



**BERMUDA
1977 : 52**

**LAW REFORM (MISCELLANEOUS PROVISIONS) (No 2) ACT
1977**

ARRANGEMENT OF SECTIONS

- 1 Interpretation
- 2 Personal injuries; application for interim payment of damages
- 3 Order for interim payment of damages
- 4 Defendant making counterclaim
- 5 Preservation of evidence
- 6 Act binds the Crown
- 7 Rules

[29 December 1977]

[*preamble and words of enactment omitted*]

Interpretation

- 1 In this Act unless the context otherwise requires —
 - "an action for personal injuries" means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death;
 - "Court" means the Supreme Court;
 - "interim payment", in relation to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which a party may be liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceedings is given or made in favour of that other party;

LAW REFORM (MISCELLANEOUS PROVISIONS) (No 2) ACT 1977

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"public authority" includes the Government, the municipalities, and any person providing electricity, water or telephone services;

and reference to a party to any proceedings includes a reference to any person who for the purposes of the proceedings acts as a next friend or guardian of a party to the proceedings.

Personal injuries; application for interim payment of damages

2 In an action for personal injuries in the Court the plaintiff may, at any time after the writ has been served on the defendant and the time limited for him to appear has expired apply to the Court for an order requiring the defendant to make an interim payment.

Order for interim payment of damages

3 (1) If on the hearing of an application made under section 2, the Court is satisfied —

- (a) that the defendant against whom the order is sought (in this section referred to as the "respondent") has admitted liability for the plaintiff's claim; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed,

the Court may, if it thinks fit and subject to subsection (2), order the respondent to make an interim payment of such an amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff.

(2) No order shall be made under subsection (1) if it appears to the Court that the defendant or, if there are two or more defendants, any of them, is not a person falling into one of the following categories —

- (a) a person who is insured in respect of the plaintiff's claim;
- (b) a public authority;
- (c) a person whose means and resources are such as to enable him to make an interim payment.

(3) Subject to any provision of law relating to the making of payments to minors or persons under a disability, the amount of any interim payment ordered to be made shall be paid into court, and when the amount is paid into court, the Court may, on the *ex parte* application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

Defendant making counterclaim

4 A defendant who makes a counterclaim for damages in respect of personal injuries to himself or any other person or in respect of a person's death may apply for an order requiring the plaintiff to make an interim payment and the provisions of this Act relating to payments to plaintiffs shall apply to such a defendant with the necessary modifications.

Preservation of evidence

5 (1) A court where it considers it necessary or expedient for the preservation of evidence in any cause or matter may on the application of a party to the cause or matter, and on such terms, if any, as it thinks just make an order for any one or more of the following matters —

- (a) the inspecting, photographing or preservation of property whether or not it is the property of or in possession of a party to the proceedings which appears to the court to be property which may become the subject matter of subsequent proceedings in the court, or as to which any question may arise in such proceedings; and
- (b) the taking of samples of any such property as is mentioned in the preceding paragraph and the carrying out of any experiment on or with any such property.

(2) A court, where the right of any party to a specific fund is in dispute in any cause or matter may on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured subject to such terms as the court thinks just.

(3) An order under this section may be made conditional on the applicant either paying or giving security for the costs of the person against whom the order is made or of the person carrying out the order and on such other conditions, if any, as the court making the order thinks just.

(4) This section shall apply both to civil and criminal proceedings.

(5) In this section—

"court" shall include a Magistrates' Court established under the Magistrates Act 1948 [*title 8 item 15*];

"property" for the purposes of inspection and photographing shall include land.

**LAW REFORM (MISCELLANEOUS PROVISIONS) (No 2) ACT
1977**

(6) This section shall be without prejudice to the exercise of powers by a court, by any other authority or person which may be exercised apart from this section.

Act binds the Crown

6 This Act shall bind the Crown:

Provided that a court shall not make an order against the Crown under section 5, if it considers that compliance with the order, would be likely to be injurious to the public interest.

Rules

7 (1) The Chief Justice may make rules under section 62 of the Supreme Court Act 1905 [*title 8 item 1*] for the better carrying out the provisions of this Act.

(2) Rules made under this section shall not be subject to section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*].