Short title and extent.

4.—(1) This Act may be cited as the Law Reform (Damages and Solatium) (Scotland) Act, 1962.

(2) This Act shall apply to Scotland only.

CHAPTER 43

Carriage by Air (Supplementary Provisions) Act, 1962

ARRANGEMENT OF SECTIONS

Section

1. Supplementary Convention to have force of law.
2. Interpretation of Supplementary Convention.
3. Application of provisions of Acts of 1961 and 1932.
4. Interim protection for carriers' servants and agents.
5. Application to British possessions, etc., and to carriage by air not governed by Supplementary Convention.
6. Application to Crown.
7. Short title, commencement and saving.

SCHEDULE—Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier.

An Act to give effect to the Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier; and for connected purposes. [19th July, 1962]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Supplementary Convention to have force of law.

1.—(1) The provisions of the Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, as set out in the Schedule to this Act, shall, so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees, and other persons, and subject to the provisions of this Act, have the force of law in the United Kingdom in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

(2) If there is any inconsistency between the text in English in Part I of the Schedule to this Act and the text in French in Part II of that Schedule, the text in French shall prevail.

Interpretation of Supplementary Convention. 9 & 10 Eliz. 2. c. 27. 22 & 23 Geo. 5. c. 36.

2.—(1) In the Schedule to this Act " the Warsaw Convention " means—

(*a*) before the day on which section one of the Carriage by Air Act, 1961, comes into force, the Convention set out in the First Schedule to the Carriage by Air Act, 1932, and

(*b*) on and after that day, the Convention set out in the First Schedule to the said Act of 1961,

but, in relation to rights or liabilities arising out of an occurrence before that day, " the Warsaw Convention " shall continue to have the same meaning as before that day.

(2) In Articles VII and VIII in the Schedule to this Act " court " includes (in an arbitration allowed by the Conventions referred to in the foregoing subsection or by Article IX, 3 in the Schedule to this Act) an arbitrator.

(3) In the application to Scotland of the Schedule to this Act and of the foregoing provisions of this section, for references to an arbitrator and a plaintiff there shall be substituted respectively references to an arbiter and a pursuer.

Application of provisions of Acts of 1961 and 1932.

3.—(1) In paragraph (*a*) of subsection (1) and in subsections (2) and (3) of section four of the said Act of 1961 (which explain the limitations on liability in Article 22 in the First Schedule to that Act and enable a court to make appropriate orders and awards to give effect to those limitations) references to the said Article 22 shall include, subject to any necessary modifications, references to Article VI in the Schedule to this Act.

(2) In section five of the said Act of 1961 (which limits the time for bringing proceedings against a carrier's servant or agent and to obtain contribution from a carrier) references to a carrier include references to an actual carrier as defined in paragraph (*c*) of Article I in the Schedule to this Act as well as to a contracting carrier as defined in paragraph (*b*) of that Article.

(3) In section eight of the said Act of 1961 (which relates to actions against States brought in the United Kingdom in accordance with Article 28 in the First Schedule to that Act) and in section two of the said Act of 1932 (which contains corresponding provisions) the reference to Article 28 shall include a reference to Article VIII in the Schedule to this Act.

Interim protection for carriers' servants and agents.

4. Article V in the Schedule to this Act, and so much of Article VI in that Schedule as limits the aggregate amount which can be recovered from a carrier and his servants and agents, shall, in relation to rights or liabilities arising out of an occurrence before the day on which Article 25A in the First Schedule to the

said Act of 1961 (to which those provisions are supplementary) comes into force, apply not only in relation to carriage performed by an actual carrier and to the persons mentioned in those provisions but also in relation to any other carriage governed by the Convention set out in the First Schedule to the said Act of 1932 and to any carrier under that Convention and his servants and agents.

Application to British possessions, etc., and to carriage by air not governed by Supplementary Convention.

5.—(1) Section nine of the said Act of 1961 (which enables Her Majesty to extend that Act to British possessions and other territories) shall (except so far as it relates to United Kingdom trust territories) apply to this Act as it applies to that Act, and an order under that section may relate to both that Act and this Act.

(2) Section ten of the said Act of 1961 (which enables Her Majesty to apply the First Schedule and other provisions of that Act to carriage by air which is not governed by the Convention set out in that Schedule) shall apply to the Schedule and other provisions of this Act as it applies to that Act, and an order under that section may relate to both that Act and this Act.

(3) Before the day on which section one of the said Act of 1961 comes into force, in subsections (1) and (2) of this section the references to sections nine and ten of the said Act of 1961 shall be read respectively, subject to any necessary modifications, as references to sections three and four of the said Act of 1932 (which contain corresponding provisions).

(4) This section shall come into force on the passing of this Act.

Application to Crown.

6.—(1) This Act shall bind the Crown.

(2) This section shall not have effect before the day on which section one of the said Act of 1961 comes into force.

Short title, commencement and saving.

7.—(1) This Act may be cited as the Carriage by Air (Supplementary Provisions) Act, 1962.

(2) Except as otherwise provided, this Act shall come into force on such day as Her Majesty may by Order in Council certify to be the day on which the Convention in the Schedule to this Act comes into force as regards the United Kingdom.

(3) This Act shall not apply so as to affect rights or liabilities arising out of an occurrence before the day mentioned in the last foregoing subsection; and nothing in this section shall prevent any provision of this Act having effect before that day by virtue of an order under subsection (2) of section five of this Act.

SCHEDULE

Section 1.

PART I

THE ENGLISH TEXT

CONVENTION

SUPPLEMENTARY TO THE WARSAW CONVENTION, FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER

ARTICLE I

In this Convention:

(*a*) [*This paragraph is not reproduced. It defines "Warsaw Convention."*]

(*b*) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

(*c*) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (*b*) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

ARTICLE II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article I, paragraph (*b*), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

ARTICLE III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

SCH.

