

Foreign Judgments (Reciprocal Enforcement) Ordinance, 1959.

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Assented to in Her Majesty's name this 31st day of
March, 1959.


Governor.



No. 4



1959.

Colony of the Falkland Islands.

IN THE EIGHTH YEAR OF THE REIGN OF
HER MAJESTY QUEEN ELIZABETH II.

EDWIN PORTER ARROWSMITH, C.M.G.
Governor.

An Ordinance

To make provision for the enforcement in the Colony of judgments given in foreign countries which accord reciprocal treatment to judgments given in the Colony, for facilitating the enforcement in foreign countries of judgments given in the Colony, and for other purposes in connection with the matters aforesaid.

ENACTED by the Legislature of the Colony of the Falkland Islands, as follows :— Enacting clause.

PART I.

REGISTRATION OF FOREIGN JUDGMENTS.

1. This Ordinance may be cited as the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1959. Short title.

2. (1) In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say — Interpretation.

“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, 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 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 ;

“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 Ordinance, 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 this Ordinance, 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 I of Ordinance to foreign countries giving reciprocal treatment.

3. (1) The Governor, if he is satisfied that, in the event of the benefits conferred by this Part of this Ordinance 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 Supreme Court of the Colony and judgments given on appeals therefrom, may by Order in Council direct —

- (a) that this Part of this Ordinance 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 of this Ordinance.

(2) Any judgment of a superior court of a foreign country to which this Part of this Ordinance 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 Ordinance 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 Ordinance 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 may by a subsequent Order in Council vary or revoke any Order previously made under this section.

4. (1) A person, being a judgment creditor under a judgment to which this Part of this Ordinance 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 court shall, subject to proof of the prescribed matters and to the other provisions of this Ordinance, order the judgment to be registered :

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

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 this Ordinance 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 of this Act and the Rules 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 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 Colony, the judgment shall be registered as if it were a judgment for such sum in the currency of the Colony 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 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 an incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

5. (1) The Governor in Council shall, subject to the provisions of this section, have power to make rules for the following purposes –

- (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 Ordinance 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 of this Ordinance is to be prescribed.

(2) Rules made for the purposes of this Part of this Ordinance shall be expressed to have, and shall have, effect subject to any such provisions contained in Orders in Council made under section one of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, as are declared by the said 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 of this Ordinance.

(3) Without prejudice to the provisions of subsection (1) of this section the rules contained in Part IV of the Rules of the Supreme Court shall continue to have effect as if they had been made under the power conferred by the said subsection.

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

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 –

- (a) shall be set aside if the registering court is satisfied –
 - (i) that the judgment is not a judgment to which this Part of this Ordinance applies or was registered in contravention of the foregoing provisions of this Ordinance ; or
 - (ii) that the courts of the country of the original court 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 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 ; 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 situated 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 in paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.

(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 ; or
- (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 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.

7. (1) If, 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 the last foregoing subsection, 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.

8. No proceedings for the recovery of a sum payable under a foreign judgment, being 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 the Colony.

Power to apply Part I of Ordinance to British dominions, protectorates and territories under trusteeship.

9. (1) Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any part of Her Majesty's dominions outside the United Kingdom for the enforcement within that part of Her dominions of judgments obtained in the Supreme Court of the Colony, the Governor may by Order in Council direct that this Part of this Ordinance shall extend to judgments obtained in a superior court in that part of Her Majesty's dominions in like manner as it extends to judgments obtained in the courts of foreign countries, but subject, however, to the provisions contained in subsection (2) of this section, and on any such Order being made this Part of this Ordinance shall extend accordingly.

(2) Notwithstanding anything contained in paragraph (c) of subsection (2) of section 3 or in subsection (1) of section 4 of this Ordinance any judgment obtained in a superior court of a part of Her Majesty's dominions to which this Part of this Ordinance has been extended shall be a judgment to which this Part of this Ordinance applies notwithstanding that it was given before the coming into operation of this Order, but the time limited for the registration of a judgment so given shall be twelve months from the date of the judgment or such longer period as the Supreme Court may allow.

(3) References in this section to Her Majesty's dominions outside the United Kingdom shall be construed as including references to any territories which are under Her Majesty's protection and to any territories administered by the government of the United Kingdom or by the government of any part of Her Majesty's dominions under the trusteeship of the United Nations.

PART II.

MISCELLANEOUS AND GENERAL.

General effect of certain foreign judgments.

10. (1) Subject to the provisions of this section, a judgment to which Part I of this Ordinance 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 the Colony, 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) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in the Colony 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 this Ordinance.

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 superior courts of the Colony is substantially less favourable than that accorded by the courts of the Colony to judgments of the superior courts of that country, the Governor may by Order in Council apply this section to that country.

Power to make foreign judgments unenforceable in Colony if no reciprocity.

(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 the Colony 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 may by a subsequent Order in Council vary or revoke any Order previously made under this section.

12. 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 a foreign 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 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 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 the Colony.

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.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and is found by me to be a true and correctly printed copy of the said Bill.


Clerk of the Executive Council.