

T A S M A N I A.



1943.

ANNO SEPTIMO

GEORGII VI. REGIS.

No. 33.

## ANALYSIS.

1. Short title.
2. Amendment of 26 Geo. V. No. 38.  
     Repeal of section 27.  
     New section 27.  
     Rights of action by and against personal  
     representatives.



AN ACT to amend the *Administration and Probate Act 1935*. [19 October, 1943.]

A.D.  
1943.

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1** This Act may be cited as the *Administration and Probate Act 1943*. Short title.

6d.]

*Administration and Probate.*

A.D. 1943.

Amendment  
of 26 Geo. V.  
No. 38.Repeal of  
section 27.New section  
27.Rights of  
action by and  
against  
personal  
representa-  
tives.

**2** The Principal Act is hereby amended by repealing section twenty-seven thereof and substituting therefor the following new section twenty-seven—

“**27**—(1) Subject to the provisions of this section on the death of any person after the commencement of this section all causes of action—

- I. Subsisting against him shall survive against his estate: and
- II. Vested in him shall survive for the benefit of his estate—

except as provided by subsection (2) hereof.

(2) No cause of action in respect of—

- I. Seduction:
- II. Inducing one spouse to leave, or remain apart from, the other: or
- III. Damages under section twenty-two of the *Matrimonial Causes Act 1860*—

shall survive under the provisions of this section.

(3) Where a cause of action survives under this section the damages recoverable in respect thereof shall—

- I. Not include any exemplary damages:
- II. Be limited in the case of a breach of promise to marry to such damage, if any, to the estate of that person as flows from the breach of promise to marry:
- III. Be calculated, where the death of that person has been caused by the act or omission which gives rise to the cause of action, 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:
- IV. Not include any damages for the pain or suffering of that person for any bodily or mental harm suffered by him or for the curtailment of his expectation of life.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before, or at the same time as, the damage was suffered, the cause of action which would have subsisted against him if he had died after the damage was suffered, shall be deemed to have subsisted against him before he died.

(5) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless—

- I. Proceedings against him in respect of that cause of action were pending at the date of his death: or

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II. The cause of action arose not earlier than twelve months before the date of his death and proceedings are taken not later than six months, or such extended time as a judge may allow, after the date of the grant of probate of his will, or letters of administration, to his personal representative. A.D. 1943.

(6) A judge, on application, may extend the period of six months prescribed by paragraph II. of subsection (5) hereof for such further period as the justice of the case may require, and such application may be made although the said period of six months has expired.

(7) A personal representative may distrain for arrears of a rent charge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rent charge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(8) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living, and such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

I. Within six months after the termination of the lease or tenancy: and

II. During the continuance of the possession of the lessee or tenant from whom the arrears were due—

and the statutory enactments relating to distress for rent shall apply to any distress made pursuant to this subsection.

(9) The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the *Fatal Accidents Act 1934*, 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 Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.”.

