does not preclude a valuation which brings the rent of furnished premises into line with those of unfurnished premises *mutatis mutandis*.

MILLS v. ROBINSON (1950) S.A.S.R. 25. In fixing a rent the South Australian Housing Trust should take into consideration a proper return to be paid by the tenant for any easement, or a right of that nature, to which he is entitled under the terms of his tenancy agreement.

PART III.

Inserted by
51, 1951,
s. 9 (a).

- (d) whether the premises or any part thereof is sublet by the lessee or is used by the lessee for the purpose of accommodating lodgers or boarders and the number of persons residing in the premises;
- (e) if the lease relates to a part of any premises, any rights conferred upon the lessee to the use of any other part of the premises or any fittings therein;
- (f) if the lease provides for payment for the use of furniture or other goods, the value, condition, and suitability of the furniture or goods;
- (g) if the lease provides for any amount to be payable by the lessee to the lessor for any electricity, gas, water, fuel, or other domestic commodity, the reasonable value of the electricity, gas, water, fuel, or other domestic commodity for which payment is to be made;
- (h) any amount which pursuant to the lease the lessee is required to pay or expend for the purposes of the repair, renovation, or improvement of the premises;
- (i) any expenditure reasonably incurred by the lessor for rates, taxes, insurance and other costs in respect of the premises beyond the expenditure which would have been reasonably incurred for that purpose immediately prior to the first day of September, nineteen hundred and thirty-nine;
- (j) the difference between the reasonable value of any repairs or maintenance work carried out with respect to the premises and the reasonable expenditure which would have been incurred in carrying out those repairs or maintenance work immediately prior to the first day of September, nineteen hundred and thirty-nine;
- (k) any additions or improvements which have been made to the premises by the person who is the lessee of the premises at the time the rent is fixed and which have been made with the express or implied consent of the lessor.

Inserted by
38, 1946, s. 5,
and sub-
stituted by
51, 1951,
s. 9 (b).

Inserted by
51, 1951,
s. 9 (b).

Inserted by
9, 1949, s. 7,
and amended
by 51, 1951,
s. 9 (c).

Inserted by
51, 1951,
s. 9 (d).

(2) In fixing the rent under this Act of any dwelling-house, the trust or, as the case may be, local court, shall take as the basis for fixing the rent, the amount of its rental value in accordance with the general level of rental values for comparable premises prevailing at the first day of September,

nineteen hundred and thirty-nine, but for the said purpose the said general level shall be deemed to be increased by twenty-two and one-half per centum thereof and the rent shall be fixed in accordance with the said general level so deemed to be increased and after having regard to any other matters required by this section to be taken into regard.

(3) In fixing the rent of any premises to which this Act applies (not being a dwelling-house), the trust or, as the case may be, local court, in addition to having regard to any other matters required by this section to be taken into regard, shall have regard to the general level of rentals for comparable premises prevailing at the time of fixing the rent which is the result of agreement between the lessors and lessees thereof and the rent shall be fixed in accordance with that general level.

Inserted by
51, 1951,
s. 9 (d).

(4) In fixing the rent of any premises to which this Act applies which is a shop or part of which is a shop (whether the shop or part is let separately as a shop or as a part of a dwelling-house) and which (whether with or without the consent of the lessor) is used as a dwelling-house or part of a dwelling-house, the trust or, as the case may be, local court shall fix the rent of the shop or the part of the premises which is a shop according to its rental value as a shop.

Inserted by
51, 1951,
s. 9 (d).

(5) If the trust or, as the case may be, the local court is satisfied that by reason of the dirty, harmful, or careless habits or actions of the lessee of any premises to which this Act applies or of any members of his household greater expenditure upon the repair or renovation of the premises has been or will be likely to be necessary than would otherwise be the case, the trust or, as the case may be, the local court, in fixing the rent under this Act of the premises, shall have regard thereto.

(6) If under the lease of any premises to which this Act applies any amount is payable by the lessee to the lessor for the use of any furniture or other goods in connection with the letting of the premises, the trust or, as the case may be, the local court in fixing the rent of the premises shall fix the rent thereof which shall be payable in respect of the premises without the use of the furniture or other goods and shall also fix the rent thereof which shall be payable in respect of the premises including any amount payable for the use of the furniture or other goods.

22. Any determination or order under this Act fixing the rent of any premises may fix the rent to be so payable at an amount payable for every week, month, or other period.

Period for
which rent
may be fixed.

PART III.

Effect of
fixing rent.
Amended by
9, 1949, s. 8.

23. (1) If the rent of any premises to which this Act applies has been fixed pursuant to this Act by a determination of the trust or an order of a local court, then during any time during which the determination or order fixing the rent is in force, and notwithstanding any change in ownership or occupation of the premises, the rent which shall be payable in respect of the premises shall not exceed that fixed as aforesaid and, unless a lesser amount is, after the making of the determination or order, agreed to be paid, the rent fixed as aforesaid shall, notwithstanding the provisions of any other Part of this Act, be the rent payable in respect of the premises.

(2) Any amount by which the rent charged in respect of the premises is in excess of the rent fixed as aforesaid shall, notwithstanding any agreement to the contrary, be irrecoverable.

Recovery
of overpaid
rent.

24. Where any sum has been paid on account of any rent, being a sum which by virtue of section 13 or section 23 would have been irrecoverable by the lessor, the sum so paid shall, at any time within six months after the date of payment, be recoverable from the lessor who received the payment by the lessee by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that lessee from any rent payable within such six months by him to such lessor.

Variation
of rents.
Amended by
9, 1949, s. 9.

25. (1) If the rent of any premises to which this Act applies has been fixed by the trust or a local court pursuant to this Act, no further proceedings under this Act for the fixing of the rent of those premises shall be commenced until after a period of six months from the time the rent was fixed as aforesaid except on the ground that—

(a) by an error or omission, an injustice has been occasioned by the determination or order fixing the rent;

(b) since the determination or order fixing the rent came into force, substantial alterations or additions have been made to the premises or, if the lease provides for the use of any furniture or other goods in connection with the letting of the premises, to the furniture or other goods; or

S. 23. DAVIES v. O'SULLIVAN (No. 2) (1949) S.A.S.R. 208, affirming DAVIES v. O'SULLIVAN (1948) S.A.S.R. 297. A determination of the rent of unfurnished premises made by the South Australian Housing Trust remains applicable to the premises notwithstanding that they are subsequently let furnished.

(c) since the determination or order fixing the rent came into force, the accommodation provided in the premises has been materially increased or decreased or, if the lease provides for the use of furniture or other goods in connection with the letting of the premises, the furniture or other goods to be so used have been substantially increased or decreased.

(2) Notwithstanding the provisions of subsection (1), if the rent of any premises to which this Act applies is, before the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, fixed by the trust or a local court pursuant to this Act, further proceedings under this Act for the fixing of the rent of those premises may be commenced after a period of three months from the time the rent was fixed as aforesaid.

Inserted by
51, 1951,
s. 10.

(3) Any proceedings to fix the rent of any premises the rent of which has been previously fixed by the trust or a local court pursuant to this Act shall be had and determined in manner provided by this Act as if the rent had not been so previously fixed.

26. (1) A lessor of premises to which this Act applies may give notice in writing to the trust stating that he intends carrying out such repairs, renovations, improvements, alterations or additions to the premises as are specified in the notice and requesting the trust to give an estimate of the probable rent of the premises after the carrying out of the work so specified.

Application
by lessor
contemplating
repairs, etc.
Inserted by
50, 1950, s. 3.

(2) The trust shall cause the premises to be inspected and after making such inquiries and obtaining such reports as the trust considers necessary, the trust shall inform the lessor of what would be the probable estimated rent of the premises if the repairs, renovations, improvements, alterations, or additions, as the case may be, are properly carried out.

(3) If subsequently to the carrying out of the work the rent of the premises is fixed by a determination of the trust made upon the application of the lessor or otherwise, the trust shall determine the rent of the premises in accordance with this Act and neither the trust nor, on any appeal from the determination of the trust, the local court, shall be bound by the estimate of rent given by the trust as aforesaid, but the trust or, as the case may be, the local court shall have such regard to the estimate as the trust or local court, as the case may be, deems just in the circumstances.

PART III.

Power to
fix rent of
premises not
let at time of
application.

27. (1) Any person who is entitled to the rents and profits of any premises which if leased would be premises to which this Act applies may, notwithstanding that the premises are not leased, make application in writing to the trust to fix the rent of the premises.

(2) Upon such application the rent of the premises may be fixed in manner provided by this Act and the provisions of this Act shall, *mutatis mutandis*, apply accordingly. The person making the application shall be deemed to be the lessor of the premises.

PART IV.

PART IV.

CONTROL OF RENTS OF CARAVANS.

Interpreta-
tion.
Inserted by
30, 1947, s. 2.

28. In this Part, unless the context otherwise requires—

“caravan” means any vehicle without motive power constructed or adapted for the purposes of habitation; the term includes any such vehicle which is not at the time fitted with wheels but which is so constructed that it is capable of being fitted with wheels:

“hirer” with respect to a caravan, means the party to whom the caravan is let:

“letting” with respect to a caravan, includes any contract for the letting or hire of the caravan, whether the contract is made orally or in writing or otherwise, and includes a contract for the letting or hire of a caravan together with the use of furniture or other goods; and “let” has a corresponding meaning:

“owner”, with respect to a caravan, means the party by whom the caravan is let:

“owner”, with respect to land, means the person by whom, whether as owner, lessee, occupier, or otherwise, any charge is made with respect to the use of any land upon which any caravan is placed for the purpose of habitation:

“rent”, with respect to a caravan, means any amount payable by the hirer to the owner of the caravan under any letting thereof, and includes any amount payable by the hirer to the owner for the use of any furniture or other goods in connection with the letting of the caravan:

“rent”, with respect to land, means any amount payable to the owner of the land by any person under any arrangement of any kind whereby any person is authorized to use or place or keep placed a caravan upon that land for the purpose of the habitation of the caravan (whether by the said person or otherwise), and includes—

Amended by 50, 1950, s. 4, and by 51, 1951, s. 11.

- (a) any amount payable to the owner for the use of any dwelling-house, other building, or any part thereof or goods or for the use of any land other than the land upon which the caravan is actually placed.
- (b) any amount payable to the owner for the use of any sanitary, laundry or washing or like facilities;
- (c) any amount payable to the owner in respect of the supply of any electricity, gas, water, or fuel.

29. (1) The trust from time to time may, by notice published in the *Gazette* and in a daily newspaper circulating throughout the State, declare that, with respect to caravans situated within such part or parts of the State as are specified in the notice, the maximum rents payable in respect of the letting of such caravans shall from a day or days to be specified in the notice, not exceed the rent or rents set out in the notice.

Fixation of rents in respect of letting of caravans. Inserted by 30, 1947, s. 2, and amended by 51, 1951, s. 12.

Any such notice may fix different maximum rents—

- (a) for different kinds or classes of caravans;
- (b) for different parts of the State.

(2) The trust may by notice published as aforesaid revoke or vary any declaration of rents made as aforesaid.

30. (1) Notwithstanding any term or condition of any letting, the rent payable in respect of the letting of any caravan in respect of any period after the coming into operation of a declaration under section 29 shall, except in

Payment of rent under letting of caravans. Inserted by 30, 1947, s. 2.

the circumstances mentioned in section 31 or 40, not exceed the rent fixed by the declaration and appropriate to the caravan.

(2) Any rent in excess of the rent provided to be paid by subsection (1) shall, notwithstanding any agreement to the contrary, be irrecoverable.

Application to trust for special determination of rent of caravan.
Inserted by 30, 1947, s. 2.

31. (1) The owner or the hirer of any caravan, the maximum rent in respect of the letting of which has been determined pursuant to section 29, may from time to time apply in writing to the trust for a determination of the maximum rent to be payable in respect of the letting of the caravan: Provided that no such application may be made in respect of any caravan by any person within six months after the making of a prior application by that person in respect of that caravan.

(2) The trust may thereupon from time to time determine the maximum rent which shall be payable in respect of the letting of the caravan from the day to be fixed by the trust.

(3) Notwithstanding the provisions of section 30, the rent so determined shall, from the day fixed as aforesaid, be the maximum rent which shall be payable in respect of the letting of the caravan and any rent in excess of such maximum rent shall, notwithstanding any agreement to the contrary, be irrecoverable.

Fixation of rents of land for use for caravans.
Inserted by 30, 1947, s. 2.

32. (1) The trust from time to time may, by notice published in the *Gazette* and in a daily newspaper circulating throughout the State, declare that the maximum rents which shall be payable in respect of land within such part or parts of the State as are specified in the notice under any arrangements of any kind whereby persons are authorized to place caravans upon such land for the purpose of habitation, shall, from a day or days to be specified in the notice, not exceed the rents set out in the notice.

Any such notice may—

(a) in respect of different items included in rent with respect to land, as defined in section 28, fix different amounts as the maximum rents to be payable in respect of those items;

(b) fix different maximum rents for different parts of the State.

(2) The trust may by notice published as aforesaid revoke or vary any declaration of rents made as aforesaid.

33. (1) Notwithstanding any term or condition of any contract or arrangement, the rent payable in respect of any land under any arrangement of any kind whereby any person is authorized to place a caravan upon that land for the purpose of the habitation of the caravan (whether by the said person or otherwise) and in respect of any period after the coming into operation of a declaration under section 32, shall, except in the circumstances mentioned in section 34, not exceed the rent fixed by the declaration and appropriate to the land and the arrangement with respect thereto.

Payment of rent in respect of land.
Inserted by 30, 1947, s. 2.

(2) Any rent in excess of the rent provided to be paid by subsection (1) shall, notwithstanding any agreement to the contrary, be irrecoverable.

34. (1) The owner of any land in respect of which a maximum rent has been determined pursuant to section 32, may, from time to time, apply in writing to the trust for a determination of the maximum rent to be payable in respect of the land for the purposes referred to in section 32: Provided that no such application may be made in respect of any land by the owner thereof within six months after the making of any prior application by that owner in respect of that land.

Application to trust for special determination of rent of land.
Inserted by 30, 1947, s. 2.

(2) The trust may thereupon from time to time determine the maximum rent which shall be so payable from a day to be fixed by the trust.

(3) Notwithstanding the provisions of section 33, the rent so determined shall, from the day fixed as aforesaid, be the maximum rent which shall be payable in respect of the land for the purposes referred to in section 32 and any rent in excess of such maximum rent shall, notwithstanding any agreement to the contrary, be irrecoverable.

35. (1) If any rent is determined pursuant to section 31 or 34 in respect of any caravan or land, the trust shall supply to the owner of the caravan or land, as the case may be, a notice stating the maximum rent payable pursuant to this Part in respect of the caravan or land and the owner of the caravan or land, as the case may be, shall, within a time to be specified by the trust, cause the notice to be affixed to the caravan or, as the case may be, displayed on the land in manner directed by the trust.

Display of maximum rent.
Inserted by 30, 1947, s. 2.

(2) Any such owner who fails to affix or display or to keep affixed or displayed any such notice in accordance with the direction of the trust shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) Any person who destroys, defaces or removes any such notice affixed or displayed as aforesaid shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Duty to give receipt for rent.
Inserted by 9, 1949, s. 10.

36. (1) Any person who, whether as principal or agent, receives any payment of any rent with respect to any caravan to the letting of which this Part applies or of any rent with respect to any land to which this Part applies shall, at the time of receiving the payment or within twenty-four hours of the making of the payment, give or cause to be given to the person making the payment a receipt (either by way of an entry in a rent book or by a separate document) for the payment specifying the amount paid, the period in respect of which the payment is made, and the caravan or land, as the case may be, in respect of which the payment is made.

(2) Any person who commits any contravention of this section shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) If pursuant to any arrangement made between the person paying the rent and the person to whom it is payable, any rent payable as mentioned in subsection (1) is paid into a bank to the credit of the person to whom it is payable (whether as principal or agent), the provisions of subsection (1) shall not apply in respect of that payment of rent.

Penalty for recovering rent above that fixed.
Inserted by 30, 1947, s. 2, and amended by 9, 1949, s. 11.

37. (1) Any person who, whether as principal or agent or in any other capacity, in any book or other document wilfully makes any entry showing or purporting to show any person as being in arrear in respect of any sum which by virtue of this Part is irrecoverable, or wilfully makes in any book or other document any false entry in a material particular with respect to the rent of any caravan or land to which this Part applies, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any person who, whether as principal or agent or in any other capacity, wilfully demands or wilfully receives as rent in respect of any caravan or land any sum which by virtue of this Part is irrecoverable, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Recovery of overpaid rent.
Inserted by 30, 1947, s. 2.

38. Where any sum has been paid to any owner on account of any rent, being a sum which by virtue of this Part would have been irrecoverable by the owner, the sum so paid shall, at any time within six months after the date of payment, be recoverable from the owner who received the payment by the

person to whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that person from any rent payable within such six months by him to such owner.

39. (1) For the purpose of this Part, any member of the trust or any officer or inspector of the trust authorized in writing for the purpose by the trust—

Powers of entry and inspection. Inserted by 30, 1947, s. 2.

- (a) may enter upon any land upon which any caravan used for the purposes of habitation is situated, and may enter and inspect any such caravan;
- (b) may require any person being the owner or hirer of any caravan or being the owner of any land or being the agent of any such owner or hirer, to answer any question relating to the letting thereof or to any rent payable in respect of any caravan or land.

(2) Any person who—

- (a) obstructs or hinders any such member, officer, or inspector in the exercise of any of the powers conferred by subsection (1) hereof; or
- (b) refuses to answer any question put by any such member, officer, or inspector as provided by paragraph (b) of subsection (1) hereof or who wilfully gives any false answer to any such question,

shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

40. (1) If any caravan is let to any person for holiday purposes only, this Part shall not apply with respect to the rent of that caravan whilst the caravan is so let but if any caravan is let to any person for holiday purposes and the letting continues for a period exceeding four weeks, this Part shall, after the expiration of four weeks from the commencement of the letting thereof, apply to the caravan whilst it is let to that person.

