

ADMINISTRATION OF JUSTICE BILL.

EXPLANATORY MEMORANDUM.

THE object of this Bill is to make provision for the enforcement in New Zealand of judgments and awards obtained in any superior Court in the United Kingdom or other part of His Majesty's Dominions to which the Act may be extended by the Governor-General.

The Bill is introduced in compliance with a promise made to the Imperial Government and for the purpose of satisfying the conditions prescribed by section 14 of the Administration of Justice Act, 1920 (Imperial) for the extension of Part II of that Act to New Zealand.

The Bill does not introduce any new principle into the statute law of New Zealand for by section 56 of the Judicature Act, 1908, provision is already made for the enforcement in New Zealand of judgments obtained elsewhere within His Majesty's Dominions. The provisions of the Bill are in addition to, and not in substitution for, the older law which is not dependent for its operation on the reciprocal action of other Legislatures. As similar legislation is adopted by other parts of the Empire the older law will be gradually superseded; in the meantime, however, it is not thought advisable to repeal it.

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.

5th September, 1922.

Hon. Mr. Lee.

ADMINISTRATION OF JUSTICE.

ANALYSIS.

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| Title. | 5. Issue of certificates of judgments obtained in New Zealand. | |
| 1. Short Title. | 6. Power to make rules. | |
| PART I. | | |
| RECIPROCAL ENFORCEMENT OF JUDGMENTS. | | |
| 2. Interpretation. | PART II. | |
| 3. Application of this Act. | MISCELLANEOUS PROVISIONS. | |
| 4. Enforcement in New Zealand of judgments obtained in superior Courts in other British Dominions. | 7. Power to make rules as to proof. | 8. Questions of foreign law to be decided by Judge. |

A BILL INTITULED

AN Act to facilitate the Reciprocal Enforcement of Judgments and Awards made in New Zealand or elsewhere within His Majesty's Dominions, and for other Purposes. Title.

5 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 Administration of Justice Act, 1922. Short Title.

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PART I.

RECIPROCAL ENFORCEMENT OF JUDGMENTS.

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

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“Judgment” means any judgment or order given or made by a Court in any civil proceedings (whether before or after the passing of this Act) whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a Court in that place:

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

Cf. 10 & 11 Geo. 5, c. 81, sec. 12

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

“ Original Court ” in relation to any judgment means the Court by which the judgment was given :

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

(2.) Subject to rules of Court, any of the powers conferred by this Part of this Act on any Court may be exercised by a Judge of that Court.

3. (1.) This Part of this Act applies with respect to the United Kingdom.

(2.) Where the Governor-General is satisfied that reciprocal provisions have been made by the Legislature of any part of His Majesty's dominions outside New Zealand, other than the United Kingdom, for the enforcement within that part of His Majesty's dominions of judgments obtained in the Supreme Court in New Zealand, the Governor-General may by Proclamation declare that this Part of this Act shall apply with respect to that part of His Majesty's dominions, and thereupon this Part of this Act shall, subject to the provisions of the Proclamation, apply accordingly.

(3.) The Governor-General may by Proclamation declare that this Part of this Act shall apply with respect to any territory which is under His Majesty's protection, or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions, as if that territory were part of His Majesty's dominions, and thereupon this Part of this Act shall, subject to the provisions of the Proclamation, apply accordingly.

(4.) Any Proclamation under this section may in like manner be at any time revoked or varied.

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

4. (1.) Where a judgment has been obtained in a superior Court in any part of His Majesty's dominions outside New Zealand with respect to which this Part of this Act applies, the judgment creditor may apply by motion to the Supreme Court at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the said Court, to have the judgment registered in the Supreme Court, and on any such application the said Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in New Zealand, and subject to the provisions of this section, order the judgment to be registered accordingly.

(2.) No judgment shall be ordered to be registered under this section if—

(a.) The original Court acted without jurisdiction ; or

(b.) The judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that Court ; or

Application of this Act.

Cf. 10 & 11 Geo. 5, c. 81, secs. 13, 14

Cf. 12 Geo. 5, No. 1461, sec. 5 (South Australia)

Enforcement in New Zealand of judgments obtained in superior Courts in other British Dominions.

10 & 11 Geo. 5, c. 81, sec. 9

- (c.) The judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original Court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that Court or agreed to submit to the jurisdiction of that Court; or
- (d.) The judgment was obtained by fraud; or
- (e.) The judgment debtor satisfies the Supreme Court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or
- (f.) The judgment was in respect of a cause of action which for reasons of public policy, or for some other similar reason, could not have been entertained by the Supreme Court.
- (3.) Where a judgment is registered under this section—
- (a.) The judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered on the date of registration in the Supreme Court:
- (b.) The Supreme Court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section:
- (c.) The reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original Court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.
- (4.) Rules of Court shall provide—
- (a.) For service on the judgment debtor of notice of the registration of a judgment under this section; and
- (b.) For enabling the Supreme Court, on an application by the judgment debtor, to set aside the registration of a judgment under this section on such terms as that Court thinks fit; and
- (c.) For suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.
- (5.) In any action brought in any Court in New Zealand on any judgment which might be ordered to be registered under this section the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused, or unless the Court otherwise orders.
5. Where a judgment has been obtained in the Supreme Court against any person the said Court shall, on an application made by the judgment creditor and on proof that the judgment debtor is resident in some part of His Majesty's dominions with respect to which this Part of this Act applies, issue to the judgment creditor a certified copy of the judgment.
6. Provision may be made by rules of Court for regulating the practice and procedure (including scales of fees and evidence) in respect of proceedings of any kind under this Part of this Act.

Issue of certificates of judgments obtained in New Zealand.

Cf. 10 & 11 Geo. 5. c. 81, sec. 10

Power to make rules.
Ibid., sec. 11.

PART II.

MISCELLANEOUS PROVISIONS.

Power to make rules
as to proof.

Cf. 10 & 11 Geo. 5,
c. 81, sec. 6

7. The power to make rules of Court conferred by the Judicature Act, 1908, shall include—

(a.) Power to make such rules of Court as are mentioned in Part I of this Act: 5

(b.) Power to make rules for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings in the Supreme Court or on any application in connection with or at any stage of any proceedings. 10

Questions of foreign
law to be decided by
Judge.

Ibid., sec. 15.

8. Where for the purpose of disposing of any action or other matter which is being tried by a Judge of the Supreme Court 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. 15