

Western Australia

Judgments Act 1855 (Imp)

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CONTENTS

1.	Judgments of common law palatinate courts obtained before coming into operation of 1 & 2 Vict. c. 110, and not registered under the same, not to affect lands, etc., unless registered within limited time	2
2.	Certain provisions of 1 & 2 Vict. c. 110, extended to common law palatinate courts, and to Equity Court of Durham	2
3.	Certain provisions of 2 & 3 Vict. c. 11, and 3 & 4 Vict. c. 82, extended to common law and equity courts of Counties Palatine	3
4.	No judgment, etc. registered under 3 & 4 Vict. c. 82, to affect lands, etc., as to purchasers, etc., until registered	4
9.	Duties of prothonotary Fees for registration and searches	5
11.	Legal estate vested in purchaser or mortgagee not to be taken in execution	6
12.	Life annuities and rentcharges not to affect lands as to purchasers, etc., until memorandum left with senior master	7
13.	Searches may be made by parties themselves	8
14.	Annuities, etc., given by will excepted from Act	8
	Notes	
	Compilation table	9

Judgments Act 1855 (Imp)

An Act for the better Protection of Purchasers against Judgments, Crown Debts, Cases of Lis Pendens, and Life Annuities or Rentcharges. ³

Preamble

Whereas an Act of Parliament was passed in the session of the first and second years of Her Majesty, intituled '*An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England*'⁴;

and another Act in the session of the second and third years of Her Majesty, intituled '*An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis Pendens, and Fiats in Bankruptcy*'⁵;

and another Act in the session of the third and fourth years of Her Majesty, intituled '*An Act for further amending the Act for abolishing Arrest on Mesne Process in Civil Actions*'⁶;

And whereas the provisions of the said Acts respecting judgments, decrees, orders, and rules, and *lis pendens*, ought to include and be applicable to the Counties Palatine of Lancaster and Durham, and the common law and equity courts thereof respectively:

And whereas an Act was passed in the session of the thirteenth and fourteenth years of Her Majesty, intituled '*An Act to amend the Practice and Proceedings of the Court of Chancery of the County Palatine of Lancaster*,' ⁷by force whereof the said provisions do to some extent include and are applicable to the County Palatine of Lancaster, as far as regards the Courts of Chancery thereof:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Judgments of common law palatinate courts obtained before coming into operation of 1 & 2 Vict. c. 110, and not registered under the same, not to affect lands, etc., unless registered within limited time

Any judgment of the Court of Common Pleas of the County Palatine of Lancaster, or of the Court of Pleas of the Court of Palatine of Durham, obtained before the coming into operation of the said Act of the session of the first and second years of Her Majesty, and not already registered in the said courts respectively under the provisions of the same Act, and which shall not be registered in the said courts respectively under the same provisions as amended by this Act, on or before the first day of November one thousand eight hundred and fifty-five, shall not after that day affect any lands, tenements, or hereditaments in the said Counties Palatine respectively as to purchasers, mortgagees, or creditors, unless and until such memorandum or minute of such judgment as is in the said Act prescribed shall be left with the prothonotary of the court in which the judgment has been obtained, who shall forthwith enter the same in manner by the same Act as amended by this Act directed in regard to judgments thereby authorised to be registered, and shall be entitled for every such entry to the sum of two shillings and sixpence; and the provision for re-registration, *toties quoties*, hereinafter mentioned, as explained by this Act, is hereby extended and applied, *mutatis mutandis* to judgments registered under this present provisions.

2. Certain provisions of 1 & 2 Vict. c. 110, extended to common law palatinate courts, and to Equity Court of Durham

And be it declared and enacted as follows: The provisions contained in the sections of the said Act of the first and second

years of Her Majesty numbered respectively 18, 19, and 20, giving to certain rules of courts of common law, and decrees and orders of courts of equity, the effect of judgments in the superior courts of common law, and constituting the persons therein mentioned judgment creditors, and giving to courts of equity the powers by the same Act given to the judges of the said superior courts, and giving to the persons so constituted judgment creditors as aforesaid such remedies as are therein mentioned, and authorising the registration of such decrees, orders, and rules as aforesaid, and providing for the writs to be sued out of courts of equity, shall extend and are applicable, *mutatis mutandis*, to the said Counties Palatine and the courts of common law thereof respectively, and to the Court of Chancery of the County Palatine of Durham, within the limits of their respective jurisdictions, to the end that the same law in the respects aforesaid may apply to the courts of the said Counties Palatine, and the decrees, orders, judgments, and rules thereof, so far as relates to lands, tenements, and hereditaments within the jurisdiction of such courts respectively, as under the previous statutes amended by this Act, will regulate the operation of judgments in the superior courts of common law:

But no judgment, decree, order, or rule of any court shall bind lands, tenements, and hereditaments in the said Counties Palatine respectively, as against purchasers, mortgagees, or creditors, unless and until such memorandum of minute thereof as hereinbefore is mentioned shall be left with the prothonotary of the palatine court in which are situated the lands, tenements, and hereditaments intended to be charged thereby.

3. Certain provisions of 2 & 3 Vict. c. 11, and 3 & 4 Vict. c. 82, extended to common law and equity courts of Counties Palatine

The provisions contained in the sections of the said Act of the second and third of Her Majesty numbers respectively 3, 4, 5, and 7, and in the section of the said Act of the third and fourth of Her Majesty numbered 2, respecting the particulars to be

inserted in the register by the master, and respecting the re-registration of judgments, decrees, or orders, and rules, and respecting the registration and re-registration of *lis pendens*, and respecting the protection of purchasers, mortgagees, and creditors, as explained or amended by this Act, shall extend and are applicable, *mutatis mutandis*, to the Counties Palatine and the courts of common law and courts of chancery thereof respectively, within the limits of their respective jurisdictions.

4. No judgment, etc. registered under 3 & 4 Vict. c. 82, to affect lands, etc., as to purchasers, etc., until registered

And whereas the protection afforded to purchasers, mortgagees, and creditors, by the said Act of the third and fourth of Her Majesty, against judgments, decrees, orders, or rules not duly registered, any notice thereof notwithstanding, is confined to judgments, decrees, orders, or rules binding by virtue of the said Act of the first and second years of Her Majesty:

And whereas the docket or register previously in use has been closed, and the said provision ought not to be so restricted:

Be it therefore enacted, that no judgment, decree, order, or rule which might be registered under the said Act of the first and second years of Her Majesty shall affect any lands, tenements, or hereditaments, at law or in equity, as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute as in the said Act in that behalf mentioned shall have been left with the proper officer of the proper court, any notice of any such judgment, decree, order, or rule to any such purchaser, mortgagee, or creditor in anywise notwithstanding.

5. Purchasers protected against judgments to re-registered

And whereas it is expedient that certain doubts which have arisen upon some of the provisions for the protection of purchasers against judgments in the said Acts contained should be removed:

Be it therefore declared and enacted as follows: The provision contained in the section numbered 2 of the said Act of the third and fourth years of Her Majesty extends and shall be deemed to extend as well to the Act therein referred to as to the section numbered 4 of the said Act of the second and third of Her Majesty, as explained by this Act, so that notice of any judgment, decree, order, or rule, not duly re-registered, shall not avail against purchasers, mortgagees, or creditors, as to lands, tenements, or hereditaments.

9. Duties of prothonotary Fees for registration and searches

For the purposes of any registration or re-registration to be made in pursuance of this Act in either of the said Counties Palatine, all such acts and things as under the provisions of the said several Acts of the reign of Her Majesty ought to be done by or left with the senior master of the Court of Common Pleas at Westminster shall be done by or left with the prothonotary or deputy prothonotary of the Court of Common Pleas of the County Palatine of Lancaster, or of the Court of Pleas of the County Palatine of Durham, as the case may require, or such other officer (if any) of the same courts respectively as may for the time being have been appointed by the same courts respectively, for the purpose of entering the judgments thereof respectively, under the provisions of the said Act of the first and second years of Her Majesty;

and the said prothonotary, deputy prothonotary, or other officer as aforesaid, shall be entitled to the sum of two shillings and

sixpence, and no more, for the duties to be performed on every registration, and the sum of one shilling only for re-registration;

and all persons shall be at liberty to search all or any of the books kept in pursuance of any of the foregoing provisions of this Act in each court, for the sum of one shilling.

[10. Deleted by No. 59 of 2004 s. 20(g).]