Exemption from operation of this Part. Inserted by 30, 1947, s. 2.

(2) If pursuant to subsection (1), this Part does not apply to any caravan then, during such time as this Part does not apply to that caravan, this Part shall not apply to the rent of any land payable in respect of that caravan.

Inserted by 51, 1951, s. 13.

PART V.

PART V.

RECOVERY OF POSSESSION OF PREMISES.

Commence-
ment of Part.
Inserted by
5, 1948, s. 6.

41. The provisions of this Part shall come into force on a day to be fixed by proclamation.

Restriction
on eviction.
Inserted by
5, 1948, s. 6.

42. (1) Except as provided by this Part, the lessor of any premises to which this Act applies shall not give any notice to terminate the tenancy or take or continue any proceedings to recover possession of the premises from the lessee or for the ejection of the lessee therefrom.

(2) A notice to quit given in contravention of this section shall not operate so as to terminate the tenancy in respect of which the notice was given.

(3) Subject to this Part, a lessor may take proceedings in a local court for an order for the recovery by him of any premises to which this Act applies (or of any furniture or other goods leased therewith) or for the ejection of the lessee therefrom if the lessor, before taking the proceedings, has given to the lessee, upon one or more of the prescribed grounds but upon no other ground, notice to quit in writing for a period determined in accordance with section 43 and that period of notice has expired.

Part V. Section 22 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1949, provides that in any proceedings in any court which were commenced before the passing of that Act and in which the decision of the court was not announced before the passing of that Act, the provisions of that Act are to be construed as if those provisions had been enacted before the commencement of those proceedings.

s. 41. Part V. was proclaimed to commence on 16th August, 1948: *Gazette* 13th August, 1948, p. 703.

s. 42. *ELDER'S TRUSTEE AND EXECUTOR COMPANY LIMITED AND ANOTHER v. SACH* (1944) S.A.S.R. 65. Where for many years the defendant had occupied as tenant at will a house and land for which the defendant paid no rent, held the defendant was not entitled to the protection of provisions of the National Security (Landlord and Tenant) Regulations relating to evictions.

INDEPENDENT ORDER OF ODDFELLOWS AND GRESHAM HOTEL LIMITED v. MALLAN, MATTERS, ROGERS, SMITH, AND LEAN (1946) S.A.S.R. 234. Where, under an agreement between an owner of premises and the holder of an *interesse termini* that such owner should give notice to quit to other existing tenants of the premises to enable vacant possession to be given to the incoming lessee and that the owner should, either alone or jointly with such lessee, bring appropriate ejection proceedings if necessary, held that it was sufficient for the purposes of regulation 58 of the National Security (Landlord and Tenant) Regulations (which corresponded with section 42) that a notice to quit, otherwise complying with the regulations, be in fact given by the owner, such notice, by virtue of the agreement, operating as an effective notice to quit, both for the owner and holder of the *interesse termini*.

WRIGHT v. CURNOW (1947) S.A.S.R. 225. When the ground set out in a notice to quit was that the premises were required by the landlord's daughter G. for her own occupation and on a subsequent date the landlord agreed to let the house to M. (who had married another of his daughters), held that the notice to quit

(4) Service of the notice to quit may, without prejudice to any other mode of service, be effected by delivering the notice to—

- (a) some person apparently over the age of sixteen years and apparently residing in or in occupation of the premises; or
- (b) the person by whom the rent of the premises is customarily paid.

The provisions of sections 110, 111 and 112 shall not apply to the service of a notice to quit.

(5) Where for any sufficient cause the service of any notice to quit cannot be effected, a special magistrate may, upon an affidavit showing grounds, make such order for substituted or other service or substitution for service of notice by advertisement or otherwise as may be proper.

Inserted by
51, 1951,
s. 14 (a).

(6) The prescribed grounds shall be—

(a) that the lessee has failed to pay the rent in respect of a period—

Amended by
50, 1950,
s. (1) (a).

(i.) where the lessee's period of occupation does not exceed six months—of not less than seven days;

(ii.) where the lessee's period of occupation exceeds six months but does not exceed twelve months—of not less than fourteen days;

(iii.) in any other case—of not less than twenty-eight days,

or that the lessee has failed to pay any rent which has been due and payable for more than twenty-eight days;

s. 42. was ineffective because the ground relied on was different to that stated in the notice.

(contd.)

PEPPER v. DISTRICT COUNCIL OF STIRLING (1948) S.A.S.R. 344. Where by an agreement in writing the committee of an institute granted to a motion picture exhibitor the sole right of showing pictures in the institute hall for fifty-one Saturday nights in any year and the committee was described in the agreement as "the landlord" and the exhibitor as "the tenant," and the agreement referred to the payment of "rent" by the tenant and contained covenants by the parties similar to covenants normally found in a lease, held, that notwithstanding the use of terms which would have been appropriate if the document were an agreement for a lease, the agreement was merely the grant of a licence to show pictures in the hall, and did not give the exhibitor a tenancy of any part of the hall.

DANSIE v. JONES (1949) S.A.S.R. 131. Where a notice to quit was expressed in terms slightly different from the particular ground provided for in subsection (6), held that the notice complied with the requirements of section 42 (3).

HAYWARD v. CLARKE (1949) S.A.S.R. 140. Under this Act exclusive jurisdiction is vested in local courts to hear and determine proceedings for the recovery of possession of premises to which the Act applies, irrespective of the amount of the rent or the value of the premises concerned.

KIERNAN v. LAWSON (1949) S.A.S.R. 256. The provisions of Part V. are applicable

- (b) that the lessee has failed to perform or observe some other term or condition of the lease and the performance or observance of that other term or condition has not been waived or excused by the lessor;
- (c) that the lessee has failed to take reasonable care of the premises, or of any furniture or other goods leased therewith or has committed waste;
- (d) that the lessee or any person residing or lodging in the premises has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the lessee or any other person has been convicted, during the currency of the lease, of any offence arising out of the use of the premises for any illegal purpose or that a court has found or declared that the premises have, during the currency of the lease, been used for some illegal purpose;
- (f) that the lessee has given notice of his intention to vacate the premises and, in consequence of that notice, the lessor has agreed to sell or let the premises or has taken any other steps as a result of which he would be seriously prejudiced if he could not obtain possession;
- (g) that the premises—
- (i.) being a dwelling-house or, in the case of a dwelling-house within the meaning of paragraph (d) of the definition of “dwelling-house” in section 4, the part thereof which is leased for the purposes

Amended by
51, 1951,
s. 14 (b).

Amended by
9, 1949,
s. 12 (a), (b).

- s. 42. to the case of a tenant holding over after the expiration of a tenancy for a (contd.) term certain. Since this decision subsection (2) of section 4 has been enacted.
- s. 42. (6) (d) *MERCANTILE INVESTMENTS LIMITED v. AUSTRALIAN OPTICAL COMPANY LIMITED* (1945) S.A.S.R. 129. Where premises were let to a tenant who covenanted to carry on a specified business in which noise necessarily occurs, held that the reasonable and ordinary use of the premises for the very purpose for which they were let is not conduct which is a nuisance or annoyance within the meaning of section 42 (6) (d).
- CURTIS v. STUTLEY* (1950) S.A.S.R. 130. To justify notice to quit being given upon the ground mentioned in section 42 (6) (d), the conduct of the lessee must have some relation to the lessee's use of the leased premises. It is not sufficient that the lessee has been guilty of conduct which has in fact been a nuisance or annoyance to an adjoining or neighbouring occupier, but which does not arise from, and has no relation to, his use of the premises.
- s. 42. (6) (g) *ARTHUR v. MARSH* (1945) S.A.S.R. 31. Premises are reasonably required by the owners for their personal occupation if the owners, being persons in indigent circumstances, desire to obtain possession for the purpose of supplementing their means by making the premises income producing.

of residence—are reasonably needed by the lessor for occupation as a dwelling-house by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon him or by a married son or married daughter of the lessor; or

- (ii.) not being a dwelling-house or a part of a dwelling-house leased as aforesaid—are reasonably needed for occupation by the lessor, or by a person associated or connected with the lessor in his trade, profession, calling or occupation;
- (h) that the premises are used as, or have been acquired for use as, a parsonage, vicarage, presbytery or other like premises and are reasonably needed for the personal occupation of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion); Amended by
51, 1951,
s. 14 (c).
- (i) that the lessor is a trustee and the premises are reasonably needed by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him; Amended by
51, 1951,
s. 14 (c).
- (j) that the lessor is a person, body or authority carrying on a hospital, or a trustee for such a person, body or authority, and the use of the premises is reasonably needed for the purposes of the hospital (including the accommodation of the staff of the hospital); Amended by
51, 1951,
s. 14 (c).
- (k) that the premises have been occupied, or are occupied in consequence of his employment by Amended by
51, 1951,
s. 14 (d).

s. 42. (6) (g) (HENLEY AND GRANGE SUB-BRANCH) INCORPORATED v. GRACE ABBOTT AND JOSEPH ERNEST ABBOTT (1946) S.A.S.R. 270. Where premises are part dwelling-house and part business premises and the parcels are not capable of severance, a claim for possession must be supported in its totality under subparagraph (i.) or (ii.) of paragraph (g) of section 42 (6). It is not permissible to found the claim part under one and part under the other of such subparagraphs.

WILLIAMS v. COULTHARD AND OTHERS (1948) S.A.S.R. 183; 22 A.L.J. 431. Held that if premises were required by the trustees of an institute under the Libraries and Institutes Act, 1939, for the use of the institute, they were required "for the occupation of the lessor." Subparagraph (ii.) of paragraph (g) does not require the premises to be required for occupation by the lessor himself "in his trade, profession, calling, or occupation."

DANSIE v. JONES (1949) S.A.S.R. 131. Held that "required" in paragraph (g) meant "demanded" or "claimed" and did not mean "needed." Since this decision the paragraph has been amended by the substitution of the word "needed" for "required."

s. 42. (6) (k) H. A. WARNER PROPRIETARY LIMITED v. WILLIAMS AND OTHERS (1946) 73 C.L.R. 421. If a person who is in fact a servant is in part remunerated for his services by being allowed to occupy a house, then he is *prima facie* a tenant.

some person in the employ of the lessor and that person has ceased to be employed by the lessor;

(l) that the premises being a dwelling-house (which was owned by the lessor at the time of the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951) situated in or contiguous to any grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm or apiary of the lessor are reasonably needed for the personal occupation as a dwelling-house in consequence of that employment by some person employed by, or about to be employed by, the lessor for the purpose of the grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm, or apiary, as the case may be;

(m) that the lessor has agreed to sell the premises by an agreement which requires the purchaser to pay not less than one-fourth of the whole purchase-money within twelve months from the date thereof and by which the purchaser is entitled to vacant possession of the premises and the premises—

(i.) being a dwelling-house or, in the case of a dwelling-house within the meaning of paragraph (d) of the definition of “dwelling-house” in section 4, the part thereof which is leased for the purposes of residence—are reasonably needed by the purchaser for occupation as a dwelling-house by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon him or by a married son or married daughter of the purchaser; or

(ii.) not being a dwelling-house or a part of a dwelling-house leased as aforesaid—are reasonably needed for occupation by the purchaser, or by a person associated or connected with the purchaser in his trade, profession, calling or occupation;

(n) that the premises are reasonably needed by the lessor for reconstruction or demolition;

Inserted by
50, 1950,
s. 5 (1) (b),
and amended
by 51, 1951,
s. 14 (c),
(e), and (f).

Amended by
9, 1949,
s. 12 (c), (d).

Amended by
51, 1951,
s. 14 (c).

s. 42. (6) (n) INDEPENDENT ORDER OF ODDFELLOWS AND GRESHAM HOTEL LIMITED v. MALLAN, MATTERS, ROGERS, SMITH, AND LEAN (1946) S.A.S.R. 234. Premises are “reasonably required by the lessee for reconstruction” where the reconstruction is not to be effected by the owner but by a lessee under a covenant

(o) that the premises being a dwelling-house, the lessee, by subletting the dwelling-house or any part thereof, or by taking in boarders or lodgers, is making or during the period of six months immediately preceding the giving of the notice to quit was making, a profit from the premises which, having regard to the rent paid by the lessee, is unreasonable;

Inserted by
51, 1951,
s. 14 (g).

(p) that the lessee has become the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved;

Amended by
50, 1950,
s. 5 (1) (c).

(q) that the lessee has sublet the premises or some part thereof by a sublease which has not been consented to or approved by the lessor;

(r) that the premises were let as a shop or business premises and have been converted by the lessee, without the consent of the lessor either express or implied, from a shop or business premises into a dwelling-house and the premises are required by the lessor for re-conversion to a shop or business premises.

Inserted by
9, 1949,
s. 12 (e).

(7) In subsection (6), unless the contrary intention appears, "lessor" includes, where there is more than one lessor, any one or more of the lessors, and "lessee" includes, where there is more than one lessee, any one or more of the lessees.

(8) Notice to quit on a ground specified in paragraph (p) or (q) of subsection (6)—

(a) shall not be given—

(i.) where the lessee became the lessee by virtue of an assignment or transfer made before the first day of March, nineteen hundred and forty-seven, or the sub-lease was granted before that day;

(ii.) where the lease is for a fixed term—unless that term has expired; or

s. 46. (6) (n) in that behalf, and it need not be proved that a detailed scheme is in existence nor that the reconstruction can be commenced at once.

RETURNED SAILORS', SOLDIERS' AND AIRMEN'S IMPERIAL LEAGUE OF AUSTRALIA (HENLEY AND GRANGE SUB-BRANCH) INCORPORATED v. GRACE ABBOTT AND JOSEPH ERNEST ABBOTT (1946) S.A.S.R. 270. "Reconstruction" connotes some structural changes and transformations of the building and something more than mere repairs of the existing structure.

(iii.) in the case of a periodic lease—unless the period which was current at the date on which the assignment, transfer or sublease took effect has expired; and

(b) may be given whether or not the assignment, transfer or sublease was in breach of any covenant or condition.

Inserted by
9, 1949,
s. 12 (f).

(9) Notice to quit on a ground specified in paragraph (g) of subsection (6) shall not be given if the lessor is an alien unless he has continuously resided in the Commonwealth for at least three years immediately prior to the giving of the notice and notice to quit on a ground specified in paragraph (m) of subsection (6) shall not be given if the purchaser is an alien unless he has continuously resided in the Commonwealth for at least three years immediately prior to the giving of the notice.

Inserted by
50, 1950,
s. 5 (2).

(10) A notice to quit may be given with respect to any part of any premises to which this Act applies notwithstanding that the lease of the premises comprises that part and other parts of the premises and proceedings may be taken for the recovery of the possession of any such part or for the ejection of the lessee therefrom.

Period of
notice to quit.
Inserted by
5, 1948, s. 6.

43. (1) The period for which notice to quit shall be given shall be not less than a period of seven days, together with an additional seven days for each completed period of six months of occupation.

(2) Nothing in subsection (1) shall—

(a) require the giving of notice to quit for—

(i.) a period exceeding fourteen days if the notice is given on any ground specified in paragraphs (a), (c), (d), (e) or (f) of subsection (6) of section 42 and not on any other ground;

(ii.) a period exceeding thirty days if the notice is given on any other ground; or

(iii.) in the case of shared accommodation—a period exceeding fourteen days; or

(b) allow the giving of notice to quit for a period shorter than the period which, but for this section, would be required.

Amended by
50, 1950, s. 7.

(3) If any premises to which this Act applies are let upon a fortnightly lease or upon a lease for any less period, a notice to quit in respect of those premises shall not be ineffective by reason that the period of the notice to quit does not expire upon a day coinciding with the expiration of a period of the lease.

Inserted by 51, 1951, s. 15.

44. (1) Every notice to quit shall on the face of the notice bear an indorsement to the effect that the lessee to whom the notice to quit is given is not legally obliged to comply with the notice unless ordered to do so by a local court.

Requirements of notice to quit. Inserted by 5, 1948, s. 6, and substituted by 51, 1951, s. 16.

(2) In any proceedings for the recovery of possession of any premises or for the ejection of the lessee therefrom in which an appearance has been entered by the defendant, the validity of the notice to quit upon which those proceedings are founded shall not be affected by the fact only that the notice to quit does not bear an indorsement as required by subsection (1).

45. (1) A person who becomes the lessor of premises to which this Act applies, being a dwelling-house or part of a dwelling-house, by purchase, transfer or assignment thereof (otherwise than in pursuance of a contract entered into before the first day of March, nineteen hundred and forty-seven) or who becomes the lessor thereof by virtue of a lease granted in respect of the premises shall not, within a period of six months after the date of the agreement for the purchase, transfer, or assignment or, as the case may be, the date of the commencement of the term of the lease, give a notice to quit on the ground specified in paragraph (g) of subsection (6) of section 42 to any person who was a lessee of the premises at the date of the agreement for the purchase, transfer, or assignment or, as the case may be, the date of the commencement of the term of the lease: Provided that where a person becomes a lessor as aforesaid in pursuance of an agreement entered into or lease made after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1950, a notice to quit as aforesaid shall not be given to any such lessee within a period of twelve months after the date of the agreement for purchase, transfer or assignment or, as the case may be, the date of the commencement of the term of the lease.

Notice to quit where dwelling-house sold. Inserted by 5, 1948, s. 6, and amended by 9, 1949, s. 13, and by 50, 1950, s. 8.

