

GOVERNMENT NOTICE No. 51

TRINIDAD AND TOBAGO

THE CROWN LIABILITY AND PROCEEDINGS ACT, 1966

RULES

MADE UNDER SECTION 36 OF THE CROWN LIABILITY AND
PROCEEDINGS ACT, 1966

THE SUPREME COURT (CROWN LIABILITY AND
PROCEEDINGS) RULES, 1967

1. These Rules may be cited as the Supreme Court (Crown Liability and Proceedings) Rules, 1967, and shall be read as one with The Rules of the Supreme Court, 1946, hereinafter referred to as the Principal Rules. Citation

2. The Principal Rules shall apply to all civil proceedings by or against the Crown save insofar as the said Rules are amended as follows: Principal Rules amended

(a) by inserting immediately after Order 1 thereof the following:—

“ORDER 1A

CIVIL PROCEEDINGS BY OR AGAINST THE CROWN

1. Save as provided by the Crown Liability and Proceedings Act, 1966, or by these Rules—

- (a) the Rules of the Supreme Court, except those contained in the preceding Order, shall, so far as may be, apply to all civil proceedings by or against the Crown instituted in the High Court on or after the date of the commencement of the said Act;
- (b) such civil proceedings as aforesaid shall, so far as may be, take the same form as civil proceedings between subjects, and shall, if no special form is applicable, take the form of an action commenced by writ of summons;
- (c) civil proceedings by or against the Crown which have been instituted before the date of commencement of the said Act shall be governed by the practice and procedure immediately before that date.

2. For the purposes of this Order, proceedings against the Crown by way of a claim against the Crown under the Crown Suits Ordinance, shall be deemed to have been instituted before the date of the commencement of the Crown Liability and Proceedings Act, 1966, if the statement of the claim with respect to the matter in question has been filed in the Supreme Court before that date.”; Ch. 5. No. 1

(b) by inserting immediately after rule 3 of Order III, the following:—

“3A. Notwithstanding anything in rule 2 or rule 3 of this Order, the endorsement of claim in proceedings against the Crown shall contain reasonable information

as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the Government departments and officers of the Crown concerned. In such proceedings if the defendant considers that the endorsement of the claim does not contain sufficient information as aforesaid, the defendant may, at any time before the time limited by the writ of summons for appearance has expired, by notice in writing to the plaintiff request further information as specified in the notice. Where such a notice has been given, the time for appearance shall expire four days after the defendant has notified the plaintiff in writing that the defendant is satisfied or four days after a Judge has, on the application of the plaintiff by summons served on the defendant not less than seven days before the return day, decided that no further information as to the matters aforesaid is reasonably required.”;

(c) by inserting immediately after rule 4 of Order V, the following:—

“4A. For the purposes of rules 3 and 4 of this Order, in any civil proceedings against the Crown the defendant shall be deemed to reside and to carry on business in Port-of-Spain.”;

(d) in Order XII—

(i) by inserting immediately after rule 4 thereof the following:—

“4A. For the purposes of rules 3 and 4 of this Order, in any civil proceedings against the Crown, the defendant shall be deemed to reside and to carry on business in Port-of-Spain.”;

(ii) by adding to rule 6 the following paragraph:—

“In civil proceedings by or against the Crown, no such order shall be made except with the consent of the Crown.”;

(e) in Order XIII, by inserting immediately after rule 17 the following:—

“18. In civil proceedings against the Crown, no judgment shall be entered in default of appearance without the leave of the Court, and any application for such leave shall be made by notice of motion served not less than seven days before the return day.”;

(f) by adding the following paragraphs to rule 1 of Order XIV:—

“(d) where an application is made by the Crown under this rule, the cause of action shall be deemed to be sufficiently verified if an affidavit is made by—

(i) the solicitor acting for the Crown,

(ii) an officer duly authorised by the solicitor acting for the Crown,

stating that to the best of his knowledge and belief and specifying the source of his knowledge and the grounds

for his belief, the plaintiff is entitled to the relief claimed and there is no defence to the action except as to the amount of the damages claimed, if any;

(e) no application shall be made under this rule in any proceedings against the Crown.”;

(g) by renumbering rule 1 of Order XIVA as paragraph (1) of the said rule and by adding thereafter the following paragraphs:—

“(2) Where an application is made under this rule in proceedings by the Crown, the cause of action shall be deemed to be sufficiently verified if an affidavit is made by—

(a) the solicitor acting for the Crown;

(b) an officer duly authorised by the solicitor acting for the Crown,

stating that to the best of his knowledge and belief the plaintiff is entitled to the relief claimed and there is no defence to the action.

