The enforcement of English judgments in the Cayman Islands by registration: reconsidering the objections

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A. Introduction

1. Judgments given by the superior courts of England and Wales are not considered to be registrable in the Cayman Islands: the widely-held view is that they must be enforced instead at common law.

2. By contrast, Cayman Islands judgments are registrable in England and Wales: they are registrable under Part II of the Administration of Justice Act 1920 ("the AJA 1920"), pursuant to an Order in Council, namely the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985 (SI 1985/1994).

3. This lack of reciprocity ought to be impossible: section 14(1) of the AJA 1920 stipulates that, before an Order in Council can be made extending Part II of the AJA 1920 to any of "*His Majesty's dominions*", as they were then termed, reciprocal provisions must have been made first "*by the legislature*" in the dominion in question providing "*for the enforcement…of judgments obtained in the High Court in England, the Court of Session in Scotland and the High Court in Northern Ireland*…".

4. Several questions therefore arise. If the Cayman Islands never enacted the necessary reciprocal provisions, how did the Privy Council come to make the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985? Could the Privy Council have overlooked the requirement for reciprocity? Although that does not seem very likely, even Homer nods. If the requirement for reciprocity was overlooked, what effect does the lack of reciprocity have upon the validity of the Order? No proper attention appears to have been given to these questions. Instead, the inability to register judgments given by the courts of England and Wales in the Cayman Islands, and the consequential lack of reciprocity, seem to be ignored as quaint accidents of history of no practical consequence.

5. This article has two essential purposes. The first and primary purpose is to argue that judgments given by the superior courts of England and Wales are, in fact, registrable in the Cayman Islands, pursuant to one or other of two Jamaican statutes enacted in 1923 and in 1936. I acknowledge that in Masri & Anr v Consolidated Contractors International Company SAL [2010 (1) CILR 265] the Grand Court took the contrary view, on the grounds that the omission of these statutes from the first revised edition of the laws of the Cayman Islands meant that they do not form part of Cayman Islands law. This aspect of the judgment in Masri is *obiter* and, I respectfully argue, wrong in law. The second, subsidiary, purpose is to warn that if, contrary to my argument, judgments from the superior courts of England and Wales cannot

be registered in the Cayman Islands, judgment creditors seeking to register Cayman Islands judgments in England and Wales may encounter significant difficulties. I suggest that, pending clarification of the law in the Cayman Islands, it might be a sensible precaution to seek to enforce Cayman Islands judgments in England and Wales at common law.

6. Given the close and long-standing ties between the Cayman Islands and the United Kingdom, the notion that there are no reciprocal arrangements for the registration in the Cayman Islands of judgments given by the superior courts of England and Wales is surprising, to say the least. Compelling judgment creditors to bring a second action in the Cayman Islands is a cause of unnecessary inconvenience and expense. It has, surely, no reasonable justification on public policy grounds. It is anomalous. Happily the anomaly can be corrected without the need for new legislation: the courts that administer Cayman Islands law need only recognise the continued application of the two Jamaican statutes discussed in this article and acknowledge, as I contend, that their omission from the first revised edition of the laws of the Cayman Islands was a mere administrative error which had no substantive legal consequences.

B. The first Jamaican statute and the adoption of reciprocal arrangements for the registration of judgments throughout the British Empire in the 1920s

7. The text of the two Jamaican statutes in question should be examined with an understanding of the historical and legislative context in which were enacted. This section considers the text of the first of the Jamaican statutes and explains its historical and legislative context. The next section is concerned with the text of the second Jamaican statute and its historical and legislative context. In providing the historical context, I gratefully acknowledge the account provided by the late Professor Keith Patchett in this book "*Recognition of Commercial Judgments and Awards in the Commonwealth*"[1], at paragraph 1.32 and following. There is a further helpful account in the speech of Lord Bridge in Owens Bank Ltd v Bracco [1992] 2 AC 443, 488B-E. There is also much useful information at paragraph 9 and following of the Greer Committee Report[2], discussed below.

8. A system for the enforcement within the different parts of the United

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[1] London, Butterworths, 1984.

[2] "*The Foreign Judgments (Reciprocal Enforcement) Committee Report*" (Cmd 4213, December 1932).

Kingdom of judgments given by the superior courts of England, Scotland and Ireland for debts, damages and costs was first introduced by the Judgments Extension Act 1868. All that was required under this Act was for the judgment creditor to register the judgment with the court in that part of the United Kingdom where enforcement was sought. The process of registration was essentially administrative in nature and it did not require the exercise of a judicial discretion. Once so registered, the judgment was then enforceable as if it had been a judgment of the receiving court.

9. This scheme was extended to inferior courts by the Inferior Courts Extension Act 1882.

10. An Imperial Conference – a meeting of various government leaders from various parts of the British Empire (the modern equivalent is the biennial Commonwealth Heads of Government Meeting) – was held in London in 1911. At this Conference a resolution was passed which proposed the extension of the Judgments Extension Act 1868 scheme to the whole of the British Empire. A draft bill was prepared, which was then circulated in 1916 to overseas governments within the Empire. During the course of the First World War there appears to have been little appetite to establish this scheme, but it was revived in 1918 by a petition presented to the Government at Westminster by representatives of the London Court of Arbitration[3], the London Chamber of Commerce, and other organisations in the City of London. In response, the Lord Chancellor established a committee to investigate the matter under the chairmanship of Lord Sumner.

11. The Sumner Committee reported in 1919[4]. It concluded that the time was "*fully ripe*" for the introduction of a scheme for the recognition of judgments throughout the Empire "*with as little further delay as possible*". However, it did not favour the extension of the 1868 scheme to the Empire, as the draft bill which had been circulated in 1916 had proposed, for that would give to all judgments no matter from which court within the Empire they emanated equal status and currency, and some overseas governments – particularly the Australian Government – had commented adversely on this idea when responding to the 1916 draft bill. Accordingly, the Committee recommended that enforcement should depend on the exercise of a discretion by the

[3] As the LCIA was then known.

[4] "*The Report of the Committee Appointed by the Lord Chancellor to Consider the Conduct of Legal Proceedings between Parties in this Country and Parties Abroad and the Enforcement of Judgments and Awards*" (Cmd 251, May 1919).

receiving court, which should decide whether enforcement was "*just and convenient*". This would enable the receiving court to consider the competence of the original court, and to consider whether the judgment had been obtained by fraud, which appears to have been a particular concern. The Committee also recommended that the judgment debtor should be given a proper opportunity to show cause before execution was issued.

12. The Committee prepared various amendments to the 1916 draft bill to give effect to its recommendations and in August 1919 the Colonial Office circulated the Committee's report to the dominions and colonies for information[5].

13. At the same time, at Westminster a set of legislative provisions were drafted which provided for the Committee's detailed proposals to be adopted and applied to the United Kingdom. An Administration of Justice Bill was already before Parliament, and the legislative provisions in question were added to that Bill, as Part II. The Bill became law the following year, with little detailed comment.

14. Part II of the AJA 1920, comprising sections 9 to 14, is entitled "*Reciprocal Enforcement of Judgments in the United Kingdom and in other parts of His Majesty's Dominions*". The key provisions for present purposes are contained in sections 9(1) and 14(1). Section 9(1) confers a power on the High Court to register judgments given by a superior court in any British dominion, provided that Part II has been extended to the dominion in question; and section 14(1) confers power to extend Part II to any British dominion, by means of an Order in Council.

15. Let me set out these provisions, for ease of reference.

    15.1 Section 9(1) provides:

    > *Where a judgment has been obtained in a superior court in any part of His Majesty's dominions outside the United Kingdom to which this Part of this Act extends, the judgment creditor may apply to the High Court in England or Northern Ireland or to the Court of Session in Scotland, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to*

[5] See the Colonial Office papers held at the National Archives in Kew, reference CO 323/810/1.

have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case they think it just and convenient that the judgment should be enforced in the United Kingdom, and subject to the provisions of this section, order the judgment to be registered accordingly.

15.2 Section 14(1) provides:

Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's dominions outside the United Kingdom for the enforcement within that part of His dominions of judgments obtained in the High Court in England, the Court of Session in Scotland, and the High Court in Northern Ireland, His Majesty may by Order in Council declare that this Part of this Act shall extend to that part of His dominions, and on any such Order being made this Part of this Act shall extend accordingly."

16. Professor Patchett notes in his book[6] that, in the years following the AJA 1920, "*the great preponderance of jurisdictions [in the British Empire] enacted their own statutes modelled, with little modification, upon [the AJA 1920] and orders [in council] bringing reciprocal arrangements into force took effect extensively. Only two parts of the Empire were not substantially involved within this development, India and Canada.*"

17. Jamaica was among the great preponderance of these jurisdictions: on 11 June 1923 it enacted what was then entitled "*the Reciprocal enforcement of judgments and awards Law, 1923*" (for convenience hereafter "the REJAL 1923 (J)").

18. An original copy of this law as enacted can be found in the relevant annual compendium of Jamaican laws published by the Government Printing Office in Kingston. Conveniently, the Florida International University College of Law has made a copy of many of these compendia available online[7].

19. With effect from 1 January 1975, revisions were made to the REJAL 1923 (J). Its short title was changed to "*the Judgments and Awards (Reciprocal*

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[6] At paragraph 1.34.

[7] The relevant volume for 1923 may be found at https://ecollections.law.fiu.edu/jamaica/88/. The REJAL 1923 (J) is at pages 184-188.

Enforcement) Act", the sequence of some of the sections was altered, and other minor changes were made to the text to reflect various constitutional developments which had occurred in the years since 1923. A copy of the law as revised, and as it now stands, is available from the website of the Ministry of Justice in Jamaica[8]. I mention the fact of these revisions for the sake of completeness only. We are concerned with the application of the REJAL 1923 (J) in the Cayman Islands, and since the Cayman Islands ceased to be a dependency of Jamaica on 6 August 1962 as explained below, it follows that any revisions to Jamaican laws which were made after that date are of relevance in Jamaica only: they cannot have revised those laws if and to the extent that they applied in the Cayman Islands.

