

Amendment
of section
115.

3. Section 115 of the principal Ordinance is amended by the deletion from subsection (1) of the words "Governor in Council" wherever they appear and the substitution therefor of the following—
"Governor".

Passed the Legislative Council of Hong Kong, this 8th day of May, 1957.

R. THOMPSON,
Deputy Clerk of Councils.

(Secretariat GR17/3231/53)

CROWN PROCEEDINGS ORDINANCE, 1957.

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HONG KONG.

No. 18 OF 1957.

(L.S)

I assent.

A. G. GRANTHAM,
Governor.

9th May, 1957.

An Ordinance 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.

[1st November, 1957]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

PART I.*Preliminary.*

1. This Ordinance may be cited as the Crown Proceedings Ordinance, 1957, and shall come into operation on a day to be appointed by the Governor by Proclamation in the *Gazette*.

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

(2) In this Ordinance, except in so far as the context otherwise requires, or it is otherwise expressly provided, the following expressions have the meanings hereby respectively assigned to them, that is to say—

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

In operation
in 1.11.57 by
oc. No. 4 of
1957.

Short title
and com-
mencement.

Interpre-
tation.

- “civil proceedings” includes proceedings in the Supreme Court or the District Court for the recovery of fines or penalties, but does not include proceedings of a nature such as in England are taken on the Crown side of the Queen’s Bench Division of Her Majesty’s High Court of Justice;
- “officer”, in relation to the Crown, includes any servant of the Crown;
- “order” includes a judgment, decree, rule, award or declaration;
- “prescribed” means prescribed by rules of court;
- “proceedings against the Crown” includes a claim by way set-off or counterclaim raised in proceedings by the Crown;
- “ship” includes every description of vessel used in navigation not propelled by oars;
- “rules of court” means rules made by the authority having for the time being power to make rules and orders regulating the practice and procedure of the Supreme Court or the District Court, as the case may be;
- “statutory duty” means any duty imposed by or under any Act of Parliament or Ordinance.

(3) Any reference in this Ordinance to Her Majesty in Her private capacity shall be construed as including a reference to Her Majesty in right of Her Duchy of Lancaster.

(4) Any reference in Parts IV or V of this Ordinance to civil proceedings by or against the Crown, or to civil proceedings to which the Crown is a party, shall be construed as including a reference to civil proceedings to which the Attorney General, or any Government department, or any officer of the Crown as such, is a party :

Provided that the Crown shall not for the purposes of Parts IV and V of this Ordinance 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.

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

PART II.

Substantive Law.

Right to
sue the
Crown.

3. Where any person has a claim against the Crown after the commencement of this Ordinance and, if this Ordinance had not been passed, the claim might have been enforced, subject to the consent of the Governor, under the rules of the Supreme Court, or might have been enforced by the proceedings provided by any statute ceasing to have effect in this Colony by virtue of this Ordinance, or by any enactment repealed by this Ordinance, then, subject to the provisions of this Ordinance, the claim may be enforced as of right, and without the consent of the Governor, by proceedings taken against the Crown for that purpose in accordance with the provisions of this Ordinance.

Liability
of the
Crown in
tort.

4. (1) Subject to the provisions of this Ordinance, 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 Ordinance 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 Ordinance, 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 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 enactment or 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 connexion with the execution of judicial process.

(6) (a) Notwithstanding the provisions of this section, no liability shall be imposed thereby upon the Crown in respect of any ship, dock or harbour owned by the Crown.

(b) This subsection shall continue in force until a day to be appointed by the Governor by Proclamation in the *Gazette* and shall then expire.

5. (1) Where after the commencement of this Ordinance any servant or agent of the Crown infringes a patent, or infringes a registered trade mark, or infringes any copyright, (including any copyright in a design subsisting under the Registered Designs Act, 1949, as applied to this Colony by the United Kingdom Designs (Protection) Ordinance), and the infringement is committed with the authority of the Crown, then, subject to the provisions of this Ordinance, civil proceedings in respect of this infringement shall lie against the Crown.

