

RECIPROCAL ENFORCEMENT OF JUDGMENTS BILL.

EXPLANATORY MEMORANDUM.

STATUTORY provision for the enforcement in New Zealand of the judgments of superior Courts in the United Kingdom or in other parts of His Majesty's dominions is already made in the Administration of Justice Act, 1922. That Act is an adaptation of Part II of the Administration of Justice Act, 1920 (Imperial).

By the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (Imperial), provisions coinciding in all material particulars with the provisions of the Administration of Justice Act have been made for the enforcement in the United Kingdom of judgments given by the superior Courts of such foreign countries as agree to enforce the judgments of the superior Courts of the United Kingdom. Differences of minor importance do, however, occur between the Acts of 1920 and 1933, and section 7 of the latter Act contains provision whereby it can be applied for the enforcement of judgments given by superior Courts within the British dominions; it may be confidently anticipated, therefore, that the earlier Act will soon be virtually superseded by the later Act.

In the present Bill it is proposed to repeal the Administration of Justice Act, 1922, and to adapt the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (Imperial), so that they will be applicable to the judgments of all superior Courts, whether foreign Courts or Courts within the British dominions.

The benefits conferred by the Administration of Justice Act, 1922, are conditional on similar benefits being conferred with respect to the enforcement of New Zealand judgments in the countries to which that Act has been applied. The same condition as to reciprocity is preserved under the Bill, but countries that now enjoy the benefits of the present Act will receive the benefit of the new measure without the necessity of further action being taken by them or by the Governor-General in Council.

Before the enactment of the provisions of 1922, section 56 of the Judicature Act, 1908, made provision for the enforcement in New Zealand of judgments obtained elsewhere within His Majesty's dominions. The operation of that section is not conditional on reciprocal treatment being accorded to New Zealand judgments, and because of that fact it was not thought advisable in 1922, nor is it now thought advisable, that the section referred to should be repealed.

A minor point of difference between the Imperial Act of 1933 and the present Bill has relation to the enforcement of awards. The term "judgment" as defined in the 1933 Imperial Act (unlike the definition in the Administration of Justice Act) does not include awards, the reason being that foreign awards are enforceable in England under the Arbitration (Foreign Awards) Act, 1930. But this leaves uncertain the position of awards made within those parts of His Majesty's dominions to which the new Act is applied in substitution for the earlier Act. The Bill provides for this matter by including awards within the definition of the term "judgments", but excluding from the operation of the Bill all foreign awards that would be enforceable under the Arbitration Clauses (Protocol) and Arbitration (Foreign Awards) Act, 1933.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

*House of Representatives,
19th July, 1934.*

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]
16th August, 1934.

Hon. Mr. Cobbe.

RECIPROCAL ENFORCEMENT OF JUDGMENTS.

ANALYSIS.

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A BILL INTITLED

- AN ACT to make Better Provision for the Enforcement Title.
in New Zealand of Judgments given in the United
Kingdom or in other Countries (whether within His
5 Majesty's Dominions or not) which afford Reciprocal
Treatment to Judgments given in New Zealand, for
facilitating the Enforcement in other Countries of
Judgments given in New Zealand, and for other
Purposes in connection with the Matters aforesaid.
- 10 BE IT ENACTED by the General Assembly of New
Zealand in Parliament assembled, and by the authority
of the same, as follows:—
1. This Act may be cited as the Reciprocal Enforce- Short Title.
ment of Judgments Act, 1934.

Interpretation.
Cf. 23 Geo. V,
c. 13, s. 11

2. (1) In this Act, unless the context otherwise requires,—

“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 : 5

“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 ; and includes an award in proceedings on an arbitration (*not being a foreign award within the meaning of Part II of the Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act, 1933*) 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 : 10

“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 : 25

“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 : 30

“Judgments given in the superior Courts of New Zealand” means judgments given in the Supreme Court

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or given in the Court of Arbitration in the exercise of its jurisdiction under the Workers' Compensation Act, 1922,	35
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and includes judgments given in any Court on appeals against any judgments so given : 40

“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 I of this Act, and the expressions “register” and “registered” shall be construed accordingly : 45

“Supreme Court” means the Supreme Court of New Zealand.

See 1922 No.
11, s. 2, Reprint
of Statutes, Vol.
IV, p. 384

(2) For the purposes of this Act 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.

