

CAP. 148.

CYPRUS

CIVIL WRONGS

CHAPTER 148 OF THE LAWS

1959 EDITION

PRINTED BY

C. F. ROWORTH LIMITED, 54, GRAFTON WAY, LONDON, W.1.

[Appointed by the Government of Cyprus the Government Printers of this Edition of Laws within the meaning of the Evidence Colonial Statutes) Act, 1907.]

1959

CHAPTER 148.

CIVIL WRONGS.

ARRANGEMENT OF SECTIONS.

<i>Section.</i>	<i>Page.</i>
1 Short title	4
PART I. PRELIMINARY.	
2 Interpretation	4
3 Right to remedy in respect of civil wrongs	5
PART II. RIGHTS AND LIABILITIES OF CERTAIN PERSONS.	
4 Limitation of actions against certain persons in respect of civil wrongs ..	5
5 Acts of state	6
6 Bankrupts	6
7 Corporate bodies	6
8 Persons under the age of eighteen years	6
9 Persons under the age of twelve years	7
10 Husband and wife	7
11 Joint civil wrong doers, etc.	7
12 Liability for acts committed by other persons not being servants ..	8
13 Master's liability for acts of his servants	9
14 When knowledge of agent or servant to be knowledge of master ..	9
15 Provisions relating to the armed forces	9
16 Liability or right in respect of civil wrong not assignable	11
PART III. CIVIL WRONGS AND DEFENCES TO CERTAIN ACTIONS THEREFOR.	
17 Defamation	11
18 Publication of defamatory matter	12
19 Special defences to action for defamation	13
20 When publication of defamatory matter absolutely privileged	14
21 When publication of defamatory matter conditionally privileged ..	15
22 Unintentional defamation	16
23 Mitigation of compensation for defamation	19
24 Special defence in case of defamatory matter published in newspaper ..	19
25 Injurious falsehood	20
26 Assault	20
27 Special defences to action for assault	21
28 Liability for assault of agent or servant	23
29 False imprisonment	23
30 Special defences to action for false imprisonment	23

<i>Section.</i>	<i>Page.</i>
31 Liability of another for false imprisonment by his agent or servant ..	24
32 Malicious prosecution	24
33 Liability of another for malicious prosecution by his agent or servant ..	24
34 Unlawfully causing breach of contract	24
35 Passing off	25
36 Fraud	25
37 Unlawful detention	25
38 Power of Court in action for unlawful detention	25
39 Conversion	25
40 Special defences to action for conversion	26
41 Jus tertii to be no defence to action for conversion	26
42 Power of Court in action for conversion	26
43 Trespass to immovable property	26
4 Trespass to movable property	26
45 Public nuisance	26
46 Private nuisance	27
47 Special defence to action for private nuisance	27
48 Nuisance existing before plaintiff's occupation	27
49 Saving	27
50 Interference with daylight	27
51 Negligence	28
52 Onus of proof of negligence when damage caused by dangerous things ..	30
53 Onus of proof of negligence when damage caused by fire	30
54 Onus of proof of negligence when damage caused by an animal	30
55 Onus of proof of negligence in certain cases	31
56 Special defences to action for negligence	31
57 Apportionment of liability in case of contributory negligence	31
58 Rights of action of certain persons in respect of act causing death of another	33
59 Special defence that plaintiff voluntarily exposed himself to state of affairs causing civil wrong	34
60 Special defence that act was done under an enactment	34

PART IV.

MISCELLANEOUS PROVISIONS AS TO THE
RECOVERY OF REMEDIES.

61 Compensation only to be recovered once	34
62 Compensation not to be recoverable under both this Law and Workmen's Compensation Law	35
63 No action to be brought on contract if compensation awarded for civil wrong	35
64 Recovery of contribution from joint civil wrong doers, etc.	35
65 Insurance not to be taken into account in assessing compensation	36
66 Recovery of compensation for libel published in a newspaper	36
67 Civil wrong which is also a crime	36
68 Limitation of actions for civil wrongs	37

PART V.

MISCELLANEOUS.

69 Saving	37
-------------------	----

1949 Cap. 9.
38 of 53.
43 of 54.

A LAW TO DEFINE AND AMEND THE LAW OF
CIVIL WRONGS.

[1st January, 1933.]

Short title.

1. This Law may be cited as the Civil Wrongs Law.
PART I.

PRELIMINARY.

Interpreta-
tion.

2. (1) This Law shall be interpreted in accordance with the principals of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English law and shall be construed in accordance therewith.

(2) In this Law—

“action” means all proceedings of a civil nature before any Court and includes a set off or a counter-claim ;

“animal” includes birds, fish, insects and reptiles ;

“wild animal” means any animal not usually kept in captivity or under the control of man in the Colony ;

“damage” means the loss of or detriment to any property, comfort, bodily welfare, reputation or other similar loss or detriment ;

“enactment” means any Order of Her Majesty in Council or any Law or any Order of the Governor in Council or any bye-law, regulation, rule or other subsidiary legislation lawfully made ;

“injury” means any unlawful interference with a legal right ;

“master” means the person who, in relation to another, has complete control of the way in which such other performs his work for such person,
“servant” means any person whose work is so controlled by a master :

Provided that no person in the service of Her Majesty or of the Government of the Colony or of the Evcaf Department or of any Municipal Corporation or of any person shall be deemed to be the master or servant of any other person in such services respectively ;

“occupier” means any person entitled as against

2 of 38/53.

the owner thereof to occupy or use any immovable property and if there is no such person then the owner of such property ;

“ property ” means immovable and movable property ;

“ immovable property ” means land, houses, buildings, walls and other constructions and trees ;

“ movable property ” means all inanimate things and animals and shall include money, the produce of trees and vines, cereals, vegetable and other crops and water, whether severed from the land or not ;

“ public office ” means any office held for the time being by any person employed in the public service as defined in the Criminal Code.

Cap. 154.

3. The matters in this Law hereinafter enumerated shall be civil wrongs, and subject to the provisions of this Law, any person who shall suffer any injury or damage by reason of any civil wrong committed in the Colony or within three miles of the coast thereof measured from low water mark shall be entitled to recover from the person committing or liable for such civil wrong the remedies which the Court has power to grant :

Right to
remedy in
respect of
civil wrongs

2nd Sch.
of 24/59

Provided that an act which if repeated would not tend to establish an adverse claim or which is an act of which in the circumstances a person of ordinary sense and temper would not complain shall not be deemed to be a civil wrong.