20. Section 2(1) of the REJAL(J) 1923 is, to all intents and purposes, identical to section 9(1) of the AJA 1920. It provides:

Where a judgment has been obtained in a Superior Court in the United Kingdom the judgment creditor may apply to the Supreme Court of Judicature of Jamaica (hereinafter referred to as the Court) at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the Court to have the judgment registered in the Court, and on any such application the Court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in Jamaica, and subject to the provisions of this section, order the judgment to be registered accordingly."

21. The enactment of the REJAL 1923 (J) on 11 June 1923 met the requirements in section 14(1) of the AJA 1920, enabling Part II of the AJA 1920 to be then extended to Jamaica. That was accomplished on 20 February 1924 by way of an Order in Council (SR&O 1924/254). This extended Part II of the AJA 1920 to Ashanti, Bermuda, Jamaica and Mauritius. A copy of this Order was published in the London Gazette[9].

22. This was one of a total of 32 Orders in Council which were made under section 14(1) of the AJA 1920. Together these Orders extended Part II of the

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[8] At https://laws.moj.gov.jm/library/statute/the-judgments-and-awards-reciprocal-enforcement-act.

[9] There is a digitised version available at https://www.thegazette.co.uk/London/issue/32912/page/1718.

AJA 1920 to 62 Commonwealth jurisdictions[10].

23. By contrast, the Cayman Islands enacted no law modelled on the AJA 1920, and none of the 32 Orders in Council mentioned the Cayman Islands by name. But as a dependency of Jamaica at the time, pursuant to the Cayman Islands Act 1863, the Islands had no need to enact a law modelled on the AJA 1920: the REJAL 1923 (J) sufficed. I shall explain this assertion in a moment. Before doing so, I turn to the second of the Jamaican statutes, and its historical and legislative context.

C. The second Jamaican statute and the development of arrangements for the registration of judgments from states outside the British Empire

24. During the 1920s there were regular complaints to the Foreign Office from representatives of the United Kingdom business community about the difficulties that they experienced enforcing domestic judgments abroad. Although foreign judgments could be enforced ultimately with little difficulty in the United Kingdom – by means of an action on the foreign judgment at common law – foreign courts frequently refused to recognise United Kingdom judgments, because of a perceived lack of reciprocity. There were three problems in particular. First, many foreign courts enforced a foreign judgment by the grant of an *exequatur*: by these means the foreign judgment would be adopted by the foreign court as a judgment given by itself. There was no comparable device in United Kingdom law, and foreign courts were typically unpersuaded that an action before the courts upon a foreign judgment at common law was comparable to an application for the grant of an *exequatur*. Secondly, the recognition of foreign judgments depended on common law rules which were too vague and indefinite, and unsatisfactorily dependent upon the exercise of a discretion, in the estimation of foreign courts. Thirdly, there were difficulties persuading foreign courts to accept proof of the common law rules by expert evidence. Foreign courts struggled to accept that these rules were to be found not in statutes, nor in official statements made by the government of the United Kingdom, but in the decisions of judges in previous cases. It appears that they found the very notion of *stare decisis* often somewhat perplexing.

25. Ultimately in March 1929 the Foreign Secretary at the time, Sir Austin Chamberlain, drew these problems to the attention of the Lord Chancellor, Lord Hailsham, who appointed a small committee to examine the subject

[10] All the Orders in Council were reprinted in 1948, in Volume XI of SR&O 1948, pp 139-162.

further under the chairmanship of Lord Justice Greer.

26. The committee produced a report which proposed the negotiation of bilateral conventions, state by state, subject to appropriate overarching legislation. In the committee's view, in specifying the conditions under which, in return for reciprocal treatment, the judgments of foreign courts would be enforced, the legislation should adopt the substantive principles of the common law, and should follow the lines already laid down in Part II of the AJA 1920: the legislation could be extended by Orders in Council to foreign countries where, by reason of the conclusion of a convention, reciprocity for United Kingdom judgments was assured.

27. In November 1931 Lord Hailsham's successor, Viscount Sankey, constituted the Foreign Judgments (Reciprocal Enforcement) Committee, a larger committee again under the chairmanship of Lord Justice Greer, to consider these proposals in further detail.

28. This second committee ("the Greer Committee") reported in 1932[11]. Essentially it endorsed the proposals which had been put forward in 1929. It prepared the text of a model draft bilateral convention and an appropriate bill, and annexed these to its report.

29. The Greer Committee intended that the arrangements which it proposed for the registration of foreign judgments should also apply to the registration of "*Dominion and Colonial judgments*", as it termed them. It accepted that Part II of the AJA 1920 was working generally satisfactorily, but it took the view that it was preferable for there to be a single scheme for the registration of all foreign judgments, whatever their origin. There were, in the Greer Committee's view, "*disadvantages in the existence side by side of two slightly differing procedures, when one will suffice*", and it considered that its draft bill was superior to Part II of the AJA 1920 (when comparing the two it described its draft bill as "*on the whole less tentative and more complete*"). Accordingly clause 7 of the draft bill contained a mechanism whereby the registration of "*Dominion and Colonial judgments*" would cease to be made under Part II of the AJA 1920 and would be made under the bill's provisions instead. In their commentary on the bill, the Greer Committee said that clause 7 contained a power "*to apply the provisions now contemplated to the judgments of any other part of the British Empire. If the Dominion or*

[11] "*The Foreign Judgments (Reciprocal Enforcement) Committee Report*" (Cmd 4213, December 1932).

Colony concerned was one to which Part II of the [AJA 1920] had already been extended, the new Act would take the place of the [AJA 1920]". Once an Order in Council was made extending the new Act to any part of the British Empire, "*no new Orders in Council applying the [AJA 1920] are to be made, but existing applications of the [AJA 1920] are not affected*"[12].

30. The bill was enacted the following year with just one amendment, as the Foreign Judgments (Reciprocal Enforcement) Act 1933 ("the FJ(RE)A 1933").

31. Part I of the FJ(RE)A 1933, comprising sections 1 to 7, is entitled "*Registration of Foreign Judgments*". The key provisions for present purposes are contained in sections 1(1), 2(1), 2(2) and 7. Section 1(1) confers power to direct by Order in Council that Part I shall extend to any foreign country and to specify which courts in the foreign country shall be deemed to be superior courts for the purposes of Part I; section 2(1) imposes an obligation (and not merely a power) on the High Court to register a foreign judgment, if the foreign judgment is one to which Part I applies and if various other requirements are satisfied; section 2(2) specifies the effects of registration, principal among which is that the registered judgment shall for the purposes of execution be of the same force and effect as if the judgment had been a judgment originally given in the registering court; and section 7 as already adumbrated is concerned with "*His Majesty's dominions outside the United Kingdom*" (as they are described in the section) and the interrelationship between the AJA 1920 and the FJ(RE)A 1933.

32. For ease of reference, let me set out these provisions.

    32.1 Section 1(1) as originally enacted provided:

    > *His Majesty, if he is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts of the United Kingdom, may by Order in Council direct—*
    >
    > *(a) that this Part of this Act shall extend to that foreign country; and*
    >
    > *(b) that such courts of that foreign country as are specified in the Order shall be deemed superior courts of that country for the*

[12] See page 64 of the Report.

purposes of this Part of this Act.

Amendments were subsequently made to section 1 by the Civil Jurisdiction and Judgments Act 1982. For present purposes they are not relevant.

32.2 Section 2(1) provides:

A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the High 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 High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, 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.

32.3 Section 2(2) provides:

Subject to the provisions of this Act 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 registering 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 registering 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 Act 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.

32.4 Section 7 (entitled "*Power to apply Part I of Act to British dominions, protectorates and mandated territories*") provides:

> *(1) His Majesty may by Order in Council direct that this Part of this Act shall apply to His Majesty's dominions outside the United Kingdom and to judgments obtained in the courts of the said dominions as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of His Majesty so directing, this Act shall have effect accordingly and Part II of the Administration of Justice Act 1920 shall cease to have effect except in relation to those parts of the said dominions to which it extends at the date of the Order.*
>
> *(2) If at any time after His Majesty has directed as aforesaid an Order in Council is made under section one of this Act extending Part I of this Act to any part of His Majesty's dominions to which the said Part II extends as aforesaid, the said Part II shall cease to have effect in relation to that part of His Majesty's dominions.*
>
> *(3) References in this section to His Majesty's dominions outside the United Kingdom shall be construed as including references to any territories which are under His Majesty's protection and to any territories in respect of which a mandate under the League of Nations has been accepted by His Majesty.*

33. As the Greer Committee's comments on clause 7 of the draft bill indicated, section 7 merely paves the way for the new regime under Part I of the FJ(RE)A 1933 to replace the former regime under Part II of the AJA 1920. This process is not automatic, nor inevitable, and section 7 requires several steps to be taken. The first step is for an Order in Council to be made under section 7(1) directing that Part I shall apply generally to "*His Majesty's dominions outside the United Kingdom and to judgments obtained in the courts of the said dominions*". However the words at the end of subsection (1) make it clear that the effect of this Order will be limited: no new Orders may be made thereafter extending Part II of the AJA 1920. Thus all existing Orders extending Part II of the AJA 1920 are unaffected, and applications to register judgments under Part II of the AJA 1920 may still be made. The next step is for Orders in Council to be made under section 1, extending Part I of the FJ(RE)A 1933 to each of the Crown's dominions, individually. It is clear from section 7(2) that it is only upon the making of an Order under section 1 that no further applications may be made under Part II of the AJA 1920 to register judgments from the dominion that is the subject of that Order, and that all such applications must thereafter be made under Part I the FJ(RE)A 1933.