(3) No application shall be made under this rule in proceedings against the Crown.”;

(h) in Order XVI—

(i) by inserting the following rules immediately after rule 50:—

“IVA—CROWN PROCEEDINGS

“50A. In respect of civil proceedings by or against the Crown, the provisions of this Order shall have effect subject to the provisions of section 19 of the Crown Liability and Proceedings Act, 1966, which relates to the parties to such proceedings.

50B. An application by any person under subsection (5) of section 12 of the Crown Liability and Proceedings Act, 1966, for leave to bring proceedings in the name of the sender or addressee of a postal package or his personal representative shall be made by originating summons. The respondents to the summons shall be the Attorney General and the person in whose name the applicant seeks to bring proceedings.”;

(ii) by inserting immediately after rule 51 thereof the following:—

“51A. Notwithstanding anything in rule 51 of this Order, leave to issue a third party notice for service on the Crown shall not be granted except upon an application to a Judge by summons served upon the plaintiff and the Attorney General. Such leave shall not be granted unless the Judge is satisfied that the Crown is in possession of such information as is reasonably required with regard to the circumstances in which it is alleged that the liability of the Crown has arisen.”;

- (iii) by adding the following proviso at the end of rule 55 thereof:—

“Provided that in the case of third party proceedings against the Crown, the foregoing provisions of this rule shall not apply unless a Judge so orders; and any application for such an order shall be made by summons served not less than seven days before the return day.”;

- (iv) by adding the following paragraph at the end of rule 56 thereof:—

“A defendant shall not in any event be entitled to enter judgment against the Crown under this rule without the leave of a Judge. Any application for leave to enter judgment against the Crown under this rule shall be by summons served not less than seven days before the return day.”;

- (i) in Order XX—

- (i) by inserting immediately after the words “Order XXII,” in the first line of rule 3 thereof the words “and subject also to rule 3A of this Order,”;

- (ii) by inserting immediately after rule 3 thereof the following:—

“3A. (1) A person shall not be entitled to avail himself of any set-off or counter-claim in any proceedings by the Crown for the recovery of taxes, duties or penalties, or to avail himself in proceedings by the Crown of any other nature of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(2) A person shall not be entitled without the leave of a Judge to avail himself of any set-off or counterclaim in any proceedings by the Crown.

(3) The Crown shall not be entitled without the leave of a Judge to avail itself of any set-off or counterclaim.

(4) Any application for leave pursuant to paragraph (2) or (3) of this rule shall be made by summons.”;

- (j) by adding immediately after rule 5 of Order XXVI the following:—

“6. Any application such as is referred to in subsection (2) of section 31 of the Crown Liability and Proceedings Act, 1966 (which relates to proceedings *in rem* instituted against property belonging to the Crown) may be made to a Judge at any time before trial by summons, or may be made at the trial of the proceedings.”;

- (k) in Order XXVIII—

- (i) by substituting for rule 11 thereof the following:—

“11. In all actions, other than those mentioned in the preceding rules of this Order and actions against the Crown, the plaintiff may, if the defendant does not within the time allowed for that purpose deliver a defence, apply

for judgment by motion or summons, and on the hearing of the application the Court or a Judge shall give such judgment as the plaintiff appears entitled to on the statement of claim.”;

- (ii) by adding immediately after rule 16 of Order XXVIII the following:—

“17. In proceedings against the Crown no judgment shall be entered in default of pleading without the leave of the Court, and any application for such leave shall be made by notice of motion served not less than seven days before the return day.”;

- (l) in Order XXXII:—

- (i) by inserting immediately after rule 5 the following:—

“5A. In proceedings to which the Crown is a party, if an order is made for interrogatories to be answered by the Crown, the order shall direct by what officer of the Crown the interrogatories are to be answered.”;

- (ii) by inserting immediately after rule 25 the following:—

“25A. In proceedings to which the Crown is a party any affidavit to be made in answer to an order for discovery against the Crown shall be made by such officer of the Crown as the Court or a Judge shall direct.

25B. In any proceedings in the High Court to which the Crown is a party, any order of the Court made under the powers conferred by subsection (1) of section 30 of the Crown Liability and Proceedings Act, 1966, shall be construed as not requiring disclosure of the existence of any document, the existence of which it would in the opinion of the Attorney General be injurious to the public interest to disclose.”;

- (m) in Order XXXVII:—

- (i) by substituting for all the words after the words “or interest” in the third line of rule 36 thereof the following:—

“The plaintiff may proceed against the Crown under section 19 of the Crown Liability and Proceedings Act, 1966, and the provisions of that Act and these Rules shall apply accordingly.”;

- (ii) by adding immediately after rule 57 thereof the following:—

“58. For the avoidance of doubt it is hereby declared that any powers exercisable by a Judge in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.”;

(n) by inserting immediately after Order XLIA the following:—

“ORDER XLIB

ORDER, ETC., AGAINST THE CROWN

1. In this Order the following expressions have the following meanings:—

“Order against the Crown” means any order (including an order for costs) made in any civil proceedings by or against the Crown, or in any proceedings which in England are taken on the Crown side of the Queen’s Bench Division, or in connection with any arbitration to which the Crown is a party or in favour of any person against the Crown;

“Order” includes a judgment, decree, rule, award or declaration.