Provisions
as to
industrial
property.

(Cap. 44).

(2) Nothing in subsection (1) or in any other provision of this Ordinance shall affect the rights of the Crown under section 46 of the Patents Act, 1949, or section 12 and the First Schedule of the Registered Designs Act, 1949, as applied to this Colony by the Registration of United Kingdom Patents Ordinance, and the United Kingdom Designs (Protection) Ordinance respectively.

(Cap. 42).

(Cap. 44).

(3) Save where it is expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Ordinance 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.

Applica-
tion of
law as to
indemnity,
contribu-
tion, joint
and several
tortfeasors,
and con-
tributory
negligence.

(Cap. 28).

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

(2) Without prejudice to the effect of subsection (1), the Tortfeasors Ordinance (which relates to proceedings against, and contribution between, joint and several tortfeasors) shall bind the Crown.

(36 of
1951).

(3) Without prejudice to the general effect of section 4 of this Ordinance, section 4 of the Law Reform (Miscellaneous Provisions) Ordinance, 1951, (which amends the law relating to contributory negligence) shall bind the Crown.

Liability in
connexion
with
postal
packets.

(Cap. 98).

7. (1) Subject as hereinafter provided, no proceedings in tort shall lie against the Crown for anything done or omitted to be done in relation to a postal packet by any person while employed as a servant or agent of the Crown; nor shall any officer of the Crown be subject, except at the suit of the Crown, to any civil liability for any of the matters aforesaid.

(2) Notwithstanding the provisions of section 7 of the Post Office Ordinance, proceedings shall lie against the Crown under this subsection in respect of loss of or damage to a registered inland postal packet in so far as the loss or damage is due to any wrongful act done or any neglect or default committed by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet:

Provided that—

- (a) no proceedings shall lie under this subsection in respect of any postal packet registered before the commencement of this Ordinance;
- (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 Regulations, 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 Regulations in relation to registered inland postal packets have been complied with in relation to that packet.

For the purposes 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 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.

(3) No relief shall be available under subsection (2) except upon a claim by the sender or the addressee of the packet in question; and the sender or addressee of the packet shall be entitled to claim any relief available under 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 representative.

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

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

(6) In this section—

(Cap. 98). “postal packet” has, subject as hereinafter provided, the same meaning as in the Post Office Ordinance;

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

“inland postal packet” means a postal packet which is posted in Hong Kong for delivery in Hong Kong to the person to whom it is addressed;

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

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

Provisions relating to the armed forces.

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

(a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown; and

(b) (i) where that other person is a member of the armed forces of the Crown in right of Her Majesty's Government in the United Kingdom, the Minister of Pensions certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant, Order in Council or Order of Her Majesty relating to the disablement or death of members of the force of which he is a member;

(ii) where that other person is a member of the armed forces of the Crown in right of Her Majesty's Government in the Colony, the Governor in Council certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to a gratuity or pension under any enactment relating to the disablement or death of members of the force of which he is a member :

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

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

(a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid, or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and

(b) (i) in the case of a member of the armed forces of the Crown in right of Her Majesty's Government in the United Kingdom, the Minister of Pensions certifies as mentioned in subsection (1);

(ii) in the case of a member of the armed forces of the Crown in right of Her Majesty's Government in the Colony, the Governor in Council certifies as mentioned in subsection (1);

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

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

- (3) The Colonial Secretary, if satisfied that it is the fact—
- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of Her Majesty's Government in the Colony; or
 - (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces,

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

- (4) A certificate of the Admiralty or a Secretary of State—
- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of Her Majesty's Government in the United Kingdom; or
 - (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces;

shall, for the purposes of this section, be conclusive as to the fact which it certifies.

(5) For the purposes of this section "member of the armed forces of the Crown" unless the context otherwise requires, means a member of the armed forces of the Crown in right of Her Majesty's Government in the Colony or in right of Her Majesty's Government in the United Kingdom.