PART II.

RIGHTS AND LIABILITIES OF CERTAIN PERSONS.

4. (1) No action in respect of any civil wrong shall be brought against Her Majesty.

(2) A servant of the Crown shall be responsible for any civil wrong committed by him :

Limitation
of actions
against
certain
persons in
respect of
civil wrongs.

Provided that he shall be sued therefor in his personal capacity :

Provided also that, subject to the provisions of sub-sections (3) and (4) hereof, it shall be a defence to any action brought against any such servant that the act complained of was within the scope of his lawful authority.

No servant of the Crown shall be responsible for any civil wrong committed by any other servant of the Crown

unless he shall have expressly authorised or ratified such civil wrong.

(3) No action shall be brought against any Judge of the Supreme Court of the Colony, nor against any person lawfully performing the duties of a Judge of such Court in respect of any civil wrong committed by him in his judicial capacity.

(4) No action shall be brought against any Judge of any Court in the Colony, other than the Supreme Court, nor against any person lawfully performing the duties of a Judge of such Court, nor against any official receiver, nor any member of any court martial nor against any arbitrator nor other judicial officer in respect of any civil wrong committed by him in his judicial capacity if the act causing the civil wrong was within his jurisdiction.

Acts of state. 5. No action shall be brought under the provisions of this Law in respect of any act of state, that is to say, any act causing injury or damage to any person who is not at the time of that act a subject of Her Majesty and which act is done by a representative of Her Majesty's civil or military authority and is either previously sanctioned or subsequently ratified by Her Majesty.

Bankrupts.
Cap. 5. 6. Notwithstanding anything contained in the Bankruptcy Law, a bankrupt may sue and be sued in respect of a civil wrong and no action in respect thereof shall be brought on behalf of or against the estate of any bankrupt: Provided,

3 of 38/53. (a) that the right of action in respect of any such wrong which caused or causes special damage to the estate of a bankrupt shall pass to or be exercised by his trustee, and

(b) that a judgment obtained against a bankrupt before the date of the receiving order, in respect of a civil wrong, shall be provable in the bankruptcy.

Corporate bodies. 7. A corporate body shall not recover any compensation in respect of any civil wrong unless it shall have suffered damage thereby.

Persons under the age of eighteen years. 8. A person under the age of eighteen years may sue and, subject to the provisions of section 9 of this Law, be sued in respect of a civil wrong:

Provided that no action shall be brought against any such person in respect of any civil wrong when such wrong arises directly or indirectly out of any contract entered into by such person.

9. No action shall be brought against any person in respect of any civil wrong committed by such person when such person was under the age of twelve years.

Persons under the age of twelve years.

10. (1) No action shall be brought in respect of any civil wrong committed before or during the subsistence of a marriage by either party thereto or any person representing his or her estate against the other party thereto or any person representing his or her estate :

Husband and wife.

Provided that any spouse may, for the protection and security of his or her own property, bring an action against the other for any civil wrong committed by him or her in connection with such property.

4 of 38/53.

(2) No party to a marriage shall be liable for any civil wrong committed at any time by the other party thereto save under the provisions of sections 11 and 12 of this Law.

11. When two or more persons are respectively liable under the provisions of this Law for any act and such act constitutes a civil wrong such persons shall be jointly liable as joint civil wrong doers for such act and may be sued therefor jointly or severally :

Joint civil wrong doers, etc.

Provided that—

(a) if a judgment is obtained against, or

(b) if a release is given to,

one or more of such persons in respect of such civil wrong no action shall lie against the other person or persons in respect thereof :

Provided that where damage is suffered by any person as a result of a civil wrong (whether a crime or not)—

5 of 38/53.

(a) judgment recovered against any civil wrong doer liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint civil wrong doer in respect of the same damage ;

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the

estate, or of the wife, husband, parent or child, of that person, against civil wrong doers liable in respect of the damage (whether as joint civil wrong doers or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the Court is of opinion that there was reasonable ground for bringing the action.

Liability
for acts
committed
by other
persons not
being
servants.

12. (1) For the purposes of this Law—

- (a) any person who shall join or aid in, authorise, counsel, command, procure or ratify any act done or to be done by any other person shall be liable for such act;
- (b) any person who shall employ an agent, not being his servant, to do any act or class of acts on his behalf shall be liable for anything done by such agent in the performance of, and for the manner in which such agent does, such act or class of acts;
- (c) any person who shall enter into any contract with any other person, not being his servant or agent, to do any act on his behalf shall not be liable for any civil wrong arising during the doing of such act:

Provided that the provisions of this paragraph of this subsection shall not apply if—

(i) such person was negligent in the selection of such contractor, or

(ii) such person interfered with the work of the contractor in such a way as to cause the injury or damage, or

(iii) such person authorised or ratified the act causing injury or damage, or

(iv) the thing for the doing of which the contract was entered into was unlawful.

(2) Nothing in this section shall affect the liability of any person for any act committed by such person.

13. (1) For the purposes of this Law a master shall be liable for any act committed by his servant—

Master's liability for acts of his servant.

- (a) which he shall have authorised or ratified, or
- (b) which was committed by his servant in the course of his employment :

Provided that a master shall not be liable for any act committed by any person, not being another of his servants, to whom his servant shall, without his authority, express or implied, have delegated his duty.

6 of 38/53.

(2) An act shall be deemed to have been done in the course of a servant's employment if it was done by him in his capacity as a servant and whilst performing the usual duties of and incidental to his employment notwithstanding that the act was an improper mode of performing an act authorised by the master ; but an act shall not be deemed to have been so done if it was done by a servant for his own ends and not on behalf of the master.

(3) For the purposes of this section act includes omission.

(4) Nothing in this section shall affect the liability of any servant for any act committed by such servant.

14. Whenever under the provisions of this Law it is necessary to allege or prove knowledge, the knowledge of an agent or of a servant shall be deemed to be the knowledge of his principal or master if such knowledge was acquired—

When knowledge of agent or servant to be knowledge of master.

