

CHAPTER 197

CROWN PROCEEDINGS

1955-5

This Act came into operation on 23rd February, 1955.

Amended by:

1961-21

1967/168

1981-55

1961-54

1980-61

1995-17

1964-12

1981-19

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

1997

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 197

**CROWN PROCEEDINGS
1955-5**

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SCHEDULE

Proceedings Abolished by this Act

**BARBADOS****CROWN PROCEEDINGS
1955-5**

An Act to amend the law relating to the civil liabilities and rights of the Crown and to civil proceedings by and against the Crown, to amend the law relating to the civil liabilities of persons other than the Crown in certain cases involving the affairs or property of the Crown and for purposes connected with the matters aforesaid.

[Commencement: 23rd February, 1955]

**PART I
PRELIMINARY****Short title**

1. This Act may be cited as the *Crown Proceedings Act*.

Interpretation

- 2.(1) For the purposes of this Act, the expression “agent” when used in relation to the Crown includes an independent contractor employed by the Crown;

“civil proceedings” includes proceedings in the Supreme Court or a magistrate’s court sitting in the exercise of his civil jurisdiction for the recovery of fines or penalties but shall not include proceedings in Barbados corresponding to proceedings on the Crown side of the Queen’s Bench Division in the United Kingdom;

“Her Majesty’s aircraft” does not include aircraft belonging to Her Majesty otherwise than in right of Her government of Barbados;

[1967/168]

“Her Majesty’s ships” means ships belonging to the Government of Barbados;

[1981-19]

“Officer”, in relation to the Crown, includes any servant of Her Majesty in right of Her government of Barbados and accordingly (but without prejudice to the generality of the foregoing provision) includes the Governor-General and a Minister of the Crown;

“order” includes a judgment, decree, rule, award or declaration;

“prescribed” means prescribed by rules of court;

“proceedings against the Crown” includes a claim by way of set-off or counter-claim raised in proceedings by the Crown;

“ship” has the meaning given it by section 2(1)(v) of the *Shipping Act*, Cap. 296;

“statutory duty” means any duty imposed by or under any Act or other enactment having effect in Barbados.

(2) Any reference in this Act to this Act shall include a reference to any rules of court made for the purposes of this Act.

(3) Any reference in Parts IV or V to civil proceedings by or against the Crown or to civil proceedings to which the Crown is a party shall be construed as including a reference to civil proceedings to which the Attorney-General or any Government department, or any officer of the Crown as such, is a party: but the Crown shall not for the purposes of Parts IV or V be deemed to be a party to any

proceedings by reason only that they are brought by the Attorney-General upon the relation of some other person.

PART II SUBSTANTIVE LAW

Right to sue the Crown

3. Where any person has a claim against the Crown and, where, before the 23rd February, 1955* the claim might have been enforced, subject to the grant of the Governor's *fiat*, by petition of right or might have been enforced by a proceeding provided by any statutory provision repealed by this Act, then, subject to this Act, the claim may be enforced as of right and without the *fiat* of the Governor-General, by proceedings taken against the Crown for that purpose in accordance with this Act.

**[Being the date of commencement of this Act.]*

Liability of the Crown in tort

4.(1) Subject to this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject

- (a) in respect of torts committed by its servants or agents;
- (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property.

(1A) No proceedings shall lie against the Crown by virtue of paragraph (a) of subsection (1) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that servant or agent or his estate.

(1B) Nothing in this section shall extend so as to impose any liability in respect of ships and docks owned or under the control of the Crown.

(2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

(3) Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by statute and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that department or officer, apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.

(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or any responsibilities which he has in connection with the execution of judicial process.

(6) No proceedings shall lie against the Crown by virtue of this section in respect of any act, neglect or default of any officer of the Crown, unless that officer has been directly or indirectly appointed by the Crown and was at the material time paid in respect of his duties as an officer of the Crown wholly out of the Consolidated Fund or was at the material time holding an office in respect

of which the Accountant-General certifies that the holder thereof would normally be so paid.

Provisions as to industrial property

5.(1) Where any servant or agent of the Crown infringes a patent or infringes a registered trade mark or infringes any copyright, and the infringement is committed with the authority of the Crown, then, subject to this Act, civil proceedings in respect of the infringement shall lie against the Crown.

(2) Nothing in subsection (1) or in any other provision of this Act shall affect the rights of any Government department under section 18 of the *Patents Act*, Cap. 314.

