

## LAW REFORM BILL.

### EXPLANATORY MEMORANDUM.

CERTAIN reforms in the law have, in recent years, been effected by the Imperial Parliament, and the main purpose of this Bill is to make corresponding changes in the law of New Zealand.

The Bill is divided into six Parts, each of which deals with a subject not directly related to the others.

#### PART I.

##### *Survival of Causes of Action after Death.*

Part I, which is an adaptation without substantial alteration of section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934 (Imp.), in effect abrogates, subject to certain expressed provisions, the rule (expressed in the maxim *actio personalis moritur cum persona*) that the personal representative of a deceased person cannot sue or be sued in respect of a wrong committed against or by the deceased during his lifetime.

Clause 3 (2) prescribes limitations in respect of damages which may be recovered in actions for the benefit of the estates of deceased persons.

Clause 3 (5) provides that the rights conferred by the Bill are in addition to and not in derogation of any rights conferred by the Deaths by Accidents Compensation Act, 1908, and that so much of Part I as relates to causes of action against the estates of deceased persons shall also apply in relation to causes of action under the Deaths by Accidents Compensation Act, 1908. One result of this subclause will be that where both the wrongdoer and the person whose dependants have a right of action die, a cause of action under the Deaths by Accidents Compensation Act will survive against the estate of the wrongdoer.

#### PART II.

##### *Deaths by Accidents Compensation.*

This Part amends the Deaths by Accidents Compensation Act, 1908.

Clauses 5 and 6 are based on provisions contained in section 2 of the Law Reform (Miscellaneous Provisions) Act, 1934 (Imp.).

Clause 5 extends the definition of the term "child" so as to include illegitimate and adopted children, with the result that in future the provisions of the principal Act will extend to those children and their parents.

Clause 7: In assessing damages under the principal Act the rule now is that any pecuniary benefit—*e.g.*, moneys payable under an insurance policy—accruing to dependants by reason of the death of the person on whom the claimants depend must be taken into account so as to reduce the amount of damages allowed. Clause 7 in effect abolishes that rule.

A similar provision in respect of insurance-moneys has been in force in England since 1908 by virtue of the Fatal Accidents (Damages) Act, 1908 (Imp.).

### PART III.

#### *Charges on Insurance-moneys payable as Indemnity for Liability to pay Damages or Compensation.*

This Part creates a charge on all insurance-moneys payable as indemnity for liability to pay damages or compensation, and makes the charge apply immediately on the happening of the event giving rise to the claim. Similar provisions are already contained in section 48 of the Workers' Compensation Act, 1922, and in section 10 of the Motor-vehicles (Third-party Risks) Insurance Act, 1928, but under these provisions no charge on insurance-moneys is created unless the insured is insolvent or becomes bankrupt. It is proposed, in clause 10 of the Bill, to repeal these existing provisions.

### PART IV.

#### *Capacity, Property, and Liabilities of Married Women, and Liabilities of Husbands.*

This Part is an adaptation, without substantial alteration, of sections 1, 2, 3, and 4 of the Law Reform (Married Woman and Tortfeasors) Act, 1935 (Imp.).

Although the Married Women's Property Act removed to a large extent the disabilities relating to the holding of property under which married women suffered, yet the law still imposes certain conditions which are considered unfair both with respect to the property of married women and the liabilities of husbands for their wives' torts and ante-nuptial debts.

Part IV in effect says that so far as the capacity to contract, to hold property, and to sue and be sued is concerned a married woman shall be in exactly the same position as an unmarried woman. A married woman will also be subject to the law relating to the enforcement of judgments, and a husband will not be liable for his wife's torts and ante-nuptial debts.

The exceptions which will remain are—

- (1) A husband will be liable in respect of contracts entered into by his wife after marriage to the same extent that he now is liable—*e.g.*, a husband will be liable in certain circumstances for necessaries supplied to his wife:
- (2) A husband and wife while living together will not be able to sue each other in tort except in order to protect their property.

It is proposed by clause 16 (5) to continue the existing right of a husband and wife who are judicially separated to sue each other for any tort.

Clause 13 (2) prevents a restraint on the anticipation of property being imposed on a woman if a similar restraint could not be imposed on a man.

### PART V.

#### *Liability of Tort-feasors.*

This Part is an adaptation of section 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935 (Imp.).

In New Zealand, by virtue of section 94 of the Judicature Act, 1908, a judgment against one or more of several persons jointly liable does not operate as a defence to an action against the persons against whom judgment has not been given except so far as the judgment has been satisfied. The section does not, however, deal with contribution between joint wrongdoers, and the general rule now is that there is no such contribution.

