

## CROWN PROCEEDINGS BILL

### EXPLANATORY NOTE

THIS Bill consolidates the provisions at present contained in the Crown Suits Act, 1908, and its amendments, and makes substantial changes in those provisions. Most of the changes are being made for the purpose of bringing the procedure in actions by or against the Crown into line with the procedure in actions between subjects. Many of the clauses follow provisions contained in the Crown Proceedings Act, 1947, of the United Kingdom. References are given in the margin of the Bill to the New Zealand and United Kingdom provisions on which each clause is based.

The Bill abolishes the special forms of procedure which have hitherto been necessary in actions involving the Crown, namely, petitions of right, writs of *capias ad respondendum*, writs of *feri facias*, writs of *feri capias*, and proceedings by the Crown by way of informations in civil suits except where such proceedings are expressly authorized by any Act. It takes away the procedural privileges formerly enjoyed by the Crown in connection with discovery, interrogatories, and interpleader; and makes certain Acts bind the Crown which have not done so previously.

*Clause 3* specifies the claims which may be enforced by or against the Crown by proceedings under the provisions of the Bill. It is in wide terms and makes the Bill apply to proceedings by the Crown in the cases where the Crown Suits Act applies under the existing legislation. The clause makes the Bill apply to all proceedings against the Crown to which either the existing New Zealand legislation or the United Kingdom legislation applies. The provisions of section 3 of the Crown Suits Amendment Act, 1910, have been amplified so as to cover explicitly claims based on tort, claims to recover property, and causes of action in respect of which relief would be granted against the Crown in equity. The United Kingdom Act applies to actions against the Crown only in cases of tort and in cases where a petition of right lay against the Crown before the passing of that Act.

*Clause 4* makes the Bill subject to the Limitation Act, 1950, and other limitation enactments which bind the Crown.

*Clause 5* preserves the rule declared in section 5 (*k*) of the Acts Interpretation Act, 1924, that the Crown is not bound by any Act unless it is expressly stated therein that the Crown shall be bound, but makes a number of specified enactments bind the Crown.

*Clause 6* defines the circumstances in which the Crown is to be liable in tort. It follows section 2 of the United Kingdom Act, but lacks the significance of that section which made the Crown in the United Kingdom liable in tort for the first time. The Crown in New Zealand has been liable in tort since the enactment of sections 3 (*c*) and 4 of the Crown Suits Amendment Act, 1910.

*Clause 7* defines the extent to which the Crown is to be liable for infringement of a patent, a registered trade mark, or copyright in a design.

*Clause 8* makes the law as to indemnity, contribution, and joint and several tortfeasors apply to the Crown.

*Clause 9* provides that the Crown shall not be liable to pay compensation or damages in respect of the death or disablement of members of the New Zealand armed forces where a pension is payable.

*Clause 10* provides that any person may claim redress from the Crown if he suffers in New Zealand any damage, loss or injury through the use of any ship, vehicle, or aircraft belonging to a visiting force, or if he has a claim against a member of a visiting force in respect of a cause of action which arises in New Zealand and is in respect of death, bodily injury, or damage to property. For the purposes of any such claim for redress the visiting force, and its ships, vehicles, and aircraft, are treated as if they belong to the Crown.

*Clause 11* preserves the powers and authorities of the Crown which are exercisable by virtue of the prerogative or of any statute except so far as those powers and authorities are expressly taken away by the Bill.

*Clause 12* abolishes the old forms of proceedings for enforcing the rights and liabilities of the Crown; and provides that all such proceedings may be commenced, heard, and determined in the same Court and in like manner in all respects as in suits between subject and subject.

*Clause 13* provides that the Crown may obtain relief by way of interpleader proceedings and may be made a party to such proceedings in the same manner as a subject.

*Clause 14* provides that in proceedings under the Bill the Crown shall sue or be sued, or joined as a party or third party, in the name of the appropriate Government Department or officer of the Crown if the Department or officer may sue or be sued apart from the clause, or in the name of the Attorney-General if there is no such Department or officer. The effect of the clause will be that most civil proceedings involving the Crown will be taken in the name of the Attorney-General.

*Clause 15* provides that the Attorney-General or the Solicitor-General may, by warrant, authorize any person to sue in a Magistrate's Court for any debt or damages payable to the Crown and not exceeding £50.

*Clause 16* provides that, in the absence of an address for service, documents which have to be served on the Attorney-General shall be served on the Solicitor-General, and may be served by registered post.

*Clause 17* provides that in any civil proceedings by or against the Crown the Court may make any order which it could make in proceedings between subjects, except that it cannot grant relief by way of injunction or specific performance or make an order for the recovery of land or for the delivery of other property. In cases to which these exceptions apply the Court is required to make an order declaratory of the rights of the parties. The Court is not to grant an injunction against an officer of the Crown if the effect would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

*Clause 18* provides that the ordinary rules as to appeals, stay of execution, and costs are to apply to the Crown, except that the Crown is not to be required to give security for costs.

*Clause 19* provides that the ordinary rules as to interest on judgment debts and costs shall apply to the Crown.

*Clause 20* provides machinery for recovering fines imposed otherwise than by judgment or conviction; for example, under section 162 of the Juries Act, 1908.

*Clause 21* provides machinery for the recovery of debts due upon a recognizance.

*Clause 22* provides that barristers or solicitors may be appointed to act for the Attorney-General in each district for the purposes of *clauses 20* and *21* of the Bill.

*Clause 23* provides that judgments for fines and on recognizances under *clauses 20* and *21* may be vacated by the Supreme Court, upon notice to the Attorney-General, where the judgment has been satisfied or where, according to equity and good conscience and the real merits and justice of the case, the defendant ought not to be required to satisfy it.

*Clause 24* provides that judgments against the Crown or the Attorney-General or any Government Department or officer of the Crown may be satisfied by the Governor-General without further appropriation than the clause; and that an annual statement is to be laid before Parliament showing all amounts paid without appropriation other than the clause. Orders made in civil proceedings under the provisions of the Bill are not to be enforced against the Crown or the Attorney-General or any Government Department or officer of the Crown except under this clause.

*Clause 25* provides that, subject to the provisions of the Bill, any order in favour of the Crown may be enforced in the same manner as an order between subjects is enforced.

*Clause 26* provides for the attachment of money payable by the Crown to any person other than wages, &c., payable to an officer of the Crown, or money which is protected by any enactment.

*Clause 27* provides that the Crown may be required to answer interrogatories or make discovery of documents to the same extent as a subject, except where the answering of any question or the disclosure of any document would be injurious to the public interest. Any order requiring the Crown to answer interrogatories must direct by what officer of the Crown the interrogatories are to be answered.

*Clause 28* prevents proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention, or sale, of any ships or aircraft or cargo or other property belonging to the Crown. Where proceedings *in rem* are commenced by any person in contravention of the clause and the person has acted in ignorance, the Court may treat the proceedings as if they were *in personam*.

*Clause 29* preserves the right of the Crown to take advantage of the provisions of any Act although not named therein; and provides in particular that the Crown may take advantage of the enactments which empower the Supreme Court or a Magistrate's Court in certain circumstances to order the arrest of a defendant about to leave New Zealand.