34. The first of these steps was soon implemented: on 10 November 1933 the Privy Council made the Reciprocal Enforcement of Judgments (General Application to His Majesty's Dominions, etc.) Order 1933 (SR&O 1933/1073). But for nearly two decades thereafter no Orders were made under section 1 extending Part I to any of the dominions, with the exception of British India and British Burma[13]. Even today the number of Commonwealth countries to which Part I has been extended is limited[14].

35. The Westminster Government commended the FJ(RE)A 1933 to the governments of the dominions, inviting them to adopt its regime by local enactments. The response was mixed. As Professor Patchett observes in his book[15] "*in most cases no action was taken to adopt the new legislation; in others, the new legislation was enacted to replace the earlier, whilst in other the two sets of legislation were put into operation.*"

36. Jamaica decided to adopt the new regime, and accordingly on 9 June 1936 the Jamaican legislature enacted the Foreign Judgments (Reciprocal Enforcement) Law 1936 ("the FJ(RE)L 1936 (J)")[16]. It also decided to retain the REJAL 1923 (J).

37. The FJ(RE)J 1936 (J) is a near copy of the FJ(RE)A 1933. Its provisions closely follow the corresponding provisions in the FJ(RE)A 1933.

    37.1 Part I, comprising sections 3 to 9, is entitled "*Registration of Foreign*

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[13] See the Reciprocal Enforcement of Judgments (British India and British Burma) Order 1938 (SR&O 1938/1363).

[14] Part I has been extended to India, Pakistan, Australia and the states and territories of Australia, the Federal Court of Canada and the Canadian provinces except Quebec and Nunavut, Tonga, Guernsey, Jersey and the Isle of Man.

[15] At paragraph 1.38.

[16] A copy of the FJ(RE)L 1936 (J) in its original form may be found at pages 42 and following at https://ecollections.law.fiu.edu/jamaica/94/. It is now known by a slightly different short title, namely the Judgments (Foreign) (Reciprocal Enforcement) Act, and a copy of the law in its current form may be obtained from the website of the Jamaican Ministry of Justice, at https://laws.moj.gov.jm/library/statute/the-judgments-foreign-reciproal-enforcement-act.

Judgments".

37.2 Section 3(1) confers power on the Governor "*by Order in Privy Council*" to direct that Part I shall extend to any foreign country and to specify which courts in the foreign country shall be deemed to be superior courts for the purposes of Part I.

37.3 Section 4(1) effectively duplicates section 2(1) of the FJ(RE)A 1933:

A person, being a judgment creditor under a judgment to which this Part of this Law applies, may apply to the Supreme Court [of Jamaica] 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 Supreme 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.

37.4 Section 4(2) specifies the effects of registration in the same terms as section 2(2) of the FJ(RE)A 1933.

37.5 Section 9 is in very similar terms to section 7 of the FJ(RE)A 1933. It provides as follows:

(1) The Governor may by Order in Privy Council direct that this Part of this Act shall apply to His Majesty's dominions and to judgments obtained in the courts of the said dominions as it applies to foreign countries, and judgments obtained in the courts of foreign countries, and, in the event of the Governor so directing, this Law shall have effect accordingly and the Reciprocal Enforcement of Judgments and Awards Law, 1923, shall cease to have effect except in relation to those parts of the said dominions to which it extends at the date of the Order.

(2) If at any time after the Governor has directed as aforesaid an Order in Privy Council is made under section three of this Law extending Part I of this law to any part of His Majesty's

dominions to which the Reciprocal Enforcement of Judgments and Awards Law 1923 extends as aforesaid, the said last mentioned Law shall cease to have effect in relation to that part of His Majesty's dominions except as regards judgments obtained before the coming into operation of the Order.

(3) References in this section to His Majesty's dominions shall be construed as including references to any British Protectorate or protected State or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty.

38. On 29 September 1936 an Order was made by the Governor of Jamaica, "*in Privy Council*" as the Order states, expressly under section 3(1) of the FJ(RE)L 1936 (J), extending Part I to the United Kingdom, and deeming the House of Lords, the Supreme Court of Judicature of England and Wales (that is to say, the Court of Appeal and all the divisions of the High Court of Justice), the Courts of Chancery of the Counties Palatine of Lancaster and Durham, the Courts of Sessions in Scotland and the Supreme Court of Northern Ireland, as superior courts for the purposes of Part I[17].

39. No Order in Privy Council appears ever to have been made by the Governor of Jamaica (nor, for that matter, since Jamaica's independence in August 1962, by the Governor-General of Jamaica) under section 9(1) of the FJ(RE)L 1936 (J) applying Part I of the FJ(RE)L 1936 (J) to "*His Majesty's dominions*" generally. Certainly the website of the Ministry of Justice in Jamaica, which contains a database of Jamaican laws, does not list any such Order.[18]

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[17] This Order is entitled The Reciprocal Enforcements of Foreign Judgments Order 1936. It is available at https://laws.moj.gov.jm/library/subsidiary-legislation/the-judgments-foreign-reciprocal-enforcement-act.

[18] One might have expected an Order under section 9(1), if it was ever going to be made, to have been made promptly following the enactment of the FJ(RE)L 1936 (J), just as its counterpart in the United Kingdom had been made promptly following the enactment of the FJ(RE)A 1933: see paragraph 34 above. That clearly did not happen, for on 10 September 1956 an Order was made by the Governor of Jamaica under section 6 of the REJAL 1923 (J) extending the REJAL 1923 (J) to Nigeria: see the Judgments and Awards (Reciprocal Enforcement) (Nigeria) Order 1956, a copy of which is available at https://laws.moj.gov.jm/library/subsidiary-legislation/the-judgments-and-

40. The absence of any Order under section 9(1) appears to mean that, since the enactment of the FJ(RE)L 1936 (J), a party with the benefit of an unsatisfied judgment from a superior court of England and Wales has been entitled to apply to have the judgment registered in the Supreme Court of Jamaica under either the REJAL 1923 (J) or the FJ(RE)L 1936 (J)[19]. Under section 2(1) of the REJAL 1923 (J)[20], the application must be made within 12 months of the judgment, unless the Supreme Court is persuaded to grant more time; under section 4(1) of the FJ(RE)L 1936 (J)[21] the application must be made within 6 years of the judgment, or, where there has been an appeal, within 6 years of the conclusion of the appeal.

41. The existence of two overlapping regimes is obviously untidy, but there do not appear to be any more serious consequences. Both regimes incorporate provisions which are designed to encourage their exclusive use. Section 2(5) of the REJAL 1923 (J) (like section 9(5) of the AJA 1920) provides that a plaintiff who seeks to enforce a foreign judgment at common law when the judgment could be registered under section 2 will not be entitled to recover the costs of the action, "*unless an application to register the judgment under this section has previously been refused, or unless the court otherwise orders*"; and section 8 of the FJ(RE)L 1936 (J) (like section 6 of the FJ(RE)A 1933) provides that the Supreme Court of Jamaica shall not entertain any proceedings for the recovery of a sum payable under a foreign judgment where the foreign judgment is one to which Part I applies, "*except proceedings by way of registration of the judgment*". Neither of these provisions would appear to require an application for registration to be

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awards-reciprocal-enforcement-act. Given that Nigeria was, in September 1956, still one of the Crown's dominions, it follows that this Order could not have been made had an Order been made under section 9(1) of the FJ(RE)L 1936 (J) beforehand: the effect of the words at the end of section 9(1) would have meant that it would have been no longer possible to make an Order under the REJAL 1923 (J) extending that Law to Nigeria.

[19] For what it may be worth, I observe that Part 72 of the Civil Procedure Rules of the Supreme Court of Jamaica, which is concerned with the reciprocal enforcement of judgments, refers to both Laws and contains nothing that directs applications for the registration of a judgment from a superior court of England and Wales to be made under one or other Law.

[20] See paragraph 20 above.

[21] See paragraph 37.3 above.

made under one regime rather than the other.

42. Having taken no steps to enact a law modelled on the AJA 1920, the Cayman Islands similarly enacted no law modelled on the FJ(RE)A 1933 – until, that is, September 1967, as I explain below. As a dependency of Jamaica at the time, there was no need. Having already promised to explain this assertion, let me now do that.

D. The Cayman Islands as a dependency of Jamaica: particular consequences

43. The Cayman Islands became a dependency of Jamaica pursuant to the Cayman Islands Act 1863, an Act of Parliament. The Islands were not constituted as a dependency in so many words, but by dint of the provisions of the Act, which, as Ian Hendry and Susan Dickson point out in their book "*British Overseas Territories Law*"[22], "*gave the Governor, legislature and courts of Jamaica extensive powers in relation to the Cayman Islands, and in effect gave the Governor the same powers in relation to the Cayman Islands as if they had been part of Jamaica*"[23].

44. The following provisions of the Cayman Islands Act 1863 are of particular relevance and importance:

    44.1 Section 2 conferred power on the legislature of Jamaica "*to make Laws for the Peace, Order and Good Government of the said Islands*".

    44.2 Section 5 directed that "*the Laws now in force in Jamaica shall from the Date of this Act be deemed to be in force in the said Islands, so far as the same shall be applicable to the Circumstances thereof*".

    44.3 Section 6 stated that "*The Officer administering the Government of Jamaica shall have, so far as may be, the same Powers and Authorities in respect of the said Islands as if the same had been Part of the Island of Jamaica*".

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[22] London, Hart Publishing, 2011 (first edition), page 311.

[23] The Privy Council in Al Sabah v Grupo Torras SA described the Cayman Islands as having been made a dependency of Jamaica by virtue of the Cayman Islands Act 1863: see [2005] UKPC 1 [2005] 2 AC 333, 343G. The Cayman Islands Government itself makes the same point at https://www.gov.ky/history.

