

Rule Com-  
mittee.

**5** Section two hundred and two of the Principal Act is amended by inserting in subsection (1) after the word "Court" (second occurring) the words "of the Master,".

Adaption of  
amendments  
to reprint of  
Principal Act.

**6**—(1) On and after the date of the reprinting of the Principal Act section four is to have effect as if—

- (a) in paragraph (a) the symbols "(a)" and "VA" were omitted and the symbols "(i)" and "(f)" were respectively substituted therefor;
- (b) in paragraph (b) the symbol "XXI" (wherever occurring) were omitted and the symbol "(v)" were substituted therefor;
- (c) in that paragraph the symbols "(a)", "(b)", and "(c)" were omitted and the symbols "(i)", "(ii)", and "(iii)" were respectively substituted therefor; and
- (d) in paragraph (c) the symbol "XXIII" were omitted and the symbol "(x)" were substituted therefor,

and, on and after that date, the Principal Act, as amended by this Act, shall be construed accordingly.

(2) The Principal Act and this Act are, by force of this subsection, amended to such extent as may be necessary to give effect to subsection (1) of this section.

(3) Subject to this section, the provisions of this Act remain in full force and effect as if this section had not been enacted.

(4) In this section "date of reprinting of the Principal Act" means the date of the giving of the certificate printed, pursuant to section six of the *Reprint of Statutes Act 1954*, in the volume of reprinted Acts published pursuant to that Act in which the reprint of the Principal Act is included.

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## FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT).

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### No. 5 of 1963.

AN ACT to provide for the enforcement in this State of judgments given in foreign countries which accord reciprocal treatment to judgments given in this State, to facilitate the enforcement in foreign countries of judgments given in this State, and for other purposes connected therewith. [2 May 1963.]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

## PART I.

## PRELIMINARY.

**1** This Act may be cited as the *Foreign Judgments (Reciprocal Enforcement) Act 1962*. Short title.

- 2—(1)** In this Act, unless the contrary intention appears—
- “appeal” includes any proceeding by way of discharging or setting aside a judgment, and 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 civil proceedings, or a judgment or order given or made by a court in criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party, whether before or after the commencement of this Act, 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 in whose favour a judgment is given, and includes a person in whom the rights under the judgment become vested by succession or assignment or otherwise;
- “judgment debtor” means the person against whom a judgment is given, and includes a person against whom the judgment is enforceable under the law of the original court;
- “judgments given in the Supreme Court” includes judgments given on appeals against judgments given in the Supreme Court, and includes judgments that have become enforceable as judgments of the Supreme Court although not given therein;
- “original court”, used in relation to a judgment, means the court by which the judgment is given;
- “registration” means registration under Part II.

Interpretation.  
 Cf. 23 Geo. 5, c. 13 (Imp.), s. 11.  
 No. 6916  
 (Vic.), s. 3.  
 8 Eliz. II  
 No. 37  
 (Q’td), s. 3.

(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:—

- (a) Matrimonial matters;
- (b) Administration of the estates of deceased persons;
- (c) Bankruptcy;
- (d) Winding up of companies;
- (e) Lunacy; or
- (f) Guardianship of infants.

## PART II.

## REGISTRATION OF FOREIGN JUDGMENTS.

Power to extend this Part to foreign countries giving reciprocal treatment.

Imp., s. 1.  
Vic., s. 4.  
Q'ld, s. 4.

**3**—(1) The Governor, if he is satisfied that, if the benefits conferred by this Part are extended to judgments given in the superior courts of a foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the Supreme Court, may, by order-in-council 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-in-council shall be deemed to be superior courts of that country for the purposes of this Part.

(2) A 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 that is not a superior court, is a judgment to which this Part applies if—

- (a) it is final and conclusive as between the parties thereto;
- (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 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.

Application for, and effect of, registration of foreign judgment.

Imp., s. 2.  
Vic., s. 5.  
Q'ld, s. 5.

**4**—(1) A person, being a judgment creditor under a judgment to which this Part 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 such an application being made the Court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered.

(2) 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.

(3) Subject to the provisions of this Act with respect to the setting aside of registration—

- (a) a registered judgment is, for the purposes of execution, of the same force and effect;
- (b) proceedings may be taken on a registered judgment;
- (c) the sum for which a judgment is registered shall carry interest; and
- (d) the Supreme Court has 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.

(4) Execution shall not issue on a registered judgment so long as, under this Part and the Rules of Court made under section five, 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.

(5) Where the sum payable under a judgment that is to be registered is expressed in a currency other than the currency of the Commonwealth, 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.

(6) 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.

(7) 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 registrable provisions but not in respect of any other provisions contained therein.

(8) In addition to the sum of money payable under the judgment of the original court, including any interest that 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**—(1) Subject to this section, the power to make Rules of Court under section one hundred and ninety-seven of the *Supreme Court Civil Procedure Act 1932* includes power to make rules for the following purposes, namely:—

Rules of  
Court.

Imp., s. 3.  
Vic., s. 6.  
Q'ld, s. 6.

- (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 a judgment set aside and with respect to the extension of the period so fixed;
- (e) For prescribing the method by which a question arising under this Act as to whether a foreign judgment can be enforced by execution in the country of the original court, or as to what interest is payable under a foreign judgment under the law of the original court, is to be determined; and
- (f) For prescribing any matter that under this Part is authorized or required to be prescribed.