(6) Nothing in this section shall be deemed by implication or otherwise to confer any right of action against the Crown in right of Her Majesty's Government in the United Kingdom.

9. (1) Nothing in Part II of this Ordinance shall extinguish or abridge any powers or authorities which, if this Ordinance 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 or the Governor by any statute or enactment, and, in particular, nothing in the said Part II shall extinguish or

Saving in respect of acts done under prerogative and statutory powers.

abridge any powers or authorities exercisable by the Crown, whether in time of peace or of war, for the purpose of the defence of the realm or of training, or maintaining the efficiency of, any of the armed forces of the Crown in right of Her Majesty's Government in the United Kingdom or in the Colony.

(2) Where in any proceedings under this Ordinance 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 may, if satisfied that the act or omission was necessary for any such purpose as is mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

PART III.

Jurisdiction and Procedure.

10. Subject to the provisions of this Ordinance, all such civil proceedings by or against the Crown as are mentioned in the First Schedule to this Ordinance are hereby abolished, and all civil proceedings by or against the Crown in the Supreme Court shall be instituted and proceeded with in accordance with rules of court.

Civil proceedings in the Supreme Court. First Schedule.

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.

11. (1) Subject to the provisions of this Ordinance, and to any enactment limiting the jurisdiction of the District Court (whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise) any civil proceedings by or against the Crown may be instituted in the District Court.

Civil proceedings in the District Court.

(2) Any proceedings by or against the Crown in the District Court shall be instituted and proceeded with in accordance with rules of court.

~~(3) On and after the commencement of this Ordinance, the District Court shall cease to exercise the jurisdiction under section 10 of the Supreme Court (Summary Jurisdiction) Ordinance conferred upon the District Court by virtue of the provisions of section 14 of the District Court Ordinance, 1953:~~

Repealed by Ord. 22 of 1957. (Cap. 5). (1 of 1953).

~~Provided that any action or other proceeding pending in the District Court which has not been disposed of prior to the commencement of this Ordinance shall be disposed of and dealt with in like manner as if this Ordinance had not been passed.~~

Inter-pleader.

12. The Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the same manner in which a subject may obtain relief by way of such proceedings or be made a party thereto; and all rules of court relating to interpleader proceedings shall, subject to the provisions of this Ordinance, have effect accordingly.

Parties to proceedings.

13. (1) Civil proceedings by or against the Crown instituted under the provisions of this Ordinance shall be instituted by or against the Attorney General.

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

Service of documents.

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

Removal and transfer of proceedings.

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

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

(2) Without prejudice to the rights of the Crown under the preceding provisions of this section, all rules of law and enactments relating to the removal or transfer of proceedings from the District Court to the Supreme Court, or the transfer of proceedings from the Supreme Court to the District Court, shall apply in relation to proceedings against the Crown :

Provided that an order for the transfer to the District Court of any proceedings against the Crown in the Supreme Court shall not be made without the consent of the Crown.

16. (1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Ordinance, 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
- (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.

17. 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 :

Costs in civil proceedings to which the Crown is a party.

Provided that—

- (a) in the case of proceedings to which by reason of any enactment or otherwise the Attorney General is authorized 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 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 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.

Appeals
and stay of
execution.

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

Scope of
Part III.

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

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

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

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

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

(3) Notwithstanding anything in the preceding provisions of this section, the provisions of this Part of this Ordinance 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 Official Trustee;
- (c) proceedings by the Attorney General or other person under Order XXX, rules 15 and 16 of the Code of Civil Procedure.

(Vol. VII,
p. 44).

PART IV.

Judgments and Execution.

20. (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.

Interest
on debts,
damages
and costs.

(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 of Record to award interest on debts and damages shall apply to judgments given in the proceedings by and against the Crown.

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

Satisfaction of orders against the Crown.

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

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

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the 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 Accountant General shall, subject as hereinafter provided, pay to the person entitled or to his solicitor the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon :

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

(4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any 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, or any Government department, or any officer of the Crown as such, of any such money or costs.

