

STATE LIABILITY AND PROCEEDINGS ACT

CHAPTER 8:02

Act

17 of 1966

Amended by

8 of 1976

22 of 1977

*21 of 1981

*24 of 1981

6 of 1998

*See Note on Amendments at page 2

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Note on Subsidiary Legislation

See LN 51/1967 for Rules applicable to this Act.

**Note on Amendments
(sections 25 and 40)**

- (a) Section 25 of the Act is amended by Act No. 24 of 1981.
- (b) Section 40 of the Act is amended by Acts Nos. 21 of 1981 and 24 of 1981.

However, Act No. 21 of 1981 and Act No. 24 of 1981 had not up to the date of the last revision of this Act been brought into operation.

Note on sections 8, 10 and 11

See section 413 of the Shipping Act (Ch. 50:10) for the application of sections 8, 10 and 11 of this Act, (i.e. the State Liability and Proceedings Act).

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STATE LIABILITY AND PROCEEDINGS ACT

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CHAPTER 8:02

STATE LIABILITY AND PROCEEDINGS ACT

17 of 1966. **An Act to amend the law relating to the civil liabilities and rights of the State and to civil proceedings by and against the State, to amend the law relating to the civil liabilities of persons other than the State in certain cases involving the affairs or property of the State, and for purposes connected with the matters aforesaid.**

Commencement.
165/1968. [28TH SEPTEMBER 1968]

Short title.
[8 of 1976]. **1.** This Act may be cited as the State Liability and Proceedings Act.

Interpretation.
[8 of 1976]. **2.** (1) Any reference in this Act to the provisions of this Act shall, unless the context otherwise requires, include a reference to Rules of Court or Petty Civil Court Rules made for the purposes of this Act.

(2) In this Act—

“agent”, in relation to the State, includes an independent contractor employed by the State but does not include a statutory corporation except where the State has entered into an express contract of agency with the corporation;

“civil proceedings” includes proceedings in the High Court of Justice or a Petty Civil Court for the recovery of fines or penalties, but does not include proceedings analogous to proceedings on the Crown side of the Queen’s Bench Division in England;

“State ship” means a ship that is owned by or is in the exclusive possession of the State;

“Minister” means the Minister to whom responsibility for defence has been assigned;

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

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

“servant”, in relation to the State, includes an officer who is a member of the public service and any servant of the State, and accordingly (but without prejudice to the generality of the foregoing) includes—

- (a) a Minister of the State;
- (b) a member of the armed forces of the State;
- (c) a member of the Trinidad and Tobago Police Service,

but does not include—

- (d) the President;
- (e) any Judge, Magistrate, Justice of the Peace or other judicial officer;
- (f) any officer, employee or servant of a statutory corporation;

“ship” includes every description of vessel used in navigation not propelled by oars;

“the State” means the Republic of Trinidad and Tobago;

“statutory duty” means any duty imposed by or under any written law.

(3) Any reference in Parts III or IV to civil proceedings by or against the State, or to civil proceedings to which the State is a party, shall be construed as including a reference to civil proceedings to which the Attorney General is a party; but the State shall not for the purposes of Parts III and IV 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.

(4) Any reference in this Act to the armed forces of the State shall be construed as including a reference to the following forces:

- (a) the Trinidad and Tobago Defence Force;
- (b) any other organisations for the time being constituted for the purpose of defence.

PART I

SUBSTANTIVE LAW

Right to sue the State.
[8 of 1976].

3. Where any person has a claim against the State after the commencement of this Act, and, if this Act had not been passed, the claim might have been enforced, subject to the grant of the fiat of the President, by petition of right, or might have been enforced by a proceeding provided by a statutory provision repealed by this Act, then, subject to this Act, the claim may be enforced as of right, and without the fiat of the President, by proceedings taken against the State for that purpose in accordance with this Act.

Liability of the State in tort.
[8 of 1976].

4. (1) Subject to this Act, the State 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;
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property.

(2) No proceedings shall lie against the State by virtue of subsection (1)(a) in respect of any act or omission of a servant or agent of the State unless the act or omission would apart from this Act have given rise to a cause of action in tort against that servant or agent or his estate.