*Clause 30* provides that any power to make, alter, or revoke rules of Court shall include power to make, alter, or revoke rules for the purpose of giving effect to the provisions of the Bill. The clause gives specific powers to make rules on many subjects.

*Clause 31* provides that, subject to the provisions of the Bill and of any Act, and of any rules made under *clause 30*, the laws, statutes, and rules for the time being in force as to pleading, joinder of parties, third party procedure, evidence, hearing and trial, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off, appeal, and all other laws, statutes, and rules for the time being available as between plaintiffs and defendants in personal actions between subjects, and the practice and course of procedure of the Court in its legal and equitable jurisdiction, shall apply to civil proceedings by and against the Crown.

*Clauses 32* and *33* provide for the application of the Bill in the Cook Islands and Western Samoa.

*Clause 34* provides for the repeal of the Crown Suits Act, 1908, and its amendments, and contains the normal saving clauses.

*Clause 35* is a special savings clause intended to clarify the scope of the Bill by excluding its application and operation in a number of specified cases.

---

Hon. Mr. Webb

## CROWN PROCEEDINGS

### ANALYSIS

|                                  | PART II   |
|----------------------------------|---|
| Title.                           | JURISDICTION, PROCEDURE, AND JUDGMENTS  |
| 1. Short Title and commencement. |   |
| 2. Interpretation.               | 12. Civil proceedings by or against the Crown.  |
|                                  | 13. Interpleader.   |
|                                  | 14. Method of making Crown a party to proceedings.  |
|                                  | 15. Recovery in Magistrate's Court on behalf of Crown of amounts not exceeding £50.         |
|                                  | 16. Service of documents and time for filing defence by Crown.                              |
|                                  | 17. Nature of relief.   |
|                                  | 18. Appeals, stay of execution, and costs.  |
|                                  | 19. Interest on debts, costs, &c.   |
|                                  | <i>Judgments for Fines and on Recognizances</i>   |
|                                  | 20. Recovery of fines imposed otherwise than by judgment or conviction.                     |
|                                  | 21. Recovery of debts due upon recognizance.  |
|                                  | 22. Barristers or solicitors may be appointed to act for Attorney-General in each district. |
|                                  | 23. Judgments for fines and on recognizances may be vacated by Supreme Court.               |

### PART I

#### SUBSTANTIVE LAW

3. Claims enforceable by or against the Crown under this Act.
4. Limitation of actions by or against the Crown.
5. Liability of the Crown under other Acts.
6. Liability of the Crown in tort.
7. Provisions as to industrial property.
8. Application of law as to indemnity, contribution, and joint and several tortfeasors.
9. Crown not liable to pay compensation or damages in respect of death or disablement of members of New Zealand armed forces where a pension is payable.
10. Claims in respect of visiting forces.
11. Saving in respect of acts done under prerogative and statutory powers.

|   |   |
|---|---|
| PART III  |   |
| EXECUTION   |   |
| 24. Satisfaction of orders against the Crown.                 |   |
| 25. Execution by the Crown.                                   |   |
| 26. Attachment of money payable by the Crown.                 |   |
| PART IV   |   |
| MISCELLANEOUS AND SUPPLEMENTAL                                |   |
| <i>Miscellaneous</i>  |   |
| 27. Discovery.  |   |
| 28. Exclusion of proceedings <i>in rem</i> against the Crown. |   |
|   | 29. Application to the Crown of certain statutory provisions. |
|   | <i>Supplemental</i>   |
|   | 30. Rules of Court.   |
|   | 31. General rules to apply in the absence of special rules.   |
|   | 32. Crown proceedings in the Cook Islands.                    |
|   | 33. Crown proceedings in Western Samoa.                       |
|   | 34. Repeals and savings.                                      |
|   | 35. Savings of certain rights, &c. Schedules.                 |

## A BILL INTITULED

Title. AN ACT to Consolidate and Amend the Law Relating to the Civil Liabilities and Rights of the Crown and Officers of the Crown, and to Civil Proceedings By and Against the Crown. 5

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement. 1. This Act may be cited as the Crown Proceedings Act, 1950, and shall come into force on the first day of 10 July, nineteen hundred and fifty-one.

Interpretation. 2. (1) In this Act, unless the context otherwise requires,—

*Cf. Crown Suits Act, 1908, s. 2 (Reprint of Statutes, Vol. II, p. 550); 1945, No. 40, ss. 19, 20; Crown Proceedings Act, 1947 (10 & 11 Geo. 6, c. 44), s. 38 (U.K.)*

“Agent”, in relation to the Crown, includes an independent contractor employed by the 15 Crown:

“Attorney-General”, in respect of any power, duty, authority, or function imposed upon or vested in him by virtue of his office as Attorney-General otherwise than under section 20 *fourteen* of this Act, includes the Solicitor-General:

“Civil proceedings” means any proceedings in any Court other than criminal proceedings; but does not include proceedings in relation to 25 habeas corpus, mandamus, prohibition, or certiorari:

“Commonwealth” means the British Commonwealth of Nations; and includes every territory for whose international relations the 30 Government of any country of the Commonwealth is responsible:

- 5 “ Court ” means the Judicial Committee of the Privy Council, the Court of Appeal, the Supreme Court, and (to the extent to which they respectively have jurisdiction) the Compensation Court constituted under section seventy of the Statutes Amendment Act, 1939, 1939, No. 39 a Magistrate’s Court constituted under the Magistrates’ Courts Act, 1947, a Warden’s Court constituted under the Mining Act, 1926, 1947, No. 16 and the Maori Land Court constituted under the Maori Land Act, 1931: See Reprint of Statutes, Vol. V, p. 943 Ibid., Vol. VI, p. 103
- 10
- 15 “ Government Department ” or “ Department ” means the Public Trustee, the Maori Trustee, and every other Department or instrument of the Executive Government of New Zealand:
- 20 “ His Majesty ” or the “ Crown ” means His Majesty in right of his Government in New Zealand:
- 25 “ Member of a visiting force ” includes a member of any other force who is attached to a visiting force:
- 30 “ New Zealand armed forces ” means the New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force:
- 35 “ Officer ”, in relation to the Crown, includes any servant of His Majesty, and accordingly (but without prejudice to the generality of the foregoing provision) includes a Minister of the Crown; and a member of the New Zealand armed forces; but does not include the Governor-General, or any Judge, Magistrate, Justice of the Peace, or other judicial officer:
- 40 “ 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:
- “ Service aircraft ” means any aircraft within the meaning of the Civil Aviation Act, 1948, 1948, No. 12 which is being used exclusively for the purposes of the New Zealand armed forces:
- “ Ship ” includes every description of vessel used in navigation not propelled by oars:

“ Visiting force ” means any naval, military, or air force of any country other than New Zealand which has been granted a right of entry into or passage through or over New Zealand.