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

22. (1) Subject to the provisions of this Ordinance, 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.

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

23. (1) Where any money is payable by the Crown to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Crown were money payable by a 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 Ordinance 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 :

Attach-
ment of
moneys
payable by
the Crown.

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.

(2) The provisions of subsection (1) shall, so far as they relate to forms of relief falling within the jurisdiction of the District Court, have effect in relation to the District Court as they have effect in relation to the Supreme Court.

PART V.

Miscellaneous and Supplemental.

Discovery.

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

- (a) in any civil proceedings in the Supreme Court or the District 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 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.

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

(2) Without prejudice to the proviso to subsection (1), any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if, in the opinion of the Governor, it would be injurious to the public interest to disclose the existence thereof.

25. (1) Nothing in this Ordinance shall authorize proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any ships or aircraft belonging to Her Majesty or the Government, 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 District Court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Crown to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Crown, order that the proceedings shall be treated as if they were in personam duly instituted against the Crown in accordance with the provisions of this Ordinance, 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.

26. Nothing in this Ordinance shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against public authorities.

Limitation of actions.

27. (1) This Ordinance shall not prejudice the right of the Crown to take advantage of the provisions of a Statute or enactment although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any Statute or enactment which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

Application to the Crown of certain statutory provisions.

(2) Rule 1 of Order XXVI of the Code of Civil Procedure (which empowers the court in certain circumstances to order the defendant about to leave the jurisdiction of the court to furnish security) shall, with any necessary modifications, apply to civil proceedings in the Supreme Court by the Crown.

(Vol. VII, p. 44).

No abatement on demise of Crown.

28. 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.

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

Rules of court.

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

- (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 Hong Kong;
- (b) for securing that where any civil proceedings are brought against the Crown in accordance with the provisions of this Ordinance 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 Government 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 authorizing the Crown to deliver interrogatories without the leave of a court in any proceedings for the enforcement of any right for the enforcement of which proceedings by way of English information might have been taken if this Ordinance had not been passed, so, however, that the Crown shall not be entitled to deliver any third or subsequent interrogatories without the leave of the court;
- (f) for enabling evidence to be taken on commission in proceedings by or against the Crown;
- (g) for providing—
- (i) that a person shall not be entitled to avail himself of any set-off or 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, or penalties;
- (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 enactments relating to the revenue, and any rules made under this subsection may revoke any enactments or rules in force immediately before the commencement of this Ordinance so far as they regulate any such appeals, and may make provision for any matters for which provision was made by any enactments or rules so in force.

31. Save as otherwise expressly provided, the provisions of this Ordinance shall not affect proceedings by or against the Crown which have been instituted before the commencement of this Ordinance; and for the purpose of this section proceedings against the Crown shall be deemed to have been so instituted if a statement of claim with respect to the matter in question has been filed and a sealed copy thereof has been served upon the Attorney General before the commencement of this Ordinance.

Pending proceedings.

Financial provisions.

32. (1) Any expenditure incurred by or on behalf of the Crown in right of Her Majesty's Government in the Colony by reason of the passing of this Ordinance shall be defrayed out of moneys provided by the Legislative Council.

(2) Any sums payable to the Crown by reason of the passing of this Ordinance shall be paid into the Treasury.

Statutes no longer effective and amendments. Second Schedule. Third Schedule.

33. (1) The statutes set out in the Second Schedule to this Ordinance shall no longer have effect in the Colony to the extent specified in the third column of that Schedule.

(2) The enactments set out in the Third Schedule to this Ordinance are amended in the manner specified in the third column of that Schedule.

Savings.

34. (1) Nothing in this Ordinance shall apply to proceedings by or against, or authorize proceedings in tort to be brought against, Her Majesty in Her private capacity.

