

THE GENERAL LAWS (No. 2) ORDINANCE, 1932

Western Samoa

No. 2, 1932



AN ORDINANCE

made by the Administrator of the Territory of Western Samoa with the advice and consent of the Legislative Council of that Territory, and in pursuance of The Samoa Act, 1921.

1. This Ordinance may be cited as "The General Laws (No. 2) Short Title. Ordinance, 1932."

2. In this Ordinance where not inconsistent with the context "Court" or "the Court" means the High Court of Western Samoa and includes a Judge and (within his jurisdiction) a Commissioner of the Court. Interpretation.

3. (1) Every person who being surety for the debt or duty of another or being liable with another for any debt or duty pays or satisfies such debt or performs such duty shall be entitled to have assigned to him or a trustee for him every judgment specialty or other security held by the creditor in respect of such debt or duty whether such judgment specialty or other security is or is not deemed at law to be satisfied by the payment of the debt or the performance of the duty. Sureties.

(2) Every such person shall be entitled to stand in the place of the creditor and to use all the remedies and if need be and upon a proper indemnity to use the name of the creditor in any action or other proceeding in order to obtain from the principal debtor or any co-surety, co-contractor or co-debtor as the case may be, indemnification for the advances made and loss sustained by the person paying or satisfying such debt or performing such duty.

(3) Such payment satisfaction or performance made by any such surety shall not be pleadable in bar of any such action or other proceeding by him.

(4) A co-surety co-contractor or co-debtor shall not be entitled to recover from any other co-surety co-contractor or co-debtor by the means aforesaid more than the just proportion to which as between those parties themselves such last-mentioned person is justly liable.

Interest on  
money.

4. In all cases where interest for the loan of money or on any other contract is lawfully recovered or allowed in any action or other proceeding but where the rate of such interest has not been previously agreed upon by or between the parties the party entitled to interest shall not be allowed to recover or receive above the rate of eight pounds for the interest of one hundred pounds for a year and so after that rate for a greater or lesser sum than one hundred pounds or for a longer or shorter time than a year.

Lost Instru-  
ments.

5. In case of any action founded on any negotiable instrument the Court may order that the loss of such instrument shall not be taken advantage of provided an indemnity is given to the satisfaction of the Court against claims of any other person upon such negotiable instrument.

Discharge of  
Debts by Part  
Payment.

6. An acknowledgment by a creditor or by any person authorized in that behalf of the receipt of a part of his debt in satisfaction of the whole debt shall operate as a discharge of the debt any rule of law notwithstanding.

Joint Debtors

7. A judgment against one or more of several persons jointly liable shall not operate as a bar or defence to an action or other proceeding against any of such persons against whom judgment has not been recovered except to the extent to which the judgment has been satisfied any rule of law notwithstanding.

Encroach-  
ments upon  
Land.

8. (1) Where in any action or other proceeding relating to land it appears to the Court that the defendant or any of his predecessors in title has, in the erection of a building or structure upon any land adjoining the land in question, encroached upon such last-mentioned land and it is proved to the satisfaction of the Court by or on behalf of the defendant that such encroachment was not intentional or did not arise from gross negligence then the Court instead of ordering the defendant to give up possession of the piece of land so encroached upon or to pay damages or instead of granting an injunction may give the defendant the right of retaining possession of the piece of land so built upon subject to the payment of such sum or sums of money and to such other conditions as the Court thinks just.

(2) Any order made under this section may be registered under "The Samoa Land Registration Order, 1920," and its amendments.

Husband's  
Liability for  
Wife's Torts.

9. The rule of common law whereunder a husband is liable to third parties for the tortious acts of his wife shall cease to be applicable in Samoa Provided that nothing in this section shall effect the vicarious liability of a husband for the tortious acts of his wife committed while acting for or on his behalf and within the scope of her authority.

Examination  
Injured  
Persons.

10. (1) Where any person injured or alleged to have been injured by an accident or through the wrongful act neglect or default of any other person claims compensation or damages on account of the injury the Court may at any time after the commencement of the action to recover such compensation order that the person injured be examined by one or more medical officers or practitioners named in the order and may make such order with respect to the costs of such examination as it thinks fit.

(2) If the person injured refuses to submit himself to such examination or in any way obstructs the same his right to compensation or damages shall be suspended and all proceedings brought by him in respect of such compensation or damages shall be stayed while such refusal continues.

11. Words spoken and published which impute unchastity or adultery of any female shall not require special damage to render them actionable. Slander of Women.

12. A judgment may be entered and an order made against a married woman in the same way as if she was a *feme sole* and every such judgment or order may be enforced accordingly. Judgments Against Married Women.

13. (1) The Court may grant to any widow widower or child of a deceased person who has died since the first day of May, 1920, leaving estate in Samoa such relief therout as to it seems just if the Court is satisfied (having regard to all circumstances of the case up to the time of the application) that such widow, widower or child is insufficiently provided for. Family Protection.

(2) Application for relief under this section shall be made by way of motion in accordance with the rules of the Court and shall be made within twelve months after the coming into operation of this Ordinance if probate of the Estate of the deceased shall have been granted in Samoa previously thereto or within twelve months after the grant of the probate in Samoa in all other cases. Provided that the Court may on special grounds give leave to make an application under this section at any time after the expiration of the said period.

(3) Subject to the provisions of the next succeeding subsection the Court may order that any specified part or parts or that the whole estate shall bear the amount or extent of any relief granted under this section.

(4) If application for relief under this section is made in respect of and affecting a will of which probate was granted in Samoa previously to the coming into operation of this Ordinance or after the period of twelve months from the said grant in all other cases the amount or extent of any relief granted by the Court shall be borne by the whole or such part or parts of the then undistributed estate of the deceased as shall be specified in the order of the Court.

(5) Every will shall be deemed to have been altered or varied as from the time of and in accordance with the order of the Court.

14. Every policy of life insurance shall be protected upon the holder thereof becoming bankrupt under any law for the time being in force relating to bankruptcy or dying leaving a will to the extent and in the manner provided by Section 65 of "The Life Insurance Act, 1908," and every existing or future amendment thereto and every enactment passed in substitution therefor Provided that Protection of Life Insurance Policies.

- (a) the word "Samoa" shall be substituted for the word "New Zealand" in subsection 4 thereof
- (b) the words "High Court on a motion filed" shall be substituted for "Supreme Court on a Summons taken out" in subsection 6 thereof.

Assented to this Tenth day of October, 1932.

A. C. TURNBULL,

Acting Administrator,

[L.S.]

By Authority: The Samoa Times Printing and Publishing Company, Ltd., Apia, Western Samoa. — 1932