2. Nothing in any of the following orders:—

XLII (execution and discovery in aid of execution);

XLIII (writ of sequestration);

XLIV (attachments);

XLV (attachment of debts);

XLVI (charging orders, distingas and stop orders);

XLVII (writ of possession);

XLVIII (writ of delivery);

shall apply in respect of any order against the Crown.

3. Any application for a certificate under section 27 of the Crown Liability and Proceedings Act, 1966 (which relates to satisfaction of orders against the Crown) shall be made to the Registrar. Any application under that section for a direction that a separate certificate be issued with respect to costs ordered to be paid to the applicant shall be made to the Court or a Judge, and may be made *ex parte* without summons. Any such certificate shall be in one of the Forms Nos. 24 and 25 in Appendix F with such variations as circumstances may require.

4. (1) No order for the attachment of debts under Order XLIV or for the appointment of a sequestrator under Order XLIII or for the appointment of a receiver under Order LI shall be made or have effect in respect of any money due or accruing or alleged to be due or accruing from the Crown.

(2) In a case where it is alleged that such an order could have been obtained and would have had effect in respect of such money if it had been due or accruing from a subject, the Court or a Judge may on application by motion or summons of the judgment creditor make an order restraining the judgment debtor from receiving such money and directing payment by the Crown to the judgment creditor or to a sequestrator or receiver; and the Court or a Judge may appoint a sequestrator or receiver for that purpose.

(3) No such order shall be made in respect of—

(a) wages or salary payable to any officer of the Crown as such;

- (b) money which is subject to the provisions of any enactment prohibiting or restricting, assigning or charging or taking in execution; or
- (c) money payable by the Crown to any person on account of a deposit in the Post Office Savings Bank.

(4) Any such motion or summons shall be served at least four days before the return day on the Crown, and, unless otherwise ordered, on the judgment debtor or his solicitor.

Service on the judgment debtor shall be effected in the manner provided for such service by Order XLV Rule 1.

Service on the Crown shall be effected in accordance with the manner prescribed for the service of documents referred to in section 20 of the Crown Liability and Proceedings Act, 1966.

(5) If the Crown disputes liability, the Court or a Judge may order that any issue or question necessary for determining the Crown's liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. Where it is suggested by the Crown that the debt with reference to which the proceedings are taken belongs to some third person, or that any third person has a claim upon it, the Court or a Judge may order such third person to appear and state the nature and particulars of his claim upon such debt. After hearing such third person as aforesaid, and any other person whom by the same or any subsequent order the Court or a Judge may require to appear, the Court or a Judge may bar the claim of the third or other person, or make such other order with respect to his claim as the Court or a Judge thinks fit, upon such terms in all cases, with respect to the third or other person's claim (if any), and to costs, as the Court or a Judge thinks just and reasonable. If the third or other person does not appear when ordered, the Court or a Judge may exercise any powers which the Court or a Judge might have exercised if he had appeared.

(6) In this rule the expression "judgment debtor" means the person against whom the order for the attachment of debts or for the appointment of a sequestrator or receiver could have been obtained as aforesaid, and the expression "judgment creditor" means the person in whose favour it could have been obtained.";

- (o) by inserting immediately after Order LV the following:—

"ORDER LVA

APPLICATIONS UNDER SECTION 16 OF THE CROWN
LIABILITY AND PROCEEDINGS ACT, 1966

1. Applications under section 16 of the Crown Liability and Proceedings Act, 1966 may be made by originating motion or originating summons *inter partes* to be intitled in the matter of the particular subject matter of the claim and in the matter of the Crown Liability and Proceedings Act, 1966.

2. The respondent to the application shall be the person from whom any information, account or payment is claimed or by whom any books are required to be produced.

3. Any such application shall refer to the enactment under which the information, account or payment or the production of books is claimed; and where information is claimed the application shall show by appropriate questions or otherwise what information is required.

4. Upon any such application an affidavit by a duly authorised officer of the department concerned setting out the state of facts upon which the application is based and stating his reasons for thinking that such facts exist shall be *prima facie* evidence of such facts.

