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ACTIONS AGAINST THE CROWN:

At common law actions against the Crown had to be brought by what was known as a Petition of right and various other writs and informations which are now merely of historical interest.

The common law idea clearly was to discourage the individual person from obtaining a remedy against the Crown. Indeed the Courts were the Courts of the Sovereign who could do no wrong. However in Jamaica the Crown Proceedings Act passed in 1959 has changed this approach and to a very significant extent now allows the individual to institute proceedings against the Crown to much the same extent and in the same manner as he can institute proceedings against another individual. The purpose of this paper which admittedly is not exhaustive is in a general way to outline and examine the general law relating to actions against the Crown, the ways in which proceedings can be brought against the Crown, and wherever possible to indicate peculiarities which exist most noticeably in the field of procedure.

WHO IS THE CROWN:

When one speaks of actions against the Crown it is necessary to determine who and what in fact is the Crown, and to identify the person whose actions can give rise to proceedings being brought against the Crown.

The Interpretation section of the Crown Proceedings Act defines the Crown as "Her Majesty in right of her Government

provision) includes a Minister of the Crown. "Agent" when used in relation to the Crown includes an independent contractor employed by the Crown. Since this law provides that the Crown is subject to all those liabilities in tort to which it would be subject if it were a private person of full age and capacity -

(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 its servants or agents at common law by reason of being their employer; and

(c) in respect of any breach of duties attaching at common law to the ownership, occupation, possession or control of property,

it must be noted that the conjoint of these provisions and the Interpretation clause to which I have already referred makes the Crown liable for the wrongful acts of its officers as defined for the breach of its duties to those officers and for the breaches by the Crown of such duties which attaches to a private individual or the owner, possessor or controller of property. The only point which needs to be noted is that whereas in the general law the word "agent" used in the sense of servant or agent is not wide enough in some instances to include an independent contractor in respect of actions against the Crown, the interpretation covers independent contractors. However a reading of

contractor than those to which it would have been subject had it been a private person. This being so it is accurate to say that in respect of the liability for the acts of independent contractors the Crown is in exactly the same position as a private person. Indeed in relation to vicarious liability only two matters need to be pointed out -

- (i) the Crown is only liable for the acts of its servants or agents which-^{ever} the servant or agent would have been liable apart from the act;
- (ii) an officer of the Crown whose actions bind the Crown must be directly or indirectly appointed by the Crown and paid wholly out of the consolidated funds or or any other fund certified by the Accountant General or was holding office in respect of which the Accountant General certifies that the holder thereof would normally be so paid.

As our Constitution perpetuates the monarchical form of Government when one refers to actions against the Crown what one is referring to is actions against the Government.

THE CROWN'S LIABILITY IN CRIMINAL LAW:

The position with relation to the taking of criminal proceedings against the Crown is that the Crown is not criminally liable and no criminal action can be taken by a citizen against the Crown.

THE CROWN'S LIABILITY IN CONTRACT:

In general a party can sue the Crown in contract in the same way as he can bring action against another party. However, it is necessary to point out that the Crown can terminate a contract of service with an employee without notice being given by the Crown. This is so except in the cases where Statute otherwise provides. This statement of law is based upon the principle that in general all Officers of the Crown and Public Servants hold their appointment at the pleasure of the Crown and are thus subject to dismissal at any time and indeed without cause assigned. Even in a case where the contract cannot

employees of the Crown are not really in a contractual relationship with the Crown. This in fact is not a principle which can stand clear examination. Indeed as Lord Atkins in *Reilly vs. R*² states " in this connection it is important to bear in mind that the power to determine a contract at will is not inconsistent with the existence of a contract until so determined". In fact there are various offices under the Crown protected by Statute or the Constitution in relation to the power to of the Crown to terminate a contract of service at will. An example of this would be seen under Section 100 of our Constitution in relation to judges of the Supreme Court. Section 100 sub-section 4 reads " a judge of the Supreme Court may be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of sub-section 5 of this section".