This Part supersedes section 94 of the Judicature Act in so far as it relates to actions in tort, and provides both for the liability of and contribution between joint wrongdoers, and furthermore provides machinery for assessing the amount of contributions.

#### PART VI.

##### *Liability of Employers to their Servants for Injuries caused by the Negligence of Fellow-servants.*

This Part abolishes the defence of common employment. This defence depended on a rule that damages could not be recovered from an employer in respect of the negligence of a fellow-servant. The rule has already been partially abolished by section 67 of the Workers' Compensation Act, 1922, but, as that section has no bearing on compensation payable under that Act, it is not appropriate for inclusion therein. That section also imposes a limitation as to the amount of damages recoverable in actions under the Workers' Compensation Act, but no such limitation exists in the Bill.

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*This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.*

*House of Representatives,  
17th September, 1936.*

*Hon. Mr. Mason.*

## LAW REFORM.

### ANALYSIS.

Title.		PART IV.
1. Short Title.		CAPACITY, PROPERTY, AND LIABILITIES OF MARRIED WOMEN, AND LIABILITIES OF HUSBANDS.
2. Act divided into Parts.		11. This Part to form part of the Married Women's Property Act, 1908.
<b>PART I.</b>		
SURVIVAL OF CAUSES OF ACTION AFTER DEATH.		
3. Effect of death on certain causes of action.		12. Capacity of married women. 13. Property of married women. 14. Abolition of husband's liability for wife's torts and antenuptial contracts, debts, and obligations. 15. Savings. 16. Consequential amendments.
<b>PART II.</b>		
DEATHS BY ACCIDENTS COMPENSATION.		
4. This Part to form part of Deaths by Accidents Compensation Act, 1908.		<b>PART V.</b>
5. Extension of terms "parent" and "child" for purposes of principal Act. Consequential amendment.		LIABILITY OF TORT-FEASORS.
6. Funeral expenses recoverable.		17. Proceedings against, and contributions between, joint and several tort-feasors.
7. In assessing damages, no account to be taken of any gain consequent on the death of the deceased person.		<b>PART VI.</b>
8. Application of this Part.		LIABILITY OF EMPLOYERS TO THEIR SERVANTS FOR INJURIES CAUSED BY THE NEGLIGENCE OF FELLOW-SERVANTS.
<b>PART III.</b>		
CHARGES ON INSURANCE-MONEYS PAYABLE AS INDEMNITY FOR LIABILITY TO PAY DAMAGES OR COMPENSATION.		
9. Amount of liability to be charge on insurance-moneys payable against that liability.		18. Defence of common employment abolished. Consequential repeal.
10. Consequential repeals.		<b>PART VII.</b>
		COVENANTS IN LEASES NOT TO ASSIGN OR UNDERLET WITHOUT CONSENT OF LESSOR.
		19. Provisions as to covenants in leases not to assign, &c., without license or consent. Schedule.

## A BILL INTITULED

Title.	AN ACT to effect Reforms in the Law relating to (1) the Effect of Death in relation to Causes of Action; (2) the Payment of Compensation under the Deaths by Accidents Compensation Act, 1908; (3) Charges on Insurance-moneys payable as Indemnity for Liability to pay Damages or Compensation; (4) the Capacity, Property, and Liabilities of Married Women, and the Liabilities of Husbands; (5) Proceedings against and Contributions between Tort-feasors; (6) the Liability of Employers to their Servants for Injuries caused by the Negligence of Fellow-servants; and (7) Covenants in Leases not to assign or underlet without Consent of Lessor.	5 10
	BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	15
Short Title.	1. This Act may be cited as the Law Reform Act, 1936.	
Act divided into Parts.	2. This Act is divided into Parts as follows:—	20
	PART I.—Survival of Causes of Action after Death.	
	PART II.—Deaths by Accidents Compensation.	
	PART III.—Charges on Insurance-moneys payable as Indemnity for Liability to pay Damages or Compensation.	25
	PART IV.—Capacity, Property, and Liabilities of Married Women, and Liabilities of Husbands.	
	PART V.—Liability of Tort-feasors.	30
	PART VI.—Liability of Employers to their Servants for Injuries caused by the Negligence of Fellow-servants.	
	PART VII.—Covenants in Leases not to assign or underlet without Consent of Lessor.	35

## PART I.

## SURVIVAL OF CAUSES OF ACTION AFTER DEATH.

Effect of death on certain causes of action. Cf. 24 & 25 Geo. V, c. 41, s. 1	3. (1) Subject to the provisions of this Part of this Act, on the death of any person after the passing of this Act all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of his estate:	40
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Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims under section twenty-nine of the 5 Divorce and Matrimonial Causes Act, 1928, for damages on the ground of adultery.