[1981-55]

(3) Save as expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of a patent, in respect of the infringement of a registered trade mark, or in respect of the infringement of any copyright.

Application of law as to indemnity, contribution

6.(1) Where the Crown is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of the liability to which it is so subject as if the Crown were a private person of full age and capacity.

(2) Without prejudice to the general effect of section 3, the *Contributory Negligence Act*, Cap. 195 (which amends the law relating to contributory negligence) shall bind the Crown.

Liability in connection with postal packets

7.(1) Subject as hereinafter provided, no proceedings in tort shall lie against the Crown for anything done or omitted to be done in relation to a postal packet by any person while employed as a servant or agent of the Crown, nor shall any

officer of the Crown be subject, except at the suit of the Crown, to any civil liability for any matters aforesaid.

(2) Proceedings shall lie against the Crown under this subsection in respect of loss of or damage to a registered inland postal packet, in so far as the loss or damage is due to any wrongful act done or any neglect or default committed by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet.

(2A) The amount recoverable in any proceedings under subsection (2)

- (a) shall not exceed the market value of this packet in question (excluding the market value of any message or information which it bears) at the time when the cause of action arises; and
- (b) shall not, in any event, exceed the maximum amount which, under the *Post Office Act, Cap. 27A* or regulations made thereunder, is available for compensating the persons aggrieved having regard to the fee paid in respect of the registration of the packet.

(2B) The Crown shall not be liable under subsection (2) in respect of any packet unless such conditions as are prescribed by the *Post Office Act, Cap. 27A* or regulations made thereunder in relation to registered inland postal packets have been complied with in relation to that packet.

(3) For the purposes of any proceedings under subsection (2) it shall be presumed, until the contrary is shown on behalf of the Crown, that the loss of or damage to the packet was due to some wrongful act done, or some neglect or default committed, by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet.

(4) No relief shall be available under subsection (2) except upon a claim by the sender or the addressee of the packet in question, and the sender or addressee of the packet shall be entitled to claim any relief available under subsection (2) in respect of the packet, whether or not he is the person damnified by the injury

complained of, and to give a good discharge in respect of all claims in respect of the packet under subsection (2).

(4A) Where the court is satisfied, upon an application by any person who is not the sender or addressee of the packet, that the sender and the addressee are unable or unwilling to enforce their remedies in respect of the packet under subsection (2), the court may, upon such terms as the security for costs and otherwise as the court thinks just, allow that other person to bring proceedings under subsection (2) in the name of the sender or the addressee of the packet.

(5) Any reference in subsection (4A) to the sender or addressee of the packet includes a reference to his personal representatives.

(6) Where by virtue of subsection (4A) any person recovers any money or property which, apart from that subsection, would have been recoverable by some other person, the money or property so recovered shall be held on trust for that person.

(7) Post Office Regulations may be made for prescribing the conditions to be observed for the purposes of this section in relation to registered inland postal packets.

(8) For the purposes of this section, the expression—

“inland postal packet” means a postal packet which is posted in the Island for delivery at any place in the Island to the person to whom it is addressed;

“postal packet” has, subject as hereinafter provided, the same meaning as in the *Post Office Act, Cap. 27*;

“Post Office Regulations” has the same meaning as in the Post Office Act;

“sender”, in relation to a postal packet, has such meaning as may be assigned to it by Post Office Regulations.

(9) Any reference in this section to a postal packet shall be construed as including a reference to the contents of such a packet.

Provisions relating to the armed forces

8.(1) Nothing done or omitted to be done by a member of the armed forces of the Crown while on duty as such shall subject either him or the Crown to liability in tort for causing the death of another person or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Crown, if—

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown; and
- (b) the Governor-General certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to a gratuity or pension under any enactment relating to the disablement or death of members of the force of which he is a member.

Subsection (1) shall not exempt a member of the said forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

(3) No proceedings in tort shall lie against the Crown for death or personal injury due to anything suffered by a member of the armed forces of the Crown, if—

- (a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid or in consequence of the nature or condition of any equipment or supplies used for the purpose of those forces; and
- (b) the Governor-General certifies as mentioned in subsection (1),

nor shall any act or omission of an officer of the Crown subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due

to anything suffered by a member of the armed forces of the Crown being a thing as to which the conditions aforesaid are satisfied.