(3) In this Act, references to His Majesty’s dominions outside the United Kingdom shall be construed as including references to any territories which are under His Majesty’s protection and to any territories in respect of which a mandate under the League of Nations has been accepted by His Majesty.

PART I.

15 RECIPROCAL ENFORCEMENT OF JUDGMENTS.

3. (1) This Part of this Act shall extend to the United Kingdom.

Application of this Part of Act. Cf. 23 Geo. V, c. 13, s. 1

(2) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to judgments given in the superior Courts of any part of His Majesty’s dominions outside the United Kingdom, or given in the superior Courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement within that part of His Majesty’s dominions or in that foreign country, as the case may be, of judgments given in the superior Courts of New Zealand, he may by Order in Council direct—

(a) That this Part of this Act shall extend to that part of His Majesty’s dominions or to that foreign country; and

(b) That such Courts as are specified in the Order in Council shall, for the purposes of this Part of this Act, be deemed superior Courts of that part of His Majesty’s dominions or of that foreign country.

(3) Any judgment of a superior Court of a country to which this Part of this Act 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 of this Act 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 in Council directing that this Part of this Act shall extend to that country: 5

Provided that nothing in this paragraph shall apply with respect to judgments given in the United Kingdom or in any other part of His Majesty's dominions to which Part I of the Administration of Justice Act, 1922, applied immediately before the passing of this Act. 10

See Reprint
of Statutes,
Vol. IV, p. 384

- (4) 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. 15

(5) The Governor-General may by a subsequent Order in Council vary or revoke any Order in Council previously made under this section. 20

(6) A copy of the *Gazette* purporting to contain a copy of an Order in Council under this section shall be conclusive evidence of the validity, contents, making, and publication of such Order in Council, and of the fulfilment of all conditions precedent to the valid making thereof. 25

Application for,
and effect of,
registration of
judgment.
Cf. 23 Geo. V,
c. 13, s. 2

4. (1) A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the Supreme 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 Supreme Court, and on any such application the said Court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered: 30 35

Provided that a judgment shall not be registered if at the date of the application— 40

- (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 this Act with respect to the setting aside of registration,—

5 (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

10 (d) The Supreme 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 Supreme Court and entered on the date of registration :

15 Provided that execution shall not issue on the judgment so long as, under this Part of this Act 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
20 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
25 the currency of New Zealand, the judgment shall be registered as if it were a judgment for such sum in the currency of New Zealand 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) If at the date of the application for registration
30 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.

35 (5) If, on an application for the registration of a judgment, it appears to the Supreme 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
40 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. 5

Rules of Court.
Cf. 23 Geo. V,
c. 13, s. 3
See Reprint
of Statutes,
Vol. II, p. 97

5. (1) The power to make rules of Court under section three of the Judicature Amendment Act, 1930, shall, subject to the provisions of this section, include power to make rules for the following purposes:— 10

(a) For making provision with respect to the giving of security for costs by persons applying for the registration of judgments: 15

(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: 20

(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: 25

(e) For prescribing the method by which any question arising under this Act whether a judgment given in any part of His Majesty's dominions or in any other country to which this Part of this Act extends can be enforced by execution in the country of the original Court, or what interest is payable under any judgment under the law of the original Court, is to be determined: 30 35

(f) For prescribing any matter which under this Part of this Act is to be prescribed.

(2) Rules made for the purposes of this Part of this Act shall be expressed to have, and shall have, effect subject to any such provisions contained in Orders in Council made under section *three* of this Act as are declared by the said Orders to be necessary for giving effect to any agreement made by or on behalf of the Government of 40

New Zealand in relation to matters with respect to which there is power to make rules of Court for the purposes of this Part of this Act.

5 6. (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 shall be set aside if the Supreme Court is satisfied—

Cases in which registered judgments must, or may, be set aside.

Cf. 23 Geo. V, c. 13, s. 4

10 (a) That the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the foregoing provisions of this Act; or

(b) That the Courts of the country of the original Court had no jurisdiction in the circumstances of the case; or

15 (c) 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

(d) That the judgment was obtained by fraud; or

25 (e) That the enforcement of the judgment would be contrary to public policy in New Zealand; or

(f) That the rights under the judgment are not vested in the person by whom the application for registration was made.

