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CHAPTER 68
CROWN PROCEEDINGS.

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.

35 of 1963
6 of 1970
E.L.A.O., 1974
7 of 1979

[Assent 20th December, 1963]

[Commencement 7th January, 1964]

1. This Act may be cited as the Crown Proceedings Act. Short title.

2. (1) Any reference in this Act to the provisions of this Act shall, unless the context otherwise requires, include a reference to rules of court from time to time in force in relation to this Act. Interpretation.

(2) In this Act, unless the context otherwise requires —

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

“civil proceedings” includes proceedings in the Supreme Court for the recovery of fines or penalties;

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

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

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

“statutory duty” means any duty imposed by or under any Act.

(3) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment, including this Act.

(4) Any reference in Part III or Part IV of this Act to civil proceedings by or against the Crown, or to civil proceedings to which the Crown is a party, shall be construed to include 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:

Provided that the Crown shall not, for the purposes of Part III or Part IV of this Act, 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 I SUBSTANTIVE LAW

Right to sue the
Crown.

3. Where any person has a claim against the Crown after the commencement of this Act, and, if this Act had not been passed, the claim might have been enforced, subject to the grant of the Governor-General’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 the provisions of 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 the provisions of this Act.

Liability of the
Crown in tort.

4. (1) Subject to the provisions of 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;

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- (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 Act 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 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 revenue of The Bahamas or was at the material time holding an office in respect of which the Minister for the time being responsible for finance certifies that the holder thereof would normally be so paid.

Provisions as to industrial property.

5. (1) Where after the commencement of this Act 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 the provisions of this Act, civil proceedings in respect of the infringement shall lie against the Crown.

(2) 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 such copyright as is mentioned in subsection (1) of this section.

Application of law as to indemnity, contribution, and contributory negligence.

6. (1) Where the Crown is subject to any liability by virtue of this Part of this Act, 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.

Ch. 75.

(2) Without prejudice to the general effect of section 3 of this Act, the Contributory Negligence Act (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 or for anything done or omitted to be done in relation to a telephonic communication by any person so employed; nor shall any officer of the Crown be subject, except at the suit of the Crown, to any civil liability for any of the matters aforesaid.

(2) Notwithstanding the provisions of section 11 of the Post Office Act, proceedings shall lie against the Crown under this subsection in respect of loss of or damage to a registered local postal packet, not being a telegram, 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: Ch. 300.

Provided that —

- (a) no proceedings shall lie under this subsection in respect of any postal packet registered before the commencement of this Act;
- (b) the amount recoverable in any proceedings under this subsection shall not exceed the market value of the packet in question (excluding the market value of any message or information which it bears) at the time when the cause of action arises;
- (c) the amount recoverable in any such proceedings shall not in any event exceed the maximum amount which, under the Post Office Act, is available for compensating the persons aggrieved having regard to the fee paid in respect of the registration of the packet; and
- (d) the Crown shall not be liable under this subsection in respect of any packet unless such conditions as are prescribed by the Post Office Act in relation to registered local postal packets have been complied with in relation to that packet.

For the purpose of any proceedings under this subsection, 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 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.

(3) No relief shall be available under subsection (2) of this section 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 the said subsection 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 the said subsection:

Provided that 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 the said subsection, the court may, upon such terms as to security for costs and otherwise as the court thinks just, allow that other person to bring proceedings under the said subsection in the name of the sender or the addressee of the packet.

Any reference in this subsection to the sender or addressee of the packet includes a reference to his personal representatives.

(4) Where by virtue of subsection (3) of this section any person recovers any money or property which, apart from that subsection, would have been recoverable by some other person, that money or property so recovered shall be held on trust for that person.

(5) In this section the expression —

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

“local postal packet” means a postal packet which is posted in The Bahamas for delivery in The Bahamas, to the person to whom it is addressed;

“sender”, in relation to a postal packet, has the same meaning as in the Post Office Act.

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

Ch. 300.

8. (1) Nothing done or omitted to be done by a member of the Defence Force 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 Defence Force if —

Provisions relating to the armed forces. 7 of 1979, 3rd Sch.