5

(2) Any reference in this Act to the Crown, in relation to any civil proceedings, or in relation to any order or judgment debt or costs in connection with any civil proceedings, shall be construed as including a reference to the Attorney-General or any Government Department or officer of the Crown where the Attorney-General, Department, or officer is a party or third party to the proceedings in accordance with section *fourteen* of this Act:

10

Provided that the Attorney-General shall not be deemed to be the Crown in relation to any proceedings by reason only of the fact that the proceedings are brought by the Attorney-General upon the relation of some other person.

15

## PART I

20

## SUBSTANTIVE LAW

Claims enforceable by or against the Crown under this Act.  
Cf. 1908, No. 34, s. 3; Crown Suits Amendment Act, 1910, ss. 3, 4 (Reprint of Statutes, Vol. II, p. 566); U.K. Act, s. 1

**3.** (1) Subject to the provisions of this Act and any other Act, all debts, damages, duties, sums of money, land, or goods, due, payable or belonging to the Crown shall be sued for and recovered by proceedings taken for that purpose in accordance with the provisions of this Act:

25

Provided that nothing in this subsection shall interfere with or restrict any special power or authority vested in the Crown, or in any person on its behalf, with respect to all or any of the matters mentioned in this subsection.

30

(2) Subject to the provisions of this Act and any other Act, any person (whether a subject of His Majesty or not) may enforce as of right, by civil proceedings taken against the Crown for that purpose in accordance with the provisions of this Act, any claim or demand against the Crown in respect of any of the following causes of action:—

35

- (a) The breach of any contract: 40
- (b) Any wrong or injury for which the Crown is liable in tort under this Act or under any other Act which is binding on the Crown:



- (c) Any cause of action, in respect of which a claim or demand may be made against the Crown under this Act or under any other Act which is binding on the Crown, and for which there is not another equally convenient or more convenient remedy against the Crown:
- 5
- (d) Any cause of action, which is independent of contract or tort or any Act, for which an action for damages or to recover property of any kind would lie against the Crown if it were a private person of full age and capacity, and for which there is not another equally convenient or more convenient remedy against the Crown:
- 10
- (e) Any other cause of action in respect of which a petition of right would lie against the Crown at common law or in respect of which relief would be granted against the Crown in equity.
- 15
4. The provisions of this Act shall be subject to the provisions of the *Limitation Act, 1950*, and of any other Act which limits the time within which proceedings may be brought by or against the Crown.
- 20
5. (1) Except as expressly provided by this Act or any other Act, this Act shall not be construed so as to make any Act binding upon the Crown which would not otherwise be so binding, or so as to impose any liability on the Crown by virtue of any Act which is not binding on the Crown.
- 25
- (2) The enactments mentioned in the *First Schedule* to this Act shall bind the Crown.
- 30
6. (1) Subject to the provisions of this Act and any other 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—
- 35
- (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
- 40
- (c) In respect of any breach of the duties attaching at common law to the ownership, occupation, possession, or control of property:
- Limitation of actions by or against the Crown.  
Cf. 1908, No. 34, s. 37
- Liability of the Crown under other Acts.  
1910, No. 54, s. 7
- Liability of the Crown in tort.  
Cf. U.K. Act, s. 2; 1910, No. 54, ss. 3 (c), 4

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. 5

(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. 10

(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. 15 20

(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. 25 30

(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. 35

7. (1) Where after the commencement of this Act any servant or agent of the Crown infringes a patent, a registered trade mark, or any copyright in a design, subsisting under the Patents, Designs, and Trade Marks Act, 1921-22, and the infringement is committed with the 40

Provisions as  
to industrial  
property.  
*Cf.* U.K. Act,  
s. 3  
See Reprint  
of Statutes,  
Vol. VI, p. 656

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) Nothing in the *last preceding* subsection or in any other provision of this Act shall affect the rights of any Government Department under section thirty-two or section sixty-six of the Patents, Designs, and Trade Marks Act, 1921-22, or the rights of any Minister of the Crown under section six of the Patents, Designs, and Trade Marks Amendment Act, 1947.

See Reprint of Statutes, Vol. VI, p. 656 1947, No. 37

(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, a registered trade mark, or of any such copyright as is mentioned in subsection *one* of this section.

8. (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.

Application of law as to indemnity, contribution, and joint and several tortfeasors.

Cf. U.K. Act, s. 4

1936, No. 31

(2) Without prejudice to the effect of the *last preceding* subsection, Part V of the Law Reform Act, 1936 (which relates to proceedings against, and contribution between, joint and several tortfeasors) shall bind the Crown.

9. (1) No proceedings for compensation or damages shall lie against the Crown or any officer of the Crown in respect of the death or disablement of any member of the New Zealand armed forces if any pension has at any time been paid, or is being paid, or will at any time become payable, under the War Pensions Act, 1943, in respect of that death or disablement:

Crown not liable to pay compensation or damages in respect of death or disablement of members of New Zealand armed forces where a pension is payable.

Cf. U.K. Act, s. 10; 1945, No. 40, s. 22 (2); 1940, No. 24, s. 10 1943, No. 22

Provided that this subsection shall not exempt an officer of the Crown from liability for any act or omission in any case where the Court is satisfied that the act or omission was not connected with the execution of his duties as an officer of the Crown.

(2) A certificate by the Secretary for War Pensions to the effect that a pension has or has not at any time been paid, or is or is not being paid, or will or will not at any time become payable, under the War Pensions Act, 1943, in respect of the death or disablement of any person shall, for the purposes of this section, be conclusive as to the fact which it certifies.

(3) Where any claim is made against the Crown in respect of any damage, loss, or injury sustained or alleged to have been sustained by or through or in connection with the use of any service aircraft, the provisions of section five of the Civil Aviation Act, 1948, shall, notwithstanding anything in section ten of that Act, apply with respect to the aircraft. 5

1948, No. 12

Claims in respect of visiting forces. Cf. 1945, No. 40 s. 21

**10.** (1) Any person who suffers in New Zealand any damage, loss, or injury by, through, or in connection with the use of any ship, vehicle, or aircraft belonging to any visiting force, or who has or deems himself to have any just claim or demand in respect of any cause of action to which this section applies against a member of any visiting force or a person acting for or on behalf of any visiting force, shall be entitled to make against the Crown any claim or demand which he would have been entitled to make under this Part of this Act if the ship or vehicle had belonged to the Crown, or the aircraft had been a service aircraft, or the member or the person so acting had been a member of the New Zealand armed forces, and if the Government of the country to which the visiting force belongs had been the Crown, and for the like amount (if any) and in the like form and manner as the amount, form, and manner of the claim or demand that he would have been entitled to make as aforesaid. 10 15 20 25

(2) This section shall apply to any cause of action which arises in New Zealand and which is in respect of the death of or bodily injury to any person or damage to any property.