See Reprint  
of Statutes,  
Vol. III, p. 877

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that 10 person—

(a) Shall not include any exemplary damages:

(b) In the case of a breach of promise to marry shall be limited to such damage (if any) to the estate of that person as flows from the breach 15 of promise to marry:

(c) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate 20 consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Part of this Act has survived against the estate of a deceased 25 person, unless either—

(a) Proceedings against him in respect of that cause of action were pending at the date of his death; or

(b) The cause of action arose not earlier than *twelve* 30 months before his death and proceedings are taken in respect thereof not later than *twelve* months after his personal representative took out representation.

(4) Where damage has been suffered by reason of 35 any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part of this Act, to have been subsisting against him 40 before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Part of this Act for the benefit of the estates of deceased persons shall be 45 in addition to and not in derogation of any rights

See Reprint  
of Statutes,  
Vol. VI, p. 427

conferred by the Deaths by Accidents Compensation Act, 1908, and so much of this Part of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under that Act.

See 1908,  
No. 12, s. 98;  
Reprint of  
Statutes,  
Vol. I, p. 524

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise, or breach of trust.

See Reprint  
of Statutes,  
Vol. VIII,  
p. 822

(7) No contract of insurance entered into under the Motor-vehicles Insurance (Third-party Risks) Act, 1928, in respect of any period before the first day of June, nineteen hundred and thirty-seven, shall, notwithstanding anything to the contrary in that Act, be deemed to indemnify the insured—

(a) Against liability to pay damages in respect of any pain or suffering caused to any person by reason of any act or omission that has caused his death:

(b) Against liability to pay damages in respect of any cause of action which by virtue of this Part of this Act has survived for the benefit of the estate of a deceased person unless proceedings in respect of that cause of action were pending at the date of his death or proceedings are taken in respect of the cause of action not later than *twelve* months after his personal representative took out representation.

## PART II.

### DEATHS BY ACCIDENTS COMPENSATION.

This Part to  
form part of  
Deaths by  
Accidents  
Compensation  
Act, 1908.

Ibid., Vol. VI,  
p. 427

Extension  
of terms  
"parent" and  
"child" for  
purposes of  
principal Act.  
Cf. 24 & 25  
Geo. V, c. 41,  
s. 2 (1)  
and (2)

4. This Part of this Act shall be read together with and deemed part of the Deaths by Accidents Compensation Act, 1908 (hereinafter in this Part referred to as the principal Act).

5. (1) For the purposes of the principal Act 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 the provisions of that Act 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.

(2) In this section the expression “ adopted person ” means a person who has been legally adopted, whether in New Zealand or elsewhere and whether before or after the passing of this Act.

5 (3) Section two of the principal Act is hereby consequentially amended by omitting from the definition of the term “ child ” the words “ and includes also an illegitimate child ”.

10 6. In any action under the principal Act damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the person or any of the persons for whose benefit the action is brought.

Funeral expenses recoverable.  
Cf. 24 & 25 Geo. V, c. 41, s. 2 (3)

15 7. In assessing damages in any action under the principal Act there shall not be taken into account any gain, whether to the estate of the deceased person or to any person for whose benefit the action is brought, that is consequent on the death of the deceased person.

In assessing damages, no account to be taken of any gain consequent on the death of the deceased person.

20 8. This Part of this Act shall apply in relation to every action that is pending on the passing of this Act or that is commenced after the passing of this Act, whether in respect of a death occurring before or after the passing of this Act.

Application of this Part.

### PART III.

#### 25 CHARGES ON INSURANCE-MONEYS PAYABLE AS INDEMNITY FOR LIABILITY TO PAY DAMAGES OR COMPENSATION.

30 9. (1) If any person (hereinafter in this Part of this Act referred to as the insured) has, whether before or after the passing of this Act, entered into a contract of insurance by which he is indemnified against liability to pay any damages or compensation, the amount of his liability shall, on the happening of the event giving rise to the claim for damages or compensation, and notwithstanding that the amount of such liability may

35 not then have been determined, be a charge on all insurance-moneys that are or may become payable in respect of that liability.

