

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957.

(Registered on the Records of the Island of Guernsey
on the 6th day of April, 1957.)



1957.

VIII
1957

ORDER IN COUNCIL.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of April, 1957, before Sir Ambrose James Sherwill, C.B.E., M.C., Bailiff; present :—Sir John Leale, William Robert Freake Clark, Ernest Francis Lainé, Bertram Bartlett, Esquires, Donald Carey Brock, Esquire, C.B.E., Osmond Priaulx, Théophile Le Messurier Allez, Bertram Guy Blampied, Esquires, Richard Edward Gibson, Esquire, O.B.E., and Claude Fortescue Nason, Esquire, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 15th day of March, 1957, ratifying a *Projet de Loi* entitled "The Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957",—the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace,

The 15th day of March, 1957.

PRESENT,

The Queen's Most Excellent Majesty.

LORD PRESIDENT

MR. HEATHCOAT AMORY

DR. HILL

MR. WALKER-SMITH

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 27th day of February, 1957, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February, 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘ 1. That, in pursuance of their Resolution of the 21st day of November, 1956, the States of De-liberation at a meeting held on the 23rd day of January, 1957, approved a Bill or “Projet de Loi” entitled “The Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most most humbly praying that Your Majesty might be graciously pleased to grant

Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957" and to order that the same shall have the force of Law in the Island of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. AGNEW.

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957.

WHEREAS, on the fifteenth day of March, fifteen hundred and fifty-nine, Her late Majesty Queen Elizabeth I granted, by Letters Patent under the Great Seal, a Charter to the Bailiff and Jurats and other inhabitants of and dwellers in the Islands of the Bailiwick of Guernsey, the said Charter containing a confirmation of all and singular the laws and customs duly and lawfully used in the Islands, and also granting and confirming to the Bailiff and Jurats and all other magistrates, officers of justice, and all other persons appointed there in any office or duty, full, absolute and complete authority touching all sorts of pleas, processes, law-suits, actions, disputes and causes of any kind whatsoever arising in the Islands, as well real, personal and mixed, as criminal and capital, and there and not elsewhere to plead, proceed with, prosecute and defend all those things and in the same matters either to proceed or supersede, to examine, hear, end, acquit, condemn, decide and put their sentences into execution according to the laws and customs of the Islands theretofore used and approved:

AND WHEREAS the said Charter contains a clause which, translated from the original Latin, provides as follows:—

“Moreover our will and pleasure is and we grant for ourselves, our heirs and successors by these presents to the said Bailiff and Jurats and other

inhabitants of and dwellers in the Islands and said maritime places; That for the time to come, none of them be cited, summoned, drawn into any lawsuit or forced in any manner by any writs or processes issued from any of our Courts of the kingdom of England to appear and answer before any judges, courts or other officers of justice out of the Islands and said maritime places, touching or concerning any thing, dispute, cause or matter in controversy whatsoever arising in the said Islands; But that the said Islanders in general and each of them in particular may lawfully, notwithstanding the said writs and processes, remain, reside quietly and abide in the Islands and said places, waiting for justice there, without incurring any corporal punishment, pecuniary fine, mulct, ransom or forfeiture by reason of any offence, contempt or contumacy committed towards us, our heirs and successors for which they or any of them might be sued, arraigned or condemned; Except only in the causes which by the laws and customs of the Islands and said places are reserved to our Royal cognisance and determination.”:

AND WHEREAS it is desirable that provision should be made for the enforcement in the Island of Guernsey, without prejudice to the privileges and immunities conferred by the said Charter, of judgments given in countries which accord reciprocal treatment to judgments given in the Island, and for facilitating the enforcement in such countries of judgments given in the Island:

THE STATES, in pursuance of their Resolution of the twenty-first day of November, nineteen hundred and fifty-six, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

Interpretation and saving

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

Interpreta-
tion.

“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;

“the Bailiwick” means the Bailiwick of Guernsey;

“country of the original court” means the country in which the original court is situated;

“the Island” means the Island of Guernsey;

“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;

“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;

“judgments given in the Royal Court” means judgments given in the Royal Court or in any Division thereof and includes judgments given in any court upon appeal against any judgments so given;

“original court” in relation to any judgment means the court by which the judgment was given;

“prescribe” means prescribed by rules of court made by the Royal Court sitting as a Full Court;

“registration” means registration under Part II of this Law, and the expressions “register” and “registered” shall be construed accordingly;

“Royal Court” means the Royal Court sitting as an Ordinary Court.