(3) In respect of any claim or demand made under this section the Crown shall have, in relation to the person making it, the same rights and liabilities as the Crown would have had if the ship or vehicle belonging to the visiting force had belonged to the Crown or the aircraft belonging to the visiting force had been a service aircraft, or the member of the visiting force or the person acting for or on behalf of the visiting force had been a member of the New Zealand armed forces, as the case may be. 30 35

(4) In the determination of any such claim or demand made by any person against the Crown, regard shall be had to any payment which that person has received or is entitled to receive, whether from the Crown or from any other person or authority, in satisfaction, wholly or partly, of the claim or demand. 40 45

(5) For the purposes of this section all persons who, by the law of the country to which any visiting force belongs, are for the time being subject to the naval, military, or air force law of that country shall be deemed to  
5 be members of the visiting force.

(6) For the purposes of any proceedings to enforce a claim or demand made under this section, a certificate issued by or on behalf of such authority as may be appointed for the purpose by the Government of the  
10 country to which any visiting force belongs stating that a person of the name and description specified in the certificate is, or was at a time so specified, subject to the naval, military, or air force law of that country shall be conclusive evidence of that fact.

(7) If in any proceedings as aforesaid the question is raised whether any person whose name appears in or in connection with the proceedings is or was at any time a member of any visiting force, any such certificate as aforesaid relating to a person bearing that name  
20 shall, unless the contrary is proved, be deemed to relate to that person.

(8) Any document purporting to be a certificate issued for the purposes of this section and to be signed by or on behalf of an authority described as appointed  
25 by the Government of any country for the purposes of this section shall be received in evidence and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of an authority so appointed.

11. (1) Except as expressly provided in this Part of  
30 this Act, nothing in this Part 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,  
35 in particular, nothing in this Part of this Act 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  
40 New Zealand or of any part of the Commonwealth.

(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 Minister of Defence, if satisfied that the act or omission was necessary for any such  
45 purpose as is mentioned in the *last preceding* subsection,

Saving in respect of acts done under prerogative and statutory powers.  
Cf. U.K. Act, s. 11

may 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

5

## JURISDICTION, PROCEDURE, AND JUDGMENTS

Civil proceedings by or against the Crown.

*Cf.* U.K. Act, ss. 13, 15, 23; 1908, No. 34, ss. 25, 36; 1945, No. 40, s. 23 (2)

**12.** (1) Subject to the provisions of this Act or any other Act, all civil proceedings which must be taken by, or may be brought against, the Crown under this Act may be commenced, heard, and determined in the same Court and in like manner in all respects as in suits between subject and subject. 10

(2) All such civil proceedings by or against the Crown as are mentioned in the *Second* Schedule to this Act are hereby abolished. 15

Interpleader.  
*Cf.* U.K. Act, s. 16

**13.** Without limiting any other provisions of this Act, it is hereby declared that the Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the 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 sheriff or bailiff or other like officer; and all rules of Court relating to interpleader proceedings shall, subject to the provisions of this Act, have effect accordingly. 20 25

Method of making Crown a party to proceedings.

*Cf.* U.K. Act, s. 17; 1908, No. 34, s. 15

**14.** (1) Subject to the provisions of this Act and any other Act, civil proceedings under this Act by the Crown may be instituted by—

- (a) The appropriate Government Department in its own name if the Department has power to sue apart from this section; or 30
- (b) The appropriate officer of the Crown in the name in which he may sue on behalf of the Crown or of any Government Department if the officer has power to sue on behalf of the Crown or of any Government Department apart from this section; or 35
- (c) The Attorney-General if there is no such appropriate Department or officer or if the Attorney-General has any reasonable doubt whether any and, if so, which Department or officer is appropriate; or 40
- (d) Any two or more of them jointly.

(2) Subject to the provisions of this Act and any other Act, civil proceedings under this Act against the Crown shall be instituted against—

- 5 (a) The appropriate Government Department in its own name if the Department may be sued apart from this section; or
- 10 (b) The appropriate officer of the Crown in the name in which he may be sued on behalf of the Crown or of any Government Department if the officer may be sued on behalf of the Crown or of any Government Department apart from this section; or
- 15 (c) The Attorney-General if there is no such appropriate Department or officer or if the person instituting the proceedings has any reasonable doubt whether any and, if so, which Department or officer is appropriate; or
- 20 (d) Any two or more of them jointly.
- (3) The Crown may be joined as a plaintiff to any civil proceedings to which it could be a plaintiff under this Act by joining as a plaintiff—
- 25 (a) Any Government Department by which, or officer of the Crown by whom, the proceedings could be instituted under subsection *one* of this section; or
- 30 (b) The Attorney-General if there is no such Department or officer or if the person seeking to join the Crown as a plaintiff has any reasonable doubt whether any and, if so, which Department or officer should be so joined; or
- (c) Any two or more of them jointly.
- (4) The Crown may be joined as a defendant or third party to any civil proceedings to which it could be a defendant under this Act by joining as a defendant or
- 35 third party—
- (a) Any Government Department against which, or officer of the Crown against whom, the proceedings could be instituted under subsection *two* of this section; or
- 40 (b) The Attorney-General if there is no such Department or officer or if the person seeking to join the Crown as a defendant or third party has any reasonable doubt whether any and, if so, which Department or officer should be so
- 45 joined; or
- (c) Any two or more of them jointly.

(5) Where any civil proceedings against the Crown under this Act are instituted against the Attorney-General or the Attorney-General is joined as a party or third party to any such proceedings, an application may at any stage of the proceedings be made to the Court by or on behalf of the Attorney-General to have one or more of the Government Departments or officers of the Crown against which or against whom the proceedings could have been instituted under subsection *two* of this section substituted for him as a party or third party to the proceedings; and where any such proceedings are brought against any such Government Department or officer, or where any such Department or officer is joined as a party or third party to any such proceedings, an application may at any stage of the proceedings be made to the Court on behalf of the Department or officer to have the Attorney-General or any such Department or officer substituted for the applicant as a party or third party to the proceedings. Upon any such application the Court may if it thinks fit make an order granting the application on such terms as the Court thinks just, and the proceedings shall continue accordingly.

(6) No proceedings instituted in accordance with this Act to which the Attorney-General or any Government Department or officer of the Crown is a party or third party shall abate or be affected by any change in the person holding the office of Attorney-General or any other office in the Government service or in the person or body of persons constituting the Department.

(7) Where the Attorney-General or any Government Department or officer of the Crown is a party or third party to any proceedings in accordance with this section, any order of the Court against or in favour of the Crown in those proceedings shall be made against or in favour of the Attorney-General or the Department or officer as the case may be.

Recovery in  
Magistrate's  
Court on  
behalf of  
Crown of  
amounts not  
exceeding £50.  
*Cf.* 1910, No. 54,  
s. 10

15. (1) Any debt or damages payable to the Crown and not exceeding fifty pounds may be sued for and recovered in a Magistrate's Court on behalf of the Crown by and at the suit of any person appointed in that behalf by a warrant under the hand of the Attorney-General or the Solicitor-General, and judicial notice shall be taken of the signature of any such warrant.



(2) Every person so appointed to sue on behalf of the Crown shall sue in his own name with the addition of the words "suing on behalf of the Crown", or words to the like effect.

5 (3) Nothing in this section shall be so construed as to prevent the recovery of moneys payable to the Crown in any manner in which those moneys are recoverable independently of this section.