30 (2) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment may be set aside if the Supreme 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
35 Court been the subject of a final and conclusive judgment by a Court having jurisdiction in the matter.

(3) For the purposes of this section the Courts of the country of the original Court shall, subject to the provisions of subsection *four* of this section, be deemed
40 to have had jurisdiction—

(a) In the case of a judgment given in an action *in personam*—

45 (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

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(ii) If the judgment debtor was plaintiff in, or counterclaimed 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

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(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

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(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 :

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(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 :

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(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) of this subsection, if the jurisdiction of the original Court is recognized by the law of the registering Court.

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(4) Notwithstanding anything in subsection *three* of this section, the Courts of the country of the original Court shall not be deemed to have had jurisdiction—

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(a) If the subject-matter of the proceedings was immovable property outside the country of the original Court ; or

5 (b) Except in the cases mentioned in subparagraphs (i), (ii), and (iii) of paragraph (a) and in paragraph (c) of subsection *three* of this section, 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

10 (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.

15 7. (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the Supreme 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, 20 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 Supreme Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by a 25 competent tribunal.

Powers of Supreme Court on application to set aside registration. Cf. 23 Geo. V. c. 13, s. 5

(2) Where the registration of a judgment is set aside under the *last preceding* subsection, or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in 30 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.

35 (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 Supreme Court shall, on the 40 application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

Judgments
which can be
registered under
this Act not to
be enforceable
otherwise.
23 Geo. V, c. 13,
s. 6

8. No proceedings for the recovery of a sum payable under a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any Court in New Zealand.

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PART II.

MISCELLANEOUS AND GENERAL.

General effect
of judgments
given by superior
Courts outside
New Zealand.
Cf. 23 Geo. V,
c. 13, s. 8

9. (1) Subject to the provisions of this section, a judgment to which Part I of this Act applies or would have applied if a sum of money had been payable there- 10
under, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognized in any Court in New Zealand as conclusive between the parties thereto in all proceedings founded on the same cause of action, and may be relied on by 15
way of defence or counterclaim 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 20
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 25

(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, and it is shown (whether it could have been registered 30
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) of this subsection. 35

(3) Nothing in this section shall be taken to prevent any Court in New Zealand recognizing any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognized before the passing of this Act. 40

10. (1) If it appears to the Governor-General that the treatment in respect of recognition and enforcement accorded by the Courts of any country to judgments given in any superior Court of New Zealand is substantially less favourable than that accorded by the Courts of New Zealand to judgments of the superior Courts of that country, the Governor-General may by Order in Council apply this section to that country.

Power to make judgments unenforceable in New Zealand if no reciprocity.
23 Geo. V, c. 13, s. 9

(2) Except in so far as the Governor-General may by Order in Council under this section otherwise direct, no proceedings shall be entertained in any Court in New Zealand 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 in Council vary or revoke any Order previously made under this section.

11. 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 Supreme Court against any person and the judgment creditor is desirous of enforcing the judgment in any country to which Part I of this Act applies, the Court shall, on an application made by the judgment creditor and on payment of such fee as may be fixed by rules of Court 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 action, and the rate of interest, if any, payable on the sum payable under the judgment, as may be prescribed:

Issue of certificates of judgments obtained in New Zealand.
23 Geo. V, c. 13, s. 10

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.

12. (1) The Administration of Justice Act, 1922, is hereby repealed.

Repeal and savings.

(2) Every Proclamation issued under section three of the said Act, and in force on the passing of this Act, shall continue in force as if it were an Order in Council to the same effect issued under section *three* of this Act,

See Reprint of Statutes, Vol. IV, p. 384

and may be varied or revoked in accordance with the provisions of subsection *five* of section *three* of this Act.

New.

Section 56 of
Judicature Act,
1908, modified.

12A. Section fifty-six of the Judicature Act, 1908, shall hereafter apply only in respect of such judgments, decrees, rules, and orders as, being enforceable under that section, are not enforceable in New Zealand in accordance with the foregoing provisions of this Act. 5

Struck out.

Application of
Part I of this
Act to awards.

13. Nothing in Part I of this Act shall apply with respect to foreign arbitral awards that are enforceable in New Zealand in accordance with the provisions of Part II of the Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act, 1933. 10