

Act No. 48, 1901.

An Act to consolidate the Acts relating to the enforcement in New South Wales of judgments obtained in other Australian States or New Zealand, and the recovery of judgments against debtors who have removed thereto from New South Wales. [13th November, 1901.]

INTER-STATE DEBTS
RECOVERY.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

1. This Act may be cited as the "Inter-state Debts Recovery Act, 1901," and is divided into Parts, as follows :—

Short title and
division.

PART I.—*Preliminary*—ss. 1-5.

PART II.—*Enforcement of Inter-state Supreme Court judgments*
—ss. 6-11.

PART

Inter-state Debts Recovery.

PART III.—*District Court proceedings against persons out of the jurisdiction—ss. 12–15.*

PART IV.—*Certifying District Court judgments for enforcement out of the jurisdiction—ss. 16–19.*

PART V.—*Enforcement of Inter-state judgments of local courts—ss. 20–25.*

Repeal
First Schedule.

2. (1) The Acts mentioned in the First Schedule hereto are hereby repealed.

(2) All proclamations heretofore made, and all proceedings heretofore taken under any Act hereby repealed, shall be deemed to have been made and taken hereunder.

Interpretation.
19 Vic. No. 12, s. 1.
52 Vic. No. 23, s. 1.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Clerk” means clerk, registrar, or other proper officer of the court in connection with which the term is used.

“Judgment” in Part II means a judgment, decree, rule, or order, whereby any sum of money is made payable.

“Local court” includes district court and any inferior court being a court of record, and having jurisdiction in actions of debt or for a liquidated sum to the amount of two hundred pounds.

“State” means a State of the Commonwealth of Australia or the Colony of New Zealand.

Act to be read with
District Courts Act.
Ibid.

4. This Act, except Part II thereof, shall be read with the District Courts Act, 1901.

Governor may apply
Act to any State in
which a similar Act
is in force.
Ibid. s. 2.

5. (1) If in any State there be any law in force by which effect may be given by the local courts thereof to the judgments of the District Courts of New South Wales, the Governor may by proclamation declare that the provisions of this Act shall apply to the judgments of the local courts of such State, and that process issuing out of such local courts may be served in New South Wales, and that certificates of judgment obtained in District Courts in New South Wales may, at the request of the judgment creditors, be forwarded to such State.

(2) Thereupon the provisions of this Act shall so apply, and the registrars of District Courts shall, subject to the provisions of this Act, give certificates of judgments obtained in such courts for registration in the local courts of such State.

(3) This section shall not apply to Part II of this Act.

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PART II.

Enforcement of Inter-state Supreme Court judgments.

6. (1) Any person in whose favour a judgment has been obtained in the Supreme Court of any State may cause a memorial of the same, authenticated by the seal of such Court, to be filed in the office of the Supreme Court of New South Wales.

Memorial of judgment of Supreme Court of any State may be filed of record.
19 Vic. No. 12, s. 1.

(2) Such memorial shall thenceforth be a record of such judgment.

7. Such memorial shall be on parchment and signed by the person in whose favour such judgment was obtained, or by his attorney, and shall contain the following particulars, all of which shall be fairly written without interlineations or erasures and with the exception of dates in words at length, that is to say—

Form and contents of memorial.
Ibid. s. 2.

- (a) the names and additions of the parties ;
- (b) the form and nature of the action or suit or other proceeding ;
- (c) when the same was commenced ;
- (d) the date of the signing or entering-up of the judgment, or of passing the decree, or of making the rule or order ;
- (e) the amount recovered, or the decree pronounced, or rule or order made ;
- (f) if there was a trial, the date of such trial and the amount of verdict given.

8. (1) Any Judge of the Supreme Court of New South Wales, upon the application of the person in whose favour such judgment was obtained, or of his attorney, may issue a summons calling upon the person against whom such judgment was obtained to show cause, within such time after personal or such other service of the summons as the judge directs, why execution should not issue upon such judgment.

Summons to show cause.
Ibid. s. 3.

(2) Such summons shall give notice that, in default of appearance, execution may issue accordingly.

9. If the person so summoned does not appear or does not show sufficient cause against such summons, the Supreme Court, or a Judge thereof, on due proof of such service as aforesaid, may order execution to issue as upon a judgment of such Court, subject to such terms and conditions, if any, as to such Court or Judge may seem fit.

Order for issue of execution.
Ibid.

10. Thereupon, and subject thereto, the person entitled to such execution shall have and be entitled to all such process and to all such rights and remedies for the enforcement thereof, and the person against whom such execution is ordered shall in like manner be entitled to all such protective rights and advantages as they would respectively have been entitled to had such judgment been obtained in the Supreme Court.

