



MONTSERRAT

CHAPTER 3.01

CIVIL PROCEDURE and Related Legislation

Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 3.01

CAUSES OF ACTION (SURVIVAL) ACT

(Acts 8 of 1951 and 24 of 1956)

Commencement

[29 October 1951]

Short title

1. This Act may be cited as the Causes of Action (Survival) Act.

Effect of death on certain causes of action

2. (1) Subject to the provisions of this section, on the death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate:

Provided that, this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims under the Matrimonial Proceedings Act, for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages;
- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—

- (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Act or by the Carriage by Air Act, 1932 (U.K.), as extended to Montserrat by the Carriage by Air (Colonies Protectorates and Mandated Territories) Order, 1934 (U.K.) and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

CHAPTER 3.01

COURTS OF JUSTICE FEES ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Fixing fees payable in Courts of Justice, etc.
3. Order to be binding on all Courts, etc.
4. Payment into the Treasury
5. Fees to be taken in stamps
6. Stamps to be impressed or adhesive
7. Rules
8. Unstamped documents not evidence
9. Accounts of stamps
10. Penalty for forgery
11. Order may abolish existing fees
12. Act not binding on the Crown

SCHEDULE

CHAPTER 3.01

COURTS OF JUSTICE FEES ACT

(Acts 6 of 1880, 11 of 1932, S.R.O. 15/1956, Acts 17 of 2010 and 9 of 2011)

Commencement

[29 July 1880]

Short title

1. This Act may be cited as the Courts of Justice Fees Act.

Fixing fees payable in Courts of Justice, etc.

2. The Governor acting on the advice of Cabinet may, by order, fix the fees and percentages (including the percentage on estates of persons of unsound mind) to be taken in the High Court, or in any Court of Justice in Montserrat, civil or criminal, or in any Court created by any Commission, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer, paid wholly or partly out of public moneys, who is attached to any

of those Courts, or to the office of Registrar of Deeds, and may by order, increase, reduce, or abolish all or any of such fees and percentages, and appoint new fees and percentages to be taken in the said Courts or offices, or any of them, or by any such officer as aforesaid.

(Amended by Act 9 of 2011)

Order to be binding on all Courts, etc.

3. Any order made in pursuance of this Act shall be binding on all Courts, offices, and officers to which it refers, in the same manner as if it had been enacted by the Legislative Assembly. *(Amended by Act 9 of 2011)*

Payment into the Treasury

4. All such fees and percentages shall be paid into the Treasury.

Fees to be taken in stamps

5. The Governor acting on the advice of Cabinet may, by notice in the form set out in the Schedule, declare and direct that, from and after the time specified in such notice, all and any of such fees for the time being payable in money shall be taken by means of stamps; and, from and after the time specified in any such notice, the fees therein mentioned shall be received by stamps denoting the amounts payable, and not in money. *(Amended by Act 9 of 2011)*

Stamps to be impressed or adhesive

6. Such stamps shall be impressed, or adhesive, and shall only be distributed by the Accountant General and such other public officers as the Governor acting on the advice of Cabinet may direct. *(Amended by Act 9 of 2011)*

Rules

7. The Governor acting on the advice of Cabinet may make rules for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps, and for keeping accounts of such stamps and for the allowancing for spoiled or misused stamps. *(Amended by Act 9 of 2011)*

Unstamped documents not evidence

8. Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admissible in evidence, except in criminal trials or inquiries, unless and until it is properly stamped within the time prescribed by the rules under this Act regulating the use of stamps, but if any such document is, through mistake or inadvertence, received, filed, or used without being properly

stamped, the Court may, if it thinks fit, order that the same be stamped on the payment of a penalty, or otherwise, as in such order may be directed.

Accounts of stamps

9. An account of all money received in respect of stamps under this Act shall be kept in the Treasury.

Penalty for forgery

10. A person who forges a stamp shall be liable to be imprisoned, for a term of seven years.

Order may abolish existing fees

11. An order under this Act may abolish any existing fees and percentages which may be taken in the said Courts or offices, or any of them, or by the said officers, or any of them; but, subject to the provisions of any order made in pursuance of this Act, the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

Act not binding on the Crown

12. For the avoidance of doubt, this Act does not bind the Crown.
(Inserted by Act 17 of 2010)

SCHEDULE*(Section 5)***NOTICE UNDER THE COURTS OF JUSTICE FEES ACT**

The Governor acting on the advice of Cabinet, in pursuance of the provisions of this Act, hereby declares and directs that, from and after the day of, the fees for the time being, payable (*here insert the nature of the fees*) shall be taken in stamps.

(Amended by Act 9 of 2011)

**COURTS OF JUSTICE (HIGH COURT)
(PAYMENT OF FEES IN STAMPS) ORDER – SECTIONS 5 AND 7**

(S.R.O. L.I. 38/1934)

Commencement

[1 January 1935]

Short title

1. This Order may be cited as the Courts of Justice (High Court) (Payment of Fees in Stamps) Order.

Fees to be paid in stamps

2. From and after 1 January, 1935, the fees for the time being payable in all proceedings in the High Court in all its branches shall be taken in stamps.

Description of stamps

3. The stamps referred to in paragraph 2 shall be adhesive or impressed stamps as authorised under the Stamp Act, and any number of separate fees may be expressed on a document by one or more stamps for the gross amount.

Use of stamps

4. The stamp or stamps shall be affixed to the document in respect of which the fee is payable:

Provided that, where any fee is payable in respect of any matter or thing in reference to which it shall not have been customary or may not be necessary to use any document or paper, the party or his solicitor requiring such matter or thing to be done shall make application for the same by a *præcipe* or short note in writing or print to or upon which the stamp or stamps shall be affixed, and all papers and documents when possible shall be stamped on the left hand upper corner of the front sheet.