(2) A lessor of premises to which this Act applies, being a dwelling-house or part thereof, shall not give a notice to quit on the ground specified in paragraph (m) of subsection (6) of section 42 to any person who was a lessee of the

Landlord and Tenant (Control of Rents) Act, 1942-1951.

premises at the date of the agreement referred to in that paragraph (whether the agreement was made before or after the commencement of this Part) within a period of six months after the date of the agreement: Provided that where any such agreement is made after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1950, a notice to quit as aforesaid shall not be given to any such lessee within a period of twelve months after the date of the agreement.

Notice to specify grounds.

Inserted by 5, 1948, s. 6, and amended by 51, 1951, s. 17.

46. A notice to quit shall specify the ground relied upon and, in the proceedings, the lessor may rely upon any ground upon which notice to quit may be lawfully given whether specified in the notice to quit or not.

Notice to quit to terminate lease.

Inserted by 5, 1948, s. 6, and amended by 51, 1951, s. 18.

47. A notice to quit given in accordance with the provisions of section 42, section 53, section 54 or section 55 shall, if the tenancy in respect of which the notice was given has not otherwise terminated, operate so as to terminate the tenancy of the premises at the expiration of the period specified in the notice, but nothing in this section shall operate so as to determine any tenancy before the date on which it would have terminated if this section had not been enacted.

Notice to quit after failure of eviction proceedings.

Inserted by 5, 1948, s. 6.

48. (1) Where a lessor has taken proceedings in any court to recover possession of any premises to which this Act applies from the lessee or for the ejectment of the lessee therefrom and the court has (whether before or after the commencement of this Part) refused to make an order in favour of the lessor, the lessor shall not give to the lessee any notice to quit (whether on the same ground as a previous notice to quit or on some other ground) within six months after the decision of the court unless he has first obtained the leave of a local court so to do.

(2) Where a court refuses to make an order in favour of a lessor it may, at the same time, grant leave for the purposes of this section.

s. 47. *AMAD v. GRANT*; *GROSLICK v. GRANT* (1946) 74 C.L.R. 327. To determine a periodic tenancy, whether it is yearly, quarterly, monthly, or weekly, a notice to quit must (unless the parties have otherwise agreed) take effect at the end of a period of the tenancy (but see subsection (3) of section 43). Held that Regulation 62 of the National Security (Landlord and Tenant) Regulations (which corresponded with section 47) did not validate a notice to quit which would be invalid under the law apart from the regulation.

OERTEL v. CROCKER (1947) S.A.S.R. 306. Held that where a tenant continued in occupation of premises after the expiration of the term of a written lease, the tenancy was a tenancy at will subject to the statutory notice to quit required by the provisions then contained in the National Security (Landlord and Tenant) Regulations. An appeal to the High Court from this decision was struck out as incompetent, *OERTEL v. CROCKER* (1947) 75 C.L.R. 261.

49. (1) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any premises to which this Act applies, or for the ejection of the lessee therefrom, the court shall take into consideration, in addition to all other relevant matters—

Court to consider hardship.
Inserted by 5, 1948, s. 6.

(a) any hardship which would be caused to the lessee or any other person by the making of the order;

(b) any hardship which would be caused to the lessor or any other person by the refusal of the court to make the order;

Amended by 9, 1949, s. 14 (a).

- s. 49. **ARTHUR v. MARSH** (1945) S.A.S.R. 31. A case of hardship arises when the owners have to eke an existence on scanty means and the charity of their friends, when they are paying more rent for the premises in which they are living than they receive from the letting of the premises which they seek to recover.
- INDEPENDENT ORDER OF ODDFELLOWS AND GRESHAM HOTEL LIMITED v. MALLAN, MATTERS, ROGERS, SMITH, AND LEAN** (1946) S.A.S.R. 234. In the case of business premises, where the relative hardship between lessor and lessee appears equal, the claim of the owner must prevail. The basis for weighing relative hardship and for testing the availability of reasonably suitable accommodation in lieu of the premises in issue considered.
- RETURNED SAILORS', SOLDIERS' AND AIRMEN'S IMPERIAL LEAGUE OF AUSTRALIA (HENLEY AND GRANGE SUB-BRANCH) INCORPORATED v. GRACE ABBOTT AND JOSEPH ERNEST ABBOTT** (1946) S.A.S.R. 270. The intention underlying paragraphs (a) and (b) of subsection (1) relating to the matters to be taken into account by the court in exercising its discretion on the ground of respective hardships, is the prevention of one person securing a privilege, however well he may be entitled thereto, if its exercise means little to him and at the same time its bestowal will cause harm of some magnitude to another.
- LEWIS v. HUTTON** (1946) S.A.S.R. 297. Held that, apart from the question of ownership, if the hardship of the tenant were not shown to be the greater, the added factor of hardship, that the owner was being kept out of the premises, was sufficient to resolve the question in favour of the landlord.
- AUSTRALIAN RED CROSS SOCIETY v. BEAVER TRADING COMPANY PROPRIETARY LIMITED AND OTHERS** (1947) 75 C.L.R. 320. The words "or any other person" in paragraphs (a) and (b) of subsection (1) include all individuals and ascertainable classes of the community who would be prejudiced by the tenant losing possession or the landlord failing to obtain possession.
- MCAURTHUR AND ANOTHER v. BROAD** (1949) S.A.S.R. 350. When the making or refusal of an order for delivering up of possession will involve equal hardship to the landlord and the tenant, the court will normally make the order. But the court, in its discretion, may take into account, as a ground for refusing to make an order, the fact that the hardship to the landlord has been created by his own act in voluntarily giving up possession of another dwellinghouse occupied by him.
- OLDFIELD v. GRAY AND OTHERS** (1950) S.A.S.R. 206. Where a lessee of premises sublet the premises to his son without the consent or approval of the lessor, held, in proceedings by the lessor for recovery of possession of the premises upon this ground, that any hardship suffered by the lessee or his son, through the lessee being prevented from conferring upon the son the right to occupation of the premises, did not constitute the "special circumstances" required by section 49 (2) (a) to justify the refusal of an order for possession.
- SHIELL v. SYMONS. SHIELL v. FORD. SHIELL v. NICHOLLS** (1951) S.A.S.R. 82. Under the Health Act, 1935, a local board of health declared an old dwellinghouse (which was sublet to various sub-tenants) unfit for habitation and the lessor gave notice to quit on the ground that the premises were reasonably required by the lessor for reconstruction. In proceedings to recover possession from some of the sub-lessees held that, while substantial hardship must necessarily be suffered by the lessor as the result of the refusal of the order, no hardship could be caused to the sub-lessees by the making of the order, any hardship which they might suffer arising not from the order but from the operation of the provisions of the Health Act.

PART V.

Amended by
50, 1950, ss.
6 (2) and
9 (a).

(c) where the application is made on any one or more of the grounds specified in paragraphs (g), (h), (i), (j), (k), (l), (m) and (n) of subsection (6) of section 42—whether reasonably suitable alternative accommodation in lieu of the premises is, or has been, whether before or after the date upon which notice to quit was given, available for the occupation of the person occupying the premises or for the occupation of the lessor or other person by whom the premises would be occupied if the order were made;

Inserted by
9, 1949,
s. 14 (b).

(d) where the application is made under a ground specified in paragraph (g) of subsection (6) of section 42—whether at the time the lessor acquired the premises the premises were let to the lessee and whether the lessee had any opportunity to acquire the premises and the reasons for the lessee failing to acquire the premises;

Inserted by
9, 1949,
s. 14 (b), and
amended
by 50, 1950,
s. 9 (b).

(e) where the application is made under a ground specified in paragraph (m) of subsection (6) of section 42—whether at the time the premises were agreed to be sold to the purchaser the premises were let to the lessee and whether the lessee had any opportunity to acquire the premises and the reasons for the lessee failing to acquire the premises;

Inserted by
9, 1949,
s. 14 (b).

(f) where the application is made under a ground specified in paragraph (g) of subsection (6) of section 42—whether the lessee is the owner of another dwelling-house capable of being occupied by him and whether he has taken all necessary and proper steps to obtain possession thereof;

Inserted by
50, 1950,
s. 9 (c).

(g) where the application is made on a ground specified in paragraph (g) of subsection (6) of section 42—whether the lessor has been required by circumstances to live elsewhere than in the premises and whether there has been any relevant change in those circumstances;

Inserted by
50, 1950,
s. 9 (c).

(h) whether the lessee has made reasonable efforts to secure other premises;

Inserted by
50, 1950,
s. 9 (c).

(i) where the proceedings relate to a dwelling-house and a permit has been issued to the lessee under the Building Materials Act, 1949, for the construction of a dwelling-house—whether the lessee has been guilty of unreasonable delay in the

construction of the dwelling-house in respect of which the permit was issued,

and may, in its discretion, make the order subject to such conditions (if any) as the court thinks fit or may, on such conditions (if any) as it thinks fit, refuse to make the order notwithstanding that one or more of the prescribed grounds has been established.

Amended by 9, 1949, s. 14 (c), and by 51, 1951, s. 19 (a), (b).

(2) Where the application is made on either of the grounds specified in paragraphs (*p*) and (*q*) of subsection (6) of section 42, the court shall not refuse, in the exercise of the discretion vested in it by subsection (1), to make the order unless the court is satisfied—

Amended by 51, 1951, s. 19 (c).

- (a) that special circumstances exist by reason of which the order should not be made; or
- (b) without limiting the generality of the last preceding paragraph, in a case where the ground specified in paragraph (*q*) applies, that the subletting was in the course of a business of subletting carried on by the lessee and that the business was commenced or is carried on with the express or implied consent of the lessor.

(3) On the hearing of an application specified in the subsection (2), any assignee, sublessee or person in occupation of the premises or any part thereof shall be entitled to be heard.

(4) If, on the hearing of any such proceedings where application is made on a ground specified in paragraph (*a*), (*b*), or (*c*) of subsection (6) of section 42 or on a ground specified in paragraph (*d*) of subsection (6) of section 42 in respect of premises other than shared accommodation, the court is satisfied that the ground has been proved, or if, on the hearing of any such proceedings, proof is given to the satisfaction of the court that, at the time of the giving of the notice to quit, the lessee was in arrears with respect to any rent payable under the lease (whether those arrears were paid before the hearing or not), the court may, if the court thinks fit, make the order without taking into consideration any of the matters referred to in subsection (1) of this section.

Inserted by 50, 1950, s. 9 (d), and amended by 51, 1951, s. 19 (d), (e), and (f).

(5) If, on the hearing of any such proceedings where application is made on a ground specified in paragraph (*e*), (*k*), (*l*), or (*r*) of subsection (6) of section 42 or on a ground specified in paragraph (*d*) of subsection (6) of section 42 in respect of premises being shared accommodation, the

Inserted by 51, 1951, s. 19 (g).

court is satisfied that the ground has been proved, the court shall not take into consideration any of the matters referred to in subsection (1) of this section.

(6) If in any such proceedings where application is made on the ground that a dwelling-house is reasonably needed for the occupation as a dwelling-house by the lessor and proof is given to the satisfaction of the court—

- (a) that the lessor has been the owner of the dwelling-house for at least five years before the giving of the notice to quit; and
- (b) that at the time of the giving of the notice to quit the lessor was not the owner of any other dwelling-house which was reasonably available to him for his occupation; and
- (c) that the lessor has not since the twenty-second day of September, nineteen hundred and forty-nine, as owner, transferred or conveyed or otherwise disposed of any dwelling-house which was at the time of the transfer, conveyance or disposition reasonably available to him for his occupation; and
- (d) that the lessor is a British subject; and
- (e) that the lessor has since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1950, given notice to quit to the lessee for a period of not less than twelve months,

then the court shall not take into consideration any of the matters mentioned in subsection (1) of this section.

Nothing in this subsection shall limit any right of the lessor under any other provision of this Act.

The Governor may make regulations prescribing a form of notice to quit which may be given by any lessor in pursuance of this subsection and, without limitation of the right of a lessor to give notice to quit in any other form, any notice to quit in the form prescribed by regulation shall be deemed to be sufficient notice of all the matters referred to in paragraphs (a) to (e) inclusive of this subsection.

In paragraph (a) of this subsection “owner” includes a tenant for life and the survivor of two or more joint tenants or tenants in common.

(7) If in any such proceedings where application is made on the ground that a dwelling-house is reasonably needed by the lessor for his occupation as a dwelling-house or that

the lessor being a trustee the dwelling-house is reasonably needed by a beneficiary under the trust for his personal occupation as a dwelling-house, proof is given to the satisfaction of the court—

- (a) that the lessor or, as the case may require, the beneficiary, is a protected person; and
- (b) that at the time of the giving of the notice to quit, the lessor or, as the case may require, the beneficiary was not the owner of any other dwelling-house which was reasonably available to him for his occupation; and
- (c) that the lessor or, as the case may require, the beneficiary has not since the twenty-second day of September, nineteen hundred and forty-nine, as owner, transferred or conveyed or otherwise disposed of any dwelling-house which was at the time of the transfer, conveyance, or disposition reasonably available to him for his occupation; and
- (d) that the lessor has since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, given notice to quit to the lessee for a period of not less than twelve months,

then the court shall not take into consideration any of the matters mentioned in subsection (1) of this section.

Nothing in this subsection shall limit any right of the lessor under any other provisions of this Act.

The Governor may make regulations prescribing a form of notice to quit which may be given by any lessor in pursuance of this subsection and, without limitation of the right of a lessor to give notice to quit in any other form, any notice to quit in the form prescribed by regulation shall be deemed to be sufficient notice of all the matters referred to in paragraphs (a) to (d) inclusive of this subsection.

In this subsection “protected person” has the meaning given to that term by section 72.

50. (1) In respect of any proceedings referred to in section 49, the court—

- (a) if satisfied that such an order should be made in accordance with the provisions of this Part, may make an order for the recovery of possession of such part of the premises the subject of the

Power of court.
Inserted by
50, 1950,
s. 10.

proceedings as the court thinks fit or for the ejection of the lessee from such part;

- (b) with the consent of the parties and without any further hearing in the proceedings may make any order which may be made by the court in pursuance of this Part.

(2) In any case where in the opinion of the court it is in the interests of justice so to do, the court, in its discretion, may hear two or more such proceedings together and in any such event the court may regulate the proceedings with reference to the cross-examination of witnesses or otherwise relating to the hearing as the court thinks fit.

51. In respect of any proceedings referred to in section 49 the court or a special magistrate may—

- (a) from time to time, subject to such conditions (if any) and for such period as it thinks fit—

(i.) adjourn the proceedings;

(ii.) stay or suspend the execution of any judgment or order which has been made or given in the proceedings; or

(iii.) postpone the date for recovery of possession or for ejection specified in any such judgment or order; or

- (b) subject to such conditions (if any) as it thinks fit, vary, discharge, or rescind any such judgment or order:

- (c) where a warrant of execution has been issued, and whether the warrant has expired or not, from time to time extend the period stated in the warrant for the execution thereof—

(i.) if the court is satisfied that, because of the illness of the lessee or for other sufficient cause, it is or has been impracticable for

Power to stay proceedings or orders. Inserted by 5, 1948, s. 6, and amended by 51, 1951, s. 20.

s. 51. *BOYLE AND ANOTHER V. JUKES* (1944) S.A.S.R. 184. Where there had been a slip in the original order suspending the issue of a warrant for possession of premises made by a local court, held that there was power to amend this slip both under the inherent jurisdiction of the court and under the provision of the National Security (Landlord and Tenant) Regulations corresponding to section 51 (b).

BURLING V. CHAS. STEELE AND COMPANY PROPRIETARY LIMITED (1948) 76 C.L.R. 485. Where a notice to quit was given on the grounds that the premises were reasonably required for occupation by the landlord and an order for possession was made by consent, and in proceedings under a provision of the National Security (Landlord and Tenant) Regulations corresponding to section 51, an application to rescind the order was refused, held that, assuming the ground stated in the notice to quit was erroneous, in view of the consent by the tenant to the original order, the refusal of the application should not be disturbed.

the officer to whom the warrant is directed to execute the warrant within the period stated therein—for such period as it thinks fit; or

- (ii.) if the court is not so satisfied—for a period not exceeding seven days from the date on which the extension is granted.

52. (1) An application to stay or suspend the execution of, or to vary, discharge or rescind, any judgment or order referred to in section 51, or to postpone the date for recovery of possession or for ejection specified in any such judgment or order, shall, when filed with the proper officer of the court, stay the execution of any warrant and operate to postpone the date for recovery of possession of the premises or for the ejection of the lessee until the court has heard the application.

Certain applications to operate as stay of execution. Inserted by 5, 1948, s. 6.

(2) Notwithstanding anything in the Local Courts Act, 1926-1947, or any other Act, a warrant for delivery of possession of premises which pursuant to such Act would remain in force for any fixed period, shall remain in force for such further period or periods, if any, as the court shall, from time to time, direct whether before or after the expiration of such fixed period and whether the warrant has expired or not.

Substituted by 51, 1951, s. 21.

(3) Where, in respect of any proceedings referred to in section 49 the court has refused to grant an application of any of the kinds referred to in subsection (1) of this section, no further application of any of those kinds shall be made in respect of those proceedings except with the leave of the court.

53. (1) Notwithstanding section 42 but subject to this section, the lessor of premises to which this Act applies being shared accommodation in a dwelling-house which premises were leased at the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, may give notice to quit to the lessee under the lease at the time of the said passing without specifying any ground therein.

Proceedings for recovery of possession of shared accommodation already leased. Inserted by 51, 1951, s. 22.

(2) A notice to quit shall not be given under this section except subject to the following provisions:—

- i. The lessor shall give notice to quit to the lessee for a period of not less than two months:

- ii. At the time of the giving of the notice to quit and during the period of twelve months prior to the giving of the notice, the lessor shall not have let shared accommodation in the dwelling-house to different lessees under two or more leases in existence at the same time:
- iii. The lessor shall at the time of the giving of the notice to quit reside in the dwelling-house and shall have resided in the dwelling-house during the whole of the period of twelve months prior to the giving of the notice to quit:
- iv. During the period of six months prior to the giving of the notice to quit the lessor shall not have recovered as rent from the lessee in respect of the premises any amount which by virtue of this Act is irrecoverable.