44.4 Section 7 stipulated that the Supreme Court of Jamaica "*shall have and exercise, in respect to Suits, Actions, Questions, or Prosecutions arising in the said Islands which may not be lawfully triable by any Authority therein, or which, in conformity with any Law or Regulation in force therein, may be referred for the Decision of the said Court, the same Jurisdiction and Power as if the same Islands were part of the Island of Jamaica*".

45. The Cayman Islands Act 1863 did not confer on the Governor and legislature of Jamaica sole power to make laws in respect of the Cayman Islands: the local Justices and Vestry[24] were permitted to make laws and regulations for various local purposes, pursuant to section 3.

46. In "*Commonwealth and Colonial Law*"[25] Sir Kenneth Roberts-Wray states that, following the application under the Cayman Islands Act 1863 of all Jamaican laws then in force to the Cayman Islands, "*other Jamaica laws were subsequently extended to the islands*". Roberts-Wray ought perhaps to have made it clear that these extensions were, however, neither comprehensive nor automatic: only some Jamaican laws were so extended, by express provision. It is unnecessary to go into detail. In summary:

46.1 The first set of Jamaican laws to be extended to the Cayman Islands were specified in Schedule III of the Cayman Islands Government Law 1893[26]. Schedule III contains by no means every law passed in Jamaica since 1863 but, rather, an evidently deliberate selection.

46.2 The following year various amendments were made to the Cayman Islands Government Law 1893[27]. Seven Jamaican laws which had

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[24] The Vestry was the name for a group of representatives in the Cayman Islands which exercised legislative powers. The Vestry comprised the lower house of what was at the time a bicameral legislature. An Assembly of Justices comprised the upper house. See further Elizabeth W Davies, "*The Legal System of the Cayman Islands*", Law Reports International, Oxford 1989, page 45.

[25] London, Stevens & Son, 1966, page 849.

[26] See the digitised copy of the compendium of laws passed in 1893 at https://ecollections.law.fiu.edu/jamaica/51/. The Cayman Islands Government Law 1893 may be found at pages 169-187.

[27] By the Cayman Islands Government Law 1893, Amendment Law 1894, which can be found at pages 33-34 of https://ecollections.law.fiu.edu/jamaica/57.

been passed between 1876 and 1893 were added to Schedule III.

46.3 In the years that then followed doubts arose as to the domestic effect in the Cayman Islands of repeals and amendments made subsequently by the Jamaican legislature to the laws mentioned in the Cayman Islands Government Law 1893. Those doubts were resolved by the Cayman Islands Government Law 1893, Amendment Law 1906. This specified, simply, that all such repeals and amendments "*shall operate as the repeal, or amendment, as the case may be, of the same in the Cayman Islands*"[28].

46.4 Thereafter the practice of the Jamaican legislature was, variously, either to pass laws from time to time which extended certain specific earlier Jamaican laws to the Cayman Islands, or, when passing a specific law, to include a provision in it which extended it to the Cayman Islands. For example:

46.4.1 The Criminal Evidence (Cayman Islands) Law 1923 extended the Criminal Evidence Law 1911 as amended, and subject to certain exceptions, to the Cayman Islands[29].

46.4.2 Section 10 of the Consular Conventions Law 1956 expressly extended that Law to the Cayman Islands, and to the Turks and Caicos Islands[30].

47. By contrast neither the REJAL 1923 (J) nor the FJ(RE)L 1936 (J) were extended to the Cayman Islands, and as I have already noted equivalent laws were not enacted locally either, at the time. But neither extensions nor local enactments were needed. The Supreme Court of Jamaica already exercised an extensive jurisdiction over the Cayman Islands by means of a statutory fiction that they were part of the island of Jamaica, under section 7 of the Cayman Islands Act 1863[31]. Given the comparatively undeveloped nature of the economy of the Cayman Islands in the first half of the twentieth century,

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[28] See the Cayman Islands Government Law 1893 Amendment Law 1906, at https://ecollections.law.fiu.edu/jamaica/68/.

[29] See https://ecollections.law.fiu.edu/jamaica/88/ at page 164.

[30] See https://ecollections.law.fiu.edu/jamaica/119 at page 157.

[31] See paragraph 44.4 above.

it is unlikely that there would have been much demand to enforce judgments there which had been obtained from a superior court in the United Kingdom. Nevertheless, had a creditor with such a judgment wanted to enforce it in the Cayman Islands, the creditor would have been able to apply to the Supreme Court of Jamaica, pursuant to either section 2(1) of the REJAL 1923 (J) or section 4(1) of the FJ(RE)L 1936 (J), to have the judgment registered in the Supreme Court, and, upon the judgment being so registered, because of the Supreme Court's extensive jurisdiction over the Cayman Islands, it would then have been enforceable in the Cayman Islands, as readily as it would have been enforceable in Jamaica. This would also explain why none of the 32 Orders in Council extending Part II of the AJA 1920 mentioned the Cayman Islands by name: no specific Order was required, it being sufficient to make an Order extending Part II to Jamaica.

48. This would have remained the position until 4 July 1959, when the Cayman Islands Act 1863 ceased to have effect. It is to this event, and to the related constitutional changes that took place in the Cayman Islands around that time, that I now turn.

E. Constitutional change in the British Caribbean in the late 1950s and early 1960s

49. In the late 1950s and early 1960s there were significant constitutional changes throughout what was then known as the British Caribbean, as a number of countries gained increasing degrees of self-government. This period is marked by four events of particular importance to the Cayman Islands:

    49.1 First, the establishment on 3 January 1958 of the West Indies Federation, of which Jamaica was a member (together with the Cayman Islands and the Turks and Caicos Islands as its dependencies).

    49.2 Secondly, the grant of separate constitutions to Jamaica, the Cayman Islands, and the Turks and Caicos Islands, and the repeal of the Cayman Islands Government Act 1863, on 4 July 1959.

    49.3 Thirdly, the dissolution of the West Indies Federation on 1 June 1962.

    49.4 Fourthly, the attainment of independence by Jamaica on 6 August 1962, in part pursuant to the Jamaica Independence Act 1962 and in part pursuant to the West Indies Act 1962, and the grant of a new constitution to the Cayman Islands at the same time.

50. It is necessary to consider each of these events in a little detail, in turn.

F. The establishment of the West Indies Federation in 1958

51. There was growing interest in the early 1950s throughout the British Caribbean in the adoption of some form of self-government. Discussions ensued, supported by the government of the United Kingdom. This culminated in the decision, in 1956, by most of the members of the British Caribbean to form a federation, with the intention that the federation would in due course attain its own statehood, independence, and sovereignty. In due course the federation became known as the West Indies Federation. The legal basis for the Federation was provided by the British Caribbean Federation Act 1956. The countries which elected to join the Federation were Barbados, Jamaica, Antigua, Montserrat, Saint Christopher, Nevis and Anguilla, Trinidad and Tobago, Dominica, Grenada, Saint Lucia and Saint Vincent, together with their dependencies. Accordingly the Cayman Islands and the Turks and Caicos Islands, as dependencies of Jamaica, joined the Federation. The Federation was formally created with effect from 3 January 1958 by the West Indies (Federation) Order in Council 1957 (SI 1957/1364). The political seat of the Federation was on the island of Trinidad. Political disagreements between the members of the Federation meant that it would prove to be a short-lived affair.

52. The Federation had its own Constitution, annexed to the 1957 Order in Council. This provided in Chapter II for a Federal Legislature, with power to make laws for the peace, order and good government of the Federation on a range of areas or topics identified in the Third Schedule of the Constitution. The Constitution also provided in Chapter V for the establishment of a Federal Supreme Court, with its own justices.

53. The library of the Institute of Advanced Legal Studies at the University of London holds various legal materials relating to the Federation, which it appears to have inherited from the Foreign Office some years ago[32]. It is convenient to mention at this point that, on examining these materials, it transpires that among the laws that the Federal Legislature enacted in its comparatively short existence was the Overseas Judgments (Reciprocal

[32] None of the Inns of Court libraries in London carry any legal materials relating to the Federation, and although the official archive of the Federation is held at a dedicated site at the University of the West Indies in Barbados (see www.wifac.org), remote access to the contents of the archive is regrettably not straightforward.

Enforcement) Act 1960 ("the OJ(RE)A 1960 (WIF)").

54. Since the islands of Trinidad and Tobago consider that this Act still forms part of their laws, a copy may be found in the Digital Legislative Library of the Government of Trinidad and Tobago[33].

55. Section 1(2) of the OJ(RE)A 1960 (WIF) expressly states that it applies to the Cayman Islands and to the Turks and Caicos Islands.

56. To all intents and purposes, the OJ(RE)A 1960 (WIF) copied the FJ(RE)A 1933. By section 3(1), the Governor-General of the Federation was empowered to direct by Order that Part II of the OJ(RE)A 1960 (WIF) should apply to any overseas country and to such courts in that overseas country as the Order should specify, provided that the Governor-General was first satisfied that substantial reciprocity of treatment would be assured in that overseas country for judgments given in the superior courts of the Federation. By section 4(1), the judgment creditor under a judgment to which Part II applied was entitled within six years after the date of the judgment to have the judgment registered in the superior court of any state which was a member of the Federation; and by section 4(2) a registered judgment was to be of the same force and effect as if the judgment had been a judgment originally given by the registering court.