*Reilly V. R*² was a case, which came to the Privy Council from Canada, and the Privy Council therein held that an employee of the Crown whose office has been statutorily abolished had no remedy. The General proposition cited as to the power of the Crown to terminate the services of its employees without notice is supported by the decision in *Dunn Vs. R*³ where it is stated that servants of the Crown, civil as well as military, except in special cases otherwise provided by law, hold their offices through the pleasure of the Crown. It would therefore be necessary if one were to give an opinion as to whether a servant of the Crown who had been summarily dismissed had an action against the Crown to discover whether there existed any Statute placing an onus on the Crown to dismiss such an employee only for cause given or misbehaviour or some such circumscribed reason or whether the terms of employment rested only on a particular contract. In any event the overall power of Parliament to pass legislation would empower the Crown as it did in *Reilly's* case to abolish an office by Statute without remedy to the office holder.

THE CROWN'S LIABILITY IN TORT:

The effect of the Crown Proceedings Act is to make the Crown's liability in tort substantially the same as that of a private individual subject to the comments I shall make later in this paper.

THE PUBLIC AUTHORITIES PROTECTION ACT:

Under the Public Authorities Protection Act any action or proceedings against the Crown must be brought "within one year next after the act neglect or default complained of, or in cases of a continuance of injury or damage within one year next after the ceasing thereof". This is a very important provision for legal practitioners to bear in mind. It is absolutely necessary that when an individual intends to bring action against the Crown he should be wary not to spend too long a time in negotiation as the time limit can easily run out on him and he then finds his action Statute barred. It is to be noted that where the Crown or indeed any other party relies upon a defence based upon or a statute of limitation, which is what the Public Authorities Protection Act is, rules of Court, both in the Supreme Court and the Resident Magistrates Court require that this defence must be specially pleaded. This is because a Statute of Limitation can be waived and need not be relied upon by a defendant. If it is not pleaded originally and no amendment of the pleading is applied for and granted within the required twelve months the question of the barring of the action is not in issue and the matter can proceed to trial and judgment as if no statute of limitation existed.

HOW THIS STATUTE OF LIMITATIONS CAN AFFECT PLEADINGS:

Very often in practice the problem will arise in relation to actions against the police. It is to be recalled that such actions are required by Section 33 of the Constabulary Force Act to expressly allege in the pleadings and proved at the trial that the act complained of was done either maliciously or without reasonable or probable cause. If in an action therefore in the Resident Magistrates Court the pleader

action was done either maliciously or without reasonable or probable cause or if in an action in the Supreme Court the Writ does not so allege, certain fatal consequences may flow. If at the trial the Attorney-at-Law for the plaintiff wishes to amend his pleading to insert the omitted allegation of malice or lack of reasonable or probable cause he may find a situation arising where more than twelve months have already elapsed since the act complained of, even though at time of filing the action the period of twelve months had not yet elapsed. The Attorney-at-Law may seek to amend the pleading in order to insert the omitted allegation. He would find himself faced with an impenetrable barrier as an abundance of authority exists to establish that a Court cannot amend ^{in this manner} after the limitation period has passed.

The reason for this is that such amendment would put back life into an action which could not proceed because of the omission of the allegation of a material particular required by Statute. To permit the amendment so that the necessary allegation of malice or absence of reasonable or probable cause could be inserted would be to nullify the statutory obligation to make the allegation coupled with the requirement of the Public Authorities Act that the proceedings should be brought against the Crown within one year.

To summarise therefore it is well to note: -

- (a) in pleading a statement of claim or the particulars of claim in an action against the Police it is necessary to plead the allegation of malice or lack of reasonable or probable cause
- (b) this pleading must be filed within twelve months of the action complained of or in a case of continuance of injury or damage within twelve months after the ceasing thereof;
- (c) whilst an amendment will most likely be granted to insert the omitted allegation if the amendment

of damage or injury in the case of continuing injury or damage the Court will not allow the amendment after twelve months have elapsed.