(3) Where the State is bound by a statutory duty which is binding also upon persons other than the State and its officers, then, subject to this Act, the State 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.

(4) Where any functions are conferred or imposed upon an officer of the State 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 State 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 State.

(5) Any written law which negatives or limits the amount of the liability of any Government department or officer of the State in respect of any tort committed by that department or officer shall, in the case of proceedings against the State under this section in respect of a tort committed by that department or officer, apply in relation to the State as it would have applied in relation to that department or officer if the proceedings against the State had been proceedings against that department or officer.

(6) No proceedings shall lie against the State 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.

5. Except as expressly provided by this Act or any other written law, this Act shall not be construed so as to make any written law binding upon the State which would not otherwise be so binding or so as to impose any liability by virtue of any written law which is not binding on the State.

Liability of State under other written laws. [8 of 1976].

6. (1) Where after the commencement of this Act any servant or agent of the State infringes a patent, or infringes a registered trade mark, or infringes any copyright (including any copyright in a design) subsisting under the Patents and Designs Act and the Trade Marks Act, and the infringement is committed with the authority of the State, then, subject to this Act, civil proceedings in respect of the infringement shall lie against the State.

Provisions as to industrial property. [8 of 1976].

Ch. 82:83.

Ch. 82:81.

(2) Nothing in subsection (1) or in any other provision of this Act shall affect the rights of any Government department under section 12 of the Patents and Designs Act.

(3) Save as expressly provided by this section, no proceedings shall lie against the State by virtue of this Act in respect of the infringement of a patent, in respect of the infringement of a registered trade mark, or in respect of the infringement of any such copyright as is mentioned in subsection (1).

Application of law as to indemnity, contribution, joint and several tortfeasors and contributory negligence. [8 of 1976].

Ch. 4:01.

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

(2) Without prejudice to the effect of section 26(1) of the Supreme Court of Judicature Act (which relates to proceedings against, and contribution between, joint and several tortfeasors) binds the State.

(3) Without prejudice to the general effect of section 3 of this Act, section 28 of the Supreme Court of Judicature Act (which relates to contributory negligence) binds the State.

Liability in respect of State ships. [8 of 1976]. 11 & 12 Geo. 6 c. 44.

***8.** (1) The Merchant Shipping Acts 1894 to 1948 of the United Kingdom which limit the amount of the liability of the owners of ships shall, with any necessary modifications, apply for the purpose of limiting the liability of the State in respect of State ships; and any provision of the said Acts, which relates to or is ancillary to or consequential on the provisions so applied shall have effect accordingly.

(2) Any reference in this section to the Merchant Shipping Acts 1894 to 1948 of the United Kingdom, which limit the amount of the liability of owners of ships shall be construed as including a reference to any provision of those Acts which negatives the liability of the owner of a ship and accordingly any reference in this section to limiting the liability of any person shall be construed as including a reference to negating his liability.

*See Note on page 2.

9. The provisions of sections 1, 2 and 3 of the Maritime Conventions Act 1911 of the United Kingdom (which relate to the apportionment of damage or loss caused by vessels) shall apply in the case of vessels belonging to the State as they apply in the case of other vessels.

Application to ships of the State of Rules as to division of loss, etc. [8 of 1976]. 1 & 2 Geo. 5 c. 57.

***10.** (1) It is hereby declared that the Merchant Shipping Acts 1894 to 1948 of the United Kingdom which limit the amount of the liability of the owners of docks and of harbour authorities, apply for the purpose of limiting the liability of the State in its capacity as the owner of any dock, or in its capacity as a harbour authority, and that all the relevant provisions of the said Acts have effect in relation to the State accordingly.

Liability in respect of State's docks, harbours, etc. [8 of 1976]. 11 & 12 Geo. 6 c. 44.

(2) In this section, the expressions "dock", "harbour", "owner" and "harbour authority" have respectively the same meanings as they have for the purposes of section 2 of the Merchant Shipping (Liability of Shipowners and Others) Act 1900 of the United Kingdom.

63 & 64 Vict. c. 32.