- (a) by the agent whilst acting for and on behalf of his principal, or
- (b) by the servant in the course of his employment in connection with, the matter or thing in respect of which the knowledge is so necessary.

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

Provisions relating to the armed forces.

8 of 38/53.

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though

not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown ; and

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

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

(2) The Administrative Secretary, if satisfied that it is the fact—

- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of its Government in the Colony ; or
- (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces,

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

(3) A certificate of the Admiralty or a Secretary of State—

- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of its Government in the United Kingdom ; or
- (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces,

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

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

(5) Nothing in this section shall be deemed by implication or otherwise to confer any right of action against the Crown in right of its Government in the United Kingdom.

16. The right of any remedy for, and any liability in respect of, any civil wrong shall not be assignable otherwise than by operation of law.

Liability or right in respect of civil wrong not assignable.

PART III.

CIVIL WRONGS AND DEFENCES TO CERTAIN ACTIONS THEREFOR.

17. (1) Defamation consists of the publication by any person by means of print, writing, painting, effigy, gestures, spoken words or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy, of any matter which—

Defamation.
9 of 38/53.

- (a) imputes to any other person a crime ; or
- (b) imputes to any other person misconduct in any public office ; or
- (c) naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office ; or
- (d) is likely to expose any other person to general hatred, contempt or ridicule ; or
- (e) is likely to cause any other person to be shunned or avoided by other persons.

For the purposes of this subsection, "crime" means any offence or other act punishable under any enactment in force in the Colony and any act wheresoever committed, which, if committed in the Colony, would be punishable therein.

(2) A person is not less answerable for a defamatory statement by reason only that he—

- (a) makes it by way of repetition or hearsay ; or
- (b) gives at the time or afterwards the authority on which he makes the statement ; or
- (c) subject to the provisions of sections 19, 20 and 21, believes the statement to be true ; or
- (d) did not intend in fact to make or publish it of and concerning the plaintiff ; or
- (e) subject to the provision of section 22, was unaware of the existence of the plaintiff :

Provided that the Court may take such or like circumstances into account in awarding compensation.

(3) An action for defamation by gestures, spoken words or other sounds, other than broadcasting by wireless telegraphy, shall not lie without proof of special damage except where the gestures, spoken words or other sounds—

- (a) impute a crime for which the plaintiff may be made to suffer corporal punishment or imprisonment in the first instance ;
- (b) are calculated to injure or prejudice the reputation of the plaintiff in the way of his profession, trade, business, calling or office ;
- (c) impute to the plaintiff a contagious or infectious disease ;
- (d) impute adultery or unchastity to a woman or girl.

(4) It is not necessary for defamation that a defamatory meaning should be directly or completely expressed ; and it suffices if such meaning, and its application to the person alleged to be defamed, can be collected either from the alleged defamatory statement itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

18. (1) A person publishes defamatory matter if he causes the print, writing, painting, effigy, gestures, spoken words, or other sounds or other means by which the

defamatory matter is conveyed to be dealt with, either by exhibition, reading, recitation, description, delivery, communication, distribution, demonstration, expression or utterance, or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to any person other than—

- (a) the person defamed thereby ; or
- (b) the husband or wife of the person publishing the defamatory statement so long as the marriage is subsisting.

(2) For the purposes of this section, communication by open letter or postcard, whether sent to the person defamed or to any other person, constitutes publication.

19. In ^{an} action for defamation it shall be a defence—

- (a) that the matter of which complaint was made was true :

Provided that where the defamatory matter contains two or more distinct charges against the plaintiff, a defence under this paragraph shall not fail by reason only that the truth of every charge is not proved, if the defamatory matter not proved to be true does not materially injure the plaintiff's reputation having regard to the truth of the remaining charges ;

- (b) that the matter of which complaint was made was a fair comment on some matter of public interest :

Provided that where the defamatory matter consists partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is a fair comment having regard to such of the facts alleged or referred to in the defamatory matter complained of as are proved :

Provided further that a defence under this paragraph shall not succeed if the plaintiff proves that the publication was not made in good faith within the meaning of subsection (2) of section 21 of this Law ;

Special
defences to
action for
defamation.

9 of 38/53.

- (c) that the publication of the defamatory matter was privileged under sections 20 and 21 of this Law ;
- (d) that the defamation was unintentional under section 22 of this Law.

When
publication
of
defamatory
matter
absolutely
privileged.
9 of 38/53.

20. (1) The publication of defamatory matter is absolutely privileged in any of the following cases, that is to say :—

- (a) if the matter is published by the Governor, or by the Executive Council, or by any legislative body which may hereafter be established, in any official document or proceedings ;
- (b) if the matter is published in the Executive Council or any legislative body which may hereafter be established, and is so published by the Governor or by any member of such Council or body ;
- (c) if the matter is published by order of the Governor in Council ;
- (d) if the matter is published concerning a person subject to military, naval or police discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct and to some person having authority over him in respect of such conduct ;
- (e) if the matter is published in the course of any judicial proceedings by a person taking part therein as a Judge or Magistrate or advocate or witness or party thereto ;
- (f) if the matter published is in fact a fair report of anything said, done or published in the Executive Council or any legislative body which may hereafter be established and which is published by order or with the authority of such Council or body ;
- (g) if the matter published is in fact a fair, accurate and contemporaneous report of anything said, done or shown in any judicial proceedings before any Court or tribunal and the Court or tribunal has not prohibited such publication ;

- (h) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under the provisions of this section ;
- (i) if the person publishing the matter is legally bound to publish it ;
- (j) if the publication is made in any military, naval or police report made for the purposes of the defence or security of the Colony :

Provided that nothing in this section shall authorise the publication of any seditious, blasphemous or indecent matter.

(2) Where any publication of defamatory matter is absolutely privileged under the provisions of subsection (1) of this section, it is immaterial whether the matter was true or false, and whether it was or was not known by the defendant to be false and whether it was or was not published in good faith.

21. (1) The publication of defamatory matter is privileged, on condition that it is published in good faith, in any of the following cases, that is to say :—

- (a) if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under a legal, moral or social duty to publish it to the person to whom the publication is made and the last mentioned person has a corresponding interest in receiving it or the person publishing the matter has a legitimate personal interest to be protected and the person to whom the publication is made is under a corresponding legal, moral or social duty to protect that interest ;

Provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion ;

- (b) if the matter is a censure passed by a person on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct ;

When publication of defamatory matter conditionally privileged.
9 of 38/53.