Every such notice to quit shall, in addition to containing such other matters as are necessary, give notice to the lessee of the matters referred to in paragraphs ii., iii., and iv. of this subsection but if, in any proceedings by the lessor for an order for the recovery of possession of the premises or the ejection of the lessee therefrom, an appearance is entered by the defendant, the validity of the notice to quit shall not be affected by the fact only that the notice to quit has not given notice of the matters aforesaid.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the premises or for the ejection of the lessee therefrom, if proof is given (the onus of which proof shall be on the lessor) to the court that the lessor was entitled under this section to give the notice to quit, then the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49 unless the court considers that special circumstances exist in which case the court may, in its discretion, take into consideration any of the said matters.

(4) Except as otherwise provided by this section, the provisions of this Part shall apply with respect to any such notice to quit or proceedings.

(5) Nothing in this section shall limit any right of the lessor under any other provisions of this Act.

Provisions for recovery of possession of shared accommodation to be leased in the future.

Inserted by 51, 1951, s. 22.

54. (1) Notwithstanding section 42 but subject to this section, the lessor of premises to which this Act applies being shared accommodation in a dwelling-house, may give notice to quit to the lessee of those premises under any lease

made after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, without specifying any ground therein.

(2) A notice to quit shall not be given under this section except subject to the following provisions:—

- i. The lessor shall give notice to quit to the lessee for a period of not less than two months:
- ii. At the time of the giving of the notice to quit and during the period of twelve months prior to the giving of the notice, the lessor shall not have let shared accommodation in the dwelling-house to different lessees under two or more leases in existence at the same time:
- iii. The lessor shall at the time of the giving of the notice to quit reside in the dwelling-house and shall have resided in the dwelling-house during the whole of the period of twelve months prior to the giving of the notice to quit:
- iv. The rent payable for the premises shall have been fixed by a determination of the trust or an order of a local court:
- v. During the period of six months prior to the giving of the notice to quit the lessor shall not have recovered as rent from the lessee in respect of the premises any amount which by virtue of this Act is irrecoverable.

Every such notice to quit shall, in addition to containing such other matters as are necessary, give notice to the lessee of the matters referred to in paragraphs ii., iii., iv., and v., of this subsection but if, in any proceedings by the lessor for an order for the recovery of possession of the premises or the ejectment of the lessee therefrom, an appearance is entered by the defendant, the validity of the notice to quit shall not be affected by the fact only that the notice to quit has not given notice of the matters aforesaid.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the premises or for the ejectment of the lessee therefrom if proof is given (the onus of which proof shall be on the lessor) to the court that the lessor was entitled under this section to give the notice to quit, then the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49 unless the court considers that special circumstances exist in which case the court may, in its discretion, take into consideration any of the said matters.

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(4) Except as otherwise provided by this section, the provisions of this Part shall apply with respect to any such notice to quit or proceedings.

(5) Nothing in this section shall limit any right of the lessor under any other provision of this Act.

(6) In this section “shared accommodation” means any premises to which this Act applies—

- (a) which form part of other premises; and
- (b) which are leased for the purpose of residence; and
- (c) the lessee of which, under the terms of the lease, uses any habitable room, bathroom or privy in common with the lessor or with another lessee.

Provisions for recovery of dwelling-house for occupation by employee. Inserted by 51, 1951, s. 22.

55. (1) Notwithstanding section 42 but subject to this section, the lessor of any dwelling-house may give notice to quit to the lessee of the dwelling-house on the ground that the dwelling-house is reasonably needed for the personal occupation in consequence of that employment of some person employed by, or about to be employed by, the lessor.

(2) Notice to quit shall not be given under this section except subject to the following provisions:—

- I. The lessor shall have been the owner of the premises for at least five years before the giving of the notice to quit:
- II. The lessor shall be a British subject or a body corporate incorporated or registered in accordance with any law of the State:
- III. The lessor shall have, since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, given notice to the lessee for a period of not less than twelve months.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the dwelling-house or the ejection of the lessee therefrom, if proof is given (the onus of which proof shall be on the lessor) that the lessor was entitled under this section to give the notice to quit and that the lessor has not within the period of twelve months preceding the giving of the notice to quit given any other notice to quit under this section, the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49.

(4) Except as otherwise provided by this section, the provisions of this Part shall apply with respect to any such notice to quit or proceedings.

(5) Nothing in this section shall limit any right of the lessor under any other provision of this Act.

56. Proceedings for the recovery of possession of premises to which this Act applies or for the ejectment of a lessee therefrom may, with the consent of all parties, be disposed of in chambers but nothing in this section shall affect the power of the court to dispose of any such proceedings in chambers otherwise than under this section.

Hearing in chambers.
Inserted by 5, 1948, s. 6.

57. (1) Except as provided in subsection (2), there shall be no appeal in proceedings under this Part from a judgment or order of a local court.

Appeal.
Inserted by 5, 1948, s. 6.

(2) There shall be an appeal, as to questions of law only, to the Supreme Court from any judgment or order of a local court in proceedings under this Part.

58. Notwithstanding any other Act or law to the contrary, no order, other than an order made under this Part or under the National Security (Landlord and Tenant) Regulations made by any court for the recovery by the lessor of possession of any premises to which this Act applies (or of any furniture or other goods leased therewith), or for the ejectment of the lessee, shall be enforceable.

Ejectment orders not enforceable unless made under Act.
Inserted by 5, 1948, s. 6.

* * * * *

Section inserted by 5, 1948, s. 6, and repealed by 51, 1951, s. 23.

60. (1) If a notice to quit is given on the ground specified in paragraph (g), (h), (i), (j), (k), (l) or (m) of subsection (6) of section 42 and the premises in respect of which the notice is given are vacated in accordance with the notice, or if an order for the recovery of possession of the premises or for the ejectment therefrom of the lessee is made on any such ground, the premises shall not, without the consent of a local court, be again leased or sold, or agreed to be leased or sold until after the expiration of the period of twelve months immediately succeeding the date on which the premises were vacated, possession of the premises was recovered, or the ejectment effected. Any person who commits any contravention of this subsection shall be guilty of an offence and liable to a penalty not exceeding five hundred pounds.

Premises not to be sold or re-let in certain cases.
Inserted by 5, 1948, s. 6, and amended by 50, 1950, s. 6 (3), and by 51, 1951, s. 24.

s. 57. WILLIAMS V. COULTHARD AND OTHERS (1948) S.A.S.R. 183; 22 A.L.J. 431. An appeal to the Supreme Court may be instituted in manner provided by sections 58 to 60 of the Local Courts Act, 1926-1947, notwithstanding that the appeal under section 58 of that Act is an appeal both on questions of law and of fact, but the grounds of appeal must be confined to questions of law.

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(2) Nothing in subsection (1) shall prevent—

- (a) the letting of any portion of the premises to which this Act applies which is not reasonably required by the lessor or purchaser, as the case may be, provided that the total rent obtained is not greater than a reasonable rent for the whole of the premises less a reasonable deduction for the portion of the premises not so let; or
- (b) where notice to quit has been given on the ground specified in paragraph (h), (i), (k) or (l) of subsection (6) of section 42 the letting of the premises—
 - (i.) to a minister of religion;
 - (ii.) to a beneficiary under the trust; or
 - (iii.) to some person in the employ of, or about to become an employee of, the lessor in consequence of his employment,
 respectively.

(3) A transaction entered into in contravention of subsection (1) of this section shall not thereby be invalidated, but nothing in this subsection shall affect the liability of any person to any penalty in respect of any contravention of subsection (1).

Enforcement
of orders.
Inserted by
5, 1948, s. 6.

61. An order for the recovery of possession of any premises to which this Act applies (or of any furniture or other goods leased therewith) or for the ejection of a lessee therefrom made by a court under this Part may be enforced in the same manner as a like order if made by that court otherwise than under this Part, might be enforced.

Acceptance of
rent not to
waive notice
to quit.
Inserted by
5, 1948, s. 6,
and amended
by 51, 1951,
s. 25.

62. Where notice to quit any premises to which this Act applies has been given, whether before or after the commencement of this Part—

- (a) any demand by the lessor for payment of rent, or of any sum of money as rent, in respect of any period after the giving of the notice;
- (b) the commencement of proceedings by the lessor to recover rent, or any sum of money as rent, in respect of any such period; or
- (c) the acceptance of rent, or of any sum of money as rent, by the lessor in respect of any such period,

shall not of itself constitute evidence of a new tenancy or operate as a waiver of the notice.

63. (1) Where—

Protection of
sub-lessee.
Inserted by
5, 1948, s. 6.

(a) a lessor has consented to or approved a sublease of any premises to which this Act applies or any part thereof by the lessee, or a lessee has sublet any premises to which this Act applies or any part thereof in the course of a business of subletting carried on by the lessee; and

(b) the lessee ceases to be in possession of the premises, following upon—

(i.) the obtaining of an order by the lessor for the recovery of possession of the premises from the lessee or for the ejection of the lessee from the premises on any of the grounds specified in paragraphs (a) to (f) of subsection (6) of section 42;
or

(ii.) the surrender of his lease by the lessee,

the sublessee shall (if he is in possession of the whole or portion of the premises sublet to him) be deemed to become the lessee thereof from the lessor upon the same terms and conditions as the terms and conditions of the sublease, as in force immediately prior to—

(c) the date on which the lessor gave notice to quit to the lessee; or

(d) the date on which the lessee notified the lessor of his intention to surrender the lease (or, if he did not so notify the lessor, the date on which the lessee surrendered the lease),

as the case may be.

(2) In a case to which subparagraph (i.) of paragraph (b) of subsection (1) applies, the order shall not be enforced against the sublessee.

(3) Where, prior to the lessor of any premises to which this Act applies giving notice to quit to the lessee upon any of the grounds specified in subsection (6) of section 42, the lessee of the premises has sublet the whole or any part thereof—

(a) the lessee shall, upon service of the notice to quit, forthwith notify the lessor in writing of the name and address of each person to whom he has so

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sublet and who is a sublessee of the premises or any part thereof at the date of service of the notice to quit;

- (b) the lessor shall, upon taking proceedings for the recovery of possession of the premises or for the ejectment of the lessee therefrom, file the notice given to him under this section with the proper officer of the court in which the proceedings are taken; and
- (c) the proper officer of the court shall thereupon give notice by registered post to each person specified in the notice, at the address so specified, of the date of hearing of the proceedings by the court.

(4) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any premises to which this Act applies or for the ejectment of the lessee therefrom, every person who is a sublessee of such premises or any part thereof shall be entitled to be heard.

(5) Any lessee who fails to give notice as required by paragraph (a) of subsection (3) shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Protection of certain persons in possession of premises.
Cf. Vic. 5264, 1948, s. 57.
Inserted by 5, 1948, s. 6, and substituted by 51, 1951, s. 26.

64. Where the lessee of any premises to which this Act applies dies and a person (not being a lodger or boarder) who resided with the lessee immediately prior to his death is in possession of the premises immediately after his death, that person shall have the like right to continue in possession of the premises as the lessee would have had if he had not died, but proceedings may be taken against that person for the recovery of the possession of the premises from that person or for his ejectment from the premises in accordance with the provisions of this Part as if he were a lessee of the premises.

Costs not to be allowed.
Inserted by 5, 1948, s. 6.

65. (1) No costs shall be allowed in any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part, unless it appears to the court that the conduct of the party in bringing or resisting the proceedings or in relation to the subject matter has been unreasonable, vexatious or oppressive.

Inserted by 51, 1951, s. 27.

(2) Notwithstanding subsection (1), if any such proceedings are taken upon a ground specified in paragraph (a),

s. 65. CLOTHIER v. PIERCY (1945) S.A.S.R. 45. Where an action was brought for the recovery of possession of a dwellinghouse and for arrears of rent and mesne profits and the action was dismissed, held that the court had power to award costs of the proceedings.

(b), (c), (d), (e), (f), (g), or (r) of subsection (6) of section 42 the costs of the proceedings shall be in the discretion of the court.

(3) Notwithstanding subsection (1) the costs of any appeal to the Supreme Court shall be in the discretion of the Supreme Court.

* * * * *

Section inserted by 5, 1948, s. 6, and repealed by 51, 1951, s. 28.

67. (1) The lessor or former lessor under a lease, or the proposed lessor under a proposed lease, of any premises to which this Act applies for a fixed term not exceeding twelve months may, at any time while the lessee or former lessee is in occupation of the premises, or prior to the commencement of the term of the proposed lease, make application in writing to the trust to exclude the premises from the operation of this Part.

Exclusion of premises let for a short term from operation of Part.

Inserted by 5, 1948, s. 6, and amended by 50, 1950, s. 11, and by 51, 1951, s. 29.

(2) The applicant shall furnish such information in relation to the application as the trust requires.

(3) The trust may, in its discretion, issue a certificate excluding the premises, for such period as is specified in the certificate, from the operation of the provisions of this Part and the premises shall be excluded accordingly.

(4) The trust may at any time revoke or vary any certificate issued under subsection (3) and may at any time extend the period of any such certificate.

(5) Every certificate issued pursuant to regulation 78 of the National Security (Landlord and Tenant) Regulations before the commencement of this Part shall have the same effect as if issued by the trust under this section, and may be revoked or varied by the trust.

68. (1) The provisions of this Part shall not apply to or in relation to any premises to which this Act applies in respect of which a certificate under this section is in force.

Exclusion of certain sub-divided premises, etc., from operation of Part.

Inserted by 5, 1948, s. 6.

(2) Where the owner of any premises to which this Act applies is desirous of making the whole or any part of those premises available for accommodation, he may apply to the trust for a certificate that the premises are premises to which this Part does not apply.

(3) The trust may—

- (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as it thinks fit and for such period as it thinks fit; or
- (b) refuse the application.

(4) A certificate issued under this section in respect of premises to which this Act applies being any part of a dwelling-house or of a residential unit in any building shall not have any force or effect in respect of any person who immediately prior to the issue of the certificate was the lessee of the dwelling-house or of any part of the dwelling-house or of the residential unit or of any other residential unit in the building.

Amended by 51, 1951, s. 30 (a).

(5) The trust may revoke or vary any certificate issued under this section and may at any time extend the period of any such certificate.

Subsec. (6) repealed by 51, 1951, s. 30 (b).

* * * * *

Amended by 51, 1951, s. 30 (c).

(7) In this section “residential unit” means any part of a building which is or has been designed, whether originally or otherwise, for occupation as a residence independently of any other part of the building and “owner” includes a tenant for life and the survivor of two or more joint tenants or tenants in common.

(8) Every certificate issued pursuant to regulation 79 of the National Security (Landlord and Tenant) Regulations before the commencement of this Part shall have the same effect as if issued by the trust under this section, and may be revoked or varied by the trust.

Operation of exclusion certificate. Inserted by 51, 1951, s. 31.

69. If at the expiration of the period of any certificate issued or continued in force under section 67 or section 68, the lessee continues in possession of the premises to which the certificate applies, then the following provisions shall apply:—

- i. At any time within one month after the expiration of the said period a notice to quit the premises may be given to the lessee by the lessor and the provisions of this Part shall not apply with reference to the notice to quit:
- ii. After the expiration of the period of the notice to quit but within three months after the expiration of the period of the certificate, proceedings may be commenced by the lessor for the recovery of the

possession of the premises from the lessee or for the ejection of the lessee therefrom and the provisions of this Part shall not apply with respect to those proceedings nor, for the purpose of those proceedings, to the premises.

70. (1) All proceedings before any court under the National Security (Landlord and Tenant) Regulations which were pending at the commencement of this Part for the recovery of possession of any premises to which this Act applies or for the ejection of any lessee therefrom may be continued as if those proceedings had been commenced under this Part.

Continuance of existing proceedings. Inserted by 5, 1948, s. 6.

(2) Any notice to quit in respect of premises to which this Act applies which was given before the commencement of this Part pursuant to Part III. of the National Security (Landlord and Tenant) Regulations shall have the same force and effect as if given under this Part.

(3) All rules of court made pursuant to the Local Courts Act, 1926-1947, with respect to proceedings under the National Security (Landlord and Tenant) Regulations shall *mutatis mutandis* apply to proceedings under this Part.

71. (1) The Governor may make regulations—

Regulations. Inserted by 5, 1948, s. 6.

(a) prescribing grounds upon which notices to quit premises to which this Act applies may be given by lessors, and for that purpose may vary or delete any of the prescribed grounds set out in section 42 and may prescribe additional grounds;

(b) prescribing any period for which any notice to quit shall be given and for that purpose may prescribe periods different to those prescribed by section 43.

(2) The Governor may make regulations prescribing forms of notices to quit which may be given by any lessor in pursuance of section 42, and, without limitation of the right of a lessor to give a notice to quit in any other form, any notice to quit in a form prescribed by regulation shall be deemed to be sufficient notice of all matters referred to therein.

Inserted by 51, 1951, s. 32.

PART VI.

PART VI.

PROTECTED PERSONS.

Interpretation.
 Inserted by
 9, 1949,
 s. 15, and
 substituted
 by 51, 1951,
 s. 33.