ARTICLE IV

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

ARTICLE V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

ARTICLE VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

ARTICLE VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

ARTICLE VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

ARTICLE IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.

SCH.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisidictions referred to in Article VIII.

ARTICLE X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

[*Articles* XI *to* XVIII *and the concluding words of the Convention are not reproduced. They deal with the coming into force of the Convention and provide that in the case of inconsistency the text in French shall prevail.*]

PART II

THE FRENCH TEXT

CONVENTION

COMPLEMENTAIRE A LA CONVENTION DE VARSOVIE, POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES AU TRANSPORT AERIEN INTERNATIONAL EFFECTUE PAR UNE PERSONNE AUTRE QUE LE TRANSPORTEUR CONTRACTUEL.

ARTICLE PREMIER

Dans la présente Convention:

(*a*) . . . . . .

(*b*) " transporteur contractuel " signifie une personne partie à un contrat de transport régi par la Convention de Varsovie et conclu avec un passager ou un expéditeur ou avec une personne agissant pour le compte du passager ou de l'expéditeur;

(*c*) " transporteur de fait " signifie une personne, autre que le transporteur contractuel, qui, en vertu d'une autorisation donnée par le transporteur contractuel, effectue tout ou partie du transport prévu à l'alinéa (*b*) mais n'est pas, en ce qui concerne cette partie, un transporteur successif au sens de la Convention de Varsovie. Cette autorisation est présumée, sauf preuve contraire.

ARTICLE II

Sauf disposition contraire de la présente Convention, si un transporteur de fait effectue tout ou partie du transport qui, conformément au contrat visé à l'article premier, alinéa (*b*), est régi par la

SCH. Convention de Varsovie, le transporteur contractuel et le transporteur de fait sont soumis aux règles de la Convention de Varsovie, le premier pour la totalité du transport envisagé dans le contrat, le second seulement pour le transport qu'il effectue.

ARTICLE III

1. Les actes et omissions du transporteur de fait ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur contractuel.

2. Les actes et omissions du transporteur contractuel ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur de fait. Toutefois, aucun de ces actes ou omissions ne pourra soumettre le transporteur de fait à une responsabilité dépassant les limites prévues à l'article 22 de la Convention de Varsovie. Aucun accord spécial aux termes duquel le transporteur contractuel assume des obligations que n'impose pas la Convention de Varsovie, aucune renonciation à des droits prévus par ladite Convention ou aucune déclaration spéciale d'intérêt à la livraison, visée à l'article 22 de ladite Convention, n'auront d'effet à l'égard du transporteur de fait, sauf consentement de ce dernier.

ARTICLE IV

Les ordres ou protestations à notifier au transporteur, en application de la Convention de Varsovie, ont le même effet qu'ils soient adressés au transporteur contractuel ou au transporteur de fait. Toutefois, les ordres visés à l'article 12 de la Convention de Varsovie n'ont d'effet que s'ils sont adressés au transporteur contractuel.

ARTICLE V

En ce qui concerne le transport effectué par le transporteur de fait, tout préposé de ce transporteur ou du transporteur contractuel, s'il prouve qu'il a agi dans l'exercice de ses fonctions, peut se prévaloir des limites de responsabilité applicables, en vertu de la présente Convention, au transporteur dont il est préposé, sauf s'il est prouvé qu'il a agi de telle façon que les limites de responsabilité ne puissent être invoquées aux termes de la Convention de Varsovie.

ARTICLE VI

En ce qui concerne le transport effectué par le transporteur de fait, le montant total de la réparation qui peut être obtenu de ce transporteur, du transporteur contractuel et de leurs préposés quand ils ont agi dans l'exercice de leurs fonctions, ne peut pas dépasser l'indemnité la plus élevée qui peut être mise à charge soit du transporteur contractuel, soit du transporteur de fait, en vertu de la présente Convention, sous réserve qu'aucune des personnes mentionnées dans le présent article ne puisse être tenue pour responsable au delà de la limite qui lui est applicable.

SCH.

ARTICLE VII

Toute action en responsabilité, relative au transport effectuée par le transporteur de fait, peut être intentée, au choix du demandeur, contre ce transporteur ou le transporteur contractuel ou contre l'un et l'autre, conjointement ou séparément. Si l'action est intentée contre l'un seulement de ces transporteurs, ledit transporteur aura le droit d'appeler l'autre transporteur en intervention devant le tribunal saisi, les effets de cette intervention ainsi que la procédure qui lui est applicable étant réglés par la loi de ce tribunal.

ARTICLE VIII

Toute action en responsabilité, prévue à l'article VII de la présente Convention, doit être portée, au choix du demandeur, soit devant l'un des tribunaux où une action peut être intentée au transporteur contractuel, conformément à l'article 28 de la Convention de Varsovie, soit devant le tribunal du domicile du transporteur de fait ou du siège principal de son exploitation.

ARTICLE IX

1. Toute clause tendant à exonérer le transporteur contractuel ou le transporteur de fait de leur responsabilité en vertu de la présente Convention ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

2. En ce qui concerne le transport effectué par le transporteur de fait, le paragraphe précédent ne s'applique pas aux clauses concernant la perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées.

3. Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article VIII.

ARTICLE X

Sous réserve de l'article VII, aucune disposition de la présente Convention ne peut être interprétée comme affectant les droits et obligations existant entre les deux transporteurs.

CHAPTER 44

Finance Act, 1962

ARRANGEMENT OF SECTIONS

PART I

CUSTOMS, EXCISE AND PURCHASE TAX

Section
1. Surcharge under Finance Act, 1961, s. 9, and related changes in rates of revenue duties.
2. Lower rates of Customs duties on E.F.T.A. goods.