- (4) The Governor-General, if satisfied that it is the fact—
- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown; or
 - (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces,

may issue a certificate certifying that to be the fact, and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.

Saving prerogatives of the Crown and statutory rights

9.(1) Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of the prerogative of the Crown or any powers or authorities conferred on the Crown under any Act or any Act of the United Kingdom Parliament and, in particular, nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the Crown whether in time of peace or of war for the purpose of the defence of the realm or of training, or maintaining the efficiency of, any of the armed forces of the Crown.

(2) Where, in any proceedings under this Act, it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Crown, the Governor-General may, if satisfied that the act or omission was necessary for any such purpose as is mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose, and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

PART III
JURISDICTION AND PROCEDURE

Civil proceedings in the Supreme Court

10. Subject to this Act, all such civil proceedings by or against the Crown as are mentioned in the Schedule are hereby abolished, and all civil proceedings by or against the Crown in the Supreme Court, shall be instituted and proceeded with in accordance with rules of court and not otherwise.

[1967/168]

Applications to Supreme Court in certain revenue matters

11.(1) Subject to and in accordance with rules of court, the Crown may apply to the Supreme Court—

- (a) for the furnishing of information required to be furnished by any person under the enactments relating to death duties, including estate and succession duties;
- (b) for the delivery of accounts and payment of duty under the said enactments by persons accountable for or chargeable with such duty and by persons who have taken possession of and administered the estates of deceased persons without obtaining probate or letters of administration.

(2) Subject to and in accordance with rules of court, the Crown may apply to the Supreme Court—

- (a) for the payment of duty under the enactments relating to excise duties;
- (b) for the delivery of any accounts required to be delivered or the furnishing of any information required to be furnished by the enactments relating to excise duties or by any regulations relating to such duties.

(3) For the purposes of subsection (2), excise duties shall include any duty or tax imposed by or under the *Barbados Turf Club (Imposition of Duty) Act*, Cap. 60, the *Entertainment Tax Act*, Cap. 69, the *Package Tax Act*, Cap. 80 or the *Brewery Act*, Cap. 326.

Civil proceedings in a magistrate's court

12.(1) Subject to this Act and to any enactment limiting the jurisdiction of a magistrate's court (whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise), any civil proceedings by or against the Crown may be instituted in a magistrate's court.

(2) Any proceedings by or against the Crown in a magistrate's court shall be instituted in accordance with the rules of court and not otherwise.

[1961-54]

Interpleader

13. The Crown may obtain relief by way of interpleader proceedings and may be made a party to such proceedings in the same manner in which a private person may obtain relief by way of such proceedings or be made a party thereto and may be made a party to such proceedings notwithstanding that the application for relief is made by the Chief Marshal or other like officer, and all rules of court relating to interpleader proceedings shall, subject to this Act, have effect accordingly.

Parties to proceedings

14.(1) Civil proceedings by the Crown may be instituted by the Attorney-General.

(2) Civil proceedings against the Crown shall be instituted against the Attorney-General.

(3) No proceedings instituted in accordance with this Part by or against the Attorney-General shall abate or be affected by any change in the person holding the office of Attorney-General.

Service of documents

15. All documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall be served on the Attorney-General.

Removal and transfer of proceedings

16.(1) Where in a case where proceedings are instituted against the Crown in a magistrate's court an application in that behalf is made by the Crown to the High Court and there is produced to the High Court a certificate of the Attorney-General to the effect that the proceedings may involve an important question of law or may be decisive of other cases arising out of the same matter or are for other reasons more fit to be tried in the High Court, the proceedings shall be removed to the High Court.

(2) Where any proceedings have been removed to the High Court on the production of such a certificate, and it appears to the High Court that the removal has occasioned additional expense to the person by whom the proceedings are brought, the High Court may take account of the additional expense so occasioned in exercising its powers in regard to the award of costs.

(3) Without prejudice to the rights of the Crown under the preceding provisions of this section, all rules of law and enactments relating to the removal or transfer of proceedings from one court to another shall apply to proceedings against the Crown:

Provided that an order for the transfer to a magistrate's court of any proceedings against the Crown in the High Court shall not be made without the consent of the Crown.