***11.** (1) Subject to this Act, the law relating to civil salvage, whether of life or property, except sections 77, 82, 83 and 84 of the Merchant Shipping Ordinance, or any corresponding provisions relating to aircraft, shall apply in relation to salvage services rendered after the commencement of this Act in assisting any State ships or aircraft, or in saving life therefrom, or in saving any cargo or apparel belonging to the State, in the same manner as if the ship, aircraft, cargo or apparel belonged to a private person.

Salvage claims against the State and State's rights to salvage. [8 of 1976]. Ch. 18 No. 5 (1950 Ed.).

(2) Where after the commencement of this Act salvage services are rendered by or on behalf of the State, the State shall be entitled to claim salvage in respect of those services to the same extent as any other salvor, and shall have the same rights and remedies in respect of those services as any other salvor.

12. (1) Subject to this section no proceedings in tort shall lie against the State for anything done or omitted to be done in relation to a postal packet by any person while employed as a servant or

Liability in connection with postal packets. [8 of 1976].

*See Note on page 2.

agent of the State, nor shall any officer of the State be subject except at the suit of the State, to any civil liability for any of the matters aforesaid.

Ch. 47:01.

(2) Notwithstanding section 20 of the Post Office Act, proceedings shall lie against the State 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 State while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet except that—

- (a) no proceedings shall lie under this subsection in respect of any postal packet registered before the commencement of this Act;
- (b) the amount recoverable in any proceedings under this subsection shall not exceed the market value of the packet in question (excluding the market value of any message or information which it bears) at the time when the cause of action arises;
- (c) the amount recoverable in any such proceedings shall not in any event exceed the maximum amount which, under the Post Office 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 State shall not be liable under this subsection in respect of any packet unless such conditions as are prescribed by Post Office Regulations in relation to registered inland postal packets have been complied with in relation to that packet.

Sub. Leg.
Ch. 47:01.

(3) For the purposes of any proceedings under subsection (2), it shall be presumed, until the contrary is shown, 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 State while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet.

(4) Subject to subsection (5), no relief is 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 subsection (2) 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 made in relation to the packet under subsection (2).

(5) 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 subsection (2), 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 subsection in the name of the sender or the addressee of the packet.

(6) Any reference in subsections (4) and (5) to the sender or addressee of the packet includes a reference to his personal representatives.

(7) Where by virtue of subsection (5) 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.

(8) 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.

(9) No claim for salvage shall lie against the State by virtue of section 10 in respect of anything done to, or suffered in relation to, any postal packets while they are being carried by sea or by air.

(10) In this section—

“inland postal packet” means a postal packet which is posted in Trinidad and Tobago for delivery at any place in Trinidad and Tobago to the person to whom it is addressed;

“postal packet” means a letter, postcard, reply postcard, newspaper, printed packet, sample packet, or parcel, and every packet or article transmissible by post;

Ch. 47:01. “Post Office Regulations” means such Regulations as have been or may be made under the Post Office Act;

“sender” means the person on whose behalf a postal packet is posted but does not include a person at whose request any article contained in a postal packet is sent by the first mentioned person by post.

Provisions relating to the armed forces. [8 of 1976].

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

- (a) at the time when that thing is suffered by that other member, he is either on duty as a member of such forces 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 such forces; and
- (b) the Minister certifies that the suffering of that thing by such other member has been or will be treated as attributable to service for the purposes of entitlement to a gratuity or pension under any written law relating to the disablement or death of members of the force of which he is a member.

(2) Subsection (1) does 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.

(3) No proceedings in tort shall lie against the State for death or personal injury due to anything suffered by a member of the armed forces of the State 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 mentioned above or in consequence of the nature or condition of any

equipment or supplies used for the purposes of those forces; and

- (b) the Minister certifies as mentioned in subsection (1),

nor shall any act or omission of an officer of the State 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 State being a thing as to which the conditions mentioned above are satisfied.

- (4) The Minister, 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 State; 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 and at the request in writing of any injured person shall issue a certificate certifying that to be the fact; and any such certificate shall, for the purposes of this section, be *prima facie* evidence of the fact which it certifies.

