

CHAPTER 201

FOREIGN AND COMMONWEALTH JUDGMENTS (RECIPROCAL ENFORCEMENT)

1922-3

Part I of this Act came into operation on 10th August, 1922.

Parts II and III of this Act came into operation on 14th September, 1937.

Amended by:

1937-8

1958-39

1956-56

1967/168

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 201

FOREIGN AND COMMONWEALTH JUDGMENTS (RECIPROCAL ENFORCEMENT) 1922-3

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BARBADOS

FOREIGN AND COMMONWEALTH JUDGMENTS (RECIPROCAL
ENFORCEMENT)
1922-3

[(This Chapter comprises a consolidation of the Reciprocal Enforcement of Judgments Act, 1922, 1922-3, and the Foreign Judgments (Reciprocal Enforcement) Act, 1937, 1937-8.)]

An Act to facilitate the reciprocal enforcement of judgments and awards in this Island and other parts of the Commonwealth, to make provision for the reciprocal enforcement of judgments in this Island and in foreign countries and for other purposes in connection therewith.

[Commencement: 10th August, 1922 Part I]

[Commencement: 14th September, 1937 Parts II and III]

Short title

1. This Act may be cited as the Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act.

PART I

REGISTRATION OF COMMONWEALTH JUDGMENTS

[This Part was originally contained in the Reciprocal Enforcement of Judgments Act, 1922, 1922-3.]

Interpretation of Part I

2. For the purposes of this Part, the expression—

“judgment” means any judgment or order given or made by a court in any civil proceedings whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;

“judgment creditor” means the person by whom the judgment was obtained and includes the successors and assigns of that person;

“judgment debtor” means the person against whom the judgment was given and includes any person against whom the judgment is enforceable in the place where it was given;

“original court” in relation to any judgment means the court by which the judgment was given;

“registering court” in relation to any judgment means the court by which the judgment was registered.

Enforcement in this Island of judgments obtained in superior courts in United Kingdom

3.(1) Where a judgment has been obtained in a superior court in the United Kingdom, the judgment creditor may apply to the High Court at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the High Court, to have the judgment registered in the High Court, and on any such application the High Court may, if in all circumstances of the case it thinks it is just and convenient that the judgment should be enforced in

this Island and subject to this section, order the judgment to be registered accordingly.

- (2) No judgment shall be ordered to be registered under this section if—
- (a) the original court acted without jurisdiction; or
 - (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
 - (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or
 - (d) the judgment was obtained by fraud; or
 - (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or
 - (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.
- (3) Where a judgment is registered under this section—
- (a) the judgment shall, as from the date of registration, be of the same force and effect and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;
 - (b) the registering court shall have the same control and jurisdiction over the judgment as it has in similar judgments given by itself, but in so far only as relates to execution under this section;

- (c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.
- (4) Rules of court shall provide—
- (a) for service on the judgment debtor of notice of the registration of a judgment under this section;
 - (b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit; and
 - (c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.
- (5) In any action brought in any court in this Island on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused or unless the court otherwise orders.

Issue of certificates of judgments obtained in this Island

4. Where a judgment has been obtained in the High Court against any person, the High Court shall, on an application made by the judgment creditor and on proof that the judgment debtor is resident in the United Kingdom, issue to the judgment creditor a certified copy of the judgment.

Rules of court in relation to Part I

5. Provision may be made by rules of court for regulating the practice and procedure (including scales of fees and evidence) in respect of proceedings of any kind under this Part.

**Power to extend Part I to judgments obtained in other parts of
Commonwealth**

6.(1) Where the Governor-General is satisfied that reciprocal provisions have been made by the legislature of any part of the Commonwealth outside the United Kingdom for the enforcement within that part of the Commonwealth of judgments obtained in the High Court, the Governor-General may by order declare that this Part shall extend to judgments obtained in a superior court in that part of the Commonwealth in like manner as it extends to judgments obtained in a superior court in the United Kingdom and on any such order being made this Part shall extend accordingly.

(2) An order under this section may be varied or revoked by a subsequent order.

[1967/168]

PART II

REGISTRATION OF FOREIGN JUDGMENTS

[This Part and Part III were originally contained in the Foreign Judgments (Reciprocal Enforcement) Act, 1937, 1937-8.]

Interpretation of Parts II and III

7.(1) For the purposes of Parts II and III, the expression—

“appeal” includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

“country of the original court” means the country in which the original court is situated;

“judgment” means a judgment or order given or made by a court in any civil proceedings or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

“judgment creditor” means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

“judgment debtor” means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;

“judgments given in the High Court” includes judgments given in any court on appeal against any judgments so given;

“original court”, in relation to any judgment, means the court by which the judgment was given;

“prescribed” means prescribed by rules of court;

“registration” means registration under Part II, and the expressions “register” and “registered” shall be construed accordingly;

“registering court”, in relation to any judgment, means the court to which an application to register the judgment is made.

(2) For the purposes of Parts II and III, the expression “action *in personam*” shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy or guardianship of infants.

Power to extend Part II to foreign countries giving reciprocal treatment

8.(1) The Governor-General, if it appears that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the High Court, may by order direct—

(a) that this Part shall extend to that foreign country; and

- (b) that such courts of that foreign country as are specified in the order shall be deemed superior courts of that country for the purposes of this Part.
- (2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if—
- (a) it is final and conclusive as between the parties thereto; and
- (b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
- (c) it is given after the coming into operation of the order directing that this Part shall extend to that foreign country.
- (3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.
- (4) The Governor-General may by a subsequent order vary or revoke any order previously made under this section.