Documents to be stamped before signature

5. All documents must be fully stamped to the amount of the prescribed fees before being brought to the Officer of the Court responsible for the transaction involved, and such officer before signing the document shall satisfy himself that the same has been correctly stamped.

Cancellation of stamps

6. Before any stamped document passes out of the possession of the Officer of the Court responsible for the transaction involved, the stamps on the document shall be effectively cancelled by such officer by means of a metallic date stamp and indelible ink; and in the case of stamps of a higher value than 24 cents, each stamp must be perforated with a punching machine in such a way as to destroy completely any philatelic value such stamps might otherwise possess.

Accounts

7. As soon as possible after the end of each quarter the Registrar of the High Court shall transmit to the Treasury a statement signed by him certifying the amount paid by means of stamps in respect of all proceedings during the preceding quarter, and the same shall be duly entered in the appropriate account.

**MAGISTRATE'S COURT (CIVIL FEES)
(PAYMENT IN STAMPS) ORDER – SECTIONS 5 AND 7**

(S.R.O. L.I. 23/1931)

Commencement

[1 January 1931]

Short title

1. This Order may be cited as the Magistrate's Courts (Civil Fees) (Payment in Stamps) Order.

Fees to be paid in stamps

2. From and after 1 December, 1931, the fees for the time being payable in civil proceedings in the Magistrate's Courts shall be taken in stamps.

Description of stamps

3. The stamps referred to in paragraph 2 shall be adhesive stamps as authorised for postage and revenue under the Stamp Act, and any number of separate fees may be expressed on a document by one or more stamps for the gross amount.

Use of stamps

4. The stamp or stamps shall be affixed to the document in respect of which the fee is payable;

Provided that, where any fee is payable in respect of any matter or thing in reference to which it shall not have been customary or may not be necessary to use any document or paper, the party or his solicitor requiring such matter or thing to be done shall make application for the same by a *præcipe* or short note in writing or print to or upon which the stamp or stamps shall be affixed, and all papers and documents when possible shall be stamped on the left hand upper corner of the front sheet.

Documents to be stamped before signature

5. All documents must be fully stamped to the amount of the prescribed fees before being brought to the Magistrate, and the Magistrate before signing the document shall satisfy himself that the same has been correctly stamped.

Cancellation of stamps

6. Before any stamped document passes out of the possession of the Magistrate or of any duly appointed Clerk to the Magistrate the stamps on the document shall be effectively cancelled by the Magistrate or his Clerk by means of a metallic date stamp and indelible ink.

Custody of stamped documents

7. On the conclusion of the hearing of a case the stamped documents in connection therewith shall be retained in safe custody by the Magistrate or his Clerk and shall not be delivered to any person save for official purposes.

Destruction of documents

8. The Magistrate shall cause all stamped documents, over seven years old, in his custody, to be destroyed.

Accounts

9. As soon as possible after the end of each quarter the Magistrate shall transmit to the Treasury a statement signed by him certifying the amount paid by means of postage and revenue stamps in respect of civil proceedings during the preceding quarter, and the same shall be duly entered in the appropriate account.

CHAPTER 3.01

THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT

(Acts 6 of 1949 and 24 of 1956)

Commencement

[23 December 1949]

Short title

1. This Act may be cited as the Third Parties (Rights against Insurers) Act.

Rights of third parties against insurers on bankruptcy, etc., of the insured

2. (1) Where under any contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then—

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
- (b) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to the company; or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge;

if, either before or after that event, any such liability, as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order is made under section 112 of the Bankruptcy Act, for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the said Act, be transferred to and vested in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the commencement of this Act in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or alter

the rights of the parties thereunder upon the happening to the insured of any of the events specified in subsection (1)(a) or (b), or upon the making of an order under section 112 of the Bankruptcy Act, in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or (2), the insurer shall, subject to the provisions of section 4, be under the same liability to the third party as he would have been under to the insured, but—

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Act shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Act shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this Act, the expression “**liabilities to third parties**”, in relation to a person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This Act shall not apply—

- (a) where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company; or
- (b) to any case to which section 30(1) and (2) of the Workmen’s Compensation Act, applies.

Duty to give necessary information to third parties

3. (1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors, or in the event of an order being made under section 112 of the Bankruptcy Act, in respect of the estate of any person, or in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to any company or of a receiver or manager of the company’s business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, receiver, or manager, or person in possession of the property to give at the request of any person claiming that the bankrupt, debtor, deceased debtor, or company is under a liability to him such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Act and for the purpose of enforcing such rights, if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or

to alter the rights of the parties thereunder upon the giving of any such information in the events aforesaid or otherwise to prohibit or prevent the giving thereof in the said events shall be of no effect.

(2) If the information given to any person in pursuance of subsection (1) discloses reasonable ground for supposing that there have or may have been transferred to him under this Act rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said subsection on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

(4) If without reasonable excuse any person fails to comply with the provisions of this section or wilfully makes any false statement in reply to any such demand as aforesaid he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$240 or to imprisonment for a term of three months.

Settlement between insurers and insured persons

4. Where the insured has become bankrupt or where in the case of the insured being a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed, with respect to the company, no agreement made between the insurer and the insured after liability has been incurred to a third party and after the commencement of the bankruptcy or winding-up, as the case may be, nor any waiver, assignment, or other disposition made by, or payment made to the insured after the commencement aforesaid shall be effective to defeat or affect the rights transferred to the third party under this Act, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment had been made.