Amount of liability to be charge on insurance-moneys payable against that liability.

(2) If, on the happening of the event giving rise to any claim for damages or compensation as aforesaid,

40 the insured has died insolvent or is bankrupt or, in the case of a corporation, is being wound up, or if any subsequent bankruptcy or winding-up of the insured is deemed to have commenced not later than the happening of that event, the provisions of the *last preceding*

45 subsection shall apply notwithstanding the insolvency, bankruptcy, or winding-up of the insured.



(3) Every charge created by this section shall have priority over all other charges affecting the said insurance-moneys, and where the same insurance-moneys are subject to two or more charges by virtue of this Part of this Act those charges shall have priority between themselves in the order of the dates of the events out of which the liability arose, or, if such charges arise out of events happening on the same date, they shall rank equally between themselves. 5

(4) Every such charge as aforesaid shall be enforceable by way of an action against the insurer in the same way and in the same Court as if the action were an action to recover damages or compensation from the insured; and in respect of any such action and of the judgment given therein the parties shall, to the extent of the charge, have the same rights and liabilities, and the Court shall have the same powers, as if the action were against the insured: 10 15

Provided that, except where the provisions of subsection *two* of this section apply, no such action shall be commenced in any Court except with the leave of that Court. 20

(5) Such an action may be brought although judgment has been already recovered against the insured for damages or compensation in respect of the same matter. 25

(6) Any payment made by an insurer under the contract of insurance without actual notice of the existence of any such charge shall to the extent of that payment be a valid discharge to the insurer, notwithstanding anything in this Part of this Act contained. 30

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

**10.** Section forty-eight of the Workers' Compensation Act, 1922, and section ten of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, are hereby consequentially repealed: 35

Provided that where the event giving rise to a claim for damages or compensation happens before the passing of this Act all rights under those sections, whether accrued on the passing of this Act or subsequently accruing, shall subsist for the benefit of the person having the claim. 40

Consequential  
repeals.  
See Reprint  
of Statutes,  
Vol. V,  
p. 628,  
Vol. VIII,  
p. 827

## PART IV.

CAPACITY, PROPERTY, AND LIABILITIES OF MARRIED WOMEN,  
AND LIABILITIES OF HUSBANDS.

11. This Part of this Act shall be read together with  
5 and deemed part of the Married Women's Property Act,  
1908 (hereinafter referred to as the principal Act).

12. Subject to the provisions of this Part of this Act,  
and subject as respects actions in tort between husband  
and wife to the provisions of section seventeen of the  
10 principal Act, a married woman shall—

- (a) Be capable of acquiring, holding, and disposing  
of any property; and
- (b) Be capable of rendering herself, and being  
rendered, liable in respect of any tort, contract,  
15 debt, or obligation; and
- (c) Be capable of suing and being sued either in tort  
or in contract or otherwise; and
- (d) Be subject to the law relating to the enforcement  
of judgments and orders,—

20 in all respects as if she were a *feme sole*.

13. (1) Subject to the provisions of this Part of this  
Act, all property which—

- (a) Immediately before the passing of this Act was  
the separate property of a married woman or  
25 held for her separate use in equity; or
- (b) Belongs at the time of her marriage to a woman  
married after the passing of this Act; or
- (c) After the passing of this Act is acquired by or  
devolves upon a married woman,—

30 shall belong to her in all respects as if she were a  
*feme sole*, and may be disposed of accordingly:

35 Provided that nothing in this subsection shall  
interfere with or render inoperative any restriction upon  
anticipation or alienation attached to the enjoyment of  
any property by virtue of any provision attaching such  
a restriction, contained in any Act passed before the  
passing of this Act, or in any instrument executed before  
the first day of January, nineteen hundred and  
thirty-seven.

40 (2) Any instrument executed on or after the first  
day of January, nineteen hundred and thirty-seven, shall,  
in so far as it purports to attach to the enjoyment of any

This Part to  
form part of  
the Married  
Women's  
Property  
Act, 1908.  
See Reprint  
of Statutes,  
Vol. III,  
p. 851

Capacity of  
married  
women.  
Cf. 25 & 26  
Geo. V, c. 30,  
s. 1

Property of  
married  
women.  
Cf. *ibid.*, s. 2

property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.