- (c) if the matter is a complaint or accusation made by a person against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter ;
- (d) if the matter is published for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested ;
- (e) if the matter published is a fair and accurate report of anything said, done or published in any legislative body hereafter to be established.
- (2) The publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of subsection (1) of this section, if it is made to appear either—
- (a) that the matter was untrue, and that he did not believe it to be true ; or
- (b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false ; or
- (c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.
- (3) In any action brought in respect of the publication of any defamatory matter if such publication might be privileged under the provisions of subsection (1) of this section, and the defence of privilege is raised, the onus of proving that such publication was not made in good faith shall be upon the plaintiff.

that other person, make an offer of amends under this section ; and in any such case—

- (a) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for defamation shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication) ;
- (b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for defamation against the person making the offer in respect of the publication in question, to prove that the matter complained of was published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that it was or might be defamatory of the plaintiff and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the fact relied upon by the person making it to show that the matter in question was published by him innocently in relation to the party aggrieved ; and for the purposes of a defence under paragraph (b) of subsection (1) of this section no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the matter was so published.

(3) An offer of amends under this section shall be understood to mean an offer—

- (a) in any case, to publish or join in the publication of a suitable correction of the matter complained of, and a sufficient apology to the party aggrieved in respect of that matter ;
- (b) where copies of a document or record containing the said matter have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the

matter is alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this section is accepted by the party aggrieved—

(a) any question as to the steps to be taken in fulfilment of the offer as so accepted shall, in default of agreement between the parties, be referred to and determined by the Court, whose decision thereon shall be final ;

(b) the power of the Court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (a) of this subsection, shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question,

and if no such proceedings as aforesaid are taken, the Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this section matter shall be treated as published by one person (in this subsection referred to as "the publisher") innocently in relation to another person if and only if the following conditions are satisfied, that is to say—

(a) that the publisher did not intend to publish it of and concerning that other person, and did not know of circumstances by virtue of which it might be understood to refer to him ; or

(b) that the matter was not defamatory on the face of it, and the publisher did not know of circumstances by virtue of which it might be understood to be defamatory of that other person,

and in either case that the publisher exercises all reasonable care in relation to the publication ; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (b) of subsection (1) of this section shall not apply in relation to the publication by any person of

matter of which he is not the author unless he proves that the matter was written by the author without malice.

23. The defendant in any action for defamation may, after reasonable notice to the plaintiff of his intention so to do, prove in mitigation of any compensation that may be awarded—

Mitigation
of compen-
sation for
defamation.
9 of 38/53.

(a) that he made or offered an apology to the plaintiff before the commencement of the action or as soon afterwards as he had an opportunity, if the action was commenced before he had an opportunity of so doing ;

(b) that the defamatory matter was contained in a newspaper, a subsisting permit to publish which has been issued under the provisions of the Press Law, and that the plaintiff has already recovered, or brought an action for, compensation, or received or agreed to receive some recompense in respect of defamatory matter to the same purpose or effect as the defamatory matter in respect of the publication of which such action has been brought ;

Cap. 79.

(c) that prior to the publication of the defamatory matter the plaintiff was of general bad reputation in connection with the particular trait of his character which is assailed by the defamation ;

(d) that the defendant received provocation from the plaintiff,

and the Court may, having regard to the circumstances of the case, take all or any of such matters into consideration in assessing compensation.

24. In any action brought against the proprietor of any newspaper, a subsisting permit to publish which has been issued to him under the provisions of the Press Law, in respect of any defamatory matter contained in such newspaper, the proprietor of such newspaper may, if he pays into Court a sum of money which in the opinion of the Court is sufficient amends, and pleads no other defence, prove by way of defence—

Special
defence in
case of
defamatory
matter
published in
newspaper.
Cap. 79.
9 of 38/53.

(a) that the defamatory matter was inserted without actual malice ; and

- (b) that there was no gross lack of reasonable care for which he was liable in connection with the insertion of such defamatory matter ; and
- (c) that before the commencement of the action or so soon afterwards as he had an opportunity, if the action was begun before he had an opportunity of so doing, he inserted in such newspaper a full apology, or if the newspaper is published at intervals exceeding one week, that he offered to publish the apology in any newspaper selected by the plaintiff. ~

Injurious
falsehood.
9 of 38/53.

25. (1) Injurious falsehood consists of the publication maliciously by any person of a false statement, whether oral or otherwise, concerning—

- (a) the profession, trade, business, calling or office ; or
- (b) the goods ; or
- (c) the title to property,

of any other person :

Provided that, subject to subsection (2) of this section, no person shall recover compensation in respect thereof unless he has suffered special damage thereby.

(2) In an action under subsection (1) of this section, it shall not be necessary to allege or prove special damage—

- (a) if the words upon which the action is founded are calculated to cause pecuniary loss to the plaintiff and are published in writing or other permanent form ; or
- (b) if the said words are calculated to cause pecuniary loss to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(3) For the purposes of this section, “ publication ” has the same meaning as it has in section 18 in relation to defamatory matter.

Assault.
10 of 38/53.

26. (1) Assault consists of intentionally applying force of any kind whether by way of striking, touching, moving, or otherwise, to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or attempting or threatening by any act or gesture to apply such force to the person of another if the person making the attempt or threat causes

the other to believe upon reasonable grounds that he has the present intention and ability to effect his purpose.

(2) For the purposes of this section, the expression "applying force" includes applying heat, light, electrical force, gas, odour or any other substance or thing whatever if applied in such a degree as to cause damage.

27. In any action brought in respect of any assault it shall be a defence—

Special
defences
to action
for assault.
10 of 38/53.