Execution thereon.
Ibid.

11.

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Revisor, &c.
19 Vic. No. 12, s. 3.

11. All such proceedings may be had or taken for the revival of such judgment or the enforcement thereof by and against persons not parties thereto as may be had or taken for the like purposes upon any judgment of the Supreme Court.

PART III.

District Court proceedings against persons out of the jurisdiction.

District Court
summons may be
served out of
jurisdiction.
52 Vic. No. 23, s. 3.

12. Any summons issued under the authority of the District Courts Act, 1901, for a debt or liquidated demand in money, whether on balance of account or otherwise, not exceeding in the whole the sum of two hundred pounds (if such summons bear an endorsement under the seal of the District Court whence it issues to the effect that it is for service out of the jurisdiction), may be served out of the jurisdiction.

Affidavit to be filed

Second Schedule.

Ibid.

13. (1) Before any such summons is so endorsed and sealed, the plaintiff or some person on his behalf, shall file an affidavit, in the form in the Second Schedule hereto or to the like effect, stating,—

- (a) that the defendant is resident out of the jurisdiction;
- (b) that the plaintiff has a good cause of action which arose within the jurisdiction;
- (c) the nature of the same;
- (d) the amount sought to be recovered;
- (e) that the claim is for a debt or a liquidated demand in money not exceeding in the whole the sum of two hundred pounds, or that if it originally exceeded that sum it has been reduced, by payment or admitted set-off or by abandonment of excess, to a sum not exceeding two hundred pounds;
- (f) what is believed to be the defendant's then place of residence and the distance in miles (approximately) of such place of residence from the court whence such summons is issued.

and prima facie case
proved.

Ibid.

- (2) Proof shall also be given to the satisfaction of—
 - (a) the Judge of the District Court whence such summons issues,
or
 - (b) a stipendiary or police magistrate acting for the district in which such District Court is holden, or
 - (c) a justice of the peace for New South Wales, if there is no such magistrate,

that prima facie, a good cause of action exists, and that apparently justice will be done by allowing the summons to be so endorsed and sealed and the plaintiff to proceed under this Act.

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14 (1) Every such summons shall be served personally, and proof of such service shall be made by affidavit before a justice of the peace of the State in which such summons was served, or before a commissioner for taking affidavits in the Supreme Court of New South Wales resident in such State. Personal service of summons. 52 Vic. No. 23, s. 4.

(2) But if it be made to appear to the Judge of the District Court whence any such summons issued,— When personal service may be dispensed with.

(a) that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to such defendant's knowledge, and that he wilfully neglects to appear to such summons, or Ibid.

(b) that the defendant has removed, or is living, out of the jurisdiction in order to defeat or delay his creditors or deprive the plaintiff of the relief to which he is entitled,

such Judge may, on the application of the plaintiff, order that personal service may be dispensed with, and that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such judge may seem fit, although the summons has not been served personally upon the defendant.

(3) Thereupon the plaintiff may proceed in the action against such defendant accordingly.

15. (1) Where the defendant resides within twenty miles of the District Court at which any summons issued for service out of the jurisdiction is returnable, such summons shall be issued six clear days, and served four clear days at least, before the return day thereof. Time for issue, service and return of summons. Ibid. s. 5.

(2) Where he resides beyond twenty and within fifty miles of such Court, such summons shall be issued eight clear days, and served six clear days at least, before the return day thereof.

(3) Where he resides beyond fifty miles from such Court, the respective periods to elapse between the issue and the service of the summons and the return day thereof shall be fixed by the Judge of such Court or stipendiary or police magistrate or justice as aforesaid after the affidavit aforesaid has been filed and before the issue of the summons, and in fixing such periods regard shall be had to the distance of the place of residence of the defendant from such Court.

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PART IV.

Certifying District Court judgments for enforcement out of the jurisdiction.

Affidavit of judgment, &c.
52 Vic. No. 23, s. 6.
Third Schedule.

16. Any person who obtains a judgment in any action in any District Court may file with the registrar of such Court an affidavit in the form of the Third Schedule hereto or to the like effect, by himself or some person on his behalf cognizant of the facts, stating—

- (a) that a judgment has been obtained in such Court in respect of a cause of action which arose within the jurisdiction, for a debt or a liquidated demand in money ;
- (b) the nature of the cause of action ;
- (c) the amount recovered ;
- (d) that the time for appealing has expired, and that no appeal is pending ;
- (e) that such judgment is still in full force and remains unsatisfied (or if partly satisfied, to what extent, and the amount or balance remaining due and unsatisfied) ; and
- (f) that the person against whom such judgment was recovered is resident out of the jurisdiction.