[1961-54]

Nature of relief

17.(1) In any civil proceedings or arbitration by or against the Crown, the court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between private persons, and otherwise to give such appropriate relief as the case may require:

Provided that—

- (a) where in any proceedings against the Crown any such relief is sought as might in proceedings between private persons be granted by an injunction or specific performance, the court shall not grant an injunction or make an order for specific performance but may in lieu thereof make an order declaratory of the rights of the parties; and
 - (b) in any proceedings against the Crown for the recovery of land or other property, the court shall not make an order for the recovery of the land or the delivery of the property but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.
- (2) The court shall not in any civil proceedings grant an injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

Costs in civil proceedings to which the Crown is a party

18.(1) In any civil proceedings or arbitration to which the Crown is a party, the costs of and incidental to the proceedings shall, subject to this section, be awarded in the same manner and on the same principles as in cases between private persons and the court or arbitrator shall have power to make an order for the payment of costs by or to the Crown accordingly.

(2) In the case of proceedings to which by reason of any enactment or otherwise the Attorney-General, a Government department or any officer of the

Crown as such is authorised to be made a party, the court or arbitrator shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney-General, the department or officer of the Crown appears and may in the exercise of its or his discretion order any other party to the proceedings to pay the costs of the Attorney-General, department or officer, whatever may be the result of the proceedings.

(3) Nothing in this section shall affect the power of the court or arbitrator to order, or any enactment providing for, the payment of costs out of any particular fund or property or any enactment expressly relieving any department or officer of the Crown of the liability to pay costs.

Appeals and stay of execution

19. Subject to this Act, all enactments and rules of court relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Crown as they apply to proceedings between private persons.

[1967/168]

Scope of Part III

20.(1) Subject to this section, any reference in this Part to civil proceedings by the Crown shall be construed as a reference to the following proceedings only—

- (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 1 of the Schedule;
- (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by an action at the suit of any Government department or any officer of the Crown as such;

- (c) all such proceedings as the Crown is entitled to bring by virtue of this Act;

and the expression “civil proceedings by or against the Crown” shall be construed accordingly.

(2) Subject to this section, any reference in this Part to civil proceedings against the Crown shall be construed as a reference to the following proceedings only—

- (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 2 of the Schedule;
- (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by an action against the Attorney-General, any Government department or any officer of the Crown as such; and
- (c) all such proceedings as any person is entitled to bring against the Crown by virtue of this Act;

and the expression “civil proceedings by and against the Crown” shall be construed accordingly.

(3) Notwithstanding anything in subsections (1) and (2), this Part shall not have effect with respect to any of the following proceedings, that is to say—

- (a) proceedings brought by the Attorney-General on the relation of some other person;
- (b) proceedings by or against the Public Trustee;
- (c) proceedings by or against the Chief Marshal;
- (d) proceedings under any law relating to charitable trusts by or against the Attorney-General.

PART IV
JUDGMENT AND EXECUTION

Interest on debts, damages and costs

21.(1) The provisions of any law relating to the payment of interest on judgment debts in proceedings between private persons shall apply to judgment debts due from or to the Crown.

(2) When any costs are awarded to or against the Crown in the Supreme Court, interest shall be payable upon those costs unless the Court otherwise orders, and any interest so payable shall be at the same rate as that at which interest is payable upon judgment debts due from or to the Crown.

(3) The provisions of any law empowering a court of record to award interest on debts and damages shall apply to judgments given in proceedings by or against the Crown.

Satisfaction of orders against the Crown

22.(1) Where in any civil proceedings by or against the Crown or in any proceedings in any court which in England would be proceedings on the criminal side of the Queen's Bench Division or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made by any court in favour of any person against the Crown or against a Government department or against an officer of the Crown as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the person for the time being named in the record as the attorney-at-law, or as the person acting as attorney-at-law, for the Crown or for the Government department or officer concerned.

(3) Where the order provides for the payment of any money by way of damages or otherwise or of any costs, the certificate shall state the amount so payable, and shall be a charge on the Consolidated Fund and shall be paid to the person entitled or to his attorney-at-law the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon.

[1967/168; 1995-17]

(4) Notwithstanding subsection (3), the court by which such order is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended and, if the certificate has not been issued, may order any such directions to be inserted therein.

(5) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs, and no person shall be individually liable under any order for the payment by the Crown or any Government department or any officer of the Crown as such of any such money or costs.

Settlements out of court

22A. Where the Crown accepts liability for any injury or damage caused to or suffered by any person or property as a result of any act or omission by any servant or agent of the Crown, any amount, including costs that the Crown agrees to pay such person by way of compensation shall be a charge on the Consolidated Fund and shall be paid to the person entitled or to his attorney-at-law.