11. Legal estate vested in purchaser or mortgagee not to be taken in execution

And whereas great delay and expense are occasioned upon purchases and mortgages of lands in consequence of judgments against mortgagees and Crown debts and liabilities to the Crown of mortgagees continuing to bind lands, although the mortgagees have been *bonâ fide* paid off, and the lands have been actually conveyed to purchasers, or to other mortgagees:

For remedy whereof, be it enacted as follows: Where any legal or equitable estate or interest or any disposing power in or over any lands, tenements, or hereditaments shall, under any conveyance or other instrument executed after the passing of this Act, become vested in any person as a purchaser or mortgagee for valuable consideration, such lands, tenements, or hereditaments shall not be taken in execution under any writ of *elegit*, or other writ of execution, to be sued upon any judgment, or any decree, order, or rule against any mortgagee or mortgagees thereof, who shall have been paid off prior to or at the time of the execution of such conveyance, nor shall any such judgment, decree, order, or rule, or the money thereby secured, be a charge upon such lands, tenements, or hereditaments so vested in purchasers or mortgagees, nor shall such lands, tenements, or hereditaments so vested in purchasers or mortgagees be extended or taken in execution, or rendered liable under any writ of extent or writ of execution or other process issued by or on behalf of Her Majesty, her heirs or successors, in respect of any judgment, statute, or recognizance obtained against or entered into by, or inquisition found against, or

obligation or specialty made by, or acceptance of office by any mortgagee or mortgagees, whereby he or they hath or have become or shall become a debtor or accountant, or debtors or accountants to the Crown, where such mortgagee or mortgagees shall have been paid off prior to or at the time of the execution of such conveyance as aforesaid.

12. Life annuities and rentcharges not to affect lands as to purchasers, etc., until memorandum left with senior master

And whereas by reason of the repeal in the last session of Parliament of the Act of the fifty-third year of King George the Third, chapter one hundred and forty-one, requiring the enrolment of life annuities or rentcharges, purchasers are no longer enabled to ascertain by search what life annuities or rent charges may have been granted by their vendors or others:

Be it therefore enacted by the authority aforesaid as follows:
Any annuity or rentcharge granted after the passing of this Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall not affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, or assurance whereby the annuity or rentcharge is granted, and the annual sum or sums to be paid, shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rentcharge, together with the year and the day of the month when every such memorandum or minute is so left with him, and he shall be entitled for every such entry to the sum of two shillings and sixpence, and all persons shall be at liberty to search the same book, together with the other

books or registers in the office, on payment of the sum of one shilling.

13. Searches may be made by parties themselves

The searches of the several registers, by the said recited Acts or by this Act authorised to be made for the sum of one shilling, may be made by the parties themselves, under proper regulations in the office, and the sum of one shilling only shall be payable on one search, although more names than one shall be searched for where such names relate to the same purchase, mortgage, or other transaction.

14. Annuities, etc., given by will excepted from Act

The provisions of this Act shall not extend to require the registry of annuities or rentcharges given by will.

Notes

¹ This is a compilation of the *Judgments Act 1855 (Imp)*. The following table contains information about that Act and any previous reprints.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Judgments Act 1855 (Imp)</i>	1855 (18 and 19 Vict. c. 15)	26 Apr 1855	15 Jul 1867 (adopted by <i>Imperial Acts Adopting Ordinance 1867</i>)

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- ² Adopted in WA by *Imperial Acts Adopting Ordinance 1867*. (31 Vict. No. 8) [Assent 15 July 1867]
- ³ The short title *Judgments Act 1855* was given to this Imperial Act by the *Short Titles Act 1896 (UK)*. For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 13 p 380.
- ⁴ I.e. *Judgments Act 1838 (Imp)* (1 & 2 Vict. c. 110) which is also adopted in WA and reproduced in this part of this publication.
- ⁵ I.e. *Judgments Act 1839 (Imp)* (2 & 3 Vict. c. 11) which is also adopted in WA and reproduced in this part of this publication.
- ⁶ I.e. *Judgments Act 1840 (Imp)* (3 & 4 Vict. c. 82) which is also adopted in WA and reproduced in this part of this publication.
- ⁷ I.e. 13 & 14 Vict. c. 43.
- ⁸ I.e. repealed in so far as it was part of the law of WA by the *Debtors Act 1871* (34 Vict. No. 21) s 23 [Assent 13 January 1871; Commencement 1 April 1871].