72. (1) In this Part, unless the context otherwise requires—

“discharged member of the forces” means, subject to subsection (2) of this section, a person who, having been a member of the forces, has been discharged from the forces for a period not exceeding five years or has ceased to be engaged on war service for a period not exceeding five years:

“member of the forces” means a member of the Defence Force engaged on war service and includes any person on active service during any such war service with the naval, military, or air forces of the United Kingdom or of any other part of the King’s Dominions (other than the Commonwealth of Australia):

“pension” means a pension (other than a service pension) under the Australian Soldiers’ Repatriation Act, 1920-1949, and includes a pension payable under any law of the United Kingdom or of any other part of the King’s Dominions (other than the Commonwealth of Australia) providing for payment of pensions to members or former members of the naval, military, or air forces thereof:

“protected person” means, subject to subsections (2) and (3) of this section—

- (a) a discharged member of the forces;
- (b) a war pensioner;
- (c) the wife of a war pensioner who is residing with her husband;
- (d) the widow of any member of the forces who is wholly or partly dependent for her support upon a pension paid to her in consequence of the death of her husband whilst engaged on or as a result of war service:

Part VI. Section 22 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1949, provides that in any proceedings in any court which were commenced before the passing of that Act and in which the decision of the court was not announced before the passing of that Act, the provisions of that Act are to be construed as if those provisions had been enacted before the commencement of those proceedings.

“war pensioner” means, subject to subsection (3) of this section, a person who, having been a member of the forces and having been discharged from the forces or having ceased to be engaged on war service, is receiving a pension in respect of incapacity arising from war service of an amount of at least fifty per centum of the amount which would be payable as pension for total and permanent incapacity:

“war service” means—

- (a) the service during any war in which His Majesty became engaged on or after the third day of September, nineteen hundred and thirty-nine but before the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, of a member of the citizen forces when called up for war service under the Defence Act, 1903-1949, or during continuous training under that Act, the Naval Defence Act, 1910-1949, or the Air Force Act, 1923-1941;
- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during any such war;
- (c) the continuous service during any such war of a person called upon to serve in the defence force in pursuance of any Act or of any regulations under an Act of the Commonwealth of Australia;
- (d) the service during any such war of a member of the permanent forces;
- (e) the continuous service during any such war of a person called upon to serve in the naval, military, or air forces of the United Kingdom or of any other part of the King's Dominions (other than the Commonwealth of Australia).

(2) A person shall not be deemed to be a discharged member of the forces unless that person was—

- (a) immediately prior to his discharge;
- (b) for a continuous period of not less than three months during the period of six months immediately prior to his discharge; or

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- (c) for a total period of not less than twelve months during his period of war service,

required, by reason of his war service, to live in premises other than premises occupied by him, or by a member of the household to which he belongs, as a home.

(3) A person shall not be deemed to be a war pensioner unless that person was—

- (a) immediately prior to his discharge;
- (b) for a continuous period of not less than three months during the period of six months immediately prior to his discharge; or
- (c) for a total period of not less than twelve months during his period of war service,

required, by reason of his war service, to live in premises other than premises occupied by him, or by a member of the household to which he belongs, as a home and unless that person—

- (d) resided within the Commonwealth at any time within three years before the commencement of his war service.

(4) Any reference in this section to any Act of the Commonwealth shall be deemed to include a reference to any amendment thereof.

Rights of protected persons as to recovery of possession of premises. Inserted by 9, 1949, s. 15.

73. (1) The provisions of Part V. of this Act relating to the termination of tenancies, the recovery of the possession of premises and the ejection of lessees from premises, and any provisions incidental to those provisions, shall extend to all premises to which this Act applies of which a protected person is the lessee but the said provisions shall be construed subject to the provisions of this section.

(2) The provisions of paragraph (c) of subsection (1) of section 49 shall not apply in relation to any premises of which a protected person is the lessor, unless the lessee of the premises is a protected person.

(3) In the application of the provisions of this Act to a lessee who is a protected person, section 42 shall be read as if for paragraph (a) of subsection (6) there were substituted the following paragraph:—

- “(a) that the lessee has failed to pay the rent in respect of a period of not less than twenty-eight days.”

Amended by
50, 1950,
s. 6 (4), and
by 51, 1951,
s. 34 (a), (b).

(4) Notwithstanding the provisions of Part V. of this Act, an order shall not be made for the recovery of possession of any premises from a protected person, or for the ejection from any premises of a lessee (being a protected person) on any ground specified in paragraph (g), (h), (i), (j), (k), (l), (m) or (n) of subsection (6) of section 42 unless the court making the order is satisfied—

- (a) that reasonably suitable alternative accommodation (in this section referred to as “the alternative accommodation”) is, or has been whether before or after the date upon which notice to quit was given, available for the occupation of the protected person in lieu of the premises in respect of which the order is sought (in this section referred to as “the premises at present occupied”); or
- (b) that within a period of twelve months of the bringing of the action the premises have been offered for sale to the protected person at a price approved by the principal administrative officer for the purposes of the administration of the provisions of the Prices Act, 1948, relating to land transactions or at a price which in the opinion of the court is a fair price for the premises subject to the lease of the lessee, and the protected person, without reasonable cause, has failed to accept the offer; or
- (c) that the protected person has sublet the premises in respect of which the order is sought and is permanently residing elsewhere.

(5) Where a tenancy has been lawfully determined and any person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejection of persons from those premises or for the recovery of possession of those premises shall, if the order is made on any ground specified in paragraph (g), (h), (i), (j), (k), (l), (m), or (n) of subsection (6) of section 42, not be enforced against the protected person unless the court is satisfied—

Amended by
50, 1950,
s. 6 (4), and
by 51, 1951,
s. 34 (c), (d).

- (a) that reasonably suitable alternative accommodation (in this section referred to as “the alternative accommodation”) is, or has been whether before

s. 73. (5) DALBY v. GAZZARD (1949) 78 C.L.R. 375; 23 A.L.J. 290. The words “claiming under the lessee” do not extend to persons who are merely let into possession by a lessee whose tenancy has been determined. The possession of the person claiming under the tenant must be founded on a right or title good as against him and depending on the continued existence of his tenancy.

or after the date upon which notice to quit was given, available for the occupation of the protected person in lieu of the premises in respect of which the order is sought (in this section referred to as "the premises at present occupied"); or

(b) that within a period of twelve months of the bringing of the action the premises have been offered for sale to the protected person at a price approved by the principal administrative officer for the purposes of the administration of the provisions of the Prices Act, 1948, relating to land transactions or at a price which in the opinion of the court is a fair price for the premises subject to the lease of the lessee, and the protected person, without reasonable cause, has failed to accept the offer; or

(c) that the protected person has sublet the premises in respect of which the order is sought and is permanently residing elsewhere.

Subsec. (6) repealed by 51, 1951, s. 34 (e).

* * * * *

Amended by 51, 1951, s. 34 (f), (g).

(7) The provisions of subsections (3), (4) and (5) of this section shall not apply in relation to the premises of which a protected person is the lessor.

Letting of vacant houses to protected persons. Inserted by 9, 1949, s. 15.

74. (1) A protected person may, if he thinks fit, apply in writing to a local court for a warrant authorizing and requiring the delivery of possession to the applicant of any dwelling-house which is unoccupied or about to become unoccupied.

(2) An application under subsection (1) may be made by the protected person personally or by some person authorized by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection (1), together with a notice of hearing, shall be served on—

- (a) the owner of the dwelling-house; or
- (b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

either personally or by registered letter sent to the place of business or abode of the owner or person.

Subsec. (4) repealed by 51, 1951, s. 35.

* * * * *

(5) Where the owner of a dwelling-house or his agent has advertised the proposed sale by auction of the dwelling-house no person shall make an application under this section in respect of that dwelling-house until the expiration of three months after the day on which the advertisement is first published; and an application made in contravention of this subsection shall not be heard or determined by the court.

Inserted by
63, 1949, s. 3.

(6) In this section and the subsequent sections of this Part, the term "dwelling-house" includes any building which has been constructed or adapted for use as a place of habitation and whether or not the building is so used at the time an application is made under this section in respect thereof.

Inserted by
63, 1949, s. 3.

75. For the purposes of section 74—

- (a) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection (4) of that section and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application;
- (b) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into occupation of the dwelling-house in contravention of subsection (4) of that section;
- (c) a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished;
- (d) a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is used as a warehouse, store, office, shop, factory, or other business premises, unless the whole or a substantial part of it was so used at the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act (No. 2), 1949, and was so used continuously from that time until the day on which the application was made;
- (e) a dwelling-house may be deemed by the court to be unoccupied if it is occupied irregularly and the court is satisfied that the dwelling-house is not used as the permanent and sole dwelling-

When
dwelling-
house deemed
to be
unoccupied.
Inserted by
9, 1949, s. 15.

Inserted by
63, 1949, s. 4.

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house of the occupant and that another dwelling-house is occupied as the principal dwelling-house of the occupant;

- (f) a dwelling-house shall be deemed to be about to become unoccupied if the court is satisfied that the occupant of the dwelling-house, at the time of the service of the notice of application, is about to vacate the dwelling-house, notwithstanding any arrangement (other than an arrangement for the occupation of the dwelling-house by a protected person or by a person such as is referred to in subsection (5) of section 76) entered into, whether before or after the service of the notice, in respect of the occupation of the premises after the then existing occupancy ceases.

Hearing of application.
Inserted by 9, 1949, s. 15, and amended by 63, 1949, s. 5.

76. (1) Upon the hearing of an application under section 74 the court shall take into consideration, in addition to all other relevant matters—

- (a) any hardship which would be caused to the owner or to any other person by the granting of the application;
- (b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application; and
- (c) the character of the applicant and his suitability as a tenant of the premises,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

(2) An averment in the application under section 74 that a dwelling-house is unoccupied shall be *prima facie* evidence of the fact so averred.

(3) If the dwelling-house is about to become unoccupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

(5) An application shall not be granted under this section—

- (a) if the owner of the dwelling-house reasonably needs the dwelling-house for his own occupation or for

the occupation of some married member of his family or of some married person who resides with him or is wholly or partly dependent on him for his support;

- (b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is reasonably needed for the occupation of that person or a person of that class;
- (c) if the dwelling-house has not previously been occupied and is reasonably needed for the occupation of the owner of the dwelling-house;
- (d) if the dwelling-house is a newly erected dwelling-house which—
 - (i.) was erected by the owner for the purposes of occupation by him or for the purposes of sale; and
 - (ii.) has not been unoccupied for a period exceeding two months; or
- (e) if the owner of the dwelling-house has agreed to let the dwelling-house to a protected person and the agreement provides that the protected person shall take possession of the dwelling-house forthwith if unoccupied or forthwith upon it becoming unoccupied.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

77. (1) Where more than one application is made under section 74 in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address of the other applicant or applicants, and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

Provisions where several applications made in respect of same dwelling-house.

Inserted by 9, 1949, s. 15.

(2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the same in the case of two or more applicants or other persons, may in addition to the other matters referred to in section 76, take into consideration the priority of service of the applications under section 74 of this Act.

PART VI.

Enforcement
of warrants.
Inserted by
9, 1949, s. 15.

78. A warrant granted by a court under section 76 of this Act may be enforced in the same manner as a warrant of possession granted by that court may be enforced.

Rent of
dwelling-
house.
Inserted by
9, 1949, s. 15.

79. (1) Upon delivery of possession of a dwelling-house to a protected person under a warrant granted under section 76 the protected person shall be deemed to be a tenant of the owner of the dwelling-house.

(2) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

(a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under this Act—that rent or such rent (not exceeding the rent so fixed or determined) as is agreed upon between the owner and the tenant; or

(b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is determined by the trust pursuant to Part III,

but nothing in this subsection shall be deemed to prevent the subsequent alteration, subject to this Act, of any rent so agreed upon or fixed.

Meaning of
"owner."
Inserted by
9, 1949, s. 15.

80. For the purposes of sections 74 to 79 (inclusive) the expression "owner", in relation to the dwelling-house which is the subject of a lease or sublease, means—

(a) where the dwelling-house is unoccupied—the lessee or sublessee immediately entitled to possession of the dwelling-house; and

(b) where the dwelling-house is about to become unoccupied—the person immediately entitled to possession of the dwelling-house upon its becoming unoccupied.

Application
of Part.
Inserted by
9, 1949, s. 15,
and amended
by 50, 1950,
s. 12.

81. (1) Any person (in this section referred to as "the claimant") who desires to do, or to continue or complete the doing of, any act against any person (in this section referred to as "the respondent") in respect of the possession of any premises may, if the respondent is resident in Australia and is not, to the knowledge of the claimant, a protected person, serve on the respondent, in the manner provided by this section, a notice in the prescribed form requiring the respondent to inform the claimant, within fourteen days after the receipt of the notice, whether or not the respondent is a

protected person within the meaning of this Part and the grounds upon which the respondent claims to be a protected person within the meaning of this Part.

(2) A notice under subsection (1) shall be served personally or by registered letter sent to the respondent's last place of abode known to the claimant.

(3) If, within the period specified in subsection (1) of this section, a statutory declaration by the respondent or by some person having knowledge of the facts stating that the respondent is a protected person within the meaning of this Part and stating the grounds upon which the respondent claims to be a protected person within the meaning of this Part is not furnished to the claimant, then notwithstanding that the respondent is, or at any subsequent time becomes, a protected person within the meaning of this Part, this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of an act of the kind referred to in subsection (1) of this section, provided the claimant commences to do, or to continue or complete the doing of, the act within three weeks after the expiration of the period specified in that subsection.

(4) For the purposes of subsection (3) where the doing of any act is dependent on the completion of any preliminary act, the commencement of the doing or the continuance or completion of the doing, of the preliminary act shall be deemed to be the commencement of the doing of the first-mentioned act.

(5) If the claimant produces evidence (supported by statutory declaration) to the satisfaction of an officer thereto authorized in writing by the Attorney-General, that the respondent—

- (a) has abandoned the property in respect of which the claimant desires to do, or to continue or complete the doing of, any act; or
- (b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts, and that the claimant is not aware that the respondent is a protected person,

the officer may issue to the claimant a certificate to that effect and thereupon this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of the act by the claimant.

PART VI.

(6) A certificate purporting to be issued in pursuance of subsection (5) shall, in the absence of proof to the contrary, be deemed to have been duly issued.

Exemptions
from applica-
tion of Part.
Inserted by
9, 1949, s. 15.

82. Nothing in this Part shall apply to any dwelling-house in respect of which a certificate of exemption under section 67 or section 68 is in force.

PART VII.

PART VII.

CONTROL OF RENTS OF HOTEL PREMISES.

Interpreta-
tion.
Inserted by
9, 1949, s. 17.

83. In this Part—

“board” means the board constituted pursuant to section 84:

“hotel premises” means any premises in respect to which a publican’s licence is in force under the Licensing Act, 1932-1945:

“rent”, in addition to the matters mentioned in the definition of rent in section 4, includes any premium, bonus, foregift, or other sum of money paid or payable in consideration of, or in association with—

- (a) the grant or acceptance of any lease of hotel premises; or
- (b) the renewal of a lease or the continuance of a letting of hotel premises; or
- (c) any agreement for a lease or for the renewal of a lease of hotel premises.

Constitution
of board.
Inserted by
9, 1949, s. 17.

84. (1) A board shall be constituted for the purposes of this Part.

(2) The board shall consist of—

- (a) a special magistrate appointed by the Governor who shall be the chairman of the board;
- (b) a member who shall be appointed by the Governor on the nomination of the committee of the South Australian Associated Brewers;
- (c) a member to be appointed by the Governor on the nomination of the committee of the United Licensed Victuallers Association of the Commonwealth of Australia (South Australian Branch).

(3) The members of the board shall hold office for such term and upon such conditions and shall be entitled to such remuneration as the Governor from time to time determines.

(4) The chairman and one other member of the board shall be a quorum of the board. The chairman of the board shall have both a deliberate and a casting vote.

(5) No matter or thing done by the board or by the chairman or any member thereof or by any person whenever acting under the direction or authority of the board shall, if the matter or thing was done *bona fide* for the purpose of executing this Part, subject them or any of them personally to any action, liability, claim, or demand whatsoever.

(6) Any expenses incurred by the board shall be deemed to be an expense authorized by this Act.

85. (1) Any lessee of any hotel premises who is of opinion that the rent provided to be paid under the lease of the premises is excessive, may from time to time make application in writing to the board requesting that the board determine the rent of the premises.

Application to board with respect to rent of hotel premises.
Inserted by 9, 1949, s. 17.

(2) If the South Australian Prices Commissioner is of opinion that the rent provided to be paid under any lease of hotel premises is excessive, he may from time to time make application in writing to the board requesting that the board determine the rent of the premises.

(3) If pursuant to this Part, the rent of any hotel premises is determined by the board, the lessor of those premises may from time to time make application in writing to the board requesting that the board should again determine the rent of the premises.

86. After application being made as aforesaid the board shall give notice in writing of a time and place for the consideration of the application to the lessor and the lessee of the hotel premises and to the South Australian Prices Commissioner each of whom shall be entitled to be heard (either personally or by counsel, solicitor, or agent) by the board.

Notice of proceedings of application.
Inserted by 9, 1949, s. 17.

87. If application is made as aforesaid by a lessee of hotel premises, the onus shall be on the applicant to satisfy the board that the rent payable under the lease is excessive.

Onus in proceedings before board.
Inserted by 9, 1949, s. 17.

88. (1) The board shall hear and determine any application made to it and shall make a determination fixing the rent of the hotel premises.

Determination of rent by board.
Inserted by 9, 1949, s. 17.

(2) In its determination the board shall fix such rent as it considers to be fair and equitable after having regard to all relevant factors associated with the lease including the provisions of the lease and all benefits which could be derived from a proper and efficient use of the premises and the licence under the Licensing Act, 1932-1945, in force in respect thereof.

Board to have powers of Royal Commission. Inserted by 9, 1949, s. 17.

89. In the exercise of its functions under this Part the board shall have the powers of a royal commission under the Royal Commissions Act, 1917, and the provisions of that Act shall apply to and in respect of proceedings before the board.

Commencement of determination. Inserted by 9, 1949, s. 17.

90. In any determination made by the board fixing the rent of any hotel premises, the board shall fix the day from which the rent so fixed shall be payable. The day aforesaid may be any day, whether before or after the making of the determination but other than a day prior to the day on which the application was made to the board, as the board considers proper.