(3) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation— 5

(a) An instrument attaching such a restriction as aforesaid executed on or after the first day of January, nineteen hundred and thirty-seven, in pursuance of an obligation imposed before that date to attach such a restriction, shall be 10 deemed to have been executed before the said date:

(b) A provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that 15 instrument only and not in the instrument by which the power was created:

(c) The will of any testator who dies after the thirty-first day of December, nineteen hundred and forty-six, shall (notwithstanding the actual 20 date of the execution thereof) be deemed to have been executed after the first day of January, nineteen hundred and thirty-seven.

14. Subject to the provisions of this Part of this Act, the husband of a married woman shall not, by reason 25 only of his being her husband, be liable—

(a) In respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or 30

(b) To be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

15. (1) Nothing in this Part of this Act shall—

(a) During coverture which began before the first 35 day of January, eighteen hundred and eighty-five (being the date of the coming into operation of the Married Women's Property Act, 1884), affect any property to which the title (whether vested or contingent, and 40 whether in possession, reversion, or remainder) of a married woman accrued before that date, except property held for her separate use in equity:

Abolition of husband's liability for wife's torts and ante-nuptial contracts, debts, and obligations.  
Cf. 25 & 26 Geo. V, c. 30, s. 3

Savings.  
Cf. *ibid.*, s. 4

- (b) Affect any legal proceeding in respect of any tort if proceedings had been instituted in respect thereof before the passing of this Act:
- 5 (c) Enable any judgment or order against a married woman in respect of a contract entered into or debt or obligation incurred before the passing of this Act to be enforced otherwise than against her property.
- (2) Nothing in this Part of this Act shall be  
10 construed—
  - (a) To render the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have  
15 been liable if this Act had not been passed:
  - (b) To exempt the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a  
20 tort) incurred, by her after the marriage in respect of which he would have been liable if this Act had not been passed:
  - (c) To prevent a husband and wife from acquiring, holding, and disposing of any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in  
25 respect of any tort, contract, debt, or obligation, and of suing and being sued, either in tort or in contract or otherwise, in like manner as if they were not married:
  - (d) To prevent the exercise of any joint power given  
30 to a husband and wife.

- 16. (1) The principal Act is hereby consequentially  
amended in the manner indicated in the Schedule hereto. Consequential amendments.
- 35 (2) Section two of the Bankruptcy Amendment Act, 1927, is hereby amended by omitting from subsection three the words “ as though she were ”, and substituting the words “ notwithstanding that she may not be ”. See Reprint of Statutes, Vol. I, p. 574
- (3) Section twenty-two of the Copyright Act, 1913,  
40 is hereby amended by omitting from subsection four the word “ separate ”. Ibid., Vol. II, P. 16
- (4) Section eighty-three of the Destitute Persons  
Act, 1910, is hereby amended by omitting the words  
“ or, being under coverture, is not possessed of separate  
45 property ”. Ibid., Vol. II, p. 933

See Reprint  
of Statutes,  
Vol. III,  
p. 882

(5) Section thirty-nine of the Divorce and Matrimonial Causes Act, 1928, is hereby amended by repealing subsection one, and substituting the following subsection:—

*Cf.* 25 & 26  
Geo. V, c. 30,  
First Schedule

“(1) In every case of judicial separation— 5

“(a) As from the date of the decree and so long as the separation continues any property which is acquired by or devolves upon the wife shall not be affected by any restraint upon anticipation attached to the enjoyment by the wife of any property under any settlement, agreement for a settlement, will, or other instrument, and if she dies intestate shall devolve as if her husband had then been dead: 10 15

“(b) If alimony has been ordered to be paid and has not been duly paid by the husband, he shall be liable for necessaries supplied for the use of the wife:

“(c) Notwithstanding anything to the contrary in section seventeen of the Married Women’s Property Act, 1908, the husband and the wife shall, during the separation, each be entitled to sue the other for any tort, whether in respect of property or otherwise.” 20 25

## PART V.

### LIABILITY OF TORT-FEASORS.

Proceedings  
against, and  
contribution  
between,  
joint and  
several  
tort-feasors.  
*Cf.* *ibid.*,  
s. 6

17. (1) 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: 30

(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 35 40

5 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:

10 (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.

15 (2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section—

30 (a) The expressions “parent” and “child” have the same meanings as they have for the purposes of the Deaths by Accident Compensation Act, 1908, as amended by Part II of this Act:

See Reprint of Statutes, Vol. VI, p. 427

35 (b) The reference in this section to “the judgment first given” shall, in a case where that judgment is reversed on appeal, be construed as a 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.