(a) that the defendant acted for the protection of himself or another person against an unlawful use of force by the plaintiff, and that in so acting he did no more than was reasonably necessary for that purpose and the damage caused to the plaintiff by the assault was not disproportionate to the damage sought to be avoided :

(b) that the defendant, being the occupier of any immovable property, or acting under the authority of such occupier, used a reasonable degree of force in order to prevent the plaintiff from unlawfully entering upon such immovable property or to eject the plaintiff therefrom after he had unlawfully entered or remained thereupon :

Provided that—

(i) if the plaintiff did not enter, or attempt to enter, upon such immovable property by force, the defendant shall have requested the plaintiff to refrain from entering upon, or, having entered upon, to depart from, such immovable property, and shall have given the plaintiff a reasonable opportunity of peaceably complying with his request ;

(ii) the force used shall amount to nothing more than forcible prevention or removal and shall, except where the plaintiff seeks to enter by the means of a forcible felony, not include beating, wounding or other physical injury ;

(c) the defendant, being entitled to the possession of any movable property, used a reasonable degree of force in order to defend his possession thereof, or if the plaintiff has wrongfully taken or detained such movable property from him, the

defendant used a reasonable degree of force to retake possession thereof from the plaintiff :

Provided that—

(i) if the plaintiff did not take or attempt to take such movable property by force, the defendant shall have requested the plaintiff to refrain from taking, or, having taken, to restore to the defendant, such movable property, and shall have given the plaintiff a reasonable opportunity of peaceably complying with his request ;

(ii) the force used shall amount to nothing more than forcible prevention or retaking and shall not include beating, wounding or other physical injury ;

- (d) that the defendant was acting in the execution of or lawfully assisting in the execution of any warrant, committal, order of commitment or writ of attachment issued by any Court or other lawful authority having jurisdiction thereto, provided that the act complained of was authorised by such warrant, committal, order of commitment or writ of attachment and notwithstanding any defect in or in the issue of such warrant, committal, order of commitment or writ of attachment ;
- (e) that the plaintiff was of unsound mind or was suffering from infirmity of mind or body and that the force used was, or appeared to be, reasonably necessary for his own protection or for that of other persons and was exercised in good faith and without malice ;
- (f) that the plaintiff and defendant were both members of Her Majesty's armed forces and that the defendant acted under the authority of and in accordance with any Imperial Act or other law or enactment applicable to such forces ;
- (g) that the defendant was the parent, guardian or schoolmaster of the plaintiff or other person whose relationship to the plaintiff was similar to that of his parent, guardian or schoolmaster, and administered to the plaintiff only such chastisement as was reasonably necessary for the purpose of correction ;

(h) that the defendant acted in good faith for what he had reason to believe to be the benefit of the plaintiff but was unable before doing such act to obtain the consent of the plaintiff thereto, as the circumstances were such that it was impossible for the plaintiff to signify his consent or for some person in lawful charge of the plaintiff to consent on behalf of the plaintiff and the defendant had reason to believe that it was for the benefit of the plaintiff that he should not delay in doing such act.

28. Notwithstanding anything contained in this Law, no principal or master shall be liable for any assault committed by his agent or servant against any other person unless he has expressly authorised or ratified such assault.

Liability for assault of agent or servant.
10 of 38/53.

29. False imprisonment consists of unlawfully totally depriving any person of his liberty for any period of time by physical means or by a show of authority :

False imprisonment.

Provided that any parent, guardian or schoolmaster may respectively temporarily deprive any child, ward or pupil of his liberty for such time as may be reasonably necessary for the purpose of correction.

30. In any action brought in respect of any false imprisonment it shall be a defence—

Special defences to action for false imprisonment.

- (a) that the defendant was acting in the execution of or lawfully assisting in the execution of any warrant, committal, order of commitment or writ of attachment issued by any Court provided that the act complained of was authorised by such warrant, committal, order of commitment or writ of attachment and notwithstanding any defect in or in the issue of such warrant, committal, order of commitment or writ of attachment ;
- (b) that the plaintiff was detained in lawful custody in accordance with the provisions of any enactment ;
- (c) that the plaintiff was of unsound mind or was suffering from some infirmity of mind or body and that the restraint was, or appeared to be, reasonably necessary for his own protection or

for that of other persons and was exercised in good faith and without malice ;

- (d) that the act of which the plaintiff complains was an act for the non-performance of which the person performing such act would be liable to a penalty under the provisions of any enactment ;
- (e) that the plaintiff and defendants are both members of Her Majesty's armed forces and that the defendant acted under the authority of and in accordance with any Imperial Act or other law or enactment applicable to such forces.

Liability of another for false imprisonment by his agent or servant.

31. Notwithstanding anything contained in this Law, no principal or master shall be liable for the false imprisonment by his agent or servant of any other person unless he shall have expressly authorised or ratified such imprisonment.

Malicious prosecution.

32. Malicious prosecution consists of actually, maliciously and without reasonable and probable cause instituting or carrying on against any person unsuccessful criminal, bankruptcy or winding-up proceedings, where such proceedings—

- (a) caused scandal to the credit or reputation of, or possible loss of liberty by, such person, and
- (b) terminated, if in fact they were capable of so terminating, in favour of such person :

Provided that no action for malicious prosecution shall be brought against any person by reason only that he furnished information to some competent authority by whom any proceedings were instituted.

Liability of another for malicious prosecution by his agent or servant.

33. Notwithstanding anything contained in this Law, no principal or master shall be liable for any malicious prosecution instituted by his agent or servant unless he shall have expressly authorised or ratified such prosecution.

Unlawfully causing breach of contract.

11 of 38/53.

34. (1) Any person who, otherwise than in furtherance of a strike or lockout in respect of a trade dispute within the trade or industry in which the strikers or persons locking out are engaged, knowingly and without sufficient justification, causes any other person to break a legally binding contract with a third person, commits a civil wrong against such third person.

(2) For the purposes of this section, the relationship created by marriage shall not be deemed to be a contract.

35. Any person who by imitating the name, description, sign, label or otherwise causes or attempts to cause any goods to be mistaken for the goods of another person, so as to be likely to lead an ordinary purchaser to believe that he is purchasing the goods of such other person, shall commit a civil wrong against such other person : Passing off.

Provided that no person shall commit a civil wrong by reason only that he uses his own name in connection with the sale of any goods.

36. Fraud consists of a false representation of fact, made with the knowledge that it is false, or without belief in its truth or recklessly, careless whether it be true or false, with intent that it shall be acted upon by the person deceived : Fraud.

Provided that no action shall be brought in respect of any such representation unless it was intended to and did deceive the plaintiff and he has acted upon it and he has thereby suffered damage :

Provided also that no action shall be brought in respect of any such representation as to the character, conduct, credit, ability, trade or dealings of any person in order to obtain him credit, money or goods unless such representation is in writing and signed by the defendant himself.

