

CAYMAN ISLANDS

LAW 27 of 1965

[L.S.]

I assent,

J. A. CUMBER,

Administrator

22nd September, 1965.

A LAW 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.

[]

ENACTED by the Legislature of the Cayman Islands.

— This Law may be cited as the Crown Proceedings Law, 1965, and shall come into operation on a day to be appointed by the Administrator by Government Notice published in the Cayman Islands.

Short
Title and
commence-
ment

PART I — Interpretation

— (1) Any reference in this Law to the provisions of this Law shall, unless the context otherwise requires, include a reference to rules of court made for the purposes of this Law.

Interpre-
tation.

(2) In this Law, except in so far as the context otherwise requires or it is otherwise expressly provided, the following expressions

have the meanings hereby respectively assigned to them, that is to say —

"agent", when used in relation to the Crown, includes an independent contractor employed by the Crown;

"civil proceedings" does not include proceedings which in England would be taken on the Crown side of Queen's Bench Division;

"Clerk of the Court" means the officer appointed as such under section 53 of the Cayman Islands (Constitution) Order in Council, 1962;

"Court" means the Grand Court;

"Crown" means Her Majesty in right of Her Government in the Islands;

"Officer", in relation to the Crown, includes any servant of Her Majesty;

"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 counterclaim raised in proceedings by the Crown;

Cap. 421.

"rules of court" includes rules in force in the Islands under section 85 of the Cayman Islands Administration of Justice Law;

"statutory duty" means any duty imposed by or under any Law.

(3) The Crown shall not for the purposes of Parts IV and V of this Law be deemed to be a party to any proceedings by reason only that they are brought by the Clerk of the Court upon the relation of some other person.

PART II — Substantive Law

Liability of
the Crown
in tort.

3 — (1) Subject to the provisions of this Law, 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:

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

(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 the provisions of this Law, the Crown shall, in respect of failure to comply with that duty, be subject to all those liabilities or 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 liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall, in 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 responsibility.

ties 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 general revenue of the Islands, or any fund certified by the Treasurer for the purposes of this subsection or was, at the material time, holding an office in respect of which the Treasurer certifies that the holder thereof would normally be so paid:

Provisions
as to
industrial
property.

4 — (1) Where after the commencement of this Law any servant or agent of the Crown infringes a patent, or infringes a registered trade mark, or infringes any copyright (including any copyright in a design) and the infringement is committed with the authority of the Crown, then subject to the provisions of this Law, civil proceedings in respect of the infringement shall lie against the Crown.

(2) Save expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Law 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 such copyright as is mentioned in subsection (1) of this section.

Application
of law as to
indemnity,
joint and
several tort-
feasors, and
contributory
negligence.

5 — (1) Where the Crown is subject to any liability by virtue of this Part of this Law, 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 effect of subsection (1) of this section, the Law Reform (Tort-feasors) Law (which relates to proceedings against, and contribution between, joint and several tort-feasors) shall bind the Crown.

(3) Without prejudice to the general effect of section 3 of this Law the Law Reform (Contributory Negligence) Law (which amends the law relating to contributory negligence) shall bind the Crown.

— (1) It is hereby declared that the provisions of the Imperial Acts known as the Merchant Shipping Acts, 1894 to 1958, which limit the amount of the liability of the owners of docks and canals, and of harbour and conservancy authorities, apply for the purpose of limiting the liability of the Crown as the owner of any dock or canal, or as a harbour or conservancy authority, and that all the relevant provisions of the said Acts have effect in relation to the Crown accordingly.

Liability in respect of Crown docks, harbours, etc.

(2) In this section the expressions "dock", "harbour", "owner", "harbour authority" and "conservancy authority" have respectively the same meanings as they have for the purposes of section 2 of the Imperial Act known as the Merchant Shipping (Liability of Shipowners and others) Act, 1900.

Personal.

(3) In this section references to the Crown include references to any Government department and to any officer of the Crown in his capacity as such.

— (1) No proceedings in tort shall lie against the Crown for anything done or omitted to be done in relation to a postal article by any person while employed as a servant or agent of the Crown, or for anything done or omitted to be done in relation to a telephonic communication by any person while so employed; nor shall any officer of the Crown be subject, except at the suit of the Crown, to any civil liability for the matters aforesaid.