ACTIONS AGAINST THE POLICE:

In the U.K. an action against the Police is not an action against the Crown and ^{does} not fall under the provisions of the Crown Proceedings Law. However, in Jamaica the situation is different. This is because the Constabulary Force Act makes it lawful for the Governor-General, a representative of Her Majesty, to constitute a Police Force. It is further to be noted that members of this Force are under Section 4 sworn to serve the Sovereign in the particular office to which they are appointed. By far the greatest number of actions against the Crown which arise in Jamaica are actions against the police. These usually are founded in trespass (e.g. wrongful arrest otherwise called ^{false} imprisonment and assault) or malicious prosecution. It is to be recalled that actions brought against the police under provisions of Section 33 of the Constabulary Force Act must carry the allegation and indeed the plaintiff must prove that the act was done maliciously or without reasonable or probable cause.

There is very often difficulty in determining what is reasonable or probable cause. I can do no better for the purpose of this paper than to use the definition given by Hawkins J. in *Hicks v. Faulkner*⁴ "now I should define reasonable and probable cause to be an honest belief in the guilt of the accused based upon a full conviction founded on reasonable grounds on the existence of a state of circumstances which assuming them to be true would lead an ordinary prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed. There must be first an honest belief of the accuser in the guilt of the accused. Secondly, such belief must be based on an honest conviction

conclusion. Thirdly, such secondly mentioned belief must be based upon reasonable grounds. By this I mean such grounds as would lead a fairly cautious man in the defending situation so to believe. Fourthly, the circumstances so believed and relied upon by the accuser must be such as amount to reasonable grounds for belief in the guilt of the accused".

The malice to be proved in cases of this nature is that the defendant was actuated either by spite or by ill-will against the plaintiff or by indirect or improper motives. A defendant cannot justify a prosecution that failed by stating that facts which he did not then know makes it reasonable.

PLEADINGS IN ACTIONS AGAINST THE POLICE:

In considering the matter of pleadings in an action against the Police, it should be borne in mind that Section 33 of the Constabulary Force Act provides that "Every action to be brought against any Constable for any act done by him in the execution of his office shall be an action on the case as for a tort and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause, and if at the trial of any such action the plaintiff shall fail to prove such such allegation he should be non-suited or a verdict shall be given for the defendant".

In other actions for malicious prosecution not necessarily involving the Police the burden for proving absence for reasonable and probable cause is on the plaintiff. This is an ingredient which has to be proved in all malicious prosecution actions. The plaintiff undertakes the uncommonly difficult task of proving a negative as a result of Section 33 of the Constabulary Force Act just cited. In actions brought against the Police the onus is placed upon the plaintiff of proving that the defendant acted without reasonable or probable

reasonable and probable cause.

The pleading very often runs "the defendant denies that he had no reasonable and probable cause for preferring the said charge and for taking and causing to be taken the said proceeding against the plaintiff and that in so doing he acted with malice".

It has been argued from time to time and with some vigour as to whether this is a sufficient pleading. If a defence is thus pleaded the defendant is not required to give particulars of reasonable and probable cause (See Roberts Vs. Owen)⁵; That this places the plaintiff at a great disadvantage cannot be denied. However some judges in Jamaica have ruled as to the sufficiency of this pleading on the basis I have just stated. Other judges have ruled to the contrary. Of course the defendant would not be precluded from negating evidence brought by the plaintiff tending to establish the absence of reasonable and probable cause. It appears to me that there is no settled decision on this matter. It is important though to note that in Roberts V. Owen already cited Justice Hawkins stated that he had not decided nor was it to be taken that the Court had decided that under no circumstances could particulars be ordered in such an action, but only that no special reasons were given in this case why particulars should be added. The judges who take the view that a reasonable and probable cause or malice should be specifically spelt out in the pleading and if not so spelt out further and better particulars should be given appear to me to adopt a just position. It may not however be the correct view on the authorities.

PROCEDURE IN PROCEEDINGS AGAINST THE CROWN:

Under the provisions of the Crown Proceedings Act Section 9 sub-section 2 in civil proceedings in tort in the Supreme Court to which the Crown is or becomes a party the procedure and practice of the Supreme Court of Judicature in England applies in relation to the mode of trial to be followed and the rules of Court shall for this purpose be adapted and modified accordingly.

With relation to civil proceedings in tort in the Resident Magistrates

Magistrates Court rules shall for this purpose be adapted and modified accordingly.