40 (4) Nothing in this section shall—

(a) Affect any criminal proceedings against any person in respect of any wrongful act; or

(b) Render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

45 (5) Section ninety-four of the Judicature Act, 1908, shall not hereafter apply with respect to any action or other proceeding to which this Part of this Act applies.

Ibid., Vol. II, p. 87

## PART VI.

LIABILITY OF EMPLOYERS TO THEIR SERVANTS FOR INJURIES  
CAUSED BY THE NEGLIGENCE OF FELLOW-SERVANTS.

Defence of  
common  
employment  
abolished.

18. (1) Where any injury or damage is suffered by  
a servant by reason of the negligence of a fellow-servant, 5  
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 every case in which the 10  
relation of employer and servant exists, whether the  
contract of employment is made before or after the  
passing of this Act.

(3) This section shall bind the Crown.

Consequential  
repeal.

See Reprint  
of Statutes,  
Vol. V, p. 638,  
Vol. II, p. 567

(4) Section sixty-seven of the Workers' Compensa- 15  
tion Act, 1922, is hereby repealed, and section six of  
the Crown Suits Amendment Act, 1910, is hereby amended  
by omitting the words "and section sixty-two of the  
Workers' Compensation Act, 1908 (relating to common  
employment)". 20

## PART VII.

COVENANTS IN LEASES NOT TO ASSIGN OR UNDERLET WITHOUT  
CONSENT OF LESSOR.

Provisions as  
to covenants  
in leases not  
to assign, &c.,  
without license  
or consent.

*Cf.* 17 & 18,  
Geo. V, c. 36,  
s. 19 (1)

19. (1) In all leases, whether made before or after  
the passing of this Act, containing a covenant, condition, 25  
or agreement against assigning, underletting, charging,  
or parting with the possession of demised premises or  
any part thereof without license or consent, such  
covenant, condition, or agreement shall, notwithstanding  
any express provision to the contrary, be deemed to 30  
be subject—

(a) To a proviso to the effect that such license or  
consent is not to be unreasonably withheld,  
but this proviso does not preclude the right  
of the landlord to require payment of a 35  
reasonable sum in respect of any legal or  
other expenses incurred in connection with  
such license or consent; and,

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- 5 (b) If the lease is for more than forty years, and  
is made in consideration wholly or partially  
of the erection or the substantial improvement,  
addition, or alteration of buildings, and the  
lessor is not a local authority, to a proviso  
to the effect that in the case of any assign-  
ment, underletting, charging, or parting with  
the possession (whether by the holders of the  
lease or any under-tenant, whether immediate  
10 or not) effected more than seven years before  
the end of the term, no consent or license shall  
be required, if notice in writing of the  
transaction is given to the lessor within one  
month after the transaction is effected.
- 15 (2) In this section the term "lease" shall be  
deemed to have the same meaning as in section  
ninety-three of the Property Law Act, 1908.

See Reprint  
of Statutes,  
Vol. VII,  
p. 1113



Schedule.

See Reprint  
of Statutes,  
Vol. III, p. 851

## SCHEDULE.

CONSEQUENTIAL AMENDMENTS OF THE MARRIED WOMEN'S PROPERTY  
ACT, 1908 (No. 114).

Number of Section affected.	Nature of Amendment.
Section 4 .. ..	By repealing this section.
Section 5 .. ..	By repealing this section.
Section 6 .. ..	By repealing this section.
Section 7 .. ..	By repealing this section.
Section 9 .. ..	By repealing this section.
Section 10.. ..	By repealing this section.
Section 11.. ..	By omitting from subsection one the word "separate"; and by omitting from subsection two the words "for her separate use".
Section 12.. ..	By omitting from subsection one the word "separate" before the word "property"; by omitting from the same subsection the words "her separate estate", and substituting the word "she"; and by omitting from the same subsection all words after the word "liable".
Section 16.. ..	By omitting from subsection one the words "by virtue of the power of making contracts hereinbefore contained"; and by omitting from the same subsection the words "separate use", and substituting the words "own benefit".
Section 17.. ..	By omitting from subsection one the word "separate"; and by omitting from the same subsection the words "such property belonged to her as", and substituting the words "she were".
Section 20.. ..	By omitting from paragraph (a) of subsection one the words "in respect and to the extent of her separate property"; by omitting from paragraph (b) of the same subsection all words after the words "such wrong"; and by repealing subsection two.
Section 21.. ..	By repealing this section.
Section 22.. ..	By repealing this section.
Section 28.. ..	By omitting the word "separate".