An Act to amend the law as to the effect of death in relation to causes of action.

[Assented to 5th December, 1940.]

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

1. This Act may be cited as the “Survival of Causes of Action Act, 1940”.

2. Subject to the provisions 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 his estate, or, as the case may be, for the benefit of his estate: Provided that this section 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 22 of the Matrimonial Causes Act, 1929-1938, for damages on the ground of adultery.

3. Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any damages for his pain or suffering, or for any bodily or mental harm suffered by him, or for the curtailment of his expectation of life:

(b) shall not include any exemplary damages:

(c) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry:
Survival of Causes of Action Act, 1940.

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

4. No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Act has survived against the estate of a deceased 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 six months before his death and proceedings are taken in respect thereof not later than six months after his executor or administrator took out probate or letters of administration.

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

6. The rights conferred by this Act for the benefit of the estate of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependents of deceased persons by the Wrongs Act, 1936-1939, and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Wrongs Act, 1936-1939, as it applies in relation to other causes of action not expressly excepted from the operation of section 2 of this Act.

7. The following enactments shall cease to have effect as part of the law of South Australia:—

(a) The Statute 13 Edw. 1, c. 23.

(b) The Statute 4 Edw. 3, c. 7.

(c) Section 2 of The Civil Procedure Act, 1833 (3 and 4 Will. 4, c. 42).

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

C. M. BARCLAY-HARVEY, Governor.