Notice of determination. Inserted by 9, 1949, s. 17.

91. Forthwith upon the making of a determination in respect of any hotel premises, the board shall give to the lessor and the lessee of the premises and to the South Australian Prices Commissioner notice in writing setting out the determination.

Effect of determination. Inserted by 9, 1949, s. 17.

92. (1) During the continuance of this Act, as and from the day fixed by the determination of the board with respect to any hotel premises, the rent fixed by the determination shall (unless a lesser amount is, after the making of the determination, agreed to be paid) be the rent payable in respect of the premises and any rent in excess of that so fixed shall, notwithstanding any change in the ownership or occupation of the premises or any agreement to the contrary, be irrecoverable by the lessor.

(2) If any sum is or has been paid being a sum which by virtue of subsection (1) would have been irrecoverable by the lessor of any hotel premises, the sum so paid shall be recoverable from the lessor who received the payment by the lessee by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that lessee from any rent payable by him to that lessor in respect of the said premises.

Secretary and officers. Inserted by 9, 1949, s. 17.

93. (1) The Treasurer may appoint any member of the public service to act as secretary of the board.

(2) The Treasurer may direct that any officers of the public service shall perform such duties as are necessary to enable the board to exercise its functions under this Part.

94. The provisions of sections 110, 111, and 112 shall apply to notices under this Part except that whenever in those sections there is reference to the trust that reference shall be construed as if it were a reference to the board.

Application of ss. 110, 111, 112. Inserted by 9, 1949, s. 17.

95. Any application to the board under this Part may be made by delivering the application or by posting the application to the chairman or secretary of the board.

Mode of making application to board. Inserted by 9, 1949, s. 17.

PART VIII.

MISCELLANEOUS.

96. (1) Any person who, whether as principal or agent or in any other capacity, in any rent book or similar document, without reasonable excuse, makes any entry showing or purporting to show any lessee as being in arrear in respect of any sum which by virtue of this Act is irrecoverable, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Penalty for demanding rent in excess of that fixed. Amended by 51, 1951, s. 36.

(2) Any person who, whether as principal or agent or in any other capacity, without reasonable excuse, demands or, without reasonable excuse, receives as rent in respect of any premises to which this Act applies any sum which by virtue of this Act is irrecoverable, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) Any person who is knowingly a party to any contract or arrangement under which any sum is paid or agreed to be paid to that person as rent for any premises to which this Act applies shall, if that sum is, by virtue of this Act, irrecoverable, be guilty of an offence and liable to a penalty not exceeding fifty pounds.

97. (1) Any person who, whether as principal or agent, receives any payment of rent of any premises to which this Act applies shall, at the time of receiving the payment or within twenty-four hours of the making of the payment, give or cause to be given to the person making the payment a

Duty to give receipt for rent. Inserted by 9, 1949, s. 19.

s. 96. DAVIES v. O'SULLIVAN (No. 2) (1949) S.A.S.R. 208, affirming DAVIES v. O'SULLIVAN (1948) S.A.S.R. 297. Meaning of the word "wilfully" as used in subsection (2) discussed. Since this decision the section has been amended by the substitution of the words "without reasonable excuse" for the word "wilfully."

receipt (whether by way of an entry in a rent book or by a separate document) for the payment specifying the amount paid, the period in respect of which the payment is made, and the premises in respect of which the payment is made.

(2) Any person who commits any contravention of this section shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) If pursuant to any arrangement made between the person paying the rent and the person to whom it is payable, any rent payable as mentioned in subsection (1) is paid into a bank to the credit of the person to whom it is payable (whether as principal or agent), the provisions of subsection (1) shall not apply in respect of that payment of rent.

Record of rents. Amended by 51, 1951, s. 37.

98. (1) Any lessor of any premises to which this Act applies who fails, by himself or his agent, to keep or cause to be kept, a record showing the rent received in respect of those premises shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(2) Any lessor of any premises to which this Act applies or any agent of any such lessor who, without reasonable excuse, makes or, without reasonable excuse, allows to be retained, in any record showing the rent of those premises, any false entry in a material particular shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Penalty for threats and boycotts.

99. (1) Any person who, by any threat, endeavours to dissuade or prevent a lessor or lessee from making or prosecuting any application to the trust or appeal to the local court under this Act, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Subsec. (2) repealed by 51, 1951, s. 38.

* * * * *

(3) Any person who does or procures to be done, any act or thing for the purpose of imposing any detriment or disadvantage upon a lessor or lessee because the lessor or lessee has made an application to the trust under this Act or has prosecuted an appeal to a local court under this Act, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

s. 99. WRIGHT V. CURNOW (1947) S.A.S.E. 225. Held that an assignment of a lease was not an act or thing done for the purpose of imposing a detriment or disadvantage on a landlord within the meaning of a provision of the National Security (Landlord and Tenant) Regulations corresponding with subsection (3) of section 99.

100. (1) Any person who, whether as principal or agent or in any other capacity—

Provisions relating to purchase of furniture, etc. Amended by 50, 1950, s. 13.

(a) requires, gives or receives, or offers, promises or agrees to give or receive, any bonus, premium or sum of money other than rent in consideration of, or in association with—

(i.) the grant, acceptance, assignment, or transfer of any lease; or

(ii.) the renewal or extension of a lease or the continuance of a letting; or

(iii.) any agreement for a lease or for the renewal, extension, assignment, or transfer of a lease; or

(iv.) his consenting to a sublease,

of any premises to which this Act applies; or

(b) makes it a condition of the granting of any lease of any premises to which this Act applies, that the lessee shall purchase any furniture or other goods; or

(c) pays, gives, or recovers, or attempts to pay, give, or recover any consideration for obtaining or making available a key of any premises to which this Act applies,

shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any amount paid in contravention of this section may, at any time within six months after the date of payment, be recovered by the person who paid it from the person to whom it was paid, or if the person to whom it was paid is the lessor of the premises and the person by whom it was paid is the lessee of the premises may, without prejudice to any other method of recovery, be deducted by the lessee from any rent payable within such six months by him to such lessor.

(3) A complaint in respect of any offence against this section shall be made within twelve months from the time when the matter of complaint arose.

Inserted by 51, 1951, s. 39.

s. 100. WRIGHT v. CURNOW (1947) S.A.S.R. 225. Held that an assignment was not a "sub-lease" within the meaning of subsection (1).
 BISCHOF v. TROTTER (1948) 76 C.L.R. 520. The provisions of section 100 (1) (a) (i.) apply not only to a transaction which is completed by the grant of a lease, but also to a proposed transaction or one not so completed.

PART VII.

Refusal to let premises to applicant with family. Amended by 38, 1946, s. 6.

101. (1) Any person who refuses or causes any person to refuse to let any dwelling-house to any person on the ground that it is intended that a child shall live in the dwelling-house shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any person who states his intention, whether by advertisement or otherwise, not to let any dwelling-house to any person if it is intended that a child shall live in the dwelling-house shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) In any proceedings for an offence against this section, where it is proved that a person has refused, or caused any person to refuse, to let any dwelling-house to any person, it shall lie upon the first-mentioned person to prove that the refusal was for some reason other than that it was intended that a child should live in the dwelling-house.

Inserted by 38, 1946, s. 6 (g), and amended by 51, 1951, s. 40.

(4) Notwithstanding the definition of "dwelling-house" in section 4, in this section "dwelling-house" means any premises which are constructed or adapted for use for the purpose of residence.

Persons not to interfere with use or enjoyment of premises. Inserted by 5, 1948, s. 7.

102. (1) Any person who, without the consent of the lessee of premises to which this Act applies, or without reasonable cause (proof whereof shall lie upon the defendant), does, or causes to be done, any act, or omits, or causes to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any furniture or other goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with the premises is interfered with or restricted, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Amended by 51, 1951, s. 41.

(2) Where the lessor, or any agent or servant of the lessor, has been convicted of an offence arising under subsection (1), the court may order the lessor to do such things as are necessary to enable the lessee to resume the ordinary use or enjoyment of the premises, furniture, goods, conveniences, or service, and the lessor shall comply with the provisions of the order. Any lessor against whom an order is made as aforesaid who fails or neglects to comply with the order shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) For the purpose of this section, conveniences shall be deemed to be usually available to the lessee where, prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all

times during the tenancy to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

(4) In this section the term “premises to which this Act applies”, in addition to having the meaning ascribed to it by section 5, includes any caravan (within the meaning of Part IV.) the maximum rent (within the meaning of Part IV.) of which is fixed pursuant to Part IV. and any land with respect to which the maximum rent (within the meaning of Part IV.) is fixed pursuant to Part IV.

For the purposes of this section the hirer of any such caravan shall be deemed to be the lessee thereof and the owner of any such caravan or of any such land shall be deemed to be the lessor thereof respectively and the letting (within the meaning of Part IV.) of any such caravan and any arrangement with respect to land such as is referred to in the definition of “rent” with respect to land in section 28 shall be deemed to be a tenancy.

103. (1) No person shall levy or make any distress for rent of a dwelling-house.

Suspension of right to distrain for rent.
 Inserted by 5, 1948, s. 7.

(2) Any person who commits any contravention of subsection (1) shall, without limitation of any other liability occasioned thereby, be guilty of an offence and liable to a penalty not exceeding fifty pounds.

104. (1) If the rent of any part of a dwelling-house which is separately leased is fixed under this Act, the trust may from time to time give notice in writing to the lessor directing that during such time as is stated in the notice, the amount of the rent so fixed shall be shown on a notice or placard kept displayed in the said part of the dwelling-house.

Notice of rent, etc., to be displayed in certain cases.

(2) If any lessor to whom notice is given as aforesaid wilfully fails to comply with any such direction he shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

105. (1) For the purposes of this Act, any member of the trust or any officer or inspector of the trust authorized in writing for the purpose by the trust—

Powers of entry and inspection.
 Amended by 51, 1951, s. 42.

s. 105. *PELHAM V. HARRIS* (1944) S.A.S.R. 224. Held, (1) that the telephone may be used by an officer of the South Australian Housing Trust for the purpose of requiring answers to questions; (2) that the requirements of section 105 that an officer must be authorized in writing is descriptive of the person qualified to ask the questions, and that there was no obligation to produce the written authority to the person questioned; (3) that the person questioned had been “required” to

- (a) may enter into and upon any premises to which this Act applies (which or any part of which is leased) at any reasonable time for the purpose of examining the premises;
- (b) may require any person being the lessor or lessee of any premises to which this Act applies or being the agent of any such lessor or lessee, to answer any question relating to any lease thereof, or to the accommodation provided under any such lease, or to the rent payable under or any conditions of any such lease, or to the rent payable in respect of the premises at the first day of August, nineteen hundred and forty-two, or at any other date, or as to use of the premises for the purpose of accommodating lodgers and the amounts paid for such use;
- (c) may require any person being the lessor or lessee of any premises to which this Act applies or being the agent of any such lessor or lessee, to produce any rent book, receipt, or other document in his possession or power for the purpose of ascertaining the rent paid under any lease thereof or the rent payable in respect of the premises at the first day of August, nineteen hundred and forty-two, or at any other date, and may examine and make copies of any such rent book, receipt, or document.
- (2) Any person who—
- (a) refuses admission to any premises to which this Act applies to any member of the trust or any officer or inspector of the trust authorized as aforesaid or who obstructs or hinders any such member, officer, or inspector; or
- (b) refuses to answer any question put by any such member, officer, or inspector as provided by paragraph (b) of subsection (1) hereof or who wilfully gives any false answer to any such question; or
- (c) refuses or omits to produce any rent book, receipt, or document in his possession or power when required by any such member, officer, or inspector

s. 105.
(contd.)

answer notwithstanding that the questions were put in a precatory way and not an informative form. An offence under section 105 is complete if it is established that (a) an answer to a question such as prescribed by the section has been required by an authorized person of a person of one of the classes specified therein as liable to be questioned; and (b) that person has refused to answer the question.

so to do as provided by paragraph (c) of subsection (1) hereof,

shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

106. If the occupier of any premises to which this Act applies when requested by any member of the trust or any officer or inspector of the trust authorized in writing for the purpose by the trust, to state the name of the lessor of the premises, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Penalty for refusing to disclose name of lessor.

107. Any contract or arrangement, whether oral or in writing, the purpose or effect of which is either directly or indirectly to defeat, evade, or prevent the operation of this Act, shall be null and void.

Contract to avoid Act.

108. (1) The lessor of any premises to which this Act applies may by summons make application to a local court for an order under this section. Notwithstanding that no other proceedings have been instituted or are pending, any such summons shall be issued in the same form and manner as an interlocutory summons and, subject to any direction of the court, the procedure with respect to such a summons shall, *mutatis mutandis*, be followed.

Power of court to make order for inspection of leased premises. Inserted by 50, 1950, s. 14.

(2) If upon the hearing of any such application the local court is of opinion—

- (a) that the lessee of the premises or any person acting on his behalf has, without reasonable cause, refused to permit the lessor or any agent of the lessor or any person acting under the authority of the lessor to enter and inspect the premises;
- (b) that the purpose of the proposed entry and inspection is reasonable;
- (c) that, if the lease of the premises is in writing, such an order would not be contrary to the provisions of the lease,

the court may make an order under this section.

(3) If upon the hearing of any such application the local court is of opinion—

- (a) that the lessee of the premises or any person acting on his behalf has, without reasonable cause, refused to permit the lessor or any person acting

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under the authority of the lessor to enter the premises and to carry out therein any repairs, renovations or decoration work;

- (b) that the carrying out of the repairs, renovations or decoration work is reasonably necessary;
- (c) that, if the lease of the premises is in writing, such an order would not be contrary to the provisions of the lease,

the court may make an order under this section.

(4) Every such order made in pursuance of subsection (2) shall provide—

- (a) that the persons named in the order or that persons of the class named therein, or both, shall have the right to enter and inspect the premises during such hours as are specified in the order;
- (b) that the right so given shall be exercised only during the period specified in the order,

and the order may also contain such conditions as to exercise of the rights thereby given as the court thinks proper.

If thought proper by the court, any such order may provide that the lessor or any person acting on his behalf may place upon the premises a notice stating that the premises are for sale and particulars relating to the sale.

(5) Every such order made in pursuance of subsection (3) shall provide—

- (a) that the persons referred to in the order shall have the right to enter the premises during such hours as are specified in the order and that the said persons may carry out such repairs, renovations or decoration work as is specified in the order;
- (b) that the right so given shall be exercised only during the period specified in the order,

and the order may also contain such conditions as to the exercise of the rights thereby given as the court thinks proper.

(6) If the lessee of the premises, without reasonable cause, fails to comply with the order that failure shall be deemed to be a failure to observe a condition of the lease of the premises.

(7) Any proceedings under this section shall be conducted in such manner as the court from time to time thinks fit and in any such proceedings the court shall not be bound by the rules of evidence and may inform itself in such manner as it thinks fit. The costs of any such proceedings shall be in the discretion of the court.

Amended by
51, 1951,
s. 43.

(8) The power given by section 117 to make rules of court shall include power to make rules of court regulating the making and hearing of applications under this section and generally regulating proceedings under this section.

109. (1) The lessor of any premises to which this Act applies may give at least forty-eight hours' notice to the lessee of the premises that it is the intention of the lessor to inspect the premises on a day specified in the notice and during such period as is specified in the notice being not more than one hour in the daytime between the hours of nine o'clock in the morning and six o'clock in the afternoon. After the expiration of forty-eight hours after the giving of the notice aforesaid the lessor may enter and inspect the premises on the day and during the period specified in the notice.

Right of
lessor to
inspect
premises.
Inserted by
51, 1951,
s. 44.

(2) The power given by subsection (1) may be exercised from time to time but, if any such inspection is made, this section shall not be deemed to authorize a further inspection until the expiration of six months from the time of the last preceding inspection.

(3) If the lessee to whom notice is given as aforesaid, without reasonable excuse, refuses to permit the lessor to enter or inspect the premises as required by this section or hinders the lessor during any such inspection, he shall be deemed to have failed to observe a condition of the lease of the premises.

(4) Nothing in this section shall limit the power of a local court to make an order under section 108 or diminish any right of the lessor to enter the premises under any term or condition of the lease of the premises.

110. (1) Any notice required by this Act to be given to or served upon any person may be given or served—

Service of
notices.

- (a) by delivering the same to such person; or
- (b) by leaving the same at his usual or last known place of abode or business with some person thereat who is apparently over the age of fourteen years; or

Landlord and Tenant (Control of Rents) Act, 1942-1951.

(c) by sending the same by post to such person at his usual or last known place of abode or business.

(2) Any notice required by this Act to be given to or served upon any person may, if the person is a company or body corporate or the trust, be given or served—

(a) by delivering the same to the manager or secretary thereof; or

(b) by leaving the same at the office or place of business thereof with some person thereat who is apparently over the age of fourteen years; or

(c) by sending the same by post to the company or body corporate or the trust at its office or place of business.

(3) Where any notice by the trust is required by this Act to be given to or served upon a person whose address is unknown to the trust, it may be given or served by publishing it or a notice substantially to the same effect once in the *Gazette* and once in a daily newspaper circulating generally in South Australia.

Notice to
lessor or
lessee.

111. (1) Any notice required by this Act to be given to or served upon a lessor under the lease of any premises to which this Act applies shall be deemed to have been duly given or served if it is given to or served upon the person to whom the rent payable under the lease is customarily paid by or on behalf of the lessee.

(2) Any notice required by this Act to be given to or served upon a lessee under the lease of any premises to which this Act applies shall be deemed to have been duly given or served if it is given to or served upon the person by whom the rent payable under the lease is customarily paid on behalf of the lessee.

(3) If two or more persons are lessors under any lease of any premises to which this Act applies, it shall be a sufficient compliance with any provision of this Act requiring any notice to be given to or served upon such lessors, if such notice is given to or served upon any one of such lessors.