14. (1) Except as expressly provided by this Act or any other written law, nothing in this Part 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 State, or any powers or authorities conferred on the State by any written law and, in particular, nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the State, 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 State.

Saving in respect of Act under prerogative and statutory powers. [8 of 1976].

(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 State, the Minister

may, if satisfied that the act or omission was necessary for any purpose 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 II

JURISDICTION AND PROCEDURE

THE HIGH COURT OF JUSTICE

Civil proceedings in the High Court. [8 of 1976]. Schedule.

15. (1) Subject to this Act, all civil proceedings by or against the State as are mentioned in the Schedule are hereby abolished, and all civil proceedings by or against the State in the High Court of Justice (in this Act referred to as “the High Court”) shall be instituted and proceeded with in accordance with Rules of Court and not otherwise.

57 & 58 Vict. c. 39.

(2) In this section, “Rules of Court” means, in relation to any claim against the State which falls within the jurisdiction of that Court as a Prize Court, rules made under the Prize Courts Act 1894 of the United Kingdom.

Summary applications to High Court in certain revenue matters. [8 of 1976].

16. (1) Subject to and in accordance with Rules of Court, the State may apply in a summary manner to the High Court—

Ch. 76:01.

- (a) for the furnishing of information required to be furnished by any person under the written laws relating to death duties;
- (b) for the delivery of accounts and payment of duty under the said written laws by persons accountable for or chargeable with such duty and by persons who have taken possession of and administered the estates of deceased persons without obtaining probate or letters of administration;
- (c) for the delivery of an account under section 23 of the Stamp Duty Act;
- (d) for the payment of sums improperly withheld or retained within the meaning of the said section 23.

(2) Subject to and in accordance with Rules of Court, the State may apply in a summary manner to the High Court—

- (a) for the payment of duty under the written laws relating to excise duties;
- (b) for the delivery of any accounts required to be delivered, or the furnishing of any information required to be furnished, by the written laws relating to excise duties or by any Regulations relating to such duties.

PETTY CIVIL COURTS

17. (1) Subject to this Act, and to any written law limiting the jurisdiction of a Petty Civil 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 against the State may be instituted in a Petty Civil Court.

Civil proceedings in the Petty Civil Court. [8 of 1976].

(2) Any proceedings by or against the State in a Petty Civil Court shall be instituted and proceeded with in accordance with Petty Civil Court Rules and not otherwise.

GENERAL

18. The State may obtain relief by way of interpleader proceedings, and may be made a party to the proceedings, in the same manner in which a subject may obtain relief by way of the proceedings or be made a party thereto and may be made a party to the proceedings notwithstanding that the application for relief is made by a marshal or bailiff or other like officer; and all Rules of Court and Petty Civil Court Rules relating to interpleader proceedings shall, subject to this Act, have effect accordingly.

Interpleader. [8 of 1976].

19. (1) Subject to this Act and to any other written law, proceedings by the State may be instituted by the Attorney General.

Method of making the State party to proceedings. [8 of 1976 6 of 1998].

(2) Subject to this Act and to any other written law, proceedings against the State shall be instituted against the Attorney General.

(3) The State may be joined as a plaintiff in any proceedings to which it could be a plaintiff under this Act by joining the Attorney General as a plaintiff.

(4) The State may be joined as a defendant or third party to any proceedings to which it could be a defendant under this Act by joining the Attorney General as a defendant or third party.

(5) No proceedings instituted in accordance with this Act to which the Attorney General is a party or third party shall abate or be affected by any change in the person holding the office of Attorney General.

(6) Where the Attorney General 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 State in those proceedings shall be made against or in favour of the Attorney General.

(7) No proceedings whatsoever shall lie in and no process whatsoever shall issue from any Court in Trinidad and Tobago against the President in his official capacity.

(8) Proceedings against an authority established by the Constitution or a member thereof arising out of or in connection with the exercise of the powers of the authority or the performance of its functions or duties are deemed to be proceedings against the State.

(9) In this section, “authority” means a Service Commission as defined in section 3(1) of the Constitution.

Ch. 1:01.

Service of documents and time for filing defence by State. [8 of 1976 22 of 1977].