[1995-17]

Execution by the Crown

23.(1) Subject to this Act, any order made in favour of the Crown against any person in any civil proceedings to which the Crown is a party may be enforced in the same manner as an order made in an action between private persons and not otherwise.

(2) Sections 2 and 3 of the *Debtors Act*, Cap. 198 (which provide respectively for the abolition of imprisonment for debt and for saving the power of committal in cases of small debts) shall apply to sums of money payable and debts due to the Crown.

(3) Nothing in this section shall affect any procedure which immediately before the 23rd February, 1955 was available for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the recovery of any fine or penalty or the forfeiture or condemnation of any goods or the forfeiture of any ship or any share in a ship.

Attachment of moneys payable by the Crown

24.(1) Where any money is payable by the Crown to some person who, under any order of any court, is liable to pay any money to any other person and that other person would, if the money so payable by the Crown were money payable by a private person, be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due or an order for the appointment of a sequestrator or receiver to receive the money on his behalf, the High Court may, subject to this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person or to the sequestrator or receiver.

(2) No such order shall be made in respect of

- (a) any wages or salary payable to any officer of the Crown as such; or
- (b) any money which is subject to the provisions of any enactments prohibiting or restricting assignment or charging or taking in execution.

[1978-10]

(3) The provisions of subsection (1) shall, so far as they relate to forms of relief falling within the jurisdiction of a magistrates' court, have effect in relation to such court as they have effect in relation to the High Court, but with the substitution of a reference to the *Magistrates' Courts (Civil Procedure) Rules, 1958* for any references in the subsection to rules of court.

[1961-54; 1958/51]

[1961-54; 1958/51]

PART V MISCELLANEOUS

Discovery

25.(1) Subject to and in accordance with the provisions of any Act or of any rules regulating the practice and procedure in the Supreme Court or a magistrate's court in exercise of his civil jurisdiction—

- (a) in any civil proceedings in any court to which the Crown is a party, the Crown may be required by the court to make discovery of documents and produce documents for inspection; and
- (b) in any such proceedings as aforesaid, the Crown may be required by the court to answer interrogatories:

Provided that this section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(2) Any order of the court made under the powers conferred by paragraph (b) of subsection (1) shall direct by what officer of the Crown the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection (1), any rules made for the purposes of this section shall be such as to secure that the existence of a document

will not be disclosed if, in the opinion of the Governor-General, it would be injurious to the public interest to disclose the existence thereof.

Exclusion of proceedings *in rem* against the Crown

26.(1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the Crown or the arrest, detention or sale of any ship or aircraft belonging to the Crown or of any cargo or other property belonging to the Crown or given to any person any lien on any such ship, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in any court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Crown to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Crown, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Crown in accordance with this Act or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances and that the proceedings shall continue accordingly.

(3) Any such order may be made upon such terms, if any, as the court thinks just, and where the court makes any such order it may make such consequential orders as the court thinks expedient.

Limitation of actions

27. Nothing in this Act shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against any public officer or public authority.

Application to the Crown of certain statutory provisions

28.(1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of any Act although not named therein, and it is hereby declared that in any civil proceedings against the Crown the provisions of any Act which

could, if proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provisions to the contrary, be so relied upon by the Crown.

(2) Section 14 of the *Debtors Act*, Cap. 198 (which empowers the court in certain circumstances to order the arrest of a defendant about to quit the Island) shall, with any necessary modifications, apply to civil proceedings brought by the Crown.

No abatement on demise of Crown

29. No claim by or against the Crown, and no proceedings for the enforcement of any such claim, shall abate or be affected by the demise of the Crown.

Abolition of certain writs

30. No writ of extent or *diem clausit extremum* shall issue after the commencement of this Act.

Rules of court

31.(1) Any power to make rules regulating the practice or procedure in the Supreme Court or a magistrate's court in exercise of his civil jurisdiction shall include power to make rules for the purpose of giving effect to this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between private persons.