57. The IALS library has a slim bound volume of subsidiary legislation made by the Federation. A note at the beginning of the volume states that it is incomplete. Nevertheless, the volume contains a handwritten index of Orders and Proclamations, on printed forms which have the typical look and feel of official government forms produced in the 1950s and 1960s. The indices have clearly been written by a number of different people, giving the distinct impression that they were compiled contemporaneously. They may, one imagines, have very possibly been compiled by Foreign Office staff in London. The indices list all the Orders and Proclamations by title, in numbered sequence, for each year of the Federation's existence. Each annual index is evidently a complete list, although not all of the Orders and Proclamations listed are then to be found in the volume. It is clear from the indices that, no doubt because of the Federation's short life, no Order was ever made by the Governor-General under section 3 of the OJ(RE)A 1960 (WIF).

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[33] See http://laws.gov.tt/pdf/Cap7.pdf

G. The grant of separate constitutions to Jamaica, the Cayman Islands, and the Turks and Caicos Islands, and the repeal of the Cayman Islands Government Act 1863, in 1959

58. In response to increasing pressure from Jamaica for greater independence, separate Constitutions were granted with effect from 4 July 1959 by the Privy Council:

    58.1 to Jamaica by The Jamaica (Constitution) Order in Council 1959 (SI 1959/862), in the exercise of powers contained in the Jamaica Act 1866;

    58.2 to the Cayman Islands by The Cayman Islands (Constitution) Order in Council 1959 (SI 1959/863), in the exercise of powers contained in the Cayman Islands and Turks and Caicos Islands Act 1958; and

    58.3 to the Turks and Caicos Islands by The Turks and Caicos Islands (Constitution) Order in Council 1959 (SI 1959/864), again in the exercise of powers contained in the Cayman Islands and Turks and Caicos Islands Act 1958.

59. Simultaneously with the grant of these Constitutions, both the Cayman Islands Act 1863 and an equivalent instrument relating to the Turks and Caicos Islands[34] ceased to have effect, pursuant to section 2(1) of the Cayman Islands and Turks and Caicos Islands Act 1958.

60. There are several provisions of the Cayman Islands and Turks and Caicos Islands Act 1958 (the 1958 Act") and The Cayman Islands (Constitution) Order in Council 1959 ("the 1959 Constitution") to which I should draw attention.

    60.1 Section 2(3) of the 1958 Act stipulated that the "*cesser*" of both the Cayman Islands Act 1863 and the equivalent instrument relating to the Turks and Caicos Islands pursuant to section 2(1) "*shall not affect the continued operation of any other law in force in any of the said Islands immediately before the appointed day*[35]*; but an Order in*

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[34] An Order in Council made under the Turks and Caicos Islands Act 1873.

[35] By a combination of section 3 of the 1959 Constitution and section 2 of the Jamaica (Constitution) Order in Council 1959, the appointed day was 4 July 1959.

Council under this section may make or provide for the making of such modifications or adaptations in, and such repeals of, any such laws as may appear to Her Majesty to be necessary or expedient in consequence of the passing of this Act".

60.2 By section 4(1) of the 1959 Constitution, the office of the Governor of the Cayman Islands was constituted; and section 4(2) provided that "*the person who holds the office of Captain-General and Governor-in-Chief of Jamaica shall be the Governor of the Islands*".

60.3 By section 24(4) of the 1959 Constitution the assembly of the Justices and Vestry of the Cayman Islands was abolished, and in its place, pursuant to section 24(1), a new Legislative Assembly with elected members was created. Power to make laws for the peace, order and good government of the Islands was conferred on the Governor, but with the advice and consent of the Legislative Assembly, under section 36.

60.4 Under section 56(1) of the 1959 Constitution the legislature of Jamaica continued to enjoy power to "*make laws for the peace, order and good government of the Islands*", just as it had done under section 2 of the Cayman Islands Act 1863[36], but, by section 56(2) it was provided that any law enacted by the legislature of Jamaica "*shall not apply to the Islands unless – (a) it is in express terms applied thereto; and (b) the Governor has by Proclamation in the Islands declared that the law shall apply to the Islands…*".

61. Two further sections of the 1959 Constitution are of particular significance for present purposes – sections 57 and 65:

61.1 By virtue of section 57(1) the Supreme Court of Jamaica ceased to exercise original jurisdiction over the Cayman Islands, and was confined to the exercise of an appellate jurisdiction only. Section 57(1) stipulated that the Supreme Court of Jamaica "*shall have such jurisdiction to hear and determine appeals (including reserved questions of law and cases stated) from the Grand Court of the [Cayman] Islands and, in connection with such appeals, such powers and authorities as may be conferred upon it by any law of the Legislature of Jamaica enacted under the provisions of the law*

[36] See paragraph 44.1 above.

foregoing section[37] or any law in force in the Islands immediately before the appointed day."

61.2 Section 65(1) imposed a general obligation to construe "*all existing instruments…with any adaptations and modifications which may be necessary to bring them into accord with the provisions of this Order*".

61.3 Expressly without prejudice to that obligation, section 65(2) conferred a specific power on the Governor of the Cayman Islands at any time within the next 12 months by regulation to bring "*instruments to which this subsection applies into accord with the provisions of this Order or otherwise for giving effect, or enabling effect to be given, to those provisions*".

61.4 The definition of "*existing instruments*" in section 65(4) was in the widest possible terms: "'*existing instruments' means laws, rules, regulations, by-laws, proclamations, orders, licences, permits and other instruments having the force of law…which are in force in the Islands immediately before the appointed day…*".

62. It is incontestable – as it would seem to me – that, because of the extensive jurisdiction which the Supreme Court of Jamaica exercised over the Cayman Islands under section 7 of the Cayman Islands Act 1863, both the REJAL 1923 (J) and the FJ(RE)L 1936 (J) were among the laws "*in force in [the Cayman Islands] immediately before the appointed day*", within the meaning of section 2(3) of the 1958 Act. Accordingly, by section 2(1) of that Act, the cesser of the Cayman Islands Act 1863 on 4 July 1959 did not affect the continued operation of these laws in the Cayman Islands.

63. The only puzzle this creates is how to reconcile the continued operation of these laws with the fact that the Supreme Court of Jamaica ceased with effect from 4 July 1959 to exercise original jurisdiction over the Cayman Islands. How is one to understand the references in these laws to the Supreme Court of Jamaica, from 4 July 1959?

64. The answer is obtained by applying section 65(1) of the 1959 Constitution. Since both the REJAL 1923 (J) and the FJ(RE)L 1936 (J) were among the laws "*in force in [the Cayman Islands] immediately before the appointed day*"

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[37] This is a reference to section 56: see paragraph 60.4 above.

within the meaning of section 2(3) of the 1958 Act, so by the same reasoning they must have been "*existing instruments…having the force of law in the Islands before the appointed day*" within the meaning of section 65(4) of the 1959 Constitution. It follows that they were subject to the general obligation in section 65(1) that they be construed with effect from 4 July 1959 "*with any adaptations and modifications which may be necessary to bring them into accord*" with the provisions of the 1959 Constitution. It is surely impossible to resist the conclusion that, duly observing that obligation, the references in both laws to the Supreme Court of Jamaica should be understood from 4 July 1959 as references to the Grand Court of the Cayman Islands.

65. Let me put the point another way. Both the REJAL 1923 (J) and the FJ(RE)L 1936 (J) must have continued to apply to the Cayman Islands from 4 July 1959, because they formed part of the somewhat complicated patchwork of laws in force in the Islands immediately before that date, and section 2(3) of the 1958 Act required that the laws making up that patchwork should continue to operate, notwithstanding the cesser of the Cayman Islands Act 1863. Since the 1959 Constitution plainly deprived the Supreme Court of Jamaica of its original jurisdiction over the Cayman Islands, it is only consonant with the obligation under the 1959 Constitution to construe all existing instruments so that they accord with the Constitution to hold that the Supreme Court's original jurisdiction, by necessary adaptation or modification of the REJAL(J) 1923 and the FJREL(J) 1936 under section 65(1) of the 1959 Constitution, must have been passed to, or devolved upon, the Grand Court. Any contrary conclusion would cause these laws to cease to apply to the Cayman Islands, creating an exception to section 2(3) of the 1958 Act, contrary to the clear intention and purpose of that provision.

66. It would have been open to the Privy Council, in the exercise of its powers under section 2(3) of the 1958 Act, to direct that, in both the REJAL 1923 (J) and the FJREL 1936 (J), all references to the Supreme Court of Jamaica should be read with effect from 4 July 1959 as references to the Grand Court, but that step was never taken; indeed, a search of the London Gazette suggests that the Privy Council never issued any Orders in Council under section 2(3) of the 1958 Act. Similarly it would have been open to the Governor of the Cayman Islands, in the exercise of his powers under section 65(2) of the 1959 Constitution, to issue a regulation to the same effect, provided he did so within 12 months of 4 July 1959. That step was evidently not taken either. One can imagine that applications to enforce foreign judgments in the Cayman Islands would have been sufficiently infrequent in the late 1950s and early 1960s that, in all likelihood, no thought might have been given to

the exercise of these powers at the time. Nevertheless their exercise was not necessary: the obligation in section 65(1) of the 1959 Constitution was clear. There might have been some uncertainty about its results in some instances – but not, I suggest, when it comes to the references to the Supreme Court of Jamaica in these laws. Straightforwardly from 4 July 1959 they are to be understood as references to the Grand Court.[38]

H. The dissolution of the West Indies Federation in June 1962

67. Disagreements concerning various aspects of the West Indies Federation became more intractable. A referendum was held in Jamaica in September 1961 at which a majority of those participating expressed a wish to leave the Federation. Not long afterwards Trinidad and Tobago also expressed a wish to leave. Both countries then formally sought independence from the United Kingdom. Without Jamaica and Trinidad and Tobago, the Federation could not realistically survive.

68. Accordingly in April 1962 the Westminster Parliament enacted the West Indies Act 1962. Section 1 enabled the Crown by Order in Council to provide for the secession of dominions and colonies from, and for the dissolution of, the West Indies Federation. In the exercise of that power the Privy Council then made the West Indies (Dissolution and Interim Commissioner) Order in Council 1962 (SI 1962/1084). This came into effect on 29 May 1962. It established the office of an Interim Commissioner for the various territories that were members of the Federation, and gave him power by proclamation to appoint the day on which the Federation would be dissolved.