Liability in connection with postal articles.

(2) In this section the expression "postal article" includes any telegram.

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

(4) Nothing in this section shall be deemed to affect any provisions of the Post Office Law or of any regulations made thereunder in relation to the payment of compensation for the loss of or damage to a postal article.

Law 9 of 1900.

— (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

Provisions relating to the armed forces.

Civil proceedings in the Grand Court.
Schedule.

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

General

Interpleader.

12 — 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 subject 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 a bailiff or other like officer; and all rules of court relating to interpleader proceedings shall, subject to the provisions of this Law, have effect accordingly.

Parties to proceedings.

13 — (1) Civil proceedings by the Crown shall be instituted by the Clerk of the Court.

(2) Civil proceedings against the Crown shall be instituted against the Clerk of the Court.

(3) No proceedings instituted in accordance with this Part of this Law by or against the Clerk of the Court shall abate or be effected by any change in the person holding the office of Clerk of the Court.

Service of documents.

14 — 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 prescribed officer.

Nature of relief.

15 — (1) In any civil proceedings by or against the Crown the Court shall, subject to the provisions of this Law, have power to make all such orders as it has power to make in proceedings between subjects, 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 subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for

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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 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 any 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 relief against the Crown which could not have been obtained in proceedings against the Crown.

— Subject to the provisions of this Law, 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 subjects.

Appeals
and stay
of
execution.

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

Scope of
Part III.

- (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Law had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 1 of the First Schedule to this Law;
- (b) all such proceedings as the Crown is entitled to bring by virtue of this Law,

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

(2) Subject to the provisions of this section, any reference in this Part of this Law 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 Law 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 to this Law;

- (b) all such proceedings as any person is entitled to bring against the Crown by virtue of this Law,

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

(3) Notwithstanding anything in the preceding provisions of this section, the provisions of this Part of this Law shall not have effect with respect to any proceedings brought by the Clerk of the Court on the relation of some other person.

PART IV — JUDGMENTS AND EXECUTION.

Satisfaction
of orders
against the
Crown.

18 — (1) Where in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made by the Court in favour of any person against the Crown 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 solicitor, or as the person acting as solicitor, for the Crown or for the officer concerned.

(3) If 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 the appropriate Government department shall, subject as hereinafter provided, pay to the person entitled or to his

licitor the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon:

Provided that the Court by which any such order as aforesaid 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.

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

(5) This section shall apply both in relation to proceedings pending at the commencement of this Law and in relation to proceedings instituted thereafter.

— (1) Subject to the provisions of this Law, 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 subjects, and not otherwise.

**Execution
by the
Crown.**

This subsection shall apply both in relation to proceedings pending at the commencement of this Law and in relation to proceedings instituted thereafter.

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

Cap. 93.

— 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 subject, 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 Court may, subject

**Attach-
ment of
moneys
payable by
the Crown.**

to the provision of this Law 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:

Provided that no such order shall be made in respect of —

- (a) any wages or salary payable to any officer of the Crown as such;
- (b) any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution; or
- (c) any money payable by the Crown to any person on account of a deposit in the Government Savings Bank.

PART V — Miscellaneous and Supplementary

Discovery.

21 — (1) Subject to and in accordance with rules of court

- (a) in any civil proceedings 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.

An order of the Court made under the powers conferred by paragraph (b) of this subsection shall direct by what officer of the Crown the interrogatories are to be answered.

(2) Without prejudice to the proviso to subsection (1) of this section, 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 Administrator, it would be injurious to the public interest to disclose the existence thereof.

Exclusion of proceedings in rem

22 — (1) Nothing in this Law shall authorise proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale

any vessel, cargo or other property belonging to the Crown, or give any person any lien on any such vessel, cargo or other property. **against the Crown.**

(2) Where proceedings in rem have been instituted in the court against any such vessel, cargo or other property, the Court may, 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 vessel, cargo or other property did not belong to the Crown, order that proceedings shall be treated as if they were in person duly instituted against the Crown in accordance with the provisions of this Law, 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.

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.