10 **16.** (1) In any civil proceedings instituted against the Attorney-General, or to which the Attorney-General is joined as a party or third party, as aforesaid, the first document required to be served on him, and any other document required to be served before an address for service has been given by him, shall be served on the  
15 Attorney-General by delivering it to the Solicitor-General or by leaving it at the office of the Solicitor-General in Wellington or by sending it by post in a registered letter addressed to the Solicitor-General at his said office.

Service of documents and time for filing defence by Crown.

*Cf.* U.K. Act, s. 18; 1908, No. 34, ss. 27, 28

20 (2) In any civil proceedings against the Crown under this Act the time to be allowed in any writ or summons for the filing of a statement of defence or notice of intention to defend shall be not less than twenty-eight days, or such further time as the Court may allow.

25 (3) Where any document is sent by post in the manner prescribed by subsection *one* of this section it shall be deemed to have been served at the time at which the letter would have been delivered in the ordinary course of post.

30 **17.** (1) In any civil proceedings under this Act by or against the Crown or to which the Crown is a party or third party the Court shall, subject to the provisions of this Act and any other Act, have power to make all such orders as it has power to make in proceedings between  
35 subjects, and otherwise to give such appropriate relief as the case may require:

Nature of relief.

*Cf.* U.K. Act, s. 21; 1908, No. 34, s. 30

Provided that—

40 (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 instead make  
45 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 instead make an order declaring that any person is entitled as against the Crown to the land or property or to the possession thereof. 5

(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. 10

Appeals, stay  
of execution,  
and costs.  
*Cf.* U.K. Act,  
s. 22; 1908  
No. 34, s. 30

**18.** Subject to the provisions of 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 under this Act as they apply to proceedings between subjects; and the costs of suit shall follow on either side as in ordinary cases between other suitors: 15 20

Provided that the Crown shall not be required under any rule of Court or order to deposit or give security for the costs of any other party.

Interest on  
debts, costs, &c.  
*Cf.* U.K. Act,  
s. 24

**19.** (1) Any judgment debt due from or to the Crown shall carry interest if it would carry interest if it were due from or to a subject, and any interest so payable shall be at the rate at which it would be payable if the judgment debt were due from or to a subject. 25

(2) Any costs awarded to or against the Crown shall carry interest if the costs would carry interest if they were awarded to or against a subject, and any interest so payable shall be at the rate at which it would be payable by a subject. 30

(3) Any judgment in any civil proceedings by or against the Crown may award interest to any party to whom interest could be awarded if the proceedings were between subjects at the rate at which interest could be so awarded. 35

(4) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter. 40

*Judgments for Fines and on Recognizances*

20. (1) Notwithstanding the foregoing provisions of this Act, where a fine is imposed upon any person otherwise than by a judgment or conviction of some Court, and no other procedure is provided by any Act or rule of Court for the recovery of the fine, a Judge or Magistrate of the Court by which the fine was imposed shall, if the same is not immediately paid, by writing under his hand in the form numbered (1) in the *Third* Schedule to this Act or to the like effect, certify the fact, together with the name and place of abode or business of the person on whom the fine was imposed, and the cause and amount of the fine, and shall deliver or send by post the writing to the Attorney-General, who, upon receipt thereof, shall cause a final judgment to be signed in the Supreme Court for the amount of the fine, and a sum not exceeding five pounds for costs.

Recovery of fines imposed otherwise than by judgment or conviction.  
*Cf.* 1908, No. 34, s. 4

(2) Every such judgment may be in the form numbered (2) in the *Third* Schedule to this Act, or to the like effect, and no appeal shall lie therefrom.

21. (1) Notwithstanding the foregoing provisions of this Act, where any person has entered into a recognizance to His Majesty, and the recognizance is forfeited, and no other procedure is provided by any Act or rule of Court for the estreat thereof, a Judge or Magistrate of the Court before which, or the Justice before whom, the same was forfeited may cause the recognizance to be estreated as hereinafter provided.

Recovery of debts due upon recognizance.  
*Cf.* 1908, No. 34, s. 5

(2) The Judge, Magistrate, or Justice shall, by writing under his hand in the form numbered (3) in the *Third* Schedule to this Act, or to the like effect, certify that the forfeiture has taken place, and shall deliver or send by post the said recognizance and writing to the Attorney-General, who, upon receipt thereof, shall cause a final judgment to be signed in the Supreme Court for the amount of the recognizance, and a sum not exceeding five pounds for costs.

(3) Every such judgment may be in the form numbered (4) in the *Third* Schedule to this Act, or to the like effect, and no appeal shall lie therefrom.

Barristers or solicitors may be appointed to act for Attorney-General in each district.

*Cf.* 1908, No. 34, s. 6

See Reprint of Statutes, Vol. II, p. 60

**22.** (1) The Governor-General may from time to time appoint for each district constituted under the Judicature Act, 1908, a person, being a barrister or solicitor of the Supreme Court, to act in the district for which the person is appointed in the name and on behalf of the Attorney-General in all such matters as by sections *twenty* and *twenty-one* of this Act are to be done by the Attorney-General. 5

(2) On any such appointment being made and published in the *Gazette* and while the appointment remains in force— 10

(a) All certificates under section *twenty* of this Act of fines imposed within the district for which the person is appointed shall be sent to him instead of to the Attorney-General, and he shall cause final judgment to be signed thereon in the form mentioned in that section: 15

(b) All recognizances forfeited within the district for which the person is appointed shall, together with the certificate mentioned in section *twenty-one* of this Act, be sent to him, and he shall cause final judgment to be signed thereon on behalf of the Attorney-General in the form mentioned in that section. 20

Judgments for fines and on recognizances may be vacated by Supreme Court.

1908, No. 34, s. 7

**23.** Where final judgment has been signed under the provisions of section *twenty* or section *twenty-one* of this Act, the Supreme Court may order satisfaction to be entered upon the judgment, whether execution has been issued thereon or not: 25

Provided that such an order shall not be made except upon notice calling upon the Attorney-General to show cause; nor unless it is proved by affidavit to the satisfaction of the Supreme Court either that the judgment has been satisfied, or that, according to equity and good conscience and the real merits and justice of the case, the defendant ought not to be required to satisfy the same. 30 35

### PART III

#### EXECUTION

Satisfaction of orders against the Crown.

*Cf.* U.K. Act, s. 25; 1908, No. 34, ss. 31

32

**24.** (1) Except as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any Court for enforcing satisfaction by the Crown, or by the Attorney-General, 40

or any Government Department or officer of the Crown of any order made in any civil proceedings under this Act.

(2) Where in any civil proceedings any order (whether for costs or otherwise) is made by the Court in favour of any person against the Crown or the Attorney-General or any Government Department or officer of the Crown, and the person in whose favour the order is made so requests, the proper officer of the Court shall issue to that person, without payment of any fee, a certificate in the form numbered (5) in the *Third* Schedule to this Act or to the like effect:

Provided that, if the order provides for the payment of money, the Court by which the 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 money 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.

(3) On receipt of any such certificate the Governor-General, without further appropriation than this section, may cause to be paid to the person therein named the amount payable by the Crown under the order, together with any costs allowed him by the Court, and may also perform or give effect to the terms of the order so far as it is to be satisfied by the Crown.