69. By a proclamation made by the Interim Commissioner and published in the

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[38] There is a further point which it is convenient to make here. In 1964, as discussed in detail below, the first revised edition of the laws of the Cayman Islands was published. Among the laws included in the first revised edition was the Interpretation Law. Section 42 of the Interpretation Law provided that whenever any "*Imperial Act or Jamaica Law is extended or applied to the Islands, such Act or Law shall be read with such formal alterations as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to make it applicable to the circumstances*." That provision would also appear to have required references to the Supreme Court of Jamaica in the REJAL 1923 (J) and the FJ(RE)L 1936 (J) to be understood as references to the Grand Court.

West Indies Gazette[39], the Federation was dissolved on 1 June 1962.

70. When making this proclamation, the Interim Commissioner also made the Interim Commissioner (Continuation and Adaptation of Laws) Order 1962, in the exercise of a power contained in article 16 of the West Indies (Dissolution and Interim Commissioner) Order in Council 1962. A copy of this Order can be found among the materials relating to the West Indies Federation at IALS in London.

71. As its title suggests, by this Order various laws which had been made by the Federation in its short life continued to have effect, subject to certain amendments, notwithstanding its dissolution.

72. In her book "*The Legal System of the Cayman Islands*"[40], Elizabeth W Davies states that among the Acts of the Federation which continued in operation pursuant to this Order was the OJ(RE)A 1960 (WIF). Having examined the Order at IALS in London, I am able to confirm that this is correct. Section 3 of the Order provides that the laws listed in Part I of the First Schedule "*shall remain valid after the beginning of the appointed day as respects all the Territories*". The OJREA(WIF) 1960 is the third Act listed in Part I of the First Schedule. "*The appointed day*" is the day on which the Federation was dissolved, and "*the Territories*" has the same meaning as assigned by article 2 of the West Indies (Dissolution & Interim Commissioner) Order in Council (SI 1962/1084): "*the Territories*" therefore includes the Cayman Islands. Section 4 provides that the laws listed in Part I of the First Schedule "*shall have effect…subject to the adaptations and modifications (if any) respectively specified in relation to such laws in the second column of the Second Schedule to this Order*". The Second Schedule details a number of unsurprising adaptations and modifications to the OJ(RE)A 1960 (WIF), the evident purpose of which is to enable the Act to continue to apply in each territory following the dissolution of the Federation. For example, references to "*the Governor-General*" in the OJ(RE)A 1960 (WIF) are replaced with "*the Governor of a Territory*", and references to "*the Chief Justice of the Federation, after consultation with the Chief Justices of the superior courts of the Territories*" are replaced with "*the Chief Justice of any*

[39] A digitised copy of the Proclamation is available at https://ufdc.ufl.edu/UF00076857/00242/images.

[40] Law Reports International, Oxford 1989, referred to in footnote 24 above.

Territory or Territories".

73. There can be no doubt from this material that the OJ(RE)A 1960 (WIF) continued to apply to the Cayman Islands, subject to certain adaptations and modifications, notwithstanding the dissolution of the Federation on 1 June 1962.

I. Independence for Jamaica and the grant of new Constitutions for Jamaica, the Cayman Islands and the Turks and Caicos Islands in August 1962

74. Jamaica attained its independence on 6 August 1962, in part pursuant to provisions in the West Indies Act 1962, and in part pursuant to the Jamaica Independence Act 1962. At the same time, almost all the remaining political and legislative ties between Jamaica on the one hand and the Cayman Islands and the Turks and Caicos Islands on the other were severed. The Cayman Islands and the Turks and Caicos Islands ceased to be dependencies of Jamaica[41], and in the exercise of powers contained in the West Indies Act 1962 the Privy Council granted new Constitutions:

    74.1 to Jamaica by the Jamaica (Constitution) Order in Council 1962 (SI 1962/1550);

    74.2 to the Cayman Islands by the Cayman Islands (Constitution) Order in Council 1962 (SI 1962/1646); and

    74.3 to the Turks and Caicos Islands by the Turks and Caicos Islands (Constitution) Order in Council (SI 1962/1649).

75. Several provisions of the Cayman Islands (Constitution) Order in Council 1962 ("the 1962 Constitution") are of particular significance:

    75.1 The office of Governor of the Cayman Islands was abolished and by section 3 the office of Administrator was created in its place.

    75.2 The legislature of Jamaica ceased to enjoy any further power to make

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[41] "*Jamaica*" was defined in section 4(1) of the Jamaica Independence Act to include "…*any other territories which at the passing of this Act are dependencies of the Colony of Jamaica, but does not include the Cayman Islands or the Turks and Caicos Islands*…".

laws for the Cayman Islands: instead, by section 30, power to make laws of the peace, order and good government of the Islands was conferred exclusively on the Administrator with the advice and consent of the Legislative Assembly.[42]

75.3 By section 49, appellate jurisdiction over the Grand Court was removed from the Supreme Court of Jamaica and given to the Court of Appeal of Jamaica.

75.4 Section 56(1) preserved the validity of all existing laws: "*All Acts, Ordinances, rules, regulations, orders and other instruments made under or having effect by virtue of [The Cayman Islands (Constitution) Order in Council 1959] and having effect as part of the law of the Islands immediately before the appointed day*[43] *shall on and after the appointed day have effect as if they had been made under or by virtue of this Order.*"

75.5 Like section 65(1) of the 1959 Constitution[44], section 56(2) of the 1962 Constitution required all "*existing laws*" to be construed "*with such modifications, adaptations, qualifications and exceptions as are necessary to bring them into conformity with this Order*".

75.6 Like section 65(2) of the 1959 Constitution[45], section 56(3) of the 1962 Constitution conferred a power on the Administrator to make amendments to existing laws in order to bring them into conformity with the 1962 Constitution or otherwise for giving effect or enabling effect to be given to the provisions of the 1962 Constitution. This power was exercisable within 18 months.

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[42] The Constitutional Commission of the Cayman Islands has a section of its website devoted to the constitutional history of the Islands (see https://www.constitutionalcommission.ky/constitutional-history), from where a PDF can be obtained entitled "*Our Constitutional History*". This is a generally helpful document, although it is surely wrong to assert that the 1962 Constitution "*did not…differ substantively from the 1959 predecessor*".

[43] The "*appointed day*" was defined in section 2(1) as 6 August 1962.

[44] See paragraph 61.2 above.

[45] See paragraph 61.3 above.

75.7 The definition of "*existing laws*" in section 55(4) was only a little less wide than the definition of "*existing instruments*" in section 65(4) of the 1959 Constitution[46]: "'*existing laws' means laws and instruments…having effect as part of the law of the Islands immediately before the appointed day*".

76. As it seems to me, it would have been open to the Administrator of the Cayman Islands, in the exercise of his powers under section 56(3) of the 1962 Constitution, to have made amendments to the REJAL 1923 (J) and the FJ(RE)L 1936 (J), so as to cause the references in those laws to the Supreme Court of Jamaica to be read as references to the Grand Court, provided he acted within 18 months of 6 August 1962. That step was not taken, however. Since the comparable power in section 65(2) of the 1959 Constitution had not been exercised to this effect, it would not be surprising if no one thought to exercise the power in the 1962 Constitution to this effect.

77. The failure of the Administrator to exercise this power in respect of the REJAL 1923 (J) and the FJ(RE)L 1936 (J) is, however, surely of no consequence. If, for the reasons given above, with effect from 4 July 1959 the Grand Court acquired the jurisdiction which was formerly exercisable in respect of the Cayman Islands by the Supreme Court of Jamaica under the REJAL 1923 (J) and the FJ(RE)L 1936 (J), it is impossible to see how any alteration in that jurisdiction can have taken place when, on 6 August 1962, the 1962 Constitution was brought into effect. There does not appear to be any basis for any other conclusion, having regard to sections 56(1) and 56(2) of the 1962 Constitution, which, as I say, preserved all existing laws and required all existing laws to be construed with all necessary adaptations to bring them into conformity with the 1962 Constitution.

78. The Order in Council giving effect to the 1962 Constitution was, inadvertently, not laid before both Houses of Parliament before it was made and brought into effect[47], and when, several years later, this fact was discovered, so as to resolve any consequential doubts that there might then be concerning its validity, it was replaced with effect from 5 November 1965 by a new Order in Council. This revoked the 1962 Order in Council but reproduced all its provisions with retrospective effect from 6 August 1962:

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[46] See paragraph 61.4 above.

[47] See the debate in the House of Commons on 4 November 1965 at https://api.parliament.uk/historic-hansard/commons/1965/nov/04/cayman-turks-and-caicos-islands.

see the Cayman Islands (Constitution) Order 1965 (SI 1965/1860). Neither this administrative error, nor the means by which it was put right, can have had any effect on the validity of the point made in the preceding paragraph.

79. The 1962 Constitution was replaced, in due course, with effect from 22 August 1972, with the 1972 Constitution (see the Cayman Islands (Constitution) Order SI 1972/1101). The 1972 Constitution was in turn replaced, with effect from 6 November 2009, by the 2009 Constitution (see the Cayman Islands Constitution Order SI 2009/1379). Both the 1972 and 2009 Constitutions contain, as one would expect, provisions saving all existing laws.

J. The first revised edition of the laws of the Cayman Islands

80. Given that the Cayman Islands acquired, under the 1959 Constitution, a greater degree of legislative independence from Jamaica than they had enjoyed previously, and given that they acquired complete legislative independence from Jamaica under the 1962 Constitution, it was judged to be appropriate for a first revised edition of the laws of the Cayman Islands to be compiled and published.