20. (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 mentioned above, 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 Attorney General by the delivery thereof to the Solicitor General or such officer in the Department of the Solicitor General as he may designate by Notice published in the *Gazette*, or by leaving it at the office of the Solicitor General

or of that officer, or by sending it by post in a registered letter addressed to the Solicitor General or to that other officer at his office.

(2) In any civil proceedings against the State 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 notice as the Court may allow.

21. (1) If in a case where proceedings are instituted against the State in a Petty Civil Court an application in that behalf is made by the State to the High Court and there is produced to the High 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, the proceedings shall be removed into the High Court.

Removal and
transfer of
proceedings.
[8 of 1976].

(2) Where under subsection (1) any proceedings have been removed into the High Court on the production of a certificate, and it appears to the Court by which 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.

(3) Without prejudice to the rights of the State under subsection (1), all rules of law and written laws relating to the removal or transfer of proceedings from a Petty Civil Court to the High Court, or the transfer of proceedings from the High Court to a Petty Civil Court, shall apply in relation to proceedings against the State, so that, however—

- (a) an order for the transfer to a Petty Civil Court of any proceedings against the State in the High Court shall not be made without the consent of the State; and
- (b) the duty of a Court to make an order under this section for the transfer to the High Court of proceedings commenced against the State in a Petty Civil Court shall not be conditional upon the giving of security by the State.

Nature of relief.
[8 of 1976].

22. (1) In any civil proceedings by or against the State the Court, subject to this Act, may make all such orders as it may make in proceedings between subjects, and otherwise to give the appropriate relief as the case may require.

(2) Where in any proceedings against the State any 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.

(3) In any proceedings against the State 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 State to the land or property or to the possession thereof.

(4) The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the State if the effect of granting the injunction or making the order would be to give any relief against the State which would not have been obtained in proceedings against the State.

Appeal and stay
of execution.
[8 of 1976].

23. Subject to this Act, all written laws, Rules of Court and Petty Civil Court Rules relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the State as they apply to proceedings between subjects.

Costs in civil
proceedings to
which the State
is a party.
[8 of 1976].
Ch. 8:03.

24. (1) In any civil proceedings or arbitration to which the State is a party, the costs of and incidental to the proceedings shall, subject to the Public Authorities Protection Act, be awarded in the same manner and on the same principles as in cases between subjects, and the Court shall have power to make an order for the payment of costs by or to the State accordingly.

(2) Any costs awarded to the State under subsection (1) shall not be disallowed or reduced upon taxation merely because the Attorney-at-law who earned the costs, or in respect of whose services the costs are charged, was a salaried officer of the State

performing such services in the discharge of his duty and remunerated therefor by his salary, or for that or any other reason not entitled to recover any cost from the State in respect of the services so rendered; but the costs recovered by or on behalf of the State in any such case shall be paid into the Consolidated Fund.

25. (1) Subject to this section, any reference in this Part to civil proceedings by the State shall be construed as a reference to the following proceedings only: Scope of Part II. [8 of 1976].

(a) proceedings for the enforcement or vindication of any right or the obtaining of any relief, which, if this Act had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 1 of the Schedule;

Schedule.

(b) proceedings for the enforcement or vindication of any right or the obtaining of any relief, which, if this Act had not been passed, might have been enforced or vindicated or obtained by the Attorney General;

(c) all such proceedings as the State is entitled to bring by virtue of this Act,

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

(2) Subject to this section, any reference in this Part to civil proceedings against the State shall be construed as a reference to the following proceedings only:

(a) proceedings for the enforcement or vindication of any right or the obtaining of any relief, which, if this Act had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 2 of the Schedule;

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(b) proceedings for the enforcement or vindication of any right or the obtaining of any relief, which, if this Act had not been passed, might have been

enforced or vindicated or obtained by an action against the Attorney General; and

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

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

(3) Notwithstanding anything in subsection (1) or subsection (2), the provisions of this Part shall not have effect with respect to any of the following proceedings:

- (a) proceedings brought by the Attorney General on the relation of some other person;
- (b) proceedings by or against the Public Trustee;
- (c) proceedings by or against the Registrar General or any officers of his department in respect of land held under the Real Property Act.