Notice to registrar.
Ibid.
Fourth Schedule.

17. Any such person obtaining a judgment as aforesaid may, after such affidavit has been filed, deliver to such registrar a notice, in the form in the Fourth Schedule hereto or to the like effect, requiring such registrar to prepare a certificate of such judgment and to forward the same as hereinafter provided.

Certificate of judgment.
Ibid.
Fifth Schedule.

18. (1) Thereupon such registrar shall prepare a certificate of such judgment in the form in the Fifth Schedule hereto or to the like effect, addressed to the clerk of such local court of a State in which this Act has been proclaimed to be in force as such person may require, and stating—

- (a) that such judgment was obtained in such District Court in respect of a cause of action which arose within the jurisdiction for a debt or liquidated demand in money not exceeding the sum of two hundred pounds ;
- (b) the nature of the cause of action ;
- (c) the amount recovered ;
- (d) that the same is in full force and remains unsatisfied (or if partly satisfied the amount or balance remaining due and unsatisfied).

To be forwarded to local court.
Ibid.

(2) Such certificate shall be signed by the registrar of such District Court and authenticated by the seal of such Court, and shall be forwarded by such registrar through the post by registered letter addressed to the clerk of such local court.

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19. The registrar of any District Court in which a judgment has been obtained, and of which judgment a certificate as aforesaid has been given, shall (upon receipt of a certificate in the form in the Sixth Schedule hereto or to the like effect under the hand of the clerk of any local court of a State in which this Act has been proclaimed to be in force, and authenticated by the seal of such Court, stating that such judgment has been satisfied either wholly or in part) enter up satisfaction in the register of such District Court to the amount mentioned in such last-mentioned certificate.

Entry of satisfaction.
52 Vic. No. 23, s. 7.
Sixth Schedule.

PART V.

Enforcement of Inter-state judgments of local courts.

20. The registrar of any District Court, upon receipt through the post of a registered letter containing a certificate (in the form in the Seventh Schedule hereto or to the like effect addressed to him as such registrar under the hand of the clerk of any such local court, and authenticated by the seal of such court) of a judgment obtained in such local court against any person resident in New South Wales stating—

Judgment of inter-state local court may be entered up in District Court.
Seventh Schedule.
Ibid. s. 8.

- (a) that such judgment was obtained in such local court in respect of a cause of action which arose within the jurisdiction thereof for a debt or liquidated demand in money not exceeding the sum of two hundred pounds;
- (b) the nature of the cause of action;
- (c) the amount recovered; and
- (d) that the same is in full force and remains unsatisfied (or if partly satisfied, the amount or balance remaining due and unsatisfied),

shall enter up judgment in the register of such District Court for the amount appearing in such certificate to be due, in favour of the person named therein as the judgment creditor, and against the person named therein as the judgment debtor.

21. The registrar of such District Court shall, on the receipt of such certificate, forthwith send by post a notice, in the form in the Eighth Schedule hereto, or to the like effect, addressed to the defendant at his address specified in such certificate.

Notice to defendant.
Ibid.
Eighth Schedule.

22. Such judgment shall thereupon be deemed to be a judgment of such District Court, and shall have the same force and effect as if such judgment had been obtained in such District Court, and the like proceedings may be had and taken upon and under the same accordingly.

Judgment to take effect as a District Court judgment.
Ibid.

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Setting aside
judgment or staying
or execution thereon.
52 Vic. No. 23, s. 8.

23. (1) The Supreme Court or a Judge thereof may, on the application of any person against whom judgment has been so entered up, either set aside such judgment or direct a stay of execution or of proceedings on such judgment.

- (2) (a) The Judge of such District Court; or
(b) a stipendiary or police magistrate acting for the district within which such person resides; or
(c) if there is no such magistrate a justice of the peace for New South Wales,

may, on the application of such person, direct a stay of execution, or of proceedings, on such judgment.

(3) On the hearing of any such application, such Court, Judge, magistrate, or justice may enter upon the merits of the whole case, but the judgment so entered up shall be regarded as prima facie proof of the plaintiff's case.

(4) The setting aside such judgment, or stay of execution, or of proceedings may be upon such terms as to giving security or payment of costs, or as to making application to the local court in which the judgment was originally obtained to set aside the same, or otherwise, as to the said Court, Judge, magistrate, or justice may seem fit.

Certificate of
satisfaction.

