

Queensland



ANNO OCTAVO

ELIZABETHAE SECUNDAE REGINAE.

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No. 37.

An Act to make Provision for the Enforcement in Queensland of Judgments given in the United Kingdom or in other Countries (whether Commonwealth Countries or not) which accord Reciprocal Treatment to Judgments given in Queensland, for Facilitating the Enforcement in other Countries of Judgments given in Queensland, and for other purposes.

[ASSENTED TO 19TH NOVEMBER, 1959.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. (1.) This Act may be cited as "*The Reciprocal Enforcement of Judgments Act of 1959.*" Short title.

(2.) This Act is divided into Parts as follows:— Parts of this Act.

PART I.—PRELIMINARY (SS. 1-3);

PART II.—RECIPROCAL ENFORCEMENT OF
JUDGMENTS (SS. 4-9);

PART III.—MISCELLANEOUS AND GENERAL
(SS. 10-13).

Repeal and
savings.

2. (1.) “*The Reciprocal Enforcement of Judgments Act of 1927*” is repealed.

(2.) Every Proclamation issued under section five of the said Act, and in force immediately before the passing of this Act, shall continue in force as if it were an Order in Council to the same effect issued under section four of this Act, and may be varied or revoked in accordance with the provisions of subsection five of section four of this Act.

(3.) Any judgment registered in the Supreme Court under “*The Reciprocal Enforcement of Judgments Act of 1927*,” before the passing of this Act shall be deemed to have been registered in that Court under Part II. of this Act and anything done in relation thereto under “*The Reciprocal Enforcement of Judgments Act of 1927*,” or any Rules of Court or other provisions applicable to that Act shall be deemed to have been done under Part II. of this Act or the corresponding Rules of Court or other provisions applicable to the said Part II. and the said Part II. shall have operation and effect in relation thereto accordingly.

Meaning of
terms.
Cf. 23 Geo.
V., c. 13, s.
11.

3. (1.) In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say :—

Appeal.

“Appeal”—Includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution ;

Common-
wealth
country.

“Commonwealth country”—A country that is a member of the British Commonwealth of Nations, and includes every territory for whose international relations the Government of that country is responsible ;

Country of
the
original
Court.

“Country of the original Court”—The country in which the original Court is situated ;

- “ Foreign country ”—A country which is not a Foreign country.
Commonwealth country ;
- “ Judgment ”—A judgment or order given or Judgment.
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 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 ”—The person in whose Judgment creditor.
favour the judgment was given and includes
any person in whom the rights under the
judgment has become vested by succession or
assignment or otherwise ;
- “ Judgment debtor ”—The person against whom Judgment debtor.
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 superior Courts of Judgments given in the superior Courts of Queensland.
Queensland ”—Judgments given in the
Supreme Court and includes judgments given
in any Court on appeals against any
judgments so given : The term also includes
judgments that have become enforceable as
judgments of the Supreme Court though not
given therein ;
- “ Original Court ”—In relation to any judgment Original Court.
means the Court by which the judgment was
given ;
- “ Prescribed ”—Prescribed by Rules of Court ; Prescribed.
- “ Registration ”—Registration under Part II. of Registration.
this Act, and the expressions “ register ” and
“ registered ” shall be construed accordingly ;
- “ Supreme Court ”—The Supreme Court of Supreme Court.
Queensland.

(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.

PART II.—RECIPROCAL ENFORCEMENT OF JUDGMENTS.

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

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

(b) In relation to the United Kingdom, the term “superior Court” shall mean the High Court in England, the Court of Sessions in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, or such other Court as the Governor in Council may by Order in Council specify for the purposes of this Part of this Act.

(2.) If the Governor in Council 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 Commonwealth country not including the United Kingdom and the Commonwealth of Australia, or given in the superior Courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement within that Commonwealth country or in that foreign country, as the case may be, of judgments given in the superior Courts of Queensland, he may by Order in Council direct—

(a) That this Part of this Act shall extend to that Commonwealth country 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 Commonwealth country 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:

Provided that nothing in this paragraph (c) shall apply with respect to judgments given in the United Kingdom or in any other Commonwealth country (not including the Commonwealth of Australia) to which "*The Reciprocal Enforcement of Judgments Act of 1927*," applied immediately before the passing of this Act.

(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.

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

(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.

5. (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—

- (a) In the case of a judgment given before the passing of this Act in the United Kingdom or in any other Commonwealth country (not including the Commonwealth of Australia)

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

to which "*The Reciprocal Enforcement of Judgments Act of 1927*," applied immediately before the passing of this Act, within twelve months from the date of the judgment or such longer period as may be allowed by the Supreme Court ;

- (b) In any other case, 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 the 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 :

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

- (i.) It has been wholly satisfied ; or
 (ii.) 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—

- (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 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 :

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 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 the Commonwealth of Australia, the judgment shall be registered as if it were a judgment for such sum in the currency of the Commonwealth 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 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.) 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 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.

6. (1.) The power to make Rules of Court, under section eleven of "*The Supreme Court Act of 1921*," shall, subject to the provisions of this section, include power to make rules for the following purposes:—

Rules of
Court.
Cf. 23 Sec.
V., c. 13, s.
3.

- (a) For making provision 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 this Act whether a judgment given in any Commonwealth country (not including the Commonwealth of Australia) 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 ;
- (f) For prescribing all matters and things which under this Part of this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

(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 four 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 Queensland 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.

Cases in which registered judgments must, or may, be set aside.
Cf. 23 Geo. V., c. 13, s. 4.

7. (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---

- (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
- (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
- (e) That the enforcement of the judgment would be contrary to public policy in Queensland ; or
- (f) That the rights under the judgment are not vested in the person by whom the application for registration was made.

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

8. (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, 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 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 subsection one of this section, 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 Supreme Court

shall, on the 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.

9. 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 Queensland.

PART III.—MISCELLANEOUS AND GENERAL.

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

10. (1.) Subject to the provisions of this section, a judgment to which Part II. of this Act 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 recognized in any Court in Queensland 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 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 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, and 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) of this subsection.

(3.) Nothing in this section shall be taken to prevent any Court in Queensland 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.

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

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

(2.) Except in so far as the Governor in Council may by Order in Council under this section otherwise directs, no proceedings shall be entertained in any Court in Queensland 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 in Council may by a subsequent Order in Council vary or revoke any Order previously made under this section.

12. (1.) 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 II. of this Act applies, the Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed 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 Queensland. 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.

(2.) The power to make Rules of Court under section eleven of "*The Supreme Court Act of 1921*," shall include power to make rules for the purpose of prescribing any matters or things which under this section are required or permitted to be prescribed.

Questions of
foreign law
to be
decided by
judge.
Cf. 18 Geo.
V., No. 4,
s. 7; 15 and
16 Geo. V.,
c. 49, s. 102.

13. Where for the purpose of disposing of any action or other matter which is being tried in the Supreme Court, or the District Court, by a judge with a jury it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.