All civil proceedings by or against the Crown in the Supreme Court shall be instituted and proceed with in accordance with the rules of Court and in relation to the Resident Magistrates Courts shall be instituted and proceeded with in accordance with the Resident Magistrates Court rules.

It should be noted that under the Civil Procedure Code we have a provision that, whatever is not specifically laid down in the Code in relation to our proceedings in the Supreme Court, the practice and procedure for the time being in the Supreme Court of Judicature in England applies.

The conjoint effect of all these provisions cited is that in the Supreme Court a default judgment or Summary Judgment cannot be obtained against the Crown in the same manner as a default judgment or summary judgment is obtained against any other party. Leave has first to be granted before a default judgment or summary judgment can be entered into the Supreme Court against the Crown. This is because Order 77 Rule 7 of the Supreme Court practice in England states that no application against the Crown shall be made under Order 14 Rule 1 or Order 86 Rule 1 in any proceedings against the Crown or under Order 14 Rule 5 in any proceedings by the Crown.

Order 14 Rule 1 deals with an application by a plaintiff for summary judgment and enacts that where a statement of claim has been served on a defendant and that defendant has entered an appearance in the action the plaintiff may on the ground that the defendant has no defence to a claim included in the writ or a particular part of such a claim or has no defence to such a claim or part except as to the amount of any damage apply to the Court for judgment against that defendant.

The claims which are covered by this Rule are -
claims by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage or any claim by the plaintiff based on an allegation of fraud.

It is noted therefore that in these matters although summary judgment

can be obtained against the private person summary judgment cannot be obtained against the Crown.

Order 86 Rule 1 allows the plaintiff to apply for summary judgment in any action for -

- (a) specific performance of an agreement whether in writing or not for the sale, purchase or exchange of any property or for the grant or assessment of the lease of any property with or without alternative claim for damages;
- (b) for the recession of such an agreement; or
- (c) for the forfeiture or return of any deposit made under such an agreement.

The basis for this application for summary judgment would be on the ground that the defendant has no defence to the action. Again this summary remedy is available against the private person but is not available against the Crown.

By virtue of the provisions in Order 77 Rule 9, except with the leave of the Court no judgment in default of appearance or pleading shall be entered against the Crown in civil proceedings or in third-party proceedings against the Crown. The Order provides that the application for leave under this Rule may be made by summons or notice of motion served not less than seven days before the return date. Under the provisions of Order 16 Rule 5 if the third-party does not enter an appearance or having been ordered to serve a defence fails to do so he shall be deemed to admit any claim stated in the third-party notice and shall be bound by any judgment including judgment by consent or decision for the action in so far as it is relevant to any claim, question or issue stated in that notice, and the defendant issuing the third-party notice made after judgment in default is given against him in the action at any time after the satisfaction in the judgment can with

The provisions of Order 16 Rule 5 above cited applies in the case of actions against the private person but does not apply in cases of action against the Crown except with the leave of the Court. Such application for leave would have to be made by summons served not less than seven days before the return date. The effect of the above is that in any matters in the Supreme Court relating to actions brought against private persons where judgment in default of appearance or defence may be directly entered, such a judgment may not be directly entered against the Crown except with the leave of the Court. Furthermore, in matters in which summary judgment can be obtained against the private person in the Supreme Court again leave of the Court will have to be obtained when the defendant is the Crown.

A perusal of the rules of the Resident Magistrates Court discloses that no provisions exist therein as to whether a default judgment or summary judgment may be obtained against the Crown without leave. The reason for this which springs to mind must be that in any event in the Resident Magistrates Court default judgment or summary judgment is obtained on an application made in open Court and therefore based upon the evidence given. It therefore would appear superfluous and unnecessary to obtain the leave of the Court to proceed to such a judgment in matters in which the Crown is the defendant since not only does an actual hearing takes place but liberal provisions exist for the setting aside without difficulty of any such judgment obtained in the Resident Magistrates Court.