37. (1) Unlawful detention consists of the unlawful withholding of any movable property from any person entitled to the immediate possession thereof. Unlawful detention.

(2) In any action brought in respect of any unlawful detention the onus of proving that the withholding was lawful shall be upon the defendant.

38. In any action brought in respect of any unlawful detention the Court may, having regard to the circumstances of the case, order the return of the property detained in addition to or in substitution for any other remedy by this Law provided. Power of Court in action for unlawful detention.

39. Conversion consists of an unlawful physical act which affects any movable property and asserts a claim to deal therewith in a manner inconsistent with the rights of any person entitled to the immediate possession thereof. Conversion.

Special
defences to
action for
conversion.

40. In any action brought in respect of the conversion of any movable property it shall be a defence that the defendant purchased such property in good faith—

(a) in any open market from some person usually dealing in that market in the kind of property of which the property alleged to have been converted consists, or

(b) in any shop where property of the kind of which the property alleged to have been converted is usually sold and from the proprietor thereof.

Jus tertii to
be no defence
to action for
conversion.

41. In any action brought in respect of the conversion of any movable property the defendant shall not by way of defence set up against the person entitled to the immediate possession of such property the right of any third person.

Power of
Court in
action for
conversion.

42. In any action brought in respect of the conversion of any movable property the Court may, having regard to the circumstances of the case, in addition to or in substitution for any other remedy by this Law provided, order the return of the property converted.

Trespass to
immovable
property.
12 of 38/53.

43. (1) Trespass to immovable property consists of any unlawful entry upon, or any unlawful damage to or interference with, any such property by any person.

(2) Where the acts complained of are permitted by local custom, such custom if established shall be a defence but in any action brought in respect of any trespass to immovable property the onus of showing that the act of which complaint is made was not unlawful shall be upon the defendant.

Trespass to
movable
property.
13 of 38/53.

44. (1) Trespass to movable property consists of—

(a) the unlawful disturbance of or interference with, or

(b) any unlawful act directly causing damage to,

any such property, such disturbance or interference being caused by or such act being done by some person.

(2) In any action brought in respect of any trespass to movable property the onus of showing that the act of which complaint is made was not unlawful shall be upon the defendant. *re?*

Public
nuisance.

45. A public nuisance consists of some unlawful act, or omission to discharge a legal duty where such act or

omission endangers the life, safety, health, property or comfort of the public or obstructs the public in the exercise of some common right :

Provided that no action shall be brought in respect of a public nuisance, save

(a) by the Attorney-General for an injunction, or

(b) by any person who has suffered special damage thereby. ^{3 of 38/53.}

46. A private nuisance consists of any person so conducting himself or his business or so using any immovable property of which he is the owner or occupier as habitually to interfere with the reasonable use and enjoyment, having regard to the situation and nature thereof, of the immovable property of any other person : ^{Private nuisance. 14 of 38/53.}

Provided that no plaintiff shall recover compensation in respect of any private nuisance unless he shall have suffered damage thereby :

Provided also that the provisions of this section shall not apply to any interference with daylight.

47. It shall be a defence to any action brought in respect of any private nuisance that the act complained of was done under the terms of any covenant or contract binding upon the plaintiff which inures for the benefit of the defendant. ^{Special defence to action for private nuisance.}

48. It shall not be a defence to any action brought in respect of a private nuisance that the nuisance existed before the plaintiff's occupation or ownership of the immovable property affected thereby. ^{Nuisance existing before plaintiff's occupation.}

49. Nothing contained in sections 45 and 48, inclusive, of this Law shall be deemed to affect the provisions as to nuisance of the Municipal Corporations Law. ^{Saving.}

50. Any person who shall by any obstruction or otherwise prevent the enjoyment by the owner or occupier of any immovable property of a reasonable amount of daylight having regard to the situation and nature of such immovable property when such light has been continuously enjoyed by such owner or occupier or his or their predecessors in title, otherwise than under the terms of any covenant or contract, for a period of not less than fifteen ^{Interference with daylight.}

years immediately preceding such obstruction or prevention shall commit a civil wrong.

✓ Negligence.

51. (1) Negligence consists of—

- (a) doing some act which in the circumstances a reasonable prudent person would not do or failing to do some act which in the circumstances such a person would do, or
- (b) failing to use such skill or take such care in the exercise of a profession, trade or occupation as a reasonable prudent person qualified to exercise such profession, trade or occupation would in the circumstances use or take,

and thereby causing damage :

Provided that compensation therefor shall only be recovered by any person to whom the person guilty of negligence owed a duty, in the circumstances, not to be negligent.

(2) A duty not to be negligent shall exist in the following cases, that is to say :—

- (a) the occupier of any immovable property shall, subject to any terms of any lease or contract applicable to the occupation of such property, owe a duty to the owner of such property ;
- (b) the occupier of any immovable property shall owe such a duty to all persons who are, and to the owner of any property which is lawfully in or upon or so near to such immovable property as in the usual course of things to be affected by the negligence :

Provided that the owner and occupier of any immovable property shall jointly owe such a duty in respect of the maintenance and repair of such immovable property to all persons who are not, and the owner of any property which is not, in or upon such immovable property or in or upon any immovable property adjoining and held together with such immovable property by the owner and occupier thereof, or either of them :

Provided also that the occupier of any immovable property shall owe no such duty in respect of the condition of or of the maintenance

or repair of such immovable property to any bare licensee who is, or the property of whom, is, in or upon such immovable property save only to warn such bare licensee of any concealed danger or hidden peril in or upon such immovable property of which such occupier know or must be presumed to have known.

For the purposes of this section "bare licensee" means any person who lawfully comes upon any immovable property otherwise than—

(i) in connection with any business in which the occupier of the property is interested, or

(ii) in the lawful performance of any public duty under the provisions of any enactment or otherwise,

and includes the guests, not being guests for reward, and the servants of the occupier of any immovable property ;

(c) the owner of any animal, vehicle, railway train, boat, ship, aircraft or other means of conveyance shall owe such a duty to all persons who are, or the owner of any movable property which is, carried for reward in or upon such animal, vehicle, railway train, boat, ship, aircraft or other conveyance and to all other persons who are, and to the owner of any property which is so near to such animal, vehicle, railway train, boat, ship, aircraft or other conveyance as in the usual course of things to be affected by the negligence.