(4) If two or more persons are lessees under any lease of any premises to which this Act applies, it shall be a sufficient compliance with any provision of this Act requiring any notice to be given to or served upon such lessees, if such notice is given to or served upon any one of such lessees.

112. Any notice required by this Act to be given to or served upon any lessor or lessee shall, if the same has once been duly given to or served upon such lessor or lessee, be binding on all persons claiming by, from, or under such lessor or lessee and all subsequent lessors or lessees to the same extent as if given to or served upon such person claiming as aforesaid or subsequent lessors or lessees respectively.

Continued operation of notice.

113. Upon application in writing describing any premises, and upon payment of a fee of one shilling, the trust shall give or send by post to the person so applying a statement in writing as to whether any determination or order fixing the rent of the premises is in force and the amount and other particulars of such rent.

Supply of particulars as to rent of premises.

114. Notwithstanding the provisions of the South Australian Housing Trust Act, 1936-1940, any of the powers conferred by this Act upon the trust may be exercised by any three members of the trust if one of those members is the chairman or a deputy chairman of the trust.

Exercise of powers by trust.

115. If the payment of the rent of any premises to which this Act applies is guaranteed and subsequently to the giving of the guarantee, the rent of the premises is fixed under this Act, then, if the rent so fixed is less than the amount so guaranteed, the guarantee shall be construed as if the amount guaranteed to be paid was the amount fixed as the rent under this Act; but in any other case the fixing of the rent under this Act shall not affect the guarantee.

Effect on guarantee of fixing rent.

116. The Governor may make regulations providing for the execution of any matter or thing arising under and consistent with this Act and not expressly provided for in this Act, and for more fully carrying out the objects and purposes of this Act, and for guarding against evasions and violations of this Act.

Regulations.

117. The powers conferred by section 28 of the Local Courts Act, 1926-1936, shall include power to frame rules for carrying into effect or supplementing the provisions of this Act relating to appeals to local courts and for regulating the procedure to be followed in proceedings under Part V. of this Act and otherwise for carrying the said Part into effect.

Rules of Court. Amended by 5, 1948, s. 8.

* * * * *

Section repealed by 9, 1949, s. 10.

119. (1) In any prosecution or other legal proceedings under this Act no proof shall be required—

- (a) of the persons constituting or the proper constitution of or the extent of the jurisdiction of the trust;
- (b) of any authority to prosecute;
- (c) of the particular or general appointment of any officer or inspector of the trust,

unless evidence is given to the contrary.

(2) If any determination is made by the trust fixing the rent of any premises and notice thereof is published in the *Gazette* all notices required to be given and all other matters required to be done before the making of the determination shall, unless the contrary is shown, be deemed to have been given or done.

Inserted by
50, 1950,
s. 15.

(3) In any prosecution under this Act the allegation in the complaint that a specified place is situated within any specified part of the State shall be *prima facie* evidence of the fact so alleged.

Premises
used for
purpose of
residence.

120. If any premises to which any lease relates are used for the purpose of residence, then for the purposes of this Act, the premises shall, unless the contrary is shown, be deemed to have been let for the purpose of residence.

Documents
of trust.
Amended by
38, 1946, s. 7.

121. (1) All documents purporting to be issued or written by or under the direction of the trust and to be signed by the chairman, deputy chairman, secretary, assistant secretary or acting secretary of the trust shall be received as evidence in all courts of law, and shall be deemed to be issued or written by or under the direction of the trust without further proof, unless the contrary is shown.

(2) All courts shall take judicial notice of the signature of the chairman, deputy chairman, secretary, assistant secretary or acting secretary of the trust where such signature is attached for the purpose of verifying any document whatsoever under this Act.

Summary
proceedings
for offences.

122. All proceedings for offences against this Act shall be disposed of summarily.

123. This Act shall continue in operation until the thirty-first day of December, nineteen hundred and fifty-two, but the expiration of this Act shall not render recoverable any rent which during the continuance of this Act was irrecoverable nor affect the right of any lessee to recover any sum which during the continuance of this Act was under this Act recoverable by him.

Duration
of Act.
Inserted by
38, 1946,
s. 8 (1), and
amended by
30, 1947, s. 4,
by 5, 1948,
s. 9, by 9,
1949, s. 21,
by 50, 1950,
s. 16, and by
51, 1951,
s. 45.

The Wrongs Act, 1936-1959, including all amendments passed to the end of 1959 and notes of judicial decisions, is reprinted in the Annual Volume, 1959, at page 352.



WRONGS ACT, 1936-1951.

BEING

WRONGS ACT, 1936, No. 2267 OF 1936
[ASSENTED TO 13TH AUGUST, 1936.]

AS AMENDED BY

WRONGS ACT AMENDMENT ACT, 1939, No. 18 OF 1939
[ASSENTED TO 22ND NOVEMBER, 1939.]

WRONGS ACT AMENDMENT ACT, 1940, No. 48 OF 1940
[ASSENTED TO 28TH NOVEMBER, 1940.]

WRONGS ACT AMENDMENT ACT, 1944, No. 14 OF 1944
[ASSENTED TO 23RD NOVEMBER, 1944.]

AND

WRONGS ACT AMENDMENT ACT, 1951, No. 50 OF 1951
[ASSENTED TO 13TH DECEMBER, 1951.]

An Act to consolidate certain Acts relating to wrongs.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. This Act may be cited as the "Wrongs Act, 1936-1951".

Repeal.

2. The following enactments are repealed, namely:—

U.K. 6 and 7 Vict., c. 96 (adopted in South Australia by 17, 1846)—An Act of the Parliament of the United Kingdom, entitled "An Act to amend the Law respecting defamatory words and libel". (Sections 1, 2, 9, and 10.)

No. 1 of 1865-6—An Act for compensating the Families of Persons killed by Accident. (The whole.)

No. 7 of 1865—An Act to amend the Law of Slander. (The whole.)

No. 17 of 1874—An Act to provide for the recovery of damages caused by negligence on the part of persons employed by the Government of South Australia in certain cases. (Section 3.)

No. 646 of 1895—The Law of Libel Amendment Act, 1895. (The whole.)

3. The remainder of this Act is divided into Parts, as follows:— Division of Act.

PART I.—Defamation: Sections 4-17.

PART II.—Wrongful acts or neglect causing death: Sections 18-23.

PART I.

PART I.

DEFAMATION.

4. In this Part, unless inconsistent with the context—

Interpretation.
646, 1895, s. 2.
U.K. 44 and 45 Vict. c. 60, s. 1.

“newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale and published in the State, periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts, or numbers:

“proprietor” includes as well the sole proprietor of any newspaper as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

5. Words spoken and published of any woman imputing to her a want of chastity, shall be and shall be deemed to be slander, and an action shall be sustainable for such words in the same manner and to the same extent as for words charging an indictable offence.

Words imputing want of chastity to a woman.
7, 1865, s. 2.
U.K. 54 and 55 Vict. c. 51, s. 1.

s. 3. In addition to the Parts mentioned in section 3, Part III. (General Provisions), which was enacted by the Wrongs Act Amendment Act, 1939, is included in this reprint.

PART I.

Privilege of newspaper reports of legal proceedings. 646, 1895, s. 3. U.K. 51 and 52 Vict. c. 64, s. 3.

6. A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter.

Privilege of newspaper reports of proceedings of public meetings and of certain bodies and persons. 646, 1895, s. 4. U.K. 51 and 52 Vict. c. 64, s. 4.

7. (1) A fair and accurate report published in any newspaper of the proceedings of—

- (a) a public meeting; or
- (b) (except where neither the public nor any newspaper reporter is admitted) of any meeting of a municipal or district council, school board of advice, board of health, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the abovementioned bodies; or
- (c) a meeting of any royal commission, select committee of either House of Parliament; or
- (d) a meeting of shareholders in any bank or incorporated company,

and the publication at the request of any Government office or department, Minister of the Crown, or Commissioner of Police, of any notice or report issued by it or him for the information of the public, shall be privileged unless it is proved that the report or publication was published or made maliciously:

Provided that—

- (a) nothing in this section shall authorize the publication of any blasphemous or indecent matter:
- (b) the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it is proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication and has refused or neglected to insert the same:
- (c) nothing in this section shall be deemed or construed to limit or abridge any privilege now by law existing or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

(2) For the purposes of this section, "public meeting" means any meeting *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

8. If any unfair and inaccurate report of any matter mentioned in either of the last two preceding sections is published in any newspaper, every person responsible for the publication of such newspaper shall be guilty of an offence against this Act, punishable on complaint of any person aggrieved, and on summary conviction, by a fine not exceeding ten pounds, or by imprisonment not exceeding three calendar months:

Penalties on unfair and inaccurate reports. 646, 1895, s. 5.

Provided that—

(a) the punishment shall be by fine only if it is proved that the defendant, as soon as practicable after being informed of the unfairness and inaccuracy of the report, published in the newspaper a correction thereof, giving to the correction at least equal prominence to that which was given to the original report:

(b) any person laying a complaint under this section shall be deemed to have waived all other remedies, both civil and criminal, against the same defendant in respect of the same report.

9. In any action for defamation, the defendant may, after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the defence in the action, give in evidence in mitigation of damages, that he made or offered an apology to the plaintiff for the defamation before the commencement of the action, or if the action was commenced before there was an opportunity of making or offering such an apology, as soon afterwards as he had an opportunity of doing so.

Offer of an apology. U.K. 6 and 7 Vict. c. 96, s. 1, adopted in S.A. by 17, 1846.

10. (1) In an action for a libel contained in any public newspaper or other periodical publication, the defendant may plead that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper or other periodical publication, a full apology for the libel, or if the newspaper or periodical publication in

Defence in action against a newspaper for libel. U.K. 6 and 7 Vict. c. 96, s. 2, adopted in S.A. by 17, 1846.

which the libel appeared was ordinarily published at intervals exceeding one week, offered to publish such an apology in any newspaper or periodical publication to be selected by the plaintiff in the action.

(2) The defendant upon filing such defence may pay into court a sum of money by way of amends for the injury sustained by the publication of the libel.

(3) To such a defence the plaintiff may reply generally denying the whole of such defence.

Evidence in mitigation of damages.

646, 1895, s. 9.
U.K. 51 and 52 Vict. c. 64, s. 6.

11. At the trial of an action for a libel contained in any newspaper, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought action for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Publishing Parliamentary reports.

38, 1876, ss. 307, 308.
Of U.K. 3 & 4 Vict. c. 9.

12. (1) It shall be lawful for any defendant in any civil or criminal proceeding in respect of the publication of any report, paper, votes, or proceedings of Parliament, which either House of Parliament deems fit and necessary and has authorized to be published, to bring before the court, after giving twenty-four hours notice to the plaintiff or prosecutor of his intention so to do, a certificate under the hand of the President or Clerk of the Legislative Council, or the Speaker or Clerk of the House of Assembly, stating that the matter in question was published by order or under the authority of the Legislative Council or House of Assembly, as the case may be, together with an affidavit verifying the said certificate, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein shall thereupon be put an end to and superseded, by virtue of this Act.

(2) It shall be lawful for the defendant in any civil or criminal proceeding in respect of the publication of any copy of any such report, paper, votes, or proceedings, to lay before the court, at any stage of the proceeding, the said report, paper, votes, or proceedings, and the said copy together with an affidavit verifying the same and the correctness of the said copy, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein shall thereupon be put an end to and superseded by virtue of this Act.

(3) It shall be a good defence to any civil or criminal proceeding in respect of the printing of any extract from or abstract of such report, paper, votes, or proceedings if the defendant proves that the said extract or abstract was published in good faith and without malice.

(4) The following persons, namely, the Government Printer and those members of the public service who are employed in the making of official reports of the debates and proceedings of Parliament are hereby authorized by each House of Parliament to publish reports of the debates and proceedings of that House:

Inserted by
18, 1939, s. 3.

Provided that this subsection shall not absolve any such person from the duty to conform to any instructions lawfully given to him by any person in authority.

(5) For the purposes of this section the papers which set out the daily business of each House of Parliament and are commonly called "Notices and Orders of the Day" shall be papers of Parliament the publication of which has been authorized by the House concerned.

Inserted by
18, 1939, s. 3.

13. (1) A judge or the court, upon an application by or on behalf of two or more defendants in actions to the same, or substantially the same libel, brought by the same person, may make an order for the consolidation of those actions, so that they shall be tried together.

Consolidation
of actions.
646, 1895,
s. 7.
U.K. 51 and
52 Vict.
c. 64, s. 5.

(2) After such an order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect to the same or substantially the same libel, shall also be entitled to be joined in a common action, upon a joint application being made by those new defendants and the defendants in the actions already consolidated.

14. A court of summary jurisdiction, upon the hearing of a charge against the proprietor, publisher, or editor, or any person responsible for the publication of a newspaper for a libel therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any matter which under this or any other Act or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment; and the court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury at the trial would acquit the person charged, may dismiss the case.

Evidence as
to publication,
matters
charged, etc.
646, 1895,
s. 8.
U.K. 44 & 45
Vict. c. 60,
s. 4.

15. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passage, but it shall be sufficient to deposit the book, newspaper, or other documents containing the alleged libel with the indictment or other

Obscene
matter.
646, 1895,
s. 10.

PART I.

judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines, in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

Proof of publication of newspaper, book, or periodical.
646, 1895, s. 11.

16. Upon the trial of an action or prosecution in respect of a libel contained in a newspaper or book, the production of such newspaper or book containing a printed statement that it is printed or published by or for the defendant shall be *prima facie* evidence of the publication of the said newspaper or book by the defendant.

Proof of copies of newspaper.
646, 1895, s. 12.

17. Upon the trial of an action or prosecution in respect of a libel contained in a newspaper, after evidence sufficient in the opinion of the court has been given of the publication by the defendant of the newspaper containing the libel, other prints purporting to be other numbers or parts of the same newspaper formerly or subsequently published, and containing a printed statement that they were published by or for the defendant, shall be admissible in evidence on either side without further proof of publication of them.

PART II.

PART II.

WRONGFUL ACTS OR NEGLIGENCE CAUSING DEATH.

Interpretation.

1, 1865, s. 5.
U.K. 9 and
10 Vict.
c. 93, s. 5.
U.K. 24 and
25 Geo. 5,
c. 41, s. 2
(1) and (2).

Amended by
48, 1940, s. 3.

18. (1) In this Part, unless the context or subject matter otherwise requires—

“child” includes son, daughter, grandson, granddaughter, stepson and stepdaughter:

“parent” includes father, mother, grandfather, grandmother, stepfather and stepmother:

“person” includes bodies politic and corporate:

“brother” includes half-brother and step-brother:

“sister” includes half-sister and step-sister.

(2) For the purposes of this Part a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under this Part is included within the meaning of the expressions "parent" and "child", any illegitimate person and any adopted person shall be treated as being or as having been the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.

Inserted by
18, 1939, s. 4.

(3) In this section "adopted person" means a person who has been legally adopted, whether in the State or elsewhere, and whether before or after the passing of the Wrongs Act Amendment Act, 1939.

Inserted by
18, 1939, s. 4.

(4) Subsections (2) and (3) of this section shall not apply in relation to any action in respect of the death of any person before the passing of the Wrongs Act Amendment Act, 1939.

Inserted by
18, 1939, s. 4.

19. Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.

Liability for
death caused
wrongfully.

1, 1865, s. 1.
U.K. 9 and
10 Vict.
c. 93, s. 1.

20. (1) Every such action shall be for the benefit of the wife, husband, parent, brother, sister, and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.

Effect of
action and
mode of
bringing it.

1, 1865, s. 2.
U.K. 9 and
10 Vict.
c. 93, s. 2.
U.K. 24 and
25 Geo. 5,
c. 41, s. 2 (3).

(2) In every such action the court may give such damages as it thinks proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit the action is brought.

Amended by
48, 1940, s. 4.

s. 20. *GOODGER v. KNAPMAN* (1924) S.A.S.R. 347. In assessing the damages under section 20 any pecuniary benefit the dependants would have received if the deceased had remained alive must be included, but any pecuniary advantage received from the death (including voluntary benefits conferred in consequence of the death) must be deducted. Moneys payable under an insurance policy on the life of the deceased are not to be deducted, but the premiums the deceased would have had to pay if living are deducted from the assessment of his probable income. Moneys received by the widow from fellow-employees of the deceased are wholly deductible in assessing damages.

BUTLER v. McLACHLAN (1936) S.A.S.R. 152. In assessing damages under section 20 in favour of a widow, moneys payable under a policy of insurance on the life of

Inserted by
18, 1939, s. 5.

(2a) In any such action in respect of the death of any person after the passing of the Wrongs Act Amendment Act, 1939, damages may be awarded in respect of any medical expenses incurred as a result of the injury causing the death and the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

Inserted by
18, 1939, s. 5.

(2b) No action shall be brought for the benefit of an illegitimate child of a deceased person unless during the lifetime of that person—

- (a) he has contributed maintenance for the child or signed an agreement for the support of the child; or
- (b) a maintenance or pre-maternity order has been made against him in respect of the child.

(3) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court finds and directs.

s. 20 (contd.) the deceased, or to the widow under the Superannuation Act, 1926, cannot be deducted; but insurance premiums and contributions to the Superannuation Fund are deductible from the estimate of what the deceased would have earned, if living.

MATTHEW v. FLOOD (1939) S.A.S.R. 389. Observations upon circumstances to be taken into account in assessment of damages pursuant to section 20.

ADELAIDE CHEMICAL AND FERTILIZER COMPANY LIMITED v. CARLYLE (1940) 64 C.L.R. 514; 14 A.L.J. 334, affirming CARLYLE v. ADELAIDE CHEMICAL AND FERTILIZER COMPANY LIMITED (1939) S.A.S.R. 458. When a widow brought an action under Part II., proceedings on behalf of the only child of the marriage having been taken under the Workmen's Compensation Act, 1932, held that the widow's failure to sue on behalf of the child did not result in the action being improperly constituted.