(2) For the purposes of this Law, 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, insolvency, winding up of companies, lunacy or guardianship of infants.

(3) For the purposes of this Law, a judgment given by Her Majesty in Council on any matter originating in the courts of the Island shall not be deemed to be a judgment given in a court of a country outside the Bailiwick, and nothing in this Law shall affect the procedure applicable to the registration in, and the enforcement by, the Royal Court of any such judgment.

(4) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment, including this Law.

Saving.

2. Nothing in this Law shall enable a judgment creditor to register in the Island any judgment given by a court of any country outside the Bailiwick, whether within or without Her Majesty's dominions,

in any thing, suit, matter or cause whatsoever arising within the Island save in a case where, by virtue of subsection (2) of section six of this Law, the courts of the country of the original court are deemed to have jurisdiction.

PART II

Registration of judgments given outside the Bailiwick

3. (1) The States, if satisfied that, in the event of the benefits conferred by this Part of this Law being extended to judgments given in the superior courts of any country outside the Bailiwick, whether within or without Her Majesty's dominions, substantial reciprocity of treatment will be assured as respects the enforcement in that country of judgments given in the Royal Court, may by Ordinance direct—

Power to
extend
Part II to
countries
giving
reciprocal
treatment.

- (a) that this Part of this Law shall extend to that country; and
- (b) that such courts of that country as are specified in the Ordinance shall be deemed superior courts of that country for the purposes of this Part of this Law.

(2) Any judgment of a superior court of a country to which this Part of this Law 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 Law 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 Ordinance directing that this Part of this Law shall extend to that 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 States may by a subsequent Ordinance vary or revoke any Ordinance previously made under this section.

Application
for, and
effect of,
registration
of judgment.

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

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 Law 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 Royal 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 Royal 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 Law 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 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 Guernsey, the judgment shall be registered as if it were a judgment for such sum in the currency of Guernsey 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 Royal 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.

Rules of
court.

5. (1) The power of the Royal Court, sitting as a Full Court, to make rules of court under Article sixty-four of the Reform (Guernsey) Law, 1948, and section twelve of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950, shall, subject to the provisions of this section, include power to make rules of court from time to time 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 Law whether a

judgment can be enforced by execution in the country of the original court, or what interest is payable under a judgment under the law of the original court, is to be determined;

- (f) for prescribing any matter which under this Part of this Law is to be prescribed.

(2) Rules of court for the purposes of this Part of this Law shall be expressed to have, and shall have, effect subject to any such provisions contained in Ordinances made under section three of this Law as are declared by the said Ordinances 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 Law.

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 Royal Court is satisfied—

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

- (i) that the judgment is not a judgment to which this Part of this Law applies or was registered in contravention of the foregoing provisions of this Law; 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 Guernsey; 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 Royal 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 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 recognised by the law of Guernsey.
- (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
Royal Court
on applica-
tion to
set aside
registration.

7. (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the Royal 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 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 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 Royal 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 judgment to which this Part of this Law applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the Island.

Judgments which can be registered not to be enforceable otherwise.

PART III

Miscellaneous and general

9. (1) Subject to the provisions of this section, a judgment to which Part II of this Law 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 Island 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.

General effect of certain judgments.

(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 the judgment 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 Island recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the commencement of this Law.

Power to
make judgments unen-
forceable
if no
reciprocity.

10. (1) If it appears to the States that the treatment in respect of recognition and enforcement accorded by the courts of any country outside the Bailiwick to judgments given in the Royal Court is substantially less favourable than that accorded by the courts of the Island to judgments of the superior courts of that country, the States may by Ordinance apply this section to that country.

(2) Except in so far as the States may by Ordinance under this section otherwise direct, no proceedings shall be entertained in any court in the Island 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 States may by a subsequent Ordinance vary or revoke any Ordinance 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 Royal Court or in any Division thereof against any person and the judgment creditor is desirous of enforcing the judgment in a country to which Part II of this Law applies, the Bailiff shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed, direct the issue by Her Majesty's Greffier to the judgment creditor of 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:
 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.

Issue of
certificates
of judgments
obtained in
the Island.

12. This Law may be cited as the Judgments Citation. (Reciprocal Enforcement) (Guernsey) Law, 1957.

JAMES E. LE PAGE,

Her Majesty's Greffier.