PROCEEDINGS UNDER THE CONSTITUTION:

Under the Fundamental Rights and Freedom Clauses of our Constitution (Sections 14 - 24 inclusive of the Constitution) certain provisions exist for the purpose of affording protection to specified rights and freedoms, for example, the protection of right to life and the protection from inhuman treatment. Section 25 of the Constitution affords anyone whose fundamental rights and freedoms have been breached or is likely to be contravened the right to apply to the Supreme Court for

The provisions of Section 25 of the Constitution does not take away the right of a party to sue for damages. In the Jamaican case of Gladys Harrison Vs. the Attorney General and R.C. Roxburgh, Chief Electoral Officer, (unreported) the plaintiff, a school teacher, brought action against the Crown for a declaration that she had a right to have her name on the official list of electors for the year 1966 and claimed further a declaration that she had a right to have been allowed to and/or a right to vote, damages for refusing to allow her to vote in the elections held on the 21st February, 1967, a declaration that she was entitled to have her name added to the current official list of electors and to vote in any future elections that may be held with reference to that list and such further and other relief as the Court deemed necessary to secure her constitutional rights pursuant to Section 37 - 38 of the Constitution. The statement of claim was amended to include an allegation of negligence in the defendants and or breach of statutory duty.

The facts of the case briefly were that the plaintiff had been duly enumerated in 1964 and her name put on the official list of electors for the year 1965. In December 1965 a new enumeration process took place and the plaintiff was again enumerated and given a certificate of enumeration as well as an I.D. card. In February 1967, the plaintiff discovered that her name was not on the official list of electors published for the year 1966. The General Election was to take place on the 21st February 1967. On the 13th February she attended and had an interview with the Deputy Electoral Officer. On the 20th February, 1967, not having had any further communication she again re-visited the electoral office in a further attempt to have her name placed on the list of electors. She was told that the Master Card and photo-copies of her documents were lost and nothing could be done about it.

On the 21st February, 1967, Election Day, she attended at the polls but her Name was not on the official list. As a consequence she could not vote. It is upon these facts that she based her action against the Crown

Division in which she was ordinarily resident. The Court further held that the Representation of the People Law provides specifically the right to be listed as an elector with the consequential benefit of being able to vote. That right applied to certain defined individuals namely, Jamaican citizens over the age of 21 who were not subject to any disqualifications. That was a defined class of the public who are qualified under the Constitution and who have fulfilled the requirements of the Law. The duty imposed on the Chief Electoral Officer to prepare an official list was a duty imposed for the benefit of that defined class. The claim to negligence was based on the principle that persons who have statutory functions to perform not only have a duty to perform these functions but they have a further duty to perform them with reasonable care. If they fail to perform these functions with reasonable care and somebody likely to be affected by their conduct suffers damage then they are liable and the Crown as their employer is vicariously liable by virtue of the provisions of the Crown Proceedings Law. This negligence was the negligence of an employee in the performance of a statutory function. The jury found the Crown through its servant to be negligent in the circumstances and the judge refused to uphold ^{the} contention of the defence that negligence in this context is novel.

The Court further held that on the facts of this case the Chief Electoral Officer had a duty to put the plaintiff's name on the official list and the omission of her name was a breach of this duty. This duty was a ministerial one and no allegation of malice was necessary in order to establish ^{damages for} its breach. Judgment was entered for the plaintiff in the following terms -

- (i) a declaration that she had a right to have her name placed on the official list of electors for the constituency of West Rural St. Andrew Polling Division for the year 1966;

- (ii) \$2,000 damages;

for breach of statutory duty;

(iii) costs to the plaintiff to be taxed or agreed.

-NOT
WHAT ACTIONS CAN BE BROUGHT AGAINST THE CROWN:

The Statute exempts the Crown from liability for anything done or omitted to be done in relation to a postal article by any person while employed as a servant or agent of the Crown or for anything done or omitted to be done in relation to a telegraphic communication by any person while so employed. Not only is the Crown protected but also the officer of the Crown itself. Thus, for example, if a letter is posted or a telegram is sent and due to the default of the officer it does not arrive in time, although the person to whom it is sent or the sender may have suffered some damage as a result he cannot recover against the Crown. This situation could very well arise in the case of contracts entered into between parties where the offer and acceptance are made through the post and acceptance is stipulated to be made by a specific date failing which the offer lapses.