Ch. 56:02.

PART III

JUDGMENTS AND EXECUTIONS

Interest on debts and costs. [8 of 1976].
Ch. 8:09.

26. (1) Section 13 of the Remedies of Creditors Act (which *inter alia* provides that a judgment debt shall carry interest) shall apply to judgment debts due from or to the State.

(2) Where any costs are awarded to or against the State in the High 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 State.

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(3) Section 25 of the Supreme Court of Judicature Act, (which empowers Courts of record to award interest on debts and damages) shall apply to judgments given in proceedings by and against the State.

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

27. (1) Where in any civil proceedings by or against the State or in any proceedings analogous to proceedings on the Crown side of the Queen's Bench Division in England or in connection with any arbitration to which the State is a party, any order (including an order for costs) is made by any Court in favour of any person against the State 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; but 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.

Satisfaction of orders against the State. [8 of 1976].

(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 person for the time being named in the record as the Attorney-at-law, or as the person acting as Attorney-at-law, for the State.

(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 Comptroller of Accounts shall, subject as provided below, pay to the person entitled or where he is represented by an Attorney-at-law to his Attorney-at-law the amount appearing by the certificates to be due to him together with the interest, if any, lawfully due thereon; but the Court by which any such order as mentioned above 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) 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 payment by the State of any such money or costs as mentioned above, and no person shall be individually liable under any order for the payment by the State of any such money or costs.

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

Execution by
the State.
[8 of 1976].

28. (1) Subject to this Act, any order made in favour of the State against any person in any civil proceedings to which the State is a party may be enforced in the same manner as an order made in an action between subjects, and not otherwise.

(2) Subsection (1) shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

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(3) Sections 3 and 5 of the Debtors Act (which provide respectively for the abolition of imprisonment for debt, and for saving the power of committal in case of small debts), shall apply to sums of money payable and debts due to the State; but for the purpose of the application of section 3 to any sum of money payable or debt due to the State, the section shall have effect as if there were included among the exceptions therein mentioned default in payment of any sum payable in respect of death duties.

(4) Nothing in this section shall affect any procedure which immediately before the commencement of this Act was available for the enforcement of an order made in favour of the State in proceedings brought by the State for the recovery of any fine or penalty, or for the forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship.

Attachment of
moneys payable
by the State.
[8 of 1976].

29. (1) Subject to subsection (2), where any money is payable by the State 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 State 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 High Court may, subject to this Act and in accordance with Rules of Court, make an order restraining the first-mentioned person from receiving that money

and directing payment thereof to that other person, or to the sequestrator or receiver.

(2) No such order referred to in subsection (1) shall be made in respect of—

- (a) any wages or salary payable to any officer of the State as such;
- (b) any money which is subject to the provisions of any written law prohibiting or restricting assignment or charging or taking in execution.

(3) Subsections (1) and (2) shall, so far as they relate to forms of relief falling within the jurisdiction of a Petty Civil Court have effect in relation to Petty Civil Courts as they have effect in relation to the High Court, but with the substitution of a reference to Petty Civil Court Rules for any reference in subsection (1) to Rules of Court.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

MISCELLANEOUS

- 30.** (1) Subject to and in accordance with Rules of Court— Discovery.
[8 of 1976].
- (a) in any civil proceedings in the High Court to which the State is a party or third party the State may be required by the Court to make discovery of documents and produce documents for inspection; and
 - (b) in any proceedings as mentioned above, the State may be required by the Court to answer interrogatories.

(2) Subsection (1) shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(3) Any order of the Court made under the powers conferred by subsection (1)(b) shall direct by what officer of the State the interrogatories are to be answered.

(4) Without prejudice to subsection (2) any Rules made for the purpose 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 Attorney General, it would be injurious to the public interest to disclose the existence thereof.

Exclusion of proceedings *in rem* against the State. [8 of 1976].

