

**IN THE MATTER OF CLEMENT  
JAMES BROWN**

A [HIGH COURT, 1989 (Byrne J) 13 October]

Civil Jurisdiction

B *Foreign Judgments- reciprocal enforcement- whether District Court of New South Wales a "superior court"- Foreign Judgments (Reciprocal Enforcement Act (Cap 40) Section 3.*

C The successful Plaintiff in an action in the District Court of New South Wales registered the Judgment in the High Court of Fiji. On application by the Defendant the High Court HELD: that the District Court of New South Wales was not a superior court within the meaning of the legislation and that accordingly a judgment obtained in that court was not registrable in the High Court of Fiji.

Case cited:

*Levoune v Bacoulis* (1935) A.R. (NSW) 126

D *S. Lateef* for the Plaintiff  
*J. Howard* for the Defendant

Interlocutory application in the High Court.

**Byrne J:**

E This is an application by the Respondent (Defendant) for a Order to set aside the registration of a judgment obtained by the Applicant (Plaintiff) in the District Court of New South Wales on the 3rd day of March 1986 and registered as a judgment of the High Court of Fiji pursuant to the Foreign Judgments (Reciprocal Enforcement) Act Cap. 40 on the 8th day of April 1989. Two grounds for setting aside the registration of the judgment were argued before me:

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- (i) That the judgment is not one that may be registered in Fiji;
  - (ii) That the Respondent (Defendant) did not receive notice of the proceedings in the District Court in New South Wales in sufficient time to enable him to instruct Counsel and to properly defend the said proceedings when he had a good and proper defence.
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The second ground is based on Section 6(1)(a)(iii) of the Foreign Judgments (Reciprocal Enforcement) Act (Cap. 40) but it seems to me that Mr. Howard who appeared for the Respondent before me did not seriously pursue this ground. Indeed the affidavit of his own client sworn on 11th August 1989 and which has been filed herein tends to negate such an argument - see paragraphs 8, 10 and 11

thereof.

The Judgment in question is for the sum of A\$8,000.00 (Eight Thousand dollars Australian) together with A\$4,800.00 (Four Thousand Eight Hundred Dollars Australian) interest and costs to be taxed, which converted to Fiji currency, amounts to F\$15,137.18 (Fifteen Thousand One Hundred Thirty Seven Dollars and Eighteen cents Fijian).

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The legislation concerning the registration and reciprocal enforcement of foreign Judgments in Fiji is contained in two Acts -the Reciprocal Enforcement of Judgments Act (Cap. 39) and the Foreign Judgments (Reciprocal Enforcement) Act (Cap. 40) which in my view are to be read together as showing the criteria and procedure applicable in this country for the registration of Judgments of foreign countries, as defined in the Acts, in Fiji, and similar registration of judgments of the High Court of Fiji in other countries.

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The title to the Reciprocal Enforcement of Judgments Act is. "An Act to Facilitate the Reciprocal Enforcement of Judgments and Awards in the United Kingdom and Fiji." This Act was proclaimed on 18th December 1922 and Section 3 allows any Judgment of the High Court in England or Ireland or in the Court of Session in Scotland to be registered in the High Court here. Section 7 states that where the Governor-General is satisfied that reciprocal provisions have been made by the legislature of any other country or territory of the Commonwealth outside the United Kingdom for the enforcement within such country or territory of judgments obtained in the Supreme Court of Fiji the Governor-General may by order declare the Act shall extend to judgments obtained in a superior court in that country or territory in a similar way as it extends to judgments obtained in a superior court in the United Kingdom. By Order in Council dated 26th June 1925 which came into force on 3rd July 1925 the Act was extended in its operation to judgments obtained in a superior court of New South Wales.

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Section 9 of the Foreign Judgments (Reciprocal Enforcement) Act gives the Governor-General power to proclaim that Part II of the Act, dealing with the registration of foreign judgments, shall apply to any country or territory of the Commonwealth outside Fiji named in the proclamation and further states "that the Reciprocal Enforcement of Judgments Act shall cease to have effect except in relation to those parts of such countries and territories to which it extends at the date of the proclamation".

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Mr. Howard argued that, as New South Wales was not one of the territories mentioned in the list of countries or territories in respect of which proclamations have been made, and which is included in the schedule to the Act, even if I were satisfied that the District Court of New South Wales was a superior court, because this court was not named in the schedule, the registration of the judgment of the District Court in Fiji was invalid. It seems to me that this argument ignores the last part of Section 9 which I have just quoted and that the intention of Section 9

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A was to leave intact for the purposes of registration and enforcement the judgments of all other countries and territories covered by the Reciprocal Enforcement of Judgments (Reciprocal Enforcement) Act. I therefore reject Mr. Howard's submission on this point. However it seems to me that he is on stronger ground in his argument that the District Court of New South Wales is not a superior court and that consequently the registration of the instant judgment should be set aside.

B He submits that the clear intention of both the Acts in question is, except where specially stated, to apply only to superior courts. It should be noted that Section 3 of the Reciprocal Enforcement of Foreign Judgments Act mentions only the High Court of England or Ireland and the Court of Session of Scotland, and Section 7, which extends the operation of the Act to any other countries named in an Order in Council, refers to "A Superior Court in that country or territory" Section 3 of the Foreign Judgments (Reciprocal Enforcement) Act refers to the "Superior Courts" of foreign countries.

C In the schedule to this Act the only country in which District Courts are mentioned is the Republic of India but the term "District Court of India" is not defined in the Act nor could Counsel give me any assistance on this. To my knowledge all the other courts mentioned in the schedule in respect of which proclamations have been made are courts of unlimited jurisdiction.

D In his reply to Mr. Howard's submissions Mr. Lateef asserted that the District Court of New South Wales is a superior court but, regrettably neither he nor Mr. Howard could quote me any authority or legislation supporting or denying this assertion. Mr. Lateef also made other submissions based on the legislation in support of his argument that the Judgment should be registered. I accept his submission that the two Acts should be read together for reasons which I stated earlier and I find much force in his other submissions. Unfortunately for the Applicant, having considered the matter, I find it unnecessary to make any final decision on Mr. Lateef's other submissions because I am satisfied that the District Court of New South Wales is not a superior court in the sense that this term is normally used.

E In Stroud's *Judicial Dictionary* - Fourth Edition - the term "superior court" is defined thus: "A Court having an inherent jurisdiction, to administer justice according to law, descended from the *Aula Regia*, established by William the First, which had universal jurisdiction in all matters of right and wrong through out the Kingdom" (the *Aula Regia* was where the King was present). This is compared by the author with the term "Inferior Court" which is one "limited as to its area and also limited, as to its jurisdiction and powers to those matters and things which are expressly deputed to it by its document of foundation."

F In the Industrial Commission of New South Wales in Levoune v Bacoulis (1935) A.R. (NSW) 126, Cantor J. said: "There is ample authority for the proposition that an inferior court such, for example, as the District Court or a Court of

Summary Jurisdiction, has no power to do anything beyond what it is authorised to do by the statute creating it.”

Although there is no copy of the Act establishing the District Court of New South Wales in this Court’s Library, based on my own knowledge of the New South Wales Court structure, which is confirmed by the words of Cantor J. which I have just mentioned, I am satisfied that the District Court of New South Wales is not a superior court and that accordingly it is not possible for any Judgment of that Court to be registered under the relevant legislation in this country.

I therefore set aside the registration of the Judgment of the District Court of New South Wales dated the 3rd day of March 1986 and registered in this country on the 8th day of April 1989. As the Respondent has succeeded on what is clearly a technicality, I am not disposed to make any order for costs.

*(Application granted.)*

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