(4) The Minister of Finance shall, forthwith after the end of each financial year, cause to be prepared, in such form as he approves or directs, a statement showing all amounts paid under this section without appropriation other than this section; and shall, as soon as practicable, cause the statement (duly audited by the Audit Office) to be laid before Parliament.

25. (1) Subject to the provisions of this Act and any other Act, any order made in favour of the Crown against any person in any civil proceedings may be enforced in the same manner as an order made between subjects is enforced, and not otherwise. This subsection shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

Execution by the Crown.

*Cf.* U.K. Act, s. 26; 1908 No. 34, ss. 19, 20

(2) 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 forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship. 5

Attachment of  
money payable  
by the Crown.  
Cf. U.K. Act,  
s. 27; 1947,  
No. 16, s. 96

26. Any person who has obtained an order for the payment of money may take proceedings, in accordance with rules of Court, to obtain payment to him of the amount of any debt payable by or accruing due from the Crown to the person against whom the order was made, or so much thereof as may be sufficient to satisfy the order and the costs of the garnishee proceedings; and in any such case the Court may make any order in respect of the amount payable by or accruing due from the Crown which it would be entitled to make if the whole proceedings were between subjects: 10 15

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

- (a) Any wages, salary, honorarium, allowances, or expenses payable to any officer of the Crown as such: 20
- (b) Any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution. 25

## PART IV

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Miscellaneous*

Discovery.  
Cf. U.K. Act,  
s. 28

27. (1) Subject to and in accordance with rules of Court,— 30

(a) In any civil proceedings to which the Crown is a party or third party, the Crown may be required by the Court to answer interrogatories if the Crown could be required to do so if it were a private person of full age and capacity; and 35

(b) In any such proceedings as aforesaid the Crown may be required by the Court to make discovery of documents and produce documents for inspection if the Crown could be required to do so if it were a private person of full age and capacity: 40

Provided that this section shall be without prejudice to any rule of law which authorizes 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 (a) of the last preceding subsection shall direct by what officer of the Crown the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection one 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 a Minister of the Crown, it would be injurious to the public interest to disclose the existence thereof.

28. (1) Nothing in this Act shall authorize proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention, or sale of any ships or aircraft, or any cargo or other property belonging to His Majesty, whether in right of His Government in New Zealand or otherwise, or give to any person any lien on any such ship, aircraft, cargo, or other property.

Exclusion of proceedings *in rem* against the Crown.

Cf. U.K. Act, s. 29

(2) Where proceedings *in rem* have been instituted in the Supreme 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 on 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. 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.

Application  
to the Crown  
of certain  
statutory  
provisions.  
Cf. U.K. Act,  
s. 31

29. (1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of an 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 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. 5

See Reprint  
of Statutes,  
Vol. II, p. 75  
1947, No. 16

(2) Section fifty-five of the Judicature Act, 1908, and section one hundred and nine of the Magistrates' Courts Act, 1947 (which empower the Supreme Court or a Magistrate in certain circumstances to order the arrest of a defendant about to leave New Zealand), shall, with the necessary modifications, apply to civil proceedings by the Crown in the Supreme Court or in a Magistrate's Court, as the case may be. 10 15

*Supplemental*

Rules of  
Court.  
Cf. U.K. Act,  
s. 35

30. (1) Any power to make, alter, or revoke rules touching or regulating the practice and procedure of any Court shall include power to make, alter, or revoke 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. 20 25

(2) Without prejudice to the generality of the foregoing provisions of this section, rules may be made with respect to the following matters:— 30

- (a) For providing for service outside New Zealand of process or notice thereof, in the case of proceedings by the Crown against persons, whether British subjects or not; 35
- (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 steps 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; 40



- 5 (c) For providing that in the case of proceedings against the Crown the plaintiff shall not enter judgment 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;
- 10 (d) For excepting proceedings brought against the Crown from the operation of any rule of Court providing for summary judgment without trial;
- 15 (e) For providing 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;
- 20 (f) For providing that a person shall not be entitled, without the leave of the Court, to avail himself of any set-off or counterclaim in any proceedings by the Crown if either the subject matter of the set-off or counterclaim does not relate to the Government Department or officer of the Crown in whose name the proceedings are brought, or the proceedings are brought in the name of the Attorney-General:
- 25 (g) For providing that the Crown, when sued in the name of a Government Department or of an officer of the Crown, shall not, without the leave of the Court, be entitled to avail itself of any set-off or counterclaim if the subject matter thereof does not relate to that Department or officer; and
- 30 (h) For providing 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.
- 35
- 40 **31.** Subject to the provisions of this Act and any other Act, and to any rules made pursuant to the *last preceding* section, the laws, statutes and rules for the time being in force as to pleading, joinder of parties, third party procedure, evidence, hearing and trial, amendment,
- 45 arbitration, special cases, the means of procuring and

General rules to apply in the absence of special rules. Cf. 1908, No. 34, s. 34

taking evidence, set-off, appeal, and all other laws, statutes, and rules for the time being available as between plaintiffs and defendants in personal actions between subjects, and the practice and course of procedure of the Court in its legal and equitable jurisdiction respectively 5  
for the time being in reference to such suits and personal actions, shall, unless the Court otherwise orders, be applicable and apply and extend to civil proceedings by or against the Crown.

Crown  
proceedings  
in the Cook  
Islands.  
See Reprint  
of Statutes,  
Vol. II, p. 723

32. (1) The Cook Islands Act, 1915, is hereby 10  
amended by repealing section three hundred and fifty, and substituting the following section:—

“350. (1) Subject to this Act, the Crown Proceedings Act, 1950, so far as it is applicable, shall extend to and be in force in the Cook Islands. 15

“(2) In the application of the Crown Proceedings Act, 1950, to the Cook Islands, unless the context otherwise requires,—

“(a) Every reference in that Act to the Crown or His Majesty shall be construed as including a reference to His Majesty in respect of the government of the Cook Islands: 20

“(b) Every reference in that Act to New Zealand shall be construed as a reference to the Cook Islands: 25

“(c) Every reference in that Act to any Court shall be construed as including a reference to the High Court of the Cook Islands and to the Native Land Court of the Cook Islands:

“(d) Every reference in that Act to an officer of the Crown shall be construed, in relation to His Majesty in respect of the government of the Cook Islands, as including a reference to the Resident Commissioner of Rarotonga, the Resident Commissioner of Niue, and any servant of the Government of the Cook Islands and as not including any Judge or any other Commissioner or other judicial officer: 35

“(e) Every reference in that Act to the Attorney-General or any Minister of the Crown shall be construed, in relation to His Majesty in respect of the government of the Cook Islands, as a reference to any Resident Commissioner: 40

5 “(f) Every reference in that Act to the Solicitor-General shall be construed, in relation to His Majesty in respect of the government of the Cook Islands, as including a reference to the Registrar of the High Court of the Cook Islands at Rarotonga and to the Registrar of the High Court of the Cook Islands at Niue:

10 “(g) Every reference in sections *twenty to twenty-three* of that Act to the Supreme Court shall be construed, in relation to His Majesty in respect of the government of the Cook Islands, as a reference to the High Court of the Cook Islands:

15 “(h) The reference in subsection *three* of section *twenty-four* of that Act to the Governor-General shall be construed, in relation to His Majesty in respect of the government of the Cook Islands, as a reference to any Resident Commissioner; and all moneys payable under that subsection shall be payable out of the Cook Islands Treasury:

20 “(3) Subsection *two* of section *eight*, section *nine*, and subsection *two* of section *twenty-nine* of the Crown Proceedings Act, 1950, shall not extend to or be in force in the Cook Islands.