- (a) at the time that thing is suffered by that other person, he is either on duty as a member of the Defence Force 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 Defence Force; and
- (b) the Minister responsible for Pensions and Gratuities, 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 written law relating to the disablement or death of members of the Defence Force:

E.L.A.O., 1974.

Provided that this subsection shall not exempt a member of the said Defence Force 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 the Defence Force.

(2) No proceedings in tort shall lie against the Crown for death or personal injury due to anything suffered by a member of the Defence Force 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 purposes of Defence Force;
- (b) the Minister responsible for Pensions and gratuities certifies as mentioned in subparagraph (b) of subsection (1),

E.L.A.O., 1974.

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 Defence Force being a thing as to which the conditions aforesaid are satisfied.

E.L.A.O., 1974.

(3) The Minister responsible for Defence, 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 Defence Force; 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 Defence Force,

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 in respect of acts done under prerogative and statutory powers.

9. (1) Nothing in Part I of this Act 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 by any statute and, in particular, nothing in the said Part I shall extinguish or abridge any power or authorities exercisable by the Crown, whether in time of peace or war for the purposes of defence or of training or maintaining the efficiency of, any of the Defence Forces.

(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 the last preceding subsection, 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 II JURISDICTION AND PROCEDURE

Civil proceedings how instituted.

Schedule.

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

Provided that where any enactment now or at any time hereafter in force requires or permits civil proceedings to be taken in a court of a stipendiary and circuit magistrate such court shall have jurisdiction to hear and determine any such proceedings notwithstanding that the Crown is a party thereto.

(2) In this section the expression “rules of court” means, in relation to any claim against the Crown in the Supreme Court which falls within the jurisdiction of that court as a prize court, rules of court made under section 3 of the Prize Courts Act, 1894. 57 & 58 Vict.
c. 39.

11. 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. Interpleader.

12. (1) Civil proceedings by or against the Crown shall be instituted by or against the Attorney-General. Parties to
proceedings.

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

13. 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. Service of
documents.

14. In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Act, 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. Nature of relief.

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 specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

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- (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 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 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.

15. In any civil proceedings or arbitration to which the Crown is a party, the costs of and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between subjects, and the court or arbitrator shall have power to make an order for the payment of costs by or to the Crown accordingly:

Provided that —

- (a) 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; and
- (b) 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.

16. Subject to the provisions of this Act, all enactments and rules of court relating to appeals and stay of execution shall, with any necessary modification, apply to civil proceedings by or against the Crown as they apply to proceedings between subjects.

Appeals and stay of execution.

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

Scope of Part II.

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

Schedule.

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 Act 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 to this Act;
- (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

Schedule.

- (c) all such proceedings as any person is entitled to bring against the Crown by virtue of this Act.

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 Act 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 Attorney-General relating to charitable trusts.

PART III JUDGMENTS AND EXECUTION

Interest on debts,
damages and
costs.

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

(2) Where 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 to award interest on debts and damages shall apply to judgments given in proceedings by and against the Crown.

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

Satisfaction of
orders against
the Crown.

19. (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 in favour of any person against the Crown, 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 Attorney-General.

(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 Minister responsible for finance shall, subject as hereinafter provided, cause to be paid to the person entitled or to his attorney 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 such direction 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 by the Crown of any such money or costs.

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

20. (1) Subject to the provisions of 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 subjects, and not otherwise.

Execution by the
Crown.

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

Ch. 70.

(2) Sections 3 and 4 of the Debtors Act, (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.

(3) Nothing in this section shall affect any procedure which immediately before the commencement of this Act 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.

21. Where any money is payable by the Crown to some person who, under any order of 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 Supreme Court may, subject to the provisions of 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:

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 Post Office Savings Bank.

PART IV
MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

22. (1) Subject to and in accordance with rules of court — Discovery.

- (a) in any civil proceedings in the Supreme 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 a Minister of the Crown in the Government of The Bahamas, it would be injurious to the public interest to disclose the existence thereof.

23. (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 of Her Majesty's ships or aircraft, or of any cargo or other property belonging to the Crown, or give to any person any lien on any such ship, aircraft, cargo or other property.