RAFFERTY v. BARCLAY AND ANOTHER (1942) S.A.S.R. 147, appeal to the High Court dismissed, 66 C.L.R. 669 (note). Method of fixing damages under section 20 discussed.

NOLAN v. MARTIN (1946) S.A.S.R. 210. In estimating the damages payable to a dependant, the value of any voluntary benefit conferred on a dependant by any person in consequence of the death of the person killed is a proper matter to be taken into account in reduction of the claim for the loss sustained.

TAVERNER AND ANOTHER v. SWANBURY (1944) S.A.S.R. 194. Where under an arrangement morally binding but not binding in law the deceased child had agreed to work for his father for a certain period, the age of the father, the probability of the son continuing to work for him and the possibility of obtaining a suitable substitute for the child's labour, are to be taken into account in assessing damage under sections 19 and 20. *Seemingly*, the existence of a binding contract to work for his father would not deprive the father of the right to claim damages under sections 19 and 20.

PUBLIC TRUSTEE v. ZOANETTI (1945) 70 C.L.R. 266; 19 A.L.J. 232, affirming ZOANETTI v. PUBLIC TRUSTEE (1944) S.A.S.R. 150; 18 A.L.J. 255. In assessing damages under sections 19 and 20, an amount awarded under section 23b should not be deducted.

SALVEMINI v. AUSTRALIAN BARLEY BOARD (1950) S.A.S.R. 174. In a claim by a widow for damages in respect of the death of her husband caused by the wrongful act, neglect, or default of another, pension paid to the widow under Part IV. of the Social Services Consolidation Act, 1947-1949, of the Commonwealth, pending the hearing of the claim, is not deductible from the damages to which she may be entitled.

21. Not more than one action shall lie under this Part for and in respect of the same subject matter of complaint; and every such action shall be commenced within twelve calendar months after the death of the deceased person.

Restriction of actions and time of commencement.
1, 1865, s. 3.
U.K. 9 and 10 Vict. c. 93, s. 3.

22. In every such action the plaintiff shall be required to deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

Particulars of the person for whom damages claimed.
1, 1865, s. 4.
U.K. 9 and 10 Vict. c. 93, s. 4.

23. (1) In any case falling under section 19 of this Act, if there is no executor or administrator of the deceased person or, there being such an executor or administrator, no action is commenced under this Part within six months after the death of the deceased person, then an action may be brought by and in the name or names of the person or all or any of the persons for whose benefit an action could have been brought under this Part by an executor or administrator of the deceased person.

Provision where no executor or administrator or action not commenced within six months.
17, 1874, s. 3.
U.K. 27 and 28 Vict. c. 95, s. 1.

(2) Every action brought under this section shall be for the benefit of the same persons and shall be subject to the same regulations and procedure as nearly as may be as if brought by or in the name of an executor or administrator of the deceased person.

23a. (1) Whenever the death of an infant is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the infant to maintain an action and recover damages in respect thereof, the person who would have been liable if

Liability to parents of person wrongfully killed.
Inserted by 48, 1940, s. 5.

s. 23a. GIGNEY AND ANOTHER V. DUFFY AND ANOTHER. CLARK V. DUFFY AND ANOTHER (1942) S.A.S.R. 76, varied on appeal to the High Court, 66 C.L.R. 669 (note); (1942) S.A.S.R. XX. (note); 16 A.L.J. 374. Consideration of amount of solatium to be awarded.

RICHARDS AND ANOTHER V. BAKER (1943) S.A.S.R. 245. Elements in assessing and apportioning solatium discussed. Held that the award of solatium is to be regarded as compensation for the loss of the pleasure of the child's presence in the family and the deprivation of the parents of his society, and that this solatium could be awarded notwithstanding that damages were given on other grounds.

TAVERNER AND ANOTHER V. SWANBURY (1944) S.A.S.R. 194. In assessing the amount of solatium to be awarded to parents under section 23a for the death of a child, the nature and circumstances of the act causing the death, the suffering experienced by the parents, the nature of the relations between the parents and the child, are all factors to be taken into account.

JEFFRIES V. THE COMMONWEALTH OF AUSTRALIA (1946) S.A.S.R. 106. Solatium gives a right to compensation for any loss or injury for which damages are not recoverable. Damages and solatium are complementary in the sense that, so far as the hopes and expectation of parents "sound in damages," they cannot enhance the solatium but, so far as they have no ascertainable monetary value, they may and should be taken into account in the assessment of solatium. A factor which must be taken into account is anything that may be incurred in the care or expenditure outlayed in such things as the education of the child.

death had not ensued shall notwithstanding the death of the infant and although it was caused under such circumstances as amount in law to felony, be liable to pay to the surviving parents or parent of the child such sum, not exceeding three hundred pounds in the aggregate, as the court thinks just by way of solatium for the suffering caused to the parents or parent by the death of the child.

(2) Where both parents bring an action to recover any sum of money payable under this section, the amount recovered after deducting the costs not recovered from the defendant, shall be divided between the parents in such shares as the court directs.

(3) Where both parents survive the child and either of them does not join in bringing an action under this section, the other may bring an action for such amount as he claims to be due to him or her.

(4) In this section "parent" means the father or mother of a legitimate child and the mother of an illegitimate child.

Liability to surviving husband or wife of person wrongfully killed.
Inserted by 48, 1940, s. 5.

23b. Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled that person to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall, notwithstanding the death of the person injured and although the death was caused in such circumstances as amount in law to felony, be liable to pay the surviving wife or husband of the deceased person such sum, not exceeding five hundred pounds, as the court thinks just by way of solatium for the suffering caused to the wife or husband by such death.

Further provisions as to ss. 23a and 23b.
Inserted by 48, 1940, s. 5.

23c. (1) The rights conferred by sections 23a and 23b shall be in addition to and not in derogation of any rights conferred on the parent, husband or wife by any other provision of this Act.

s. 23b. *SMITH V. CALDER AND BREEDING* (1941) S.A.S.R. 263. Section 23b is not retrospective. Accordingly, when the death of a husband was caused by way of negligence prior to the coming into operation of the section, no payment by way of solatium could be awarded.

GIGNEY AND ANOTHER V. DUFFY AND ANOTHER. CLARK V. DUFFY AND ANOTHER (1942) S.A.S.R. 76, varied on appeal to the High Court, 66 C.L.R. 669 (note); (1942) S.A.S.R. XX. (note); 16 A.L.J. 374. Consideration of amount of solatium to be awarded.

RAFFERTY V. BARCLAY AND ANOTHER (1942) S.A.S.R. 147, appeal to the High Court dismissed, 66 C.L.R. 669 (note). Principles on which solatium is to be awarded discussed.

s. 23c. *PUBLIC TRUSTEE V. ZOANETTI* (1945) 70 C.L.R. 266; 19 A.L.J. 232, affirming *ZOANETTI V. PUBLIC TRUSTEE* (1944) S.A.S.R. 150; 18 A.L.J. 255. In assessing damages under sections 19 and 20, an amount awarded under section 23b should not be deducted.

(2) In an action brought to enforce any right given under section 23a or 23b of this Act the court may in its discretion refuse to order the payment of any sum by way of solatium if, having regard to the conduct of the plaintiff in relation to the deceased person, or to the relations which existed between the plaintiff and the deceased person, or for any other sufficient reason, it considers that no such payment should be made.

(3) Any cause of action conferred on any person by section 23a or 23b of this Act shall not, on the death of that person, survive for the benefit of his estate.

PART III.

GENERAL PROVISIONS.

Proceedings against and Contributions between Tort-Feasors.

24. In sections 25 to 27 inclusive—

“parent” and “child” have the same meaning as they have in and for the purposes of Part II. of this Act: the reference to “the judgment first given” shall in a case where that judgment is reversed on appeal, be construed as a reference 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 that judgment as so varied.

Interpretation.
U.K. 25 and 26 Geo. 5, c. 30, s. 6 (3).
Inserted by 18, 1939, s. 6.

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

(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:

Proceedings against and contribution between joint and several tort-feasors.
U.K. 25 and 26 Geo. 5, c. 30, s. 6 (1).
Inserted by 18, 1939, s. 6.

(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 of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the

aggregate exceed 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 the court is of opinion that there was reasonable 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 joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution 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:

(d) where the tort or torts causing the damage was or were committed by the husband or wife of the person suffering the damage and some other person, that other person may recover contribution as mentioned in paragraph (c) of this section from the husband or wife, as if the husband or wife had been liable to the person suffering the damage.

Extent of contribution.
U.K. 25 and 26, Geo. 5, c. 80, s. 6 (2).
Inserted by 18, 1939, s. 6.

26. In any proceedings for contribution under the last preceding 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 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.

Insurers and nominal defendants under Road Traffic Act.
Inserted by 50, 1951, s. 3.

26a. An insurer or nominal defendant who has been properly sued under section 70d of the Road Traffic Act, 1934-1950—

(a) for the purposes of this Part shall be deemed to be a tort-feasor in relation to the relevant death or bodily injury if the insured person or (as the case may be) the driver of the motor vehicle the

- s. 26. *KERR v. FISHER AND HAMBLÉN* (1941) S.A.S.R. 213. Damages apportioned between wrongdoers guilty of joint negligence.
BROKEN HILL PTY. Co. LTD. v. DUFFY 16 A.L.J. 374; 66 C.L.R. 669 (note); (1942) S.A.S.R. XX. (note), which varied *GIGNEY AND ANOTHER v. DUFFY AND ANOTHER, CLARK v. DUFFY AND ANOTHER* (1942) S.A.S.R. 76. Where it is impossible to assign the precise degree of fault, the responsibility should be apportioned equally.
SMITH AND OTHERS v. DYER AND WILSON (1949) S.A.S.R. 187. In determining the extent of contributions between joint tort-feasors, the contribution is to be assessed according to the extent of their respective responsibility for the damage.

identity of which cannot be ascertained, was a tort-feasor in relation to that death or bodily injury:

- (b) for the purposes of section 26 of this Act shall be deemed to be responsible for the damage to the same extent as such insured person or driver would have been held to be responsible if sued.

27. Nothing in section 24, 25 or 26 shall—

- (a) apply with respect to any tort committed before the passing of the Wrongs Act Amendment Act, 1939; 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.

Exemptions.
U.K. 25 and
26 Geo. 5,
c. 30, s. 6 (4).
Inserted by
18, 1939, s. 6.

Apportionment of liability in cases of contributory negligence.

27a. (1) In this section—

“court” means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined;

“damage” includes loss of life, personal injury, and suffering for which a sum by way of solatium may be awarded under section 23a or 23b of this Act:

“damages” includes any such solatium as mentioned in section 23a or 23b of this Act but does not include any sum payable as compensation pursuant to the Workmen’s Compensation Act, 1932-1950:

“dependant” means any person for whose benefit an action could be brought under Part II. of this Act:

“fault” means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence.

(2) Every reference in this section to the fault of a person shall be deemed to include a reference to a fault for which that person is vicariously responsible.

Apportionment
of liability in
cases of
contributory
negligence.
Cf. U.K. 8 & 9
Geo. 6, c. 28,
ss. 1-4.
Inserted by
50, 1951, s. 4.

(3) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage: Provided that—

(a) this subsection shall not operate to defeat any defence arising under a contract;

(b) this subsection is subject to subsections (4) and (5) of this section.

(4) Where damages (not being a solatium) are recoverable by virtue of subsection (3), subject to such reduction as is therein mentioned, and a contract or enactment providing for a limitation of liability is applicable to the claim or the jurisdiction of the court is limited, the amount of the damages recoverable shall be arrived at as follows:—

(a) the court shall find the total damages which would have been recoverable if the claimant had not been at fault and there had been no limitation of liability or of the jurisdiction of the court;

(b) the total damages so found shall be reduced to such an extent as the court thinks just and equitable having regard to the claimant's share in responsibility for the damage and the reduced amount shall, except as provided in paragraph (c) of this subsection, be the amount recoverable;

(c) if the amount of damages as reduced under paragraph (b) of this subsection exceeds the limit provided for in the contract or enactment or the limit of the jurisdiction of the court the court shall award the maximum amount of damages permitted by the contract, enactment, or limit of the court's jurisdiction.

(5) Where a solatium is recoverable by virtue of subsection (3) subject to such reduction as is therein mentioned, the amount of the solatium recoverable shall be arrived at as follows:—

(a) the court shall find the amount of solatium which would have been recoverable if the claimant had not been at fault, but having regard to the limitation prescribed by section 23a or 23b of this Act;

(b) the amount so found shall be reduced to such extent as the court thinks just and equitable, having regard to the claimant's share in responsibility for damage.

(6) Where damages are recoverable by any person by virtue of subsection (3) subject to such reduction as is therein mentioned, the court shall in every case find and record the total damages which apart from any limitation of liability provided by contract or enactment, or any limitation of the jurisdiction of the court would have been recoverable if the claimant had not been at fault.

(7) Sections 24 to 27 (inclusive) of this Act (which relate to proceedings against, and contributions between, joint and several tort-feasors) shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (3) of this section in respect of the damage suffered by any person.

(8) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the Survival of Causes of Action Act, 1940, the damages recoverable would be reduced under subsection (3) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under Part II. of this Act and any amount recoverable by way of solatium under that Part shall be reduced to a proportionate extent.

(9) Where—

(a) a person (in this subsection called "the injured person") suffers damage as a result partly of his own fault and partly of the fault of any other person or persons; and

(b) by reason of the damage to the injured person a third person suffers damage (whether by way of the loss of the society or services of the injured person or otherwise),

then, in any claim by the third party for the damage so suffered by him the fault of the injured person shall be taken into account under subsection (3) of this section for the purpose of reducing the damages recoverable by the third party as if the said fault were the fault of the third party.

Wrongs Act, 1936-1951.

(10) Where, in any case to which subsection (3) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contribution from that other person or representative by virtue of the said subsection.

(11) Where any case to which subsection (3) of this section applies is tried with a jury, the jury shall determine the total damages which apart from any limitation of liability provided by contract or enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

Savings.
Inserted by
50, 1951, s. 4.

27b. (1) Section 27a of this Act shall not apply to any claim to which section 111 of the Supreme Court Act, 1935-1947, applies and that section shall have effect as if section 27a of this Act had not been passed.

(2) Section 27a of this Act shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of the Wrongs Act Amendment Act, 1951.

Mental or Nervous Shock.

Personal
injury caused
by mental or
nervous shock.
Inserted by
18, 1939, s. 6.

28. (1) In any action for injury to the person caused after the passing of the Wrongs Act Amendment Act, 1939, 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.

(2) In determining any question of liability for injury to the person caused before the passing of the Wrongs Act Amendment Act, 1939, no regard shall be paid to the fact that this section has been enacted, or to the provisions hereof.

Remedies against Certain Shipowners.

Remedy
against
shipowners
and others
for injuries.
U.K. 5 Edw.
7, c. 10.
Inserted by
18, 1939, s. 6.

29. (1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries, including fatal injuries, caused by the ship or sustained on, in, or about the ship, in any port or harbour in the State, in consequence of the wrongful act, neglect, or default of the owners of the

s. 28. RICHARDS AND ANOTHER v. BAKER (1943) S.A.S.R. 245. Where the female plaintiff was walking on a highway with her infant son and, by negligence of the defendant, the child was run down and severely injured and died a short time after, held that damages could be recovered by the mother both for the injury caused by the initial shock caused by the sight of the injury to the boy and for the additional injury caused by the shock of his death, as these consequences flowed from the defendant's breach of duty to the female plaintiff.

ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river in the State or in any water within three miles of the coast of the State, the Supreme Court or the local court of full jurisdiction nearest to the ship may, upon its being shown to the court by any person applying in accordance with rules of court that the owners are probably liable to pay damages in respect of such injuries and that none of the owners resides in the State, issue an order directed to any officer of the Supreme Court or of the said local court, or of the South Australian Harbors Board, or of any authority exercising the powers vested in the said Board named in the order, requiring such officer to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by a Judge of the Supreme Court, or as the case may be, by a judge or magistrate of the said local court, to abide the event of any proceedings that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon.

(2) The officer to whom the order is directed may detain the ship in accordance with the order.

(3) In any legal proceedings in relation to such injuries as aforesaid, the person giving security may be made the defendant, and shall be stated to be the owner of the ship which has caused the injuries, and the production of the order of the judge or magistrate made in relation to the security shall in the said proceedings be conclusive evidence that the defendant is the owner of the ship.

(4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State if it has an office in the State at which service of process can be effected.

(5) If a ship after detention in pursuance of this section or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by the officer detaining it, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be guilty of an offence and liable on summary conviction to a penalty not exceeding two hundred pounds.

(6) If the master proceeds to sea with the ship in contravention of subsection (5) of this section, and takes to sea any person authorized to detain the ship or any person assisting

any person so authorized, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the taking to sea of any such person, in addition to any penalty imposable under subsection (5).

(7) The words "person applying" in this section shall include an employer who has paid compensation, or against whom a claim for compensation has been made, under the Workmen's Compensation Act, 1932, if he shows the court that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.

(8) The jurisdiction of the Supreme Court under this section may be exercised by a single judge of that court sitting in chambers.

Abolition of the rule of common employment.

Abolition of
rule of common
employment.
Inserted by
14, 1944, s. 4.

30. (1) Where any injury or damage is suffered by a servant by reason of the wrongful act, neglect or default of a fellow servant, the employer of those servants shall be liable in damages in respect of that injury or damage in the same manner and in the same cases as if those servants had not been engaged in a common employment.

(2) This section applies to any injury or damage arising from a wrongful act, neglect or default committed after the enactment of this section, whether the contract of employment was made before or is made after the enactment of this section.

(3) "Employer" in this section includes the Crown and instrumentalities of the Crown.