30 “(4) Civil proceedings to which His Majesty is a party or third party in respect of the government of the Cook Islands shall be conducted on behalf of His Majesty by such person as any Resident Commissioner may appoint for the conduct thereof.”

(2) Sections three hundred and fifty-two and three hundred and fifty-three of the Cook Islands Act, 1915, are hereby repealed.

35 **33.** (1) The Samoa Act, 1921, is hereby amended by repealing section two hundred and sixty-four, and substituting the following section:—

40 “264. (1) Subject to this Act, the Crown Proceedings Act, 1950, so far as it is applicable, shall extend to and be in force in Western Samoa, and shall be a reserved enactment within the meaning of section nine of the Samoa Amendment Act, 1947.

See Reprint  
of Statutes,  
Vol. II, p. 724

Crown  
proceedings in  
Western Samoa.  
Ibid., p. 845

“(2) In the application of the Crown Proceedings Act, 1950, to Western Samoa, unless the context otherwise requires,—

- “(a) Every reference in that Act to the Crown or His Majesty shall be construed as including a reference to the Government of Western Samoa and to the Government of New Zealand as the administering authority for Western Samoa: 5
- “(b) Every reference in that Act to New Zealand shall be construed as a reference to Western Samoa: 10
- “(c) Every reference in that Act to any Court shall be construed as including a reference to the High Court of Western Samoa and to the Native Land and Titles Court of Western Samoa: 15
- “(d) Every reference in that Act to a Government Department shall be construed, in relation to the Government of Western Samoa, as including a reference to the Samoan Public Trustee: 20
- “(e) Every reference in that Act to an officer of the Crown shall be construed, in relation to the Government of Western Samoa, as including a reference to the High Commissioner for Western Samoa and any servant of the Government of Western Samoa; and as not including any Judge or any other Commissioner or other judicial officer: 25 30
- “(f) Every reference in that Act to the Attorney-General or any Minister of the Crown shall be construed, in relation to the Government of Western Samoa, as a reference to the High Commissioner for Western Samoa: 35
- “(g) Every reference in that Act to the Solicitor-General shall be construed, in relation to the Government of Western Samoa, as a reference to the Crown Solicitor of Western Samoa: 40

5 “(h) Every reference in sections *twenty* to *twenty-three* of that Act to the Supreme Court shall be construed, in relation to the Government of Western Samoa, as a reference to the High Court of Western Samoa:

10 “(i) The reference in subsection *three* of section *twenty-four* of that Act to the Governor-General shall be construed, in relation to the Government of Western Samoa, as a reference to the High Commissioner for Western Samoa, and all moneys payable under that subsection shall be payable out of the Samoan Treasury.

15 “(3) Subsection *two* of section *eight*, section *nine* and subsection *two* of section *twenty-nine* of the Crown Proceedings Act, 1950, shall not extend to or be in force in Western Samoa.

20 “(4) Civil proceedings to which the Government of Western Samoa is a party or third party shall be conducted on behalf of the Government of Western Samoa by such person as the High Commissioner, under the seal of Western Samoa, may appoint for the conduct thereof.”

25 (2) The following enactments are hereby repealed:—

(a) The proviso to subsection one of section two hundred and sixty-five of the Samoa Act, 1921, as added by section eleven of the Samoa Amendment Act, 1923:

See Reprint  
of Statutes,  
Vol. II, pp. 846,  
874

30 (b) Sections two hundred and sixty-six and two hundred and sixty-seven of the Samoa Act, 1921:

(c) Section eleven of the Samoa Amendment Act, 1923.

35 **34.** (1) The enactments specified in the *Fourth* Schedule to this Act are hereby repealed.

Repeals and  
savings.

40 (2) All appointments, rules, orders, warrants, records, instruments, and generally all acts of authority which originated under any of the said enactments, or under the corresponding provisions of any former enactment, and are subsisting or in force at the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) All matters and proceedings commenced under any such enactment and pending or in progress at the commencement of this Act may be continued and completed under the said enactments in all respects as if the said enactments continued in force.

5

Saving of  
certain  
rights, &c.  
Cf. U.K. Act,  
s. 40; 1908,  
No. 34, s. 39

**35.** (1) Nothing in this Act shall apply to or authorize proceedings by or against His Majesty in his private capacity.

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

10

(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; or

15

(b) Authorize 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 His Majesty's Government in New Zealand, or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or

20

(c) Affect any proceedings by the Crown otherwise than in right of His Majesty's Government in New Zealand; or

25

(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 the acts or omissions if the Crown were a private person; or

30

(e) Subject the Crown to any liability in respect of the acts or omissions of any medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist, or any other person while any such person is rendering any professional or other service or supplying any medicine, drug, appliance, or material in respect of any benefit provided in accordance with Part III of the Social Security Act, 1938, unless the medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist, or other person is acting as a servant of the Crown at the time of the act or omission:

35

40

- (f) 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
- (g) Interfere with or affect any Act that now is or hereafter may be in force whereby the Crown, or any of its officers and servants, is exempt from liability for anything done under the Act or affect any power, authority, or liability vested in or imposed upon the Crown or any of its officers or servants under any such Act; or
- (h) Affect any right of the Crown to control or otherwise intervene in proceedings affecting the Crown's rights, property, or profits; or
- (i) Affect any liability imposed on the Public Trustee or on the Consolidated Fund by the Public Trust Office Act, 1908; or See Reprint of Statutes, Vol. VIII, p. 922
- (j) Affect any liability imposed on the Maori Trustee or on the Consolidated Fund by the Maori Trustee Act, 1930; or Ibid., Vol. VI, p. 373
- (k) Affect any liability imposed on the Government Insurance Commissioner, the Government Insurance Department, or on the Consolidated Fund by the Government Life Insurance Act, 1908; or Ibid., Vol. IV, p. 56
- (l) Affect any liability imposed on the State Fire Insurance General Manager or the State Fire Insurance Department or on the public revenues of New Zealand by the State Fire Insurance Act, 1908, or by the Government Accident Insurance Act, 1908; or Ibid., p. 37
- (m) Affect any liability imposed on the State Advances Corporation or on the Consolidated Fund by the State Advances Corporation Act, 1934-35. Ibid., p. 10
- (3) A certificate of the Attorney-General—
- (a) To the effect that any alleged liability of the Crown arises otherwise than in respect of His Majesty's Government in New Zealand; or 1934-35, No. 42
- (b) To the effect that any proceedings by the Crown are proceedings otherwise than in right of His Majesty's Government in New Zealand,—
- 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 10

(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. 15

---



## SCHEDULES

Schedules.