81. This substantial and no doubt difficult task was carried out by two commissioners who were appointed pursuant to the Revised Edition (Laws of the Cayman Islands) Law 1960.

82. The powers of the commissioners were specified in detail in section 4 of this Law. In Al Sabah[48] the Privy Council, summarising these powers, observed that the commissioners could "*make a variety of formal and verbal changes (no doubt in the interests of clarity, simplicity, uniformity and accuracy)*". But they had no power of repeal: section 6(1) expressly stated that the powers conferred on the commissioners by section 4 "*shall not be taken to imply any power in them to make any alteration or amendment in the matter or substance of any Act or Law or part thereof*". If they did consider such an alteration or amendment to be desirable, they were required by section 6(2) to draft a bill "*setting forth such alterations and amendments*", which bill had to be submitted to the Legislative Assembly "*and dealt with in the ordinary way*". This restraint on the commissioners' powers is unsurprising: section 6 ensured, consistent with constitutional propriety, that the commissioners had no legislative powers of their own, and that all legislative

[48] Al Sabah v Grupo Torras SA [2005] UKPC 1 [2005] 2 AC 333, paragraph [20].

power continued to be vested in, and to be exercisable only by, the Legislative Assembly.

83. In the course of their labours the commissioners prepared two bills, one setting out various amendments and the other listing various repeals which they recommended should be made. These bills were duly submitted to, and then passed by, the Legislative Assembly: they became, respectively, the Statute Law Revision (Amendments) Law 1963 and the Statute Law Revision (Repeals) Law 1963. No amendments were made to the REJAL 1923 (J), nor to the FJ(RE)L 1936 (J), nor to the OJREA 1960 (WIF), nor indeed to any of the West Indies Federation laws listed in the First Schedule of the Interim Commissioner (Continuation and Adaptation of Laws) Order 1962. Just five Jamaican laws were repealed; neither the REJAL 1923 (J) nor the FJ(RE)L 1936 (J) were among them. None of the laws which had been made by the West Indies Federation were repealed.

84. The result of the commissioners' efforts was a 3-volume work of more than 2200 pages, which was published in 1964. There is a copy in the archive of the Inner Temple Library, which can be examined on application. The Preface states that it contains "*the Laws of the Cayman Islands in force on 31st day of December 1963, together with those Laws of Jamaica applicable to the Cayman Islands which were in force on that date and includes the modifications effected by and under section 56 of the Cayman Islands (Constitution) Order in Council 1962*."

85. There is a chronological list of Jamaican laws which in the commissioners' view applied in the Cayman Islands, at pages xxxi to xxxvi. Neither the REJAL 1923 (J) nor the FJ(RE)L 1936 (J) appear in that list.

86. There is no mention in the first revised edition of the OJREA 1960 (WIF), nor indeed of any of the other West Indies Federation laws listed in the First Schedule of the Interim Commissioner (Continuation and Adaptation of Laws) Order 1962. It is not altogether clear from the Preface that the commissioners actually gave any thought to the possibility that West Indies Federation laws might continue to apply in the Cayman Islands[49].

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[49] The failure of the commissioners to refer to any West Indies Federation laws is particularly surprising given that section 5 of the Revised Edition (Laws of the Cayman Islands) Law 1960 specifically referred to them: under section 5, the

87. The failure of the commissioners to include in the first revised edition the REJAL 1923 (J), the FJ(RE)L 1936 (J), and the OJREA 1960 (WIF) (and indeed the other West Indies Federation laws listed in Schedule 1 of the Interim Commissioner (Continuation and Adaptation of Laws) Order 1962), is certainly regrettable. Given the difficulties of the task with which they were charged, it is perhaps understandable too. The real question is whether the omission of these Laws had any substantive legal consequences.

88. Since the commissioners were essentially compilers and not lawmakers, not possessed of any power of repeal, and since the commissioners did not ask the Legislative Assembly to repeal these Laws, it is difficult to see how the omission of these Laws can have effected their repeal. The only proper conclusion, I would contend, is that their omission had no substantive legal consequences, that they continued to form part of Cayman Islands law, and – since they have never subsequently been repealed – that they still form part of Cayman Islands law today.

89. Section 10 of the Revised Edition (Laws of the Cayman Islands) Law 1960 might provide, I would acknowledge, some basis for an argument to the contrary. This section provided that, once it came into force, the first revised edition "*shall be without any question whatever in all Courts of Justice and for all purposes whatsoever the sole and only proper edition of the Laws of the Cayman Islands in force on the 31st day of December 1963*…". It might be said that this provision made the first revised edition the irrebuttable or irrefutable record of all the laws in force in the Cayman Islands as at 31 December 1963, rendering it proof against any and all errors, whether of inclusion or exclusion. It might be said that this provision precludes any argument that laws wrongly included were not in fact in force, and that it precludes any argument that laws wrongly excluded were in fact still in force.

90. This argument faces at least two significant hurdles.

91. First, the decision of the Privy Council in Al Sabah (op cit) strongly suggests that errors in the compilation of the first revised edition should not be

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commissioners were permitted to include in the revised edition reprints of "*such Imperial Statutes, Orders in Council, Letters Patent, Royal Instructions, Acts and Laws of the Legislatures of Jamaica and the West Indies and other Instruments as the Governor may think desirable.*" [emphasis added]

disregarded.

92. In the course of preparing the first revised edition the commissioners prepared a single Bankruptcy Law, containing an amalgam of various provisions in two Jamaican laws, the Bankruptcy Law 1880 and the Cayman Islands Administration of Justice Law 1894. One of the provisions of the Bankruptcy Law which the commissioners prepared – section 156 – stipulated that "*All the courts in bankruptcy and the officers of such courts, shall act in aid of and be auxiliary to each other in all matters of bankruptcy and any order of any one court in a proceeding in bankruptcy may, on application to another court, be made an order of such other court, and be carried into effect accordingly…*". In Al Sabah the Privy Council was required to consider the meaning of these words.

93. The background to the decision is briefly as follows. A debtor resident in the Bahamas, indebted in a substantial sum to a Spanish company under the terms of an English judgment, left the judgment unsatisfied. He was adjudged bankrupt in the Bahamas. His trustee in bankruptcy alleged that the debtor was linked to two trusts which controlled assets which were being used for his benefit. The trusts were subject to Cayman Islands law. The trustee obtained a letter of request from the Bahamian bankruptcy court addressed to the Grand Court in the Cayman Islands seeking its assistance: in particular, it asked that the trustee be recognised as a trustee in bankruptcy in the Cayman Islands, in order that the trustee could then apply to the Grand Court to have the trusts set aside. The Grand Court acceded to this request, relying inter alia on section 156 of the Bankruptcy Law. An appeal to the Cayman Islands Court of Appeal was dismissed. Although various views were given by the Grand Court and the Court of Appeal concerning the proper construction of section 156, common to all of them was the notion that the opening words of section 156 (viz. "*All the courts in bankruptcy*…") were directed at some or all foreign courts: in other words, that these words purported to have extraterritorial effect.

94. The Privy Council examined the legislative history of section 156 and noted that it had been copied by the commissioners in the course of their preparation of the first revised edition from section 161 of the Jamaican Bankruptcy Law 1880. The opening words had made perfect sense when that Law had been passed, in the domestic context in Jamaica at the time, for bankruptcy law was administered in Jamaica then by several district courts whose jurisdiction was based on the residence or place of business of the debtor. The opening words had no extraterritorial effect: they merely compelled co-operation between the district courts which administered

bankruptcy law in Jamaica. But those words, indeed the entire section, made no sense in the domestic context in the Cayman Islands when the first revised edition was prepared, because the Cayman Islands had then but a single bankruptcy court. The Privy Council concluded that the commissioners had not understood the effect of section 161 of the Jamaican Bankruptcy Law 1880, and had failed to appreciate "*that there was no way in which [section 161] needed to be, or could sensibly be, transposed into a legal system under which there was only one bankruptcy court*"[50]. It had been included in error, and had no practical effect.

95. The Privy Council does not appear to have heard any argument that section 10 of the Revised Edition (Laws of the Cayman Islands) Law 1960 rendered the first revised edition proof against all errors. That argument might have required the conclusion that the opening words of section 156 had extraterritorial effect. Section 10 is not discussed in the Privy Council's judgment. Nevertheless, it is instructive to note that, in reaching its conclusions concerning section 156, the Privy Council drew attention to the limited nature of the commissioners' powers under section 4 of the Revised Edition (Laws of the Cayman Islands) Law 1960, and to their obligation, under section 6(2), to draft a bill setting out any alterations or amendments that they wished to see in the matter or substance of any Act or Law and to submit that bill to the Legislative Assembly for its consideration. The Privy Council noted that the commissioners had not invoked this procedure in respect of section 156, which demonstrated that they had not intended the inclusion of section 156 in the first revised edition to make a significant change to the law relating to bankruptcy in the Cayman Islands. As the Privy Council put it "*It is inconceivable that the commissioners…should have intended to make a significant change of substance without invoking the procedure in section 6(2) of the 1960 Law*"[51].

96. Thus in Al Sabah the inclusion of section 156 in the first revised edition was not proof against an enquiry as to whether it had been included in error, and the failure of the commissioners to invoke the procedure in section 6(2) led to the conclusion that it had been included in error.

97. The same reasoning should be applied in respect of the omission from the first revised edition of the REJAL 1923 (J), the FJ(RE)L 1936 (J), the OJREA 1960 (WIF), and the other West Indies Federation laws which survived the

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[50] [2005] 2 AC 333, 348 at paragraph [27].

[51] [2005] 2 AC 333, 348 at paragraph [26].

dissolution of the Federation. Their omission is not proof against an enquiry as to whether they were omitted in error, and the failure of the commissioners to invoke the procedure in section 6(2) means that they were omitted in error.