Exclusion of proceedings *in rem* against the Crown.

(2) Where proceedings *in rem* have been instituted in the Supreme Court or the court of a stipendiary and circuit magistrate 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 the provisions of 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.

24. 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 public authorities.

Application to the Crown of certain statutory provisions.

25. (1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of any statute 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 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.

Ch. 70.

(2) Section 5 of the Debtors Act (which empowers the court in certain circumstances to order the arrest of a defendant about to quit The Bahamas) shall, with any necessary modifications, apply to civil proceedings in the Supreme Court by the Crown.

No abatement on demise of Crown.

26. 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.

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

Supplemental

28. (1) Any power to make rules of court under any law shall include power to make rules for the purpose of giving effect to the provisions of 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 subjects. Rules of court.

(2) Provision shall 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 The Bahamas;
- (b) for securing that where any civil proceedings are brought against the Crown in accordance with the provisions of 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 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 enabling evidence to be taken on commission in proceedings by or against the Crown;

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- (f) for providing —
- (i) that a person shall not be entitled to avail himself of any set-off or counterclaim 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 counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties; and
 - (ii) that the Crown, when sued in the name of the Attorney-General, shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.

(3) Provision may be made by rules of court for regulating any appeals to the Supreme Court, whether by way of case stated or otherwise, under any statute relating to the revenue, and any rules made under this subsection may revoke any written law 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 written law or rules so in force.

Pending proceedings.

29. Save as otherwise expressly provided, the provisions of this Act shall not affect proceedings by or against the Crown which have been instituted before the commencement of this Act; and for the purposes of this section proceedings against the Crown by petition of right shall be deemed to have been so instituted if a petition shall have been filed in the Supreme Court.

Financial provisions.

30. (1) Any expenditure incurred by or on behalf of the Crown in right of its Government of The Bahamas by reason of the passing of this Act shall be defrayed out of moneys provided by Parliament.

(2) Any sums payable to the Crown in right of its Government of The Bahamas by reason of the passing of this Act shall be paid into the Consolidated Fund.

Savings.

31. (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 causes or matters within the jurisdiction of the Supreme Court as a prize court or to any criminal proceedings;
- (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 Government of The Bahamas, or affect proceedings against the Crown in respect of any such alleged liability as aforesaid;
- (c) affect any proceedings by the Crown otherwise than in right of its Government of The Bahamas;
- (d) 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;
- (e) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any statute;
- (f) 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;
- (g) affect any liability imposed upon the Public Trustee or on the Government of The Bahamas by the Public Trustee Act,

6 of 1979, s. 17.

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and, without prejudice to the general effect of the foregoing provisions, Part III of this Act shall not apply to the Crown except in right of its Government of The Bahamas.

(3) A certificate of the Minister responsible for National Security —

- (a) to the effect that any alleged liability of the Crown arises otherwise than in respect of its Government of The Bahamas; or

- (b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of its Government of The Bahamas,

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 for the Crown has in fact taken possession or control of any such property, or entered into occupation thereof.

(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 the provisions of this Act some other and further remedy is available.

SCHEDULE (Sections 10 and 17)

PROCEEDINGS ABOLISHED BY THE ACT

1. (a) Latin informations and English informations.

(b) Writs of *capias* and *respondendum*, writs of *subpoena ad respondendum*, and writs of appraisements.

(c) Writs of *scire facias*.

(d) Proceedings for the determination of any issue upon a writ of extent or of *diem clausit extremum*.

(e) Proceedings by or on behalf of the Crown under the Official Contracts Act (No. 18 of 1906).

2. (a) Proceedings against Her Majesty by way of petition of right, including proceedings by way of petition of right intituled in the Admiralty Division under section 52 of the Naval Prize Act 1864 (27 & 28 Vict. c. 25).

(b) Proceedings against Her Majesty by way of *monstrans de droit*.

(c) Proceedings in claims against the Crown under the Petition of Right Act (No. 21 of 1980).

(d) Proceedings against the Crown under the Official Contracts Act (No. 18 of 1906).