(2) Provision shall be made by such rules with respect to the following matters—

- (a) for providing for service of process, or notice thereof, in the case of proceedings by the Crown against persons, whether Commonwealth citizens or not, who are not resident in the Island;

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- (b) for securing that, when any civil proceedings are brought against the Crown in accordance with this Act, the plaintiff shall, before the Crown is required to take any step in the proceedings, provide the Crown with such information as the Crown may reasonably require as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned;
- (c) for providing that in the case of proceedings against the Crown the plaintiff shall not enter judgment against the Crown in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown;
- (d) for exempting proceedings brought against the Crown from the operation of any rule providing for summary judgment without trial and for enabling any such proceedings to be put in proper cases into any special list which may be kept for the trial of short causes in which leave to defend is given under any such rule of court as aforesaid;
- (e) for authorising the Crown to deliver interrogatories without the leave of a court in any proceedings for the enforcement of any right for the enforcement of which proceedings by way of English information might have been taken if this Act had not been passed, so, however, that the Crown shall not be entitled to deliver any third or subsequent interrogatories without the leave of the court;
- (f) for enabling evidence to be taken on commission in proceedings by or against the Crown;
- (g) for providing—
 - (i) that a person shall not be entitled to avail himself of any set-off or counter-claim in any proceedings by the Crown for the recovery of taxes, duties or penalties or to avail himself in proceedings of any other nature by the Crown of any set-off or counter-claim arising out of a right or claim to repayment in respect of any taxes, duties or penalties;

- (ii) that a person shall not be entitled without the leave of the court to avail himself of any set-off or counter-claim in any proceedings by the Crown;
- (iii) that the Crown shall not be entitled to avail itself of any set-off or counter-claim without the leave of the court.

(3) Provision may be made by rules of court for regulating any appeals to the Divisional Court or Court of Appeal whether by way of case stated or otherwise under enactments relating to the revenue, and any rules made under this subsection may revoke any enactments or rules in force immediately before the commencement of this Act so far as they regulate any such appeals, and may make provision for any matters for which provision was made by any enactments or rules so in force.

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Financial provisions

32.(1) Subject as otherwise provided in this Act, any expenditure incurred by or on behalf of the Crown by reason of the passing of this Act shall be defrayed out of moneys provided by Parliament.

(2) Any sums payable to the Crown shall be paid into the Consolidated Fund.

Savings

33.(1) Nothing in this Act shall apply to proceedings by or against, or authorise proceedings in tort to be brought against, Her Majesty in Her private capacity.

(2) Except as therein otherwise expressly provided, nothing in this Act shall—

- (a) affect the law relating to prize salvage, or apply to proceedings in cases or matters within the jurisdiction of any court as a prize court or to any criminal proceedings; or

- (b) authorise proceedings to be taken against the Crown under or in accordance with this Act in respect of any alleged liability of the Crown arising otherwise than in respect of its right of government of this Island or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or
 - (c) affect any proceedings by the Crown otherwise than in right of its government of this Island; or
 - (d) subject the Crown to any greater liabilities in respect of the acts or omissions of any contractor employed by the Crown than those to which the Crown would be subject in respect of such acts or omissions if it were a private person; or
 - (e) subject the Crown, in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity; or
 - (f) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any statutory provision; or
 - (g) affect any right of the Crown to demand a trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits; or
 - (h) affect any liability imposed on the Public Trustee or on the Consolidated Fund by the *Public Trustee Act*, Cap. 248.
- (3) A certificate of the Governor-General—
- (a) to the effect that any alleged liability of the Crown arises otherwise than in respect of its right of government of this Island;
 - (b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of its government of this Island,
- shall, for the purposes of this Act, be conclusive as to the matter so certified.

(4) Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or the intentions of the Crown, the Crown shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but the provisions of this subsection shall be without prejudice to the liabilities of the Crown under this Act in respect of any period after the Crown or any person acting therefor has in fact taken possession or control of any such property or entered into occupation thereof.

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(5) This Act shall not operate to limit the discretion of the court to grant relief by way of *mandamus* in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of this Act some other and further remedy is available.

SCHEDULE*(ss. 10 & 20)**Proceedings Abolished by this Act*

- 1.(1) Latin informations and English informations.
 - (2) Writs of *capias ad respondendum*, writs of *subpoena* and *respondendum* and writs of appraisement.
 - (3) Writs of *scire facias*.
 - (4) Proceedings for the determination of any issue upon a writ of extent or of *diem clausit extremum*.
- 2.(1) Proceedings against the Crown by way of petition of right.
 - (2) Proceedings against the Crown by way of *monstrans de droit*.