— Nothing in this Law shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against public authorities. **Limitation of actions.**

— (1) This Law shall not prejudice the right of the Crown to the advantage of the provisions of a Law although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any Law which could, if the proceedings were between subjects, 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 provision to the contrary, be so relied upon by the Crown. **Application to the Crown of certain statutory provisions.**

(2) Section 4 of the Debtors Law (which empowers the court in certain circumstances to order the arrest of a defendant about to depart the Island) shall, with any necessary modifications, apply to civil proceedings by the Crown.

— No claim by or against the Crown, and no proceedings for the enforcement of any such claim, shall abate or be affected by the death of the Crown. **No abatement on demise of Crown.**

**Abolition
of certain
writs.**

26 — No writ or extent or of diem clausit extremum shall issue after the commencement of this Law.

Supplemental**Rules of
court.**

27 — (1) Any power to make rules of court shall include power to make rules for the purpose of giving effect to the provisions of this Law, 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 subjects.

(2) Provisions may be made by rules of court 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 British subjects or not, who are not resident in these Islands;
- (b) for securing that where any civil proceedings are brought against the Crown in accordance with the provisions of this Law 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 excepting proceedings brought against the Crown from the operation of any rule of court 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 en-

enforcement of any right for the enforcement of which proceedings by way of English information might have been taken if this Law 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 without leave of the Court;
 - (ii) that the Crown shall not be entitled to avail itself of any set-off or counter-claim without the leave of the Court;
- (h) for providing for the mode of trial where the Crown becomes a party to any civil proceedings in tort after such proceedings have commenced.

— Save as otherwise expressly provided, the provisions of this Law shall not affect proceedings by or against the Crown which have been instituted before the commencement of this Law; and for the purposes of this section proceedings against the Crown shall be deemed to have been so instituted if a statement of complaint with respect to the matter in question has been left with the Clerk of the Court to be filed before the Administrator before the commencement of this Law.

Pending
proceedings.

— (1) Any expenditure incurred by or on behalf of the Crown in consequence of the passing of this Law shall be defrayed out of money voted by the Legislature.

Financial
provisions.

(2) Any sums payable to the Crown shall be paid into general revenue.

— (1) Except as therein otherwise expressly provided, nothing in this Law shall —

Savings.

- (a) authorise proceedings to be taken against the Crown under or in accordance with this Law in respect of any alleged

liability of the Crown arising otherwise than in respect of Her Majesty's Government in these Islands, or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or

- (b) affect any proceedings by the Crown otherwise than in right of Her Majesty's Government in these Islands; or
- (c) subject the Crown to any greater liabilities in respect of the acts or omissions of any independent 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
- (d) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Law; or
- (e) affect any right of the Crown to control or otherwise intervene in proceedings affecting its rights, property or profits; or
- (f) affect any proceedings for the recovery of any taxes within the meaning of the Tax Collection Law or of any fines or penalties, or for the forfeiture and condemnation of any goods,

Law 5 of
1927.

and without prejudice to the general effect of the foregoing provisions, Part IV of this Law shall not apply to the Crown except in right of Her Majesty's Government in these Islands.

(2) A certificate of the Administrator —

- (a) to the effect that any alleged liability of the Crown arises otherwise than in respect of Her Majesty's Government in these Islands;
- (b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of Her Majesty's Government in these Islands,

shall, for the purposes of this Law, be conclusive as to the matter so certified.

(3) Where any property vest in the Crown by virtue of any rule of law which operates independently of the acts of the intentions

of the Crown, the Crown shall not by virtue of this Law 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 Law in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation hereof.

(4) This Law 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 Law, notwithstanding that by reason of the provisions of this Law, some other and further remedy is available.

SCHEDULE (Sections 11, 17)

Proceedings Abolished by this Law

- (1) Latin informations and English informations.
- (2) Writs of *capias ad respondendum*, writs of *subpoena ad 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*.
- (1) Proceedings by way of petition of right.
- (2) Proceedings by way of *monstrans de droit*.

Passed the Assembly this 1st day of July, 1965.

J. A. CUMBER,
President.

SYBIL McLAUGHLIN,
Clerk of the Legislative Assembly.