[1967/168]

Application for, and effect of, registration of foreign judgment

9.(1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the High Court shall, subject to proof of the prescribed matters and to the other provisions of Parts II and III, order the judgment to be registered:

Provided that a judgment shall not be registered if at the date of the application—

- (a) it has been wholly satisfied; or
- (b) it could not be enforced by execution in the country of the original court.

(2) Subject to the provisions of Parts II and III with respect to the setting aside of registration—

- (a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and
- (b) proceedings may be taken on a registered judgment; and
- (c) the sum for which a judgment is registered shall carry interest; and
- (d) the registering court shall have the same control over the execution of a registered judgment,

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under this Part and the rules of court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside or, where such an application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of this Island, the judgment shall be registered as if it were a judgment for such sum in the currency of this Island as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

(4) Where at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in

respect of the whole sum payable under the judgment of the original court but only in respect of the balance remaining payable at that date.

(5) Where on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

Rules of court in relation to Part II

10.(1) The power to make rules of court under the *Supreme Court of Judicature Act*, Cap. 117 shall, subject to this section, include power to make rules for the following purposes—

- (a) for making provisions with respect to the giving of security for costs by persons applying for the registration of judgments;
- (b) for prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
- (c) for providing for the service on the judgment debtor of notice of the registration of a judgment;
- (d) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed;

- (e) for prescribing the method by which any question arising under Parts II or III whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined;
 - (f) for prescribing any matter which under this Part is to be prescribed.
- (2) Rules made for the purposes of this Part shall be expressed to have, and shall have, effect subject to any such provisions contained in orders made under section 3 as are declared by the said orders to be necessary for giving effect to agreements made between the Crown and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part.

Cases in which registered judgment must or may be set aside

11.(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

- (a) shall be set aside if the registering court is satisfied—
 - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the foregoing provisions of this Part; or
 - (ii) that the courts of the country of the court original had no jurisdiction in the circumstances of the case; or
 - (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or
 - (iv) that the judgment was obtained by fraud; or

- (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
 - (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;
- (b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.
- (2) For the purposes of this section the courts of the country of the original court, shall, subject to subsection (3), be deemed to have had jurisdiction—
- (a) in the case of a judgment given in an action *in personam*—
 - (i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of that court; or
 - (ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or
 - (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or
 - (iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

- (v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;
 - (b) in the case of a judgment given in an action of which the subject-matter was immovable property or in an action *in rem* of which the subject-matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;
 - (c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b), if the jurisdiction of the original court is recognised by the law of the registering court.
- (3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction—
- (a) if the subject-matter of the proceedings was immovable property outside the country of the original court; or
 - (b) except in the cases mentioned in sub-paragraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of subsection (2), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or
 - (c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Powers of registering court on application to set aside registration

12.(1) Where, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks

fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

Foreign judgments which can be registered not to be enforceable otherwise

13. No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in this Island.

Power to apply Part II to United Kingdom and Commonwealth

14.(1) The Governor-General may by order direct that Part II shall apply to the Commonwealth outside this Island and to judgments obtained in the courts of the Commonwealth as it applies to foreign countries and judgments obtained in the courts of foreign countries and in the event of the Governor-General so directing, Parts II and III shall have effect accordingly and Part I shall cease to have effect except in relation to those parts of the Commonwealth, as the case may be, to which it extends at the date of the order.

(2) Where at any time after the Governor-General has directed as aforesaid an order is made under section 3 extending Part II to any part of the Commonwealth to which Part I extends as aforesaid, Part I shall cease to have effect in relation to that part of the Commonwealth, as the case may be.

PART III
MISCELLANEOUS

Modification of Part II in relation to certain parts of Commonwealth

15. Where an order is made by the Governor-General extending Part II to a part of the Commonwealth or other territory to which it extends, Part II shall, in relation to that part of the Commonwealth or other territory, have effect as if—

- (a) the expression “judgment” included an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;
- (b) the fact that a judgment was given before the coming into operation of the order did not prevent it from being a judgment to which Part II applies, but the time limited for the registration of a judgment were, in the case of a judgment so given, twelve months from the date of the judgment or such longer period as may be allowed by the registering court;
- (c) any judgment registered pursuant to subsection (1) of section 3, before the coming into operation of the order has been registered under Part II and anything done in relation thereto under Part I or any rules of court or other provisions applicable to that Part had been done under Part II or the corresponding rules of court or other provisions applicable to Part II.

General effect of certain foreign judgments

16.(1) Subject to this section, a judgment to which Part II applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not and whether, if it can be registered, it is registered or not, shall be recognised in any court in this Island as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment—

(a) where the judgment has been registered and the registration thereof has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or

(b) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a).

(3) Nothing in this section shall be taken to prevent any court in this Island recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of Parts II and III.

Power to make foreign judgments unenforceable in this Island if no reciprocity

17.(1) Where it appears that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given

in the High Court is substantially less favourable than that accorded by the courts of this Island to judgments of the superior courts of that country, the Governor-General may by order apply this section to that country.

(2) Except in so far as the Governor-General may by order under this section otherwise direct, no proceedings shall be entertained in any court in this Island for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

(3) The Governor-General may by a subsequent order vary or revoke any order previously made under this section.

[1967/168]

Issue of certificates of judgments obtained in this Island

18. Where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the High Court against any person and the judgment creditor is desirous of enforcing the judgment in a country or territory to which Part II applies, the court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed for the purposes of this section, issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the causes of the action and the rate of interest, if any, payable on the sum payable under the judgment, as may be prescribed:

Provided that, where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.