24. On the satisfaction, either wholly or in part, of any judgment entered up in the register of any District Court under this Act, the registrar of such District Court shall forthwith give notice, in the form in the Ninth Schedule hereto, or to the like effect, of such satisfaction, or part satisfaction (as the case may be) to the clerk of the local court in which such judgment was originally obtained, and from whom he received the certificate thereof.

Ninth Schedule.
Ibid., s. 9.

Moneys recovered
under judgment to
be remitted to local
court.

25. All moneys received or paid into court in satisfaction of such judgment shall, after the cost of remitting the same has been deducted therefrom, be remitted to the clerk of such local court.

Ibid.

SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
19 Vic. No. 12 ..	An Act to give further remedies to creditors against persons removing from one Australasian Colony to another.	The whole.
52 Vic. No. 23 ..	Intercolonial Debts Act, 1889	The whole.

SECOND

Inter-state Debts Recovery.

SECOND SCHEDULE.

Sec. 13.

STATE OF NEW SOUTH WALES.

In the District Court at _____ No. of plaint
 Between A.B., of [*address and description*], plaintiff,
 and
 C.D., of [*address and description*], defendant.

I, A.B., of [*address and description*], make oath and say as follows:—

I am informed and verily believe that the said C.D. is resident out of the jurisdiction, at

I have a good cause of action which arose within the jurisdiction against the said C.D. for the sum of _____ for [*here state shortly the amount sought to be recovered and nature of the suit or cause of action; if the amount originally due has been reduced by payment or admitted set-off or by abandonment of excess the same must be stated and particulars given.*]

I am informed and verily believe that the said C.D. now resides at _____ and that the same is distant about _____ miles from this Court.

(Signed) _____ A.B.

Sworn at _____ in the State of New South Wales this _____ day of _____ one thousand nine hundred and _____ before me, G.H., a District Court Judge, &c., in the State of New South Wales [*or a Commissioner for taking affidavits in the Supreme Court of New South Wales, or Justice of the Peace of the State of New South Wales, or a Registrar or Deputy-Registrar of the District Court at in the State of New South Wales.*]

THIRD SCHEDULE.

Sec. 16.

STATE OF NEW SOUTH WALES.

In the District Court at _____ No. of plaint
 Between A.B., plaintiff,
 and
 C.D., defendant,

I, A.B., of [*address and description*] make oath and say as follows:—

On the _____ day of _____ one thousand nine hundred and _____ judgment in the District Court at _____ in a certain cause [No. of plaint _____] wherein I am plaintiff and C.D. is defendant was recovered by me in respect of a cause of action which arose within the State of New South Wales for a debt [*or liquidated demand in money*] not exceeding the sum of two hundred pounds, to wit the sum of _____ including costs of _____ suit against the said C.D.

Such judgment was obtained in an action for [*here state cause of action and give particulars; also if the amount originally due was reduced before action by payment, admitted set-off, or abandonment of excess, so state and give particulars.*]

The time for appealing against such judgment has expired, and no appeal is pending.

Such judgment is still in force and unsatisfied [*or such judgment has been satisfied in part by the payment of the sum of _____ but is still in force and remains unsatisfied to the extent of the sum of _____*].

I am informed and verily believe that the said C.D. is resident out of the jurisdiction at [*address.*]

Sworn at _____ in the State of New South Wales this _____ day of _____ one thousand nine hundred and _____ before me, G.H., a District Court Judge, &c., in the State of New South Wales [*or Commissioner for taking affidavits in the Supreme Court of New South Wales, or Justice of the Peace of the State of New South Wales, or a Registrar or Deputy-Registrar of the District Court at in the State of New South Wales.*]

FOURTH

Act No. 48, 1901.

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Sec. 17.

FOURTH SCHEDULE.

STATE OF NEW SOUTH WALES.

In the District Court at

No. of plaint

Between A.B., plaintiff,
and

C.D., defendant.

I, A.B., of [address and description] the abovenamed plaintiff do hereby require you to give a certificate of judgment in the above action and to forward the same to the clerk of the Court of [or at] in the State [or Colony] of

(Signed) A.B.

To the Registrar of the District Court at

Sec. 18.

FIFTH SCHEDULE

STATE OF NEW SOUTH WALES.

Certificate of Judgment.

In the District Court at

No. of plaint

Between A.B., plaintiff,
and

(Seal)

C.D., defendant.