For the purposes of this paragraph it is immaterial whether or not such reward moves from the person who is, or the owner of the movable property which is, so carried ;

(d) all persons who are, and the owner of any movable property which is, in or upon any immovable property or public or private place or animal, vehicle, railway train, boat, ship, aircraft or other conveyance, not being the occupier of such immovable property or the owner of such animal, vehicle, railway train, boat, ship, aircraft or other conveyance, shall owe such a duty to the owner and occupier of such immovable property and to the owner of such

animal, vehicle, railway train, boat, ship, aircraft or other conveyance, and to all other persons whom, and the owner of any property which a reasonable person might have contemplated as likely in the usual course of things to be affected by the negligence;

(e) any person, whether for reward or otherwise, exercising any profession, trade or occupation or rendering any service to any other person shall owe such a duty to any person upon whom, or upon the property of whom or to whom such person is exercising his profession, trade or occupation or rendering any service.

AT. 4293/59

52. In any action brought in respect of any damage in which it is proved—

Onus of proof of negligence when damage caused by dangerous things.

(a) that such damage was caused by any dangerous thing other than fire or an animal, or by the escape of anything which if it escapes is liable to cause damage, and

(b) that the defendant was the owner of or the person in charge of such thing or the occupier of the property from which such thing escaped,

the onus shall be upon the defendant to show that there was no negligence for which he is liable in connection with such dangerous thing or the escape of such thing.

53. In any action brought in respect of any damage in which it is proved—

Onus of proof of negligence when damage caused by fire.

(a) that such damage was caused by or in consequence of any fire, and

(b) that the defendant kindled such fire or was liable for the kindling of such fire or was the occupier of the immovable property or the owner of the movable property on which such fire originated,

the onus shall be upon the defendant to show that there was no negligence for which he is liable in connection with the origin or spread of such fire.

54. In any action brought in respect of any damage in which it is proved—

Onus of proof of negligence when damage caused by an animal.

(a) that such damage was caused by a wild animal, or by an animal, other than a wild animal, which the defendant knew, or must be presumed to

have known, had a propensity to do the act causing the damage, and

- (b) that the defendant was the owner of or the person in charge of such animal,

the onus shall be upon the defendant to show that there was no negligence for which he is liable in connection with such animal.

55. In any action brought in respect of any damage in which it is proved—

- (a) that the plaintiff had no knowledge or means of knowledge of the actual circumstances which caused the occurrence which led to the damage, and

- (b) that the damage was caused by some property of which the defendant had full control,

and it appears to the Court that the happening of the occurrence causing the damage is more consistent with the defendant having failed to exercise reasonable care than with his having exercised such care, the onus shall be upon the defendant to show that there was no negligence for which he is liable in connection with the occurrence which led to the damage.

Onus of proof of negligence in certain cases.

56. In any action brought in respect of any negligence it shall be a defence, notwithstanding that the defendant was negligent—

- (a) that some third person was negligent and that such third person's negligence was the decisive cause of the damage; or

- (b) that the damage was due to the happening of some extraordinary natural occurrence which a reasonable person would not have anticipated and the consequences of which could not have been avoided by the exercise of reasonable care.

Special defences to action for negligence.

15 of 38/53.

57. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Apportionment of liability in case of contributory negligence.

16 of 38/53.

Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract ;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of subsection (1) of this section, subject to such reduction as is therein mentioned, the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section 64 of this Law (which relates to contribution between joint and several wrongdoers), shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) of this section, in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under section 34 of the Administration of Estates Law, the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under section 58 of this Law, shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading section 68 of this Law, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Article 21 of the Convention contained in the First Annex to the First Schedule to the Carriage by Air (Colonies, Protectorates and Mandated Territories) Order, 1934 (which empowers a Court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person), shall have effect subject to the provisions of this section.

(7) For the purposes of this section—

“ damage ” includes loss of life and personal injury ;

Cap. 189.

Gazette:
9.11.1934.

“ dependant ” means any person for whose benefit an action could be brought under section 58 of this Law ;

“ fault ” means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from this Law, give rise to the defence of contributory negligence.

58. (1) Where the death of any person is caused by any civil wrong and such person would, if death had not ensued, have been entitled at the time of his death under the provisions of this Law to have recovered compensation in respect of bodily injury caused to him by such civil wrong, the husband, wife, parent and child of such deceased person may recover compensation from the person responsible for such civil wrong in accordance with the following provisions, that is to say :—

Right of action of certain persons in respect of act causing death of another.

(a) The action shall be brought in the name of the executor, administrator or heirs of the deceased person for the benefit of the husband, wife, parent and child, or such of them as may be in existence, of the deceased person :

Provided that if no action is brought by such executor, administrator or heirs within six months of the death of the deceased person the action may be brought on behalf of all the persons for whose benefit the action could have been brought by the executor, administrator or heirs, in the name or names of all or any of such persons.

(b) The compensation to be recovered in any such action shall be awarded in respect of the pecuniary loss actual or prospective suffered by the persons on whose behalf the action is brought by the death of the deceased person, and shall be apportioned, after the deduction of any costs not recovered from the defendant, by the Judge at the trial among such persons :

Provided that in assessing such compensation—

(i) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, and

- (ii) any sum paid or payable in respect of the funeral expenses of the deceased or of mourning on his account, shall not be taken into account.
- (c) In any such action particulars shall be given of the persons on whose behalf such action is brought, and of the pecuniary loss suffered by such persons respectively owing to the death of the deceased person.
- (d) Any such action shall be brought within twelve months of the death of the deceased person.
- 17 of 38/53. (2) For the purposes of this section—
 “ child ” includes any grand-child, step-child, illegitimate child, a child adopted in a manner recognised by law, and a child *en ventre sa mère* ;
 “ parent ” includes a step parent and a grand parent.

Special defence that plaintiff voluntarily exposed himself to state of affairs causing civil wrong.