**FIRST SCHEDULE**

Section 5 (2)

## ENACTMENTS TO BIND THE CROWN

- 1908, No. 3—  
The Administration Act, 1908. (Reprint of Statutes, Vol. III, p. 128.)
- 1908, No. 15—  
The Bills of Exchange Act, 1908. (Reprint of Statutes, Vol. I, p. 583.)
- 1908, No. 39—  
The Deaths by Accidents Compensation Act, 1908. (Reprint of Statutes, Vol. VI, p. 427.)
- 1908, No. 56—  
The Evidence Act, 1908. (Reprint of Statutes, Vol. III, p. 106.)
- 1908, No. 80—  
The Imprisonment for Debt Limitation Act, 1908. (Reprint of Statutes, Vol. IV, p. 388.)
- 1908, No. 86—  
The Infants Act, 1908: Part II. (Reprint of Statutes, Vol. III, p. 1072.)
- 1908, No. 89—  
The Judicature Act, 1908: Section 51, Part III, and the Second and Third Schedules. (Reprint of Statutes, Vol. II, p. 60.)
- 1908, No. 105—  
The Life Insurance Act, 1908: Sections 65 and 66. (Reprint of Statutes, Vol. IV, p. 97.)
- 1908, No. 117—  
The Mercantile Law Act, 1908: Part II. (Reprint of Statutes, Vol. V, p. 823.)
- 1908, No. 168—  
The Sale of Goods Act, 1908. (Reprint of Statutes, Vol. VIII, p. 93.)
- 1908, No. 220—  
The Declaratory Judgments Act, 1908. (Reprint of Statutes, Vol. II, p. 51.)
- 1909, No. 12—  
The Friendly Societies Act, 1909: Section 99. (Reprint of Statutes, Vol. III, p. 502.)
- 1909, No. 13—  
The Inferior Courts Procedure Act, 1909. (Reprint of Statutes, Vol. II, p. 55.)
- 1924, No. 11—  
The Acts Interpretation Act, 1924. (Reprint of Statutes, Vol. VIII, p. 568.)
- 1925, No. 25—  
The Life Insurance Amendment Act, 1925: Section 3. (Reprint of Statutes, Vol. IV, p. 127.)
- 1926, No. 16—  
The National Provident Fund Act, 1926: Section 66. (Reprint of Statutes, Vol. VI, p. 62.)

- 1936, No. 31—  
The Law Reform Act, 1936: Parts I and VII.  
1940, No. 15—  
The Carriage by Air Act, 1940.  
1940, No. 31—  
The Sea Carriage of Goods Act, 1940.  
1944, No. 18—  
The Law Reform Act, 1944: Section 4.  
1947, No. 16—  
The Magistrates' Courts Act, 1947.  
1947, No. 57—  
The Superannuation Act, 1947: Section 83.

### SECOND SCHEDULE

Section 12

#### PROCEEDINGS ABOLISHED BY THIS ACT

1. Proceedings by His Majesty by way of—
  - (a) Writs of *capias ad respondendum*;
  - (b) Informations in civil suits in lieu of statements of claim, except where such proceedings are expressly authorized by any Act;
  - (c) Writs of *feri facias* and *feri capias*.
2. Proceedings against His Majesty by way of petition of right, including proceedings by way of petition of right under section 52 of the Naval Prize Act, 1864, of the United Kingdom Parliament.

### THIRD SCHEDULE

Section 20 (1)

#### (1) CERTIFICATE OF FINE

THIS is to certify to the Attorney-General that, at the this day held at , the several persons whose names and places of abode or business are specified in the Schedule below were fined the several sums therein set opposite to their respective names, and that the cause of each such fine is duly and truly set forth in the said Schedule.

#### SCHEDULE

| Full Name.    | Place of Abode or Business. | Cause of Fine.   | Amount. |    |    |
|---------------|-----------------------------|--|---------|----|----|
|               |                             |  | £       | s. | d. |
|               |                             | <i>Behaving and conducting himself in a disorderly manner in Court</i> |         |    |    |
| Total .. .. . |                             |  | £       |    |    |

Given under my hand this                      day of                      , 19                      .  
Judge, Magistrate.

(2) JUDGMENT IN RESPECT OF FINE

Section 20.(2)

No. .

In the Supreme Court of New Zealand, }  
 District, }  
 Registry. }

BE it remembered that the Attorney- (or Solicitor-) General has informed the Court that at the held at on the day of , 19 , before a fine of was imposed and inflicted upon because he, the said (behaved and conducted himself in a disorderly manner in the said Court, or as the case may be) as by the certificate of the said now filed of record appears. Therefore, on the day of , 19 , it is adjudged by the Court here that the Crown do recover against the said the sum of , and also the sum of for costs, making together the sum of

Dated at , this day of , 19 .  
 Registrar.

(3) CERTIFICATE OF FORFEITURE OF RECOGNIZANCE

Section 21 (2)

THIS is to certify to the Attorney-General that, at the this day held at the recognizances hereunto annexed were forfeited, and were there and then caused to be estreated.

Given under my hand this day of , 19 .  
 Judge, Magistrate, or Justice.

(4) JUDGMENT IN RESPECT OF RECOGNIZANCE

Section 21 (3)

In the Supreme Court of New Zealand, }  
 District, }  
 Registry. }

BE it remembered that the Attorney- (or Solicitor-) General has informed the Court that at the held at on the day of , 19 , before the recognizance of one , by which he acknowledged to owe to the Crown the sum of , was forfeited and estreated as by the said recognizance and the certificate of the said now filed of record appears. Therefore, on the day of , 19 , it is adjudged by the Court here that the Crown do recover against the said the said sum of , and also the sum of for costs, making together the sum of

Dated at , this day of , 19 .  
 Registrar.

Section 24 (2)

(5) CERTIFICATE OF JUDGMENT, ETC.

In the Supreme Court of New Zealand, }  
 District, }  
 Registry. }

(or In the Magistrate's Court held at )  
 Between , Plaintiff,  
 and Defendant.

I HEREBY certify that , of , did on the  
 day of , 19 , in the Supreme Court  
 (or the Magistrate's Court) at , obtain a judgment  
 (order, decree, or declaration); and that by the judgment  
 (order, decree, or declaration) the Crown was ordered to pay  
 to him the sum of (or as the case may be).

Dated at , this day of , 19 .

Registrar.

## FOURTH SCHEDULE

## ENACTMENTS REPEALED

Section 34 (1)

1908, No. 34—

The Crown Suits Act, 1908. (Reprint of Statutes, Vol. II,  
p. 550.)

1910, No. 54—

The Crown Suits Amendment Act, 1910. (Reprint of  
Statutes, Vol. II, p. 566.)

1936, No. 31—

The Law Reform Act, 1936: Subsection (4) of section 18.

1945, No. 40—

The Statutes Amendment, 1945: Sections 18 to 23.