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

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

(b) authorize proceedings to be taken against the Crown under or in accordance with the provisions of this Ordinance in respect of any alleged liability of the Crown arising otherwise than in respect of Her Majesty's Government in the Colony, or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or

(c) authorize proceedings to be taken against the Crown under or in accordance with the provisions of this Ordinance in respect of any act, neglect, or default of any officer or agent of the Crown, unless—

(i) such 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 revenues of the Colony or any other fund certified by the Governor for the purposes of this paragraph or was at the material time holding an office in respect of which the Governor certifies that the holder thereof would normally be so paid,

(ii) such agent was at the material time acting for and on behalf of the Government; or

- (d) affect any proceedings by the Crown otherwise than in right of Her Majesty's Government in the Colony; or
- (e) subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject in respect of such acts or omissions if it were a private person; or
- (f) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Statute or enactment; or
- (g) affect any right of the Crown to demand a trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits; or
- (h) affect any right of the Attorney General, any Government department or any officer of the Crown as such to institute proceedings under or in accordance with the provisions of any other enactment;

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

(3) A certificate of the Colonial Secretary—

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

shall, for the purposes of this Ordinance, 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 Ordinance 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 Ordinance 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 Ordinance 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 Ordinance, notwithstanding that by reason of the provisions of this Ordinance some other and further remedy is available.

FIRST SCHEDULE.

[s. 10.]

Proceedings abolished by this Ordinance.

1. (1) Latin informations and English informations.
- (2) Writs of *capias ad respondendum*, writs of *subpoena ad respondendum*, and writs of appraisalment.
- (3) Writs of *scire facias*.
- (4) Proceedings for the determination of any issue upon a writ of extent or of *diem clausit extremum*.
2. (1) Proceedings by or against the Attorney General under Order XIX of the Code of Civil Procedure.
- (2) Proceedings by way of petition of right under section 52 of the Naval Prize Act, 1864.
- (3) Proceedings against Her Majesty by way of *monstrans de droit*.

SECOND SCHEDULE.

[s. 33.]

Statutes no longer having effect in the Colony.

Session and Chapter	Title or Short title	Extent of Repeal
25 Edw. I. c. 18.	The King's Tenant his Debtor.	The whole Act.
25 Geo. 3. c. 35.	The Crown Debtors Act, 1785.	The whole Act.
57 Geo. 3. c. 117.	The Extents in Aid Act, 1817.	The whole Act.
5 & 6 Vict. c. 86.	The Exchequer Court Act, 1842.	Section 9.

THIRD SCHEDULE.

[s. 33.]

Enactments amended.

Chapter No.	Short title	Extent of amendment
50.	Importation and Exportation Ordinance.	In section 7(1) all the words following the words "a debt due to the Crown" are deleted.
97.	New Territories Ordinance.	Section 47 is repealed.
102.	Waterworks Ordinance.	In section 17 the words "at the suit of the Accountant General in the District Court" are deleted and at the end of the said section the words "as a debt due to the Crown" are inserted.
109.	Dutiable Commodities Ordinance.	In section 29 all the words following the words "a debt due to the Crown" are deleted.
110.	Entertainments Tax Ordinance.	In section 4(2) all the words following the words "the proprietor" are deleted and replaced by the words "as a debt due to the Crown".
116.	Rating Ordinance.	In section 31, subsection (3) is repealed and replaced as follows— <p style="margin-left: 40px;">“(3) Any rates in default and any sum added thereto by virtue of subsection (2) shall be recoverable as a debt due to the Crown.”.</p>
278.	Colonial Treasurer Incorporation Ordinance.	In section 2 the words "to sue and be sued," are deleted.
310.	Secretary for Chinese Affairs Incorporation Ordinance.	In section 2 the words "and by that name shall and may sue and be sued in all courts in this Colony" are deleted.
No. 11 of 1952.	Agricultural Products (Marketing) Ordinance, 1952.	In section 4(1) the words "may sue and be sued" are deleted and replaced by the words "shall be known".

Passed the Legislative Council of Hong Kong, this 8th day of May, 1957.

R. THOMPSON,

Deputy Clerk of Councils.

(Secretariat CR9/3231/48)