

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.

[Assent 20th December, 1963]

[Commencement 7th January, 1964]

“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.

(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

“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fiat, by petition of right, or might have been enforced by a proceeding provided by any statutory provision repealed by this Act, then, subject to the provisions of this Act, the claim may be enforced as of right, and without the fiat of the Governor-General, by proceedings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.

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;

(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.”

“10. (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.”

“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.

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

(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;”

The provision was made by Part 24.3 of the English Civil Procedure Rules with respect to the following exception as to proceedings in which summary judgment is available:

“(1) The court may give summary judgment against a claimant in any type of proceedings.

(2) The court may give summary judgment against a defendant in any type of proceedings except —

(a) proceedings for possession of residential premises against —

(i) a mortgagor; or

(ii) a tenant or a person holding over after the end of his tenancy whose occupancy is protected within the meaning of the Rent Act 1977² or the Housing Act 1988³ and;

(b) proceedings for an admiralty claim in rem.”

The common law of the Bahamas, *see, e.g.*:

(iii) *Coral Beach Management Company Limited v. Anderson and another* - [2015] 2 BHS J. No. 106 *per* Conteh, JA at paragraph 2:

“2 ... I was troubled when I read the application on the papers where they had given that the substance of the summary judgment application, namely, for possession, could have been properly moved under Order 14, when in the face of the provisions of the rules of the Supreme Court, Order 19(5) states expressly where an application is for possession of land only (as in the instant case) that is the rule that is applicable.”

(iv) *KEOD SMITH And COMMISSIONER OF POLICE (in his capacity as Provost Marshal)*
- 2019/PUB/con/00010:

“7. The affidavit of Ms Raven Rolle, filed 10 May 2019 in support of the striking out application, reads, in part, beginning at paragraph 24:

. . .

No **action in law** against Provost Marshal

32. It is trite that the Provost Marshal and his deputies are immune from suit under s. 4(5) of the Crown Proceedings Act.”

. . .

“10. It emerged in the submissions filed on behalf of the Plaintiff in opposition to the striking out application that the basis of his central contention is not that **the Registrar did not have the authority to issue the writs**, but that the Provost Marshal, in executing the writs, was restricted to 11 executing against the things which are mentioned in section 59 of the Supreme Court Act. That section reads:

“59. By virtue of any writ of fieri facias to be sued out of the Supreme Court, the Provost Marshal, or other officer having the execution thereof, shall seize and take any money and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, belonging to the person against whose effects such writ of fieri facias is sued out.””