31. (1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the State, or the arrest, detention or sale of any State ship or aircraft, or of any cargo or other property belonging to the State, or give to any person any lien or any such ship, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in the High Court or in a Petty Civil 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 State 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 State, order that the proceedings shall be treated as if they were *in personam* duly instituted against the State in accordance with this Act, or duly instituted against any other person whom the Court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

(3) An order under subsection (2) may be made upon such terms, if any, as the Court thinks just; and where the Court makes any such order it may make such consequential orders as the Court thinks expedient.

Limitation of actions. [8 of 1976].

32. (1) Section 8 of the Maritime Conventions Act 1911 of the United Kingdom (which relates to the limitation of actions in respect of damage or loss caused to or by vessels and the limitation of action in respect of salvage services) shall apply in the case of State ships as it applies in the case of the other vessel; so, however, that section 8, as applied by this section, shall have effect as if the words from “and shall, if satisfied” to the end of the section were omitted therefrom.

(2) In this section the expression “ship” includes any boat or other description of vessel used in navigation, and the expression “State ships” shall be construed accordingly.

33. (1) This Act shall not prejudice the right of the State to take advantage of the provisions of a written law although not named therein; and it is hereby declared that in any civil proceedings against the State, the provisions of any written law 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 State.

Applications to the State of certain statutory provisions. [8 of 1976].

(2) Section 2 of the Absconding Debtors Act (which empowers the Court in certain circumstances to order the arrest of a defendant about to quit Trinidad and Tobago) shall, with any necessary modifications, apply to civil proceedings in the High Court by the State.

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34. No claim by or against the State and no proceedings for the enforcement of any such claim, shall abate or be affected by the demise of the State.

Abatement on demise of State. [8 of 1976].

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

Abolition of certain writs.

SUPPLEMENTAL

***36.** (1) Any power to make Rules of Court or Petty Civil Court Rules shall include power to make Rules for the purpose of giving effect to this Act, and any such Rules may contain provisions to have effect in relation to any proceedings by or against the State in substitution for or by way of addition to any of the provisions of the Rules, applying to proceedings between subjects.

Rules of Court and Petty Civil Court Rules. [8 of 1976].

(2) Provision shall be made by Rules of Court and Petty Civil Court Rules with respect to the following matters:

(a) for providing for service outside Trinidad and Tobago of process or notice thereof, in the case

*See LN 51/1967.

of proceedings by the State against persons, whether commonwealth citizens or not;

- (b) for securing that where any civil proceedings are brought against the State in accordance with this Act the plaintiff shall, before the State is required to take any step in the proceedings, provide the State with such information as the State may reasonably require as to the circumstances in which it is alleged that the liability of the State has arisen and as to the Government departments and officers of the State concerned;
- (c) for providing that in the case of proceedings against the State, the plaintiff shall not enter judgment against the State 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 State;
- (d) for excepting proceedings brought against the State 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 mentioned above;
- (e) for enabling evidence to be taken on commission in proceedings by or against the State;
- (f) for providing—
 - (i) that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the State for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the State of any set-off or

counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties;

- (ii) 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 State;
- (iii) that the State 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 Court of Appeal whether by way of case stated, or otherwise, under written law relating to the revenue, and any Rules made under this subsection may revoke any written laws or Rules in force immediately before the commencement of this Act so far as they regulate any such appeals, and may make provision for any matters for which provision was made by any written law or Rules so in force.

37. Save as otherwise expressly provided, this Act shall not affect proceedings by or against the State which have been instituted before the commencement of this Act.

Pending proceedings.
[8 of 1976].

38. (1) Where in any proceedings under this Act the State is held to be liable in negligence, and damages have been awarded by a Court against the State, the Attorney General may refer the findings of the Court to the appropriate Service Commission, and on the reference such Commission shall, unless the officer has ceased to hold office in the public service, determine what disciplinary action, if any, should be taken against the officer responsible for the injury, loss or damage which gave rise to the cause of action, including the repayment of such damages to the State in whole or in part by the officer.

Damages for negligence recoverable from officers.
[8 of 1976].