In Triefus Post Office the plaintiff was unsuccessful in claiming damages for the loss of a packet of diamonds sent by him by Registered Mail from the U.K. to New Zealand.

If by virtue of an act done or omitted to be done by a member of the Armed Forces of the Crown death or personal injury is caused to another member of the Armed Forces the Crown will suffer no liability if at the time when the injury or death is suffered the person suffering such was on duty as a member of the Armed Forces of the Crown. This is so even though he is not on duty if he suffers such death or injury on any land, premises, ship, aircraft or vehicle for the time being used for the purpose of the Armed Forces of the Crown. However this exemption from liability does not exist unless the Minister certifies that the injury or death will be treated as attributable to service in the performance of duty and entitles him to an award under any law for the time being in effect relating to disablement or death of members of the Forces in which he is a member.

If the Court is satisfied that the act or omission was not connected with the execution of his duties as a member of the Armed Forces the person guilty of the act or omission is not exempt from personal liability. Furthermore, the Crown is not liable for death or personal injury . in consequence of the nature or condition of any land, premises, ship, aircraft or vehicle or in consequence of the nature or condition of any equipment or supply used for the purposes of the Armed Forces. Issuing of a certificate by the Minister in the terms already stated is required in order to protect the exemption. Not only is the Crown exempt in such a case but the individual or member of the Armed Forces causing the death or injury is also protected.

The Minister may issue a certificate certifying that a person was or was not on a particular occasion on duty as a member of the Armed Forces of the Crown or that at a particular time land, premises, ship, aircraft, equipment or supplies was or was not or were or were not used for the purposes of the said Forces. Whenever the Minister issues a certificate in these terms such a certificate is conclusive of the facts which it certifies.

No action can be brought against the Crown in respect of anything done or omitted to be done by any person whilst discharging or purporting to discharge any responsibility of a judicial nature vested in him or any responsibility which he has in the execution of judicial process. It is to be noted that at common law it is well established that an action cannot be brought against the judge of a superior court of record for anything done by him in exercising his judicial function. It may however be well to consider whether a person who is not a judge of a court of record but who exercises a judicial function is protected in the carrying out of this act.

It is necessary to determine whether the action of a judicial officer is judicial or ministerial since some times judicial officers have to perform both functions. If the action is ministerial, for example, the issuing of a warrant it does not receive the protection

warrants for the arrest of the plaintiff charging him with offences not known to the law. The Court found that the respondent had jurisdiction in that particular capacity to issue the warrants. He had acted in that capacity and not in the judicial capacity which afforded him a wide protection.

Since the informations disclosed no offence this was evidence of malice as was also the fact that warrants were issued when it was clear that the plaintiff would have attended on summons. The finding of the trial judge that there was no evidence of malice or lack of reasonable or probable cause was therefore disturbed and the plaintiff's appeal allowed. The fact of the matter is that if a judicial person act outside his jurisdiction he is not acting as a judge and is not afforded the protection of the law except he has the wide common law protection afforded to Judges of Superior Courts of record.

STATUTES WHICH REFORM THE LAW OF TORTS:

Is the Crown bound by statutes which reform the Law of Torts? In this regard the Statutes which spring to mind immediately would be the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act. If the Crown is not bound by these statutes then action would not lie against the Crown on behalf of deceased person's estates under these Acts. This would be an omission that would need urgent legislative attention. The lack of judicial authority on this point appears to leave the law in a state of uncertainty. The rule at common law is that the Crown is not bound by Statute except there is an express or necessarily implied provision by Statute that the Crown should be so bound. This common law rule is preserved by Section 33 (1)(d) of the Crown Proceedings Act which states - "except as therein otherwise provided nothing in this act shall affect any rules of evidence or any presumption relating

Merchant Shipping (Liability of Shipowners and Others) Act 1900; under Section 19(1) section 51 of the Judicature (Supreme Court) Act, which provides that judgment debts shall carry interest and under Section 19(3). The interest (Allowance by Jury) Act, which empowers a jury to award interest on debts and damages, under the same Section - section 3 of the Law Reform (Miscellaneous Provisions) Act which empowers Courts of record to award interest on debts and damages and under Section 21(2) section 2 and 3 of the Debtors' Act.

