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## GEORGI VI REGIS.

A.D. 1939.

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### No. 18 of 1939.

An Act to amend the Wrongs Act, 1936.

[Assented to 22nd November, 1939.]

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

1. (1) This Act may be cited as the " Wrongs Act Amendment Act, 1939 ". Short title.

(2) The Wrongs Act, 1936, as amended by this Act, may be cited as the " Wrongs Act, 1936-1939 ".

(3) The Wrongs Act, 1936, is in this Act called " the principal Act ".

2. This Act is incorporated with the principal Act and that Incorporation. Act and this Act shall be read as one Act.

3. Section 12 of the Wrongs Act, 1936, is amended by Amendment s. 12 of the principal Act Authority to publish Hansard reports. adding at the end thereof the following subsection :—

(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 :

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.

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## Wrongs Act Amendment Act, 1939.

(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.

Amendment of  
s. 18 of the  
principal Act—  
Interpretation.

4. Section 18 of the principal Act is amended by adding at the end thereof the following subsections (the previous part of section 18 being read as subsection (1) thereof):—

U.K. 24 and  
25 Geo. 5 c. 41,  
s. 2 (1) and (2).

(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.

(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.

(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.

Amendment of  
s. 20 of the  
principal Act—  
Funeral  
expenses.  
U.K. 24 and  
25 Geo. 5 c. 41,  
s. 2 (3).

5. Section 20 of the principal Act is amended by inserting therein after subsection (2) thereof the following subsections:—

(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.

(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.

6. The following headings and sections are enacted and inserted in the principal Act after section 23 thereof :—

Enactment of Part III. of the principal Act.

PART III.—GENERAL PROVISIONS.

*Proceedings against and Contributions between Tort-Feasors.*

24. In section 25 to 27 inclusive—

Interpretation.  
U.K. 25 and 26 Geo. 5 c. 30, s. 6 (3).

“ 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.

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

Proceedings against and contribution between joint and several tort-feasors.  
U.K. 25 and 26 Geo. 5 c. 30, s. 6 (1).

(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 :

(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. 30,  
s. 6 (2).

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.

Exemptions.  
U.K. 25 and  
26 Geo. 5 c. 30,  
s. 6 (4).

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.

*Mental or Nervous Shock.*

Personal injury caused by mental or nervous shock.

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.

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 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.

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(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.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.