I, W.J., the Registrar of the District Court at in the State of New South Wales, and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that A.B. of [address and description] did in the said District Court at on the day of one thousand nine hundred and recover judgment against the said C.D. now of out of the jurisdiction in respect of a cause of action which arose within the State of New South Wales for a debt or liquidated demand in money not exceeding the sum of two hundred pounds, to wit the sum of including costs of suit, that such judgment was obtained in an action for [here state cause of action and give particulars; also if the amount originally due was reduced before action by payment, admitted set-off, or abandonment of excess, so state and give particulars], and that the time for appealing against such judgment has expired and that no appeal is pending, and that such judgment is still unsatisfied and in full force [or that such judgment has been satisfied in part by the payment of the sum of but is still in force and unsatisfied to the extent of the sum of].

(Given under my hand and the seal of the District Court at this
day of 19 .

(L.S.) W.J.,

Registrar of the said District Court at

To the Clerk of the Court of [or at]
in the State [or Colony] of

Sec. 19.

SIXTH SCHEDULE.

I, E.F., the Clerk of the Court of [or at] in the State [or Colony] of and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that the judgment mentioned in the certificate of judgment dated the day of one thousand nine hundred and given under the hand of W.J., the registrar of the District Court at in the State of New South Wales, and the seal of the said Court in a certain action in the said District Court at in the said State of New South Wales, wherein A.B. is plaintiff and C.D. is defendant, has been wholly paid and satisfied [or has been satisfied to the extent of the sum of].

Given under my hand and the seal of the Court of [or at] in the
State [or Colony] of this day of 19 .

(L.S.) E.F.,

Clerk of the said Court of [or at]

To the Registrar of the District Court at
in the State of New South Wales.

SEVENTH

Inter-state Debts Recovery.

SEVENTH SCHEDULE.

Sec. 20.

Certificate of Judgment.

In the Court of [or at] Between A.B., plaintiff,
and
C.D., defendant. No. of plaint
(Seal)

I, E.F., the Clerk of the Court of [or at] in the State [or Colony] of and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that A.B., of [address and description] did in the said Court of [or at] on the day of one thousand nine hundred and recover judgment against the said C.D., of in the State of New South Wales in respect of a cause of action which arose within the State [or Colony] of for a debt or liquidated demand in money not exceeding the sum of two hundred pounds, to wit the sum of including costs of suit, that such judgment was obtained in an action for [cause of action to be stated and particulars given; also if amount originally due was reduced before action by payment, admitted set-off, or abandonment of excess, the same should be stated and particulars given], and that the time for appealing against such judgment has expired and that no appeal is pending, and that such judgment is still unsatisfied and in full force [or that such judgment has been satisfied in part by the payment of the sum of but is still in force and unsatisfied to the extent of the sum of].

Given under my hand and the seal of the Court of [or at] this day of 19 . (L.S.) E.F.,
Clerk of the said Court of [or at]

To the Registrar of the District Court at in the State of New South Wales.

EIGHTH SCHEDULE.

Sec. 21.

In the District Court at (Seal)
To C.D. of [address and description]

I, W.J., the Registrar of the District Court do hereby give you notice that a judgment has been obtained against you by A.B. of [address and description] in respect of a cause of action which arose within the State [or Colony] of for a debt or liquidated demand in money not exceeding the sum of two hundred and fifty pounds, to wit the sum of including costs of suit in the Court of [or at], that such judgment was obtained in an action for [here state cause of action and give particulars; also if the amount originally due was reduced by payment, admitted set-off, or abandonment of excess, so state and give particulars], and that the time for appealing against such judgment has expired and that no appeal is pending, and that such judgment is still unsatisfied and in full force [or that such judgment has been satisfied in part by the payment of the sum of but is unsatisfied to the extent of the sum of].

Given under my hand and the seal of the District Court at this day of 19 .
W.J.,
Registrar of the said District Court at

Truck.

Sec. 24.

NINTH SCHEDULE.

In the District Court at _____ (Seal)
 I, W.J., the Registrar of the District Court at _____ in the State of New
 South Wales, and the person having the lawful custody of all records, books, process,
 and other proceedings, and of the seal of the said Court, do hereby certify that the
 judgment mentioned in the certificate of judgment dated the _____ day of
 one thousand nine hundred and _____ under the hand of E.F. the clerk of the
 Court of [or at] _____ in the State [or Colony] of _____ and the seal
 of the said Court in a certain action in the said _____ Court of [or at]
 wherein A.B. is plaintiff and C.D. is defendant, has been wholly paid and satisfied [or
 has been satisfied to the extent of the sum of _____].

Given under my hand and the seal of the District Court at _____ in the State
 of New South Wales this _____ day of _____ 19 _____.

(L.S.) W.J.,
 Registrar of the District Court at _____

To the Clerk of the _____ Court of [or at]
 in the State [or Colony] of _____