(2) Where in pursuance of subsection (1) the appropriate Service Commission determines that the whole or a part of the damages awarded as mentioned above shall be repaid to the State

by an officer described in the said subsection, such amount shall, if the officer continues to hold an office in the public service subsequent to the determination, be repaid to the State in such manner as that Service Commission may direct; but if the officer thereafter ceases to be a member of the public service, any amount remaining outstanding and unpaid on the date on which he ceases to be such a member shall with effect from that date be deemed to be a debt due to the State and shall, without prejudice to any other method of recovery, be enforceable summarily as a civil debt without limit as to the amount thereof.

Liability of officers who have ceased to hold office in the Public Service. [8 of 1976].

39. (1) Where an officer responsible for the injury, loss or damage which gave rise to a cause of action against the State under this Act ceases for any cause to be a member of the public service before the date on which a determination has been made under section 38, he shall, subject to subsection (2) be liable to repay the State in whole or in part, as the case may require, such damages as may have been awarded by a Court against the State.

(2) The appropriate Service Commission is hereby authorised, on a reference by the Attorney General of the findings of the Court, to determine, subject to subsection (3), what portion, if any, of the damages awarded by the Court shall be repaid by an officer referred to in subsection (1), and any portion so determined shall be a debt due to the State and shall, without prejudice to any other method of recovery, be enforceable summarily by the State as a civil debt without limit as to the amount thereof.

(3) In determining the portion of the damages to be repaid by an officer referred to in subsection (1), the appropriate Service Commission shall notify the officer in writing of the date and place of the determination and shall permit him to be represented by an Attorney-at-law or any other person who in the opinion of that Commission is competent to assist such person in the presentation of his case.

(4) On any determination under sections 38 and 39, an officer referred to in those sections shall be entitled to have the determination reviewed by the authority established for the review

of the findings of the appropriate Service Commission in disciplinary cases, and the decision of the authority shall be final.

40. (1) Except as therein otherwise expressly provided, nothing in this Act shall— Savings.
[8 of 1976].

- (a) affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the High Court as a Prize Court or to any criminal proceedings;
- (b) authorise proceedings to be taken against the State under or in accordance with this Act in respect of any alleged liability of the State arising otherwise than in respect of the Government of Trinidad and Tobago, or affect proceedings against the State in respect of any such alleged liability as mentioned above;
- (c) affect any proceedings by the State otherwise than in right of the Government of Trinidad and Tobago;
- (d) subject the State to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the State than those to which the State would be subject in respect of such acts or omissions if it were a private person;
- (e) subject the State in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity;
- (f) affect any Rules of evidence or any presumption relating to the extent to which the State is bound by any written law;
- (g) affect any right of the State to control or otherwise intervene in proceedings affecting its rights, property or profits;
- (h) affect any liability imposed on the Public Trustee by the Public Trustee Ordinance, nor on the Registrar General under the Real Property Act;

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(1950 Ed.).
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(i) interfere with or affect any written law that now or hereafter may be in force whereby the State, or any of its officers or servants, is exempt from liability for anything done under the written law or affect any powers, authority or liability vested in or conferred upon the State or any of its officers or servants under any such written law.

(2) A certificate of the Attorney General—

(a) to the effect that any alleged liability of the State arises otherwise than in respect of the Government of Trinidad and Tobago;

(b) to the effect that any proceedings by the State are proceedings otherwise than in right of the Government of Trinidad and Tobago,

shall, for the purposes of this Act, be *prima facie* evidence of the matter so certified.

(3) Where any property vests in the State by virtue of any rule of law which operates independently of the acts or the intentions of the State, the State shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liabilities of the State under this Act in respect of any period after the State or any person acting for the State has in fact taken possession or control of any such property, or entered into occupation thereof.

(4) This Act shall not operate to limit the discretion of the Court to grant relief by way of *mandamus* in cases in which the relief might have been granted before the commencement of this Act, notwithstanding that by reason of this Act some other and further remedy is available.

SCHEDULE

Sections 15(1),
25.

PROCEEDINGS ABOLISHED BY THIS ACT

1. (1) Latin informations and English informations.
 - (2) Writ 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*.
 - (5) Writs of Summons, Statements of Claim and other civil procedure under the Crown Suits Ordinance.
 2. Proceedings against the State 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. 27 & 28 Vict.
c. 25.
 3. Proceedings against the State by way of *monstrans de droit*.
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