(2) Rules of Court made for the purposes of this Part shall be expressed to have, and are to have, effect subject to any such provisions contained in orders-in-council made under section three as are declared by those orders to be necessary for giving effect to agreements made between Her Majesty 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 judgments must, or may, be set aside.

Imp., s. 4.  
Vic., s. 7.  
Q'ld, s. 7.

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

- (a) shall be set aside if the Supreme Court is satisfied—
  - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the provisions of this Act;
  - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
  - (iii) that the judgment debtor, being a defendant in the proceedings in the original court, did not (notwithstanding that process may have been 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;

- (iv) that the judgment was obtained by fraud;
- (v) that the enforcement of the judgment would be contrary to public policy in this State; or
- (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made; and

(b) may be set aside if the Supreme Court is satisfied that the matter in dispute in the proceedings in the original court has, before 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 the provisions of subsection (3) 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;
- (ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court;
- (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;
- (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 was at the time of the proceedings in the original court situated in the country of that court; and
  - (c) in the case of a judgment given in an action other than an action mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognized by the law of this State.
- (3) Notwithstanding anything in subsection (2) 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;
  - (b) except in the cases mentioned in sub-paragraphs (i), (ii), and (iii) of paragraph (a), and in paragraph (c) of subsection (2) of this section, if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute to which the proceedings related 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.  
Imp., s. 5.  
Vic., s. 8.  
Q'ld., s. 8.

**7—(1)** If, on an application to set aside the registration of a judgment, the applicant satisfies the Supreme Court that an appeal is pending or that he is entitled to appeal and intends to appeal against the judgment, the Court if it thinks fit may, on such terms as it may think just, 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 a competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1) 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 does 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.

**8** 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 State.

Foreign judgments which can be registered not to be enforceable otherwise.

Imp., s. 6.  
Vic., s. 9.  
Q'ld., s. 9.

**9**—(1) The Governor may, by order-in-council, direct that this Act shall apply to Her Majesty's dominions outside the Commonwealth and to judgments obtained in the courts of those dominions as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, if the Governor so directs, this Act shall have effect accordingly and Part X of the *Supreme Court Civil Procedure Act 1932*, shall cease to have effect except in relation to those parts of those dominions to which it extends at the date of the order.

Power to apply this Part to British dominions, protectorates, and mandated territories.

Imp., s. 7.

(2) If at any time after the Governor has given a direction under subsection (1) of this section an order-in-council is made under section three extending this Part to any part of Her Majesty's dominions to which Part X of the *Supreme Court Civil Procedure Act 1932* extends, the last-mentioned Part shall thereupon cease to have effect in relation to that part of Her Majesty's dominions.

(3) A reference in this section to Her Majesty's dominions outside the Commonwealth shall be construed as including a reference to any territories that are under Her Majesty's protection and to any territories governed by Her Majesty under a trusteeship agreement.

### PART III.

#### MISCELLANEOUS.

**10**—(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 recognized in any court in this State as

General effect of certain foreign judgments.  
Imp., s. 8.  
Vic., s. 10.  
Q'ld., s. 10.

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 does not apply in the case of a 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;
- (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) of this subsection.

(3) Nothing in this section prevents any court in this State recognizing a 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.

Power to  
make foreign  
judgments  
enforceable in  
this State if  
no recipro-  
city.

Imp., s. 9.  
Vic., s. 11.  
Q'ld, s. 11.

**11**—(1) If it appears to the Governor that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the Supreme Court is substantially less favourable than that accorded by the Supreme Court to judgments of the superior courts of that country, the Governor may, by order-in-council, apply this section to that country.

(2) Except in so far as the Governor may by order-in-council under this section otherwise direct, no proceedings shall be entertained in any court in this State 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.

Issue of  
certificates  
of judgments  
obtained in  
this State.

Imp., s. 10.  
Vic., s. 12.  
Q'ld, s. 12.

**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 a person and the judgment creditor is desirous of enforcing the judgment in a foreign country 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 fixed for the purposes of this section under section one hundred and ninety-seven of the *Supreme Court Civil Procedure Act 1932*, 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.

(2) 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.

**13** Where an order-in-council is made extending Part II to a part of Her Majesty's dominions or other territory to which Part X of the *Supreme Court Civil Procedure Act 1932* extends, Part II shall, in relation to that part of Her Majesty's dominions or other territory, have effect as if—

Modification of Act in relation to certain parts of Her Majesty's dominions.  
Cf. 4 & 5 Eliz. 2, c. 46 (Imp.), s. 51.

- (a) 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 Supreme Court; and
- (b) any judgment registered in the Supreme Court under Part X of that Act before the coming into operation of the order had been registered in the Court under Part II of this Act and anything done in relation thereto under Part X of that Act or any rules of court or other provisions applicable to Part X of that Act had been done under Part II of this Act or the corresponding rules of court or other provisions applicable to Part II of this Act.

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## CIVIL AVIATION (CARRIERS' LIABILITY).

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### No. 6 of 1963.

AN ACT to provide for the application of certain laws of the Commonwealth to and in relation to the carriage of passengers by air within this State.

[2 May 1963.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1**—(1) This Act may be cited as the *Civil Aviation (Carriers' Liability) Act 1963*.

Short title and commencement.