59. It shall be a defence to any action brought in respect of a civil wrong that the plaintiff knew and appreciated or must be taken to have known and appreciated the state of affairs causing the damage and voluntarily exposed himself or his property thereto :

Provided that the provisions of this section shall not apply to any action brought in respect of any civil wrong when such wrong was due to the non-performance of a duty imposed upon the defendant by any enactment :

Provided also that no child under the age of twelve years shall be deemed to be capable of knowing or appreciating such state of affairs or of voluntarily exposing himself thereto or of himself exposing his property thereto.

Special defence that act was done under an enactment.

60. It shall be a defence to any action brought in respect of a civil wrong that the act complained of was done under and in accordance with the provisions of any enactment.

8 of 38/53.

PART IV.

MISCELLANEOUS PROVISIONS AS TO THE RECOVERY OF REMEDIES.

Compensation only to be recovered once.

61. (1) No person who has recovered compensation or other relief in respect of any civil wrong, nor any person

Note.—Part IV of the Law as it stood before its repeal by the Civil Wrongs (Amendment) Law, 1953 was repealed by section 18 of that Law with effect from the 1st January, 1957.

claiming through such person, shall recover any further compensation in respect of such civil wrong.

(2) No person shall recover any compensation or other relief in respect of any civil wrong, if such civil wrong also constituted a breach of any contract, or of an obligation resembling those created by contract, and compensation for such breach of contract or obligation has been awarded by any Court, arbitrator or other tribunal to such person or to any person through whom such person claims.

(3) No person shall recover any compensation in respect of any civil wrong if such civil wrong also constitutes a crime or a breach of any obligation imposed by any enactment and compensation in respect thereof has been awarded in accordance with the provisions of any enactment to such person or to any person through whom such person claims.

62. Notwithstanding anything contained in any enactment as to Workmen's Compensation in force in the Colony for the time being, no workman (which term, for the purpose of this section, shall be deemed to include his dependants) shall, by reason of the happening of any event, recover from his employer both compensation under the provisions of this Law and compensation under the provisions of such enactment for any injury or damage caused by such event.

Compensation not to be recoverable under both this Law and Workmen's Compensation Law.

63. Notwithstanding anything contained in the Contract Law, no person shall recover any compensation in respect of any breach of contract, or of an obligation resembling those created by contract, if such breach also constitutes a civil wrong and compensation or other relief has been awarded for such civil wrong by any Court to such person or to any person through whom such person claims.

No action to be brought on contract if compensation awarded for civil wrong.
Cap. 149.

64. (1) Where damage is suffered by any person as a result of a civil wrong, any joint wrong doers liable in respect of that damage may recover contribution from any other wrong doer who is, or would, if sued, have been, liable in respect of the same damage, whether as joint wrong doer or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

Recovery of contribution from joint civil wrong doers, etc.
19 of 38/53.

(2) In any proceedings under this section the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extension of such person's responsibility for the damage ; and the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

Insurance not to be taken into account in assessing compensation.

65. In assessing any compensation payable by reason of any civil wrong any sum paid or payable under any contract of assurance or insurance in connection with such civil wrong shall not be taken into account.

Recovery of compensation for libel published in a newspaper.
3 of 35/34.

66. (1) If a successful plaintiff in an action brought against the proprietor of a newspaper in respect of a libel published in such newspaper shall make it appear to the Court before which the action was heard that he is not able to procure satisfaction of the judgment of the Court in respect of such libel by way of execution against the immovable or movable property of the defendant it shall be lawful for the Court to order that the judgment be enforced against the signatories of any bond given by or on behalf of the defendant under section 4 (1) (b) of the Newspaper, Books and Printing Presses Law, 1934, or under the corresponding section of any Law amending or substituted for the same, and to order execution to be levied against the security, if any, given by the signatories of any such bond or any of them :

Provided that the liability of the signatories shall in no case exceed their liability under such bond :

Provided also that the plaintiff shall serve upon the Administrative Secretary a copy of any order of Court made under this section.

(2) The Governor with the advice and assistance of the Chief Justice may from time to time by writing under the hand and official seal of the Governor and the hand of the Chief Justice make Rules of Court—

(a) regulating the practice and procedure, and

(b) prescribing the fees to be charged or taken,

in respect of any proceedings under this section.

Civil wrong which is also a crime.

67. It shall be no bar to any action in respect of a civil wrong that the facts upon which such action is based

constitute a crime or offence under the provisions of any enactment :

R.L.R by
Law 87/73
sec 2

Provided that if such crime or offence is a felony no action shall be brought in respect of the civil wrong until the offender has been brought to justice or the Court before which such action is to be tried is satisfied that it is not reasonably possible to bring the offender to justice.

68. No action shall be brought in respect of any civil wrong unless such action be commenced—

Limitation
of actions for
civil wrongs.

- (a) within two years next after the act, neglect or default of which complaint is made, or
- (b) where the civil wrong causes fresh damage continuing from day to day within two years next after the ceasing thereof, or
- (c) where the cause of action does not arise from the doing of any act or failure to do any act but from the damage resulting from such act or failure within two years next after the plaintiff sustained such damage, or
- (d) if the civil wrong has been fraudulently concealed by the defendant within two years of the discovery thereof by the plaintiff, or of the time when the plaintiff would have discovered such civil wrong if he had exercised reasonable care and diligence :

Provided that if at the time when the cause of action first arises the plaintiff is under the age of eighteen years or is of unsound mind or the defendant is not in the Colony such periods of two years shall not begin to run until the plaintiff attains the age of eighteen years or ceases to be of unsound mind or the defendant is again within the Colony :

Provided also that nothing in this section shall be deemed to affect the provisions of sections 34 of the Administration of Estates Law & 58 of this Law.

Cap. 189.

PART V.

MISCELLANEOUS.

69. Nothing in this Law shall be deemed to affect—

Saving.

- (a) any jurisdiction in Admiralty vested in any Court in the Colony, or

Cap. 113.

20 (a) of
38/53.

20 (b) of
38/53.

Gazette:
Supplement
No. 2A :
11.6.1952.
28.5.1953

- (b) the provisions of any Law, as to claims against the Government of the Colony, or
 - (c) the provisions of the Companies Law, or
 - (d) the provisions of section 40 of the Civil Aviation Act, 1949 (as set out in paragraph 10 of Schedule I to the Colonial Civil Aviation (Application of Act) Orders, 1952 and 1953).
-