The question must be asked why it was necessary in the Statute to apply particular statutes or sections thereof to the Crown. One answer must be that the Crown Proceedings Act makes it so because statutory enactments do not bind the Crown unless expressly stated.

As against this proposition it can be argued that as the provisions of Section 8 of the Act exempts the Crown from liability in respect of the death of members of the Armed Forces there is a strong implication that in other respects the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act, would apply. On the other hand, one must ask if this is so why is it specially enacted that Section 3 of the latter Act applies to the Crown. One also has to consider the general provisions of Section 3 of the Crown Proceedings Act which makes inter alia the Crown subject to all those liabilities in tort which if it were a person of full age and capacity it would be liable in respect of torts committed by servants and agents. It therefore appears to be still an unanswered question as to whether the Crown is liable in areas where statutes extend tortious liability in reforming the Law of Torts

PREROGATIVE WRITS:

Orders of certiorari are issuable against inferior administrative tribunals, local authorities and other statutory bodies and individuals performing public functions requiring the records of proceedings in some cause or matter to be transferred to the Supreme Court to be dealt

against the Crown. This is because the refusal to obey these orders constitute a contempt of Court. The enforcement of contempt proceedings is by attachment and the Crown cannot be attached. In the case of an order of mandamus which is an order to some person, corporation or inferior tribunal to do some specific thing which appertains to his or their office and is in the nature of a public duty the common law rule is clearly established by the cases that mandamus cannot be directed to the Crown - See *RV Customs Commissioners*⁸. The rule is not affected by the Crown Proceedings Act.

In habeas corpus proceedings an application is made for the writ to the Supreme Court at the instance of a person in custody directed to the person having actual custody of the detainee, for example the Director of Prisons or the Officer in charge of the police station in which lock-up the person is detained. The applicant seeks to obtain the delivery up of the detained person.

The writ can be issued against a Minister of the Government who has ordered the detention and is therefore competent to order the delivery of the detained person. This is so even when the Minister is acting in his capacity as a servant of the Crown - See *R.V. Home Secretary ex parte O'Brien*⁹ affirmed *Home Secretary v. O'Brien*¹⁰.

REMEDIES WHICH CANNOT BE OBTAINED AGAINST THE CROWN:

The Court cannot grant the remedy of injunction or specific performance against the Crown but in lieu thereof may make an order declaratory of the rights of the parties. Furthermore in actions against the Crown for recovery of land or other property an order cannot be made for recovery of land nor can an order be made for delivery of any property. Instead the Court will make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof. Since these orders cannot be made against the Crown the Court may not make

these orders against Officers of the Crown would be to grant relief against the Crown which is not permitted by Statute.

When an action is brought against the Crown the proper officer against whom the action should be brought is the Attorney General.

It is standard form to state in a pleading settled in an action against the Crown and in which the Attorney General is named as the defendant - The Attorney General is sued by virtue of the provisions of the Crown Proceedings Act.

SATISFACTION OF JUDGMENTS AGAINST THE CROWN:

When a judgment or order has been obtained in favour of a party against the Crown that party should after the expiration of 21 days from the date of the order or judgment or after taxation of costs if costs are taxed later than 21 days after the order or judgment, obtain from the Court a certificate containing the particulars of the order. This certificate should be served upon the Crown Solicitor who is normally the person on the record as representing the Crown. On service of this certificate the appropriate department must pay to the person entitled or his Attorney-at-Law the amount stated on the certificate with interest as allowed under the normal laws of the land. This is the method provided by the Statute and except as stated therein 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 judgment obtained against the Crown.

If the Crown maintains that an alleged liability arises otherwise than in respect of Her Majesty's Government of the Island this fact is proved by a certificate by the Minister responsible to this effect. The certificate is conclusive and therefore cannot be challenged.

PUNITIVE DAMAGES:

In some cases of tort and these are Restricted, exemplary or punitive damages may be awarded. The object of awarding such