5. If evidence is filed disputing any of the facts alleged in pursuance of rule 4, further evidence may be filed, and the Court or a Judge may either decide the matter upon the affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in Court.

6. An order in favour of the Crown upon any application under this Order shall, unless the Court or a Judge otherwise determines, name a time within which each of its terms is to be complied with.

7. All orders upon any application under this Order shall for the purposes of Order 2 rule 4, of the Court of Appeal Rules be deemed to be interlocutory.

8. Nothing in this Order shall be construed as requiring the Crown to proceed by way of an application under section 16 of the Crown Liability and Proceedings Act, 1966 in any case in which the only relief claimed by the Crown is the payment of money; and in any such case the Crown may avail itself of any other procedure which is open to it under the Rules of the Supreme Court.”;

(p) by adding the following proviso to rule 10 of Order LIX—

“Provided that no order shall be made against the Crown under the foregoing provisions of this Rule except upon an application by summons served not less than seven days before the return day.”;

(q) in order LXVI—

(i) by inserting immediately after rule 1 thereof the following rule:—

“1A. The provisions of these Rules relating to the service of documents shall have effect subject to the provisions of section 20 of the Crown Liability and Proceedings Act, 1966.”

(ii) by inserting at the end of rule 2 thereof the following:—
“This rule does not apply in the case of documents required to be served in accordance with section 20 of the Crown Liability and Proceedings Act, 1966.”

(iii) by adding to rule 3 thereof the following proviso:

“Provided that the preceding provisions of this rule shall not have effect in the case of civil proceedings against the Crown where no appearance has been entered on behalf of the Crown; and in any such case service shall be effected in the manner prescribed for the service of documents referred to in section 20 of the Crown Liability and Proceedings Act, 1966.”;

(r) In Order LXVII by deleting—

- (i) paragraphs (c) and (d) of rule 1 thereof; and
- (ii) rules 2 and 3;

(s) In Order LXXI by inserting after the definition of the expression "Taxing Officer" the following:—

" "Civil proceedings by the Crown" and "civil proceedings against the Crown" and "civil proceedings by or against the Crown" have the same respective meanings as in Part II of the Crown Liability and Proceedings Act, 1966, and do not include any of the proceedings specified in subsection (3) of section 25 of that Act. "Civil proceedings to which the Crown is a party" has the same meaning as it has for the purposes of Part IV of the Crown Liability and Proceedings Act, 1966, by virtue of subsection (3) of section 2 of that Act.

Except where the context otherwise requires, references in these Rules to actions for the recovery of land or for the recovery of possession of land shall be construed as including proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to land or to the possession thereof, and references in these Rules to action for the recovery or delivery or specific delivery of property other than land or the possession of such property shall be construed as including proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the property or to the possession thereof."

3. The following Forms shall be added to Appendix F and shall stand as Forms Nos. 24 and 25 respectively:—

No. 24

CERTIFICATE OF ORDER AGAINST THE CROWN (O. 41B. R. 3)

[Heading as in Form 1]

By a judgment [decree] [order] of this Honourable Court dated the _____ day of _____ 19____, it was adjudged [decreed] [ordered]:—

[Give particulars of the judgment decree or order.] I hereby certify that the amount payable to _____ by _____ in pursuance of the said judgment [decree] [order] is _____ [*together with interest thereon from the _____ day of _____ until the date of payment, and together with costs which have been taxed and certified by the Taxing Master at _____. Interest is payable on the said costs from the _____ day of _____ until the date of payment.]

[†This Certificate does not include the amount payable under the said judgment [decree] [order] in respect of costs.]

*Omit so far as not required.

†To be included where a separate certificate has been directed to be issued as to costs.

No. 25

CERTIFICATE OF ORDER FOR COSTS AGAINST THE CROWN
(O. 41B. R. 3)

[Heading as in Form 1]

By a Judgment [decree] [order] of this Honourable Court dated
the _____ day of _____, 19____, it was
adjudged [decree] [ordered]:—

[Give particulars of the judgment, decree or order.] I hereby certify
that the costs payable to _____
by _____ in pursuance of the said
judgment [decree] [order] have been taxed and certified by the Taxing
Master at _____ . [*Interest is payable on the
said costs from the _____ day of _____
until the date of payment.]

*Omit when not required."

Made by the Rules Committee this 29th day of March, 1967.

H. O. B. WOODING
Chief Justice

CLEMENT E. PHILLIPS
Justice of Appeal

D. E. MALONE
Judge of the High Court

G. A. RICHARDS
Attorney General

ERIC J. A. McCARTHY
Registrar of the Supreme Court

J. ALGERNON WHARTON
Barrister

D. C. BOUCAUD
Solicitor