98. Secondly, section 10 of the Revised Edition (Laws of the Cayman Islands) Law 1960 has undergone significant amendment and the practice nowadays is no longer for commissioners periodically to produce revised editions of all the laws in force in the Cayman Islands as at a particular date: the practice now is for revisions to be made to individual laws on a rolling basis. The equivalent provision to section 10 is now to be found in section 3 of the Law Revision Law (2020 Revision). This provides that "*The Cabinet may authorise the republication of any existing law in amended or revised form as hereinafter provided and such law shall in its revised form be, for all purposes, the only proper version of such law in the Islands*…". Even if, therefore, the first revised edition was an irrebuttable record of all the laws in force in the Cayman Islands as at 31 December 1963, under the modern regime for the revision of laws there is no statutorily-imposed presumption which would prohibit the contention that the REJAL 1923 (J), the FJ(RE)L 1936 (J), the OJREA 1960 (WIF), and the other West Indies Federation laws which survived the dissolution of the Federation, are part of the laws of the Cayman Islands today.

K. The Foreign Judgments Reciprocal Enforcement Law

99. In September 1967 the legislature of the Cayman Islands enacted the Foreign Judgments Reciprocal Enforcement Law ("the FJREL (CI)"). This law has been revised several times since, most recently in 1996. It is closely modelled on the FJ(RE)A 1933.

100. In terms substantially identical to those in section 1(1) of the FJ(RE)A 1933, section 3(1) of the FJREL (CI) provides that Part II, the operative part, may be extended to foreign countries by the Governor by order, but only if he is satisfied that upon the making of such an order "*substantial reciprocity of treatment will be assured as respects the enforcement in such country of judgments given in the Grand Court*".

101. In total 10 extension orders have been made under section 3(1): in 1971 Part II was extended to the states of Queensland, South Australia, Victoria and Western Australia, and in 1990 Part II was extended to the rest of Australia and to its external territories. These orders were then consolidated into a single order, the Foreign Judgments Reciprocal Enforcement (Australia and its External Territories) Order 1993.

102. Part II of the FJREL (CI) has never been extended to the United Kingdom.

103. The Cayman Islands already had three laws dealing with the registration of foreign judgments: the REJAL 1923 (J), the FJ(RE)L 1936 (J), and the OJREA 1960 (WIF), all as adapted. There was no need to add to this list by the enactment, in 1967, of the FJREL (CI). One might understand if the Cayman Islands Government had thought it appropriate politically in 1967 for the Cayman Islands to have its own regime for the registration of foreign judgments, so that it no longer had to rely on regimes that it had inherited historically from Jamaica and the West Indies Federation: but if that had been the motivation one would expect the laws which established these earlier regimes to have been repealed by the FJREL (CI). That did not happen. Perhaps the earlier regimes were simply overlooked. That seems quite likely, given that the commissioners who compiled the first revised edition of the laws of the Cayman Islands omitted the laws in question.

L. The Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985

104. It was not easy to obtain copies of the 32 Orders in Council which had been made under section 14(1) of the AJA 1920, particularly before the digitisation of the London Gazette, and it made good sense therefore to gather them all together into a single Order in Council. Parliament conferred the necessary power of consolidation on the Crown by way of the Civil Jurisdiction and Judgments Act 1982, which amended section 14 of the AJA 1920 so as to introduce a new subsection, subsection (3). This provides that "*Her Majesty may by Order in Council under this section consolidate any Orders in Council under this section which are in force when the consolidating Order is made.*"

105. It took two attempts to consolidate the Orders in question. Most of the consolidation was achieved in February 1984, by the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Consolidation) Order 1984. This Order revoked all 32 Orders in Council and substituted for them a single list of countries and territories to which Part II of the 1920 Act applies. Notably, however, the Cayman Islands, the British Virgin Islands, and the Turks and Caicos Islands were not included in the list. They were added to the list[52] with effect from February 1986, by the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920,

[52] Together with Montserrat, the BIOT, and the Sovereign Base Areas of Akrotiri and Dhekelia.

Part II) (Amendment) Order 1985 (SI 1985/1994).

106. I respectfully suggest that the addition of the Cayman Islands to the list with effect from February 1986 is at the very least consistent with the arguments set out in this article, for the following reasons.

106.1 The Cayman Islands cannot have been added in February 1986 to the list of countries to which Part II of the AJA 1920 applies by exercising the power of extension contained in section 14(1) of the AJA 1920 for, as explained above[53], the power of extension ceased to be exercisable long ago, in November 1933, when the Privy Council made the Reciprocal Enforcement of Judgments (General Application to His Majesty's Dominions, etc.) Order 1933. The Islands can only have been added to the list in the exercise of the power of consolidation contained in section 14(3). In order for the exercise of that power to have been lawful, Part II of the AJA 1920 must have been extended to the Cayman Islands before November 1933. As already noted, none of the 32 Orders in Council which were made under section 14(1) mentioned the Cayman Islands by name. One is compelled therefore to the conclusion that the extension of Part II to the Cayman Islands must have been effected on 20 February 1924, when Part II of the AJA 1920 was extended to Jamaica[54]: the extension of Part II to Jamaica was simultaneously effective to extend Part II to the Cayman Islands, because the Cayman Islands were a dependency of Jamaica at the time.

106.2 In order for the extension of Part II to the Cayman Islands to have been lawful, the Crown would have had to have been satisfied that reciprocal provisions had been put in place by a legislature with power to make laws for the Cayman Islands enabling judgments obtained in the superior courts of the United Kingdom to be enforced in the Cayman Islands, given the requirement for reciprocity in section 14(1). The Crown could only have been satisfied of that fact by reason of the REJAL 1923 (J), when read with section 7 of the Cayman Islands Act 1863.

106.3 It is at least arguable, given the legislative history, that in order for

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[53] See paragraphs 33 and 34 above.

[54] SR&O 1924/254. See paragraph 21 above.

the exercise of the power of consolidation to have been lawful, reciprocal provisions must still have been in place in the Cayman Islands when that power was exercised in February 1986. The necessary reciprocal provisions could only still have been in place on the basis that both the REJAL 1923 (J) and the FJ(RE)L 1936 (J) continued to form part of Cayman Islands law.

M. *Masri & Anr v Consolidated Contractors International Company SAL* (2010)

107. The principal source for the widely-held view that judgments given by the courts in England and Wales are not registrable in the Cayman Islands is the decision of the Grand Court in Masri & Anr v Consolidated Contractors International Company SAL [2010 (1) CILR 265].

108. The background to this case is as follows. The defendant owed substantial sums to the first plaintiff under various judgments which had been issued by the Commercial Court in London. The judgments were wholly or substantially unsatisfied. On the first plaintiff's application, the Commercial Court appointed the second plaintiff as receiver by way of equitable execution of various receivables which were payable to the defendant. Among these receivables was a sum payable by a company incorporated in the Cayman Islands. The first plaintiff applied to the Grand Court to have the receivership of the second plaintiff recognised in the Cayman Islands. An acting judge of the Grand Court granted the application *ex parte*, and directed the Cayman company to pay into court any monies which were payable to the defendant. When served with the Grand Court's order, it duly made a payment into court. The defendant then applied to have the order set aside. It was successful. Jones J took the view that the Grand Court had no jurisdiction to recognise and enforce the Commercial Court's appointment of the second plaintiff as a receiver, because the appointment, of itself, did not create any obligation on the part of the defendant which could be recognised by the Grand Court at common law. In the opinion of the judge, the first plaintiff ought, instead, to have asked the Grand Court to recognise and enforce the Commercial Court money judgments, whereupon the Grand Court could then have appointed a receiver locally to collect the sum payable by the Cayman company.

109. In seeking to have the *ex parte* order set aside, the defendant's lawyers took an additional point. They argued that the plaintiffs had been obliged to register the Commercial Court judgments under the FJ(RE)L 1936 (J), and that their failure to do so was fatal. I infer that the defendant's lawyers must have been relying on section 8 of the FJ(RE)L 1936 (J) (as to which see paragraph 41 above), but their argument is not recorded.

110. Jones J gave the argument short shrift:

> *[23] I should mention one other point raised on behalf of CCIC as a result of some novel and imaginative research done by junior counsel. It is said that no action may be taken on a foreign judgment in this jurisdiction without first registering it pursuant to the Jamaican Judgments (Foreign) (Reciprocal Enforcement) Act 1936. If true, this would overturn what has been understood to be the law of this country and the established practice of this court for almost 50 years. Those Jamaican statutes which applied in this country (and in some cases continue to apply) when the Cayman Islands ceased to be a dependency of Jamaica are listed in vol. 1 of The Laws of the Cayman Islands, prepared in accordance with the Revised Edition (Laws of the Cayman Islands) (Amendment) Law 1963. Suffice it to say that the Judgments (Foreign) (Reciprocal Enforcement) Act 1936 is not one of them.*

111. Having decided to set aside the *ex parte* order on the grounds that the Grand Court had no jurisdiction to recognise the appointment of the receiver, Jones J did not need, strictly, to go on and express a view as to whether the Commercial Court judgments needed to have been registered under the FJ(RE)L 1936 (J): the point was academic – and his comments accordingly are *obiter*. They were also only briefly expressed. The judge treated the omission of the FJ(RE)L 1936 (J) from the first revised edition as conclusive of the fact that it did not form part of the law of the Cayman Islands. He did not explain why its omission should have had that fatal consequence. If he had section 10 of the Revised Edition (Laws of the Cayman Islands) Law 1960 in mind, he did not say so. What arguments he may have heard, if any, concerning section 10 are not recorded in the judgment, and Al Sabah does not appear to have been cited to him.

112. All these matters together mean, I would respectfully suggest, that there are reasons to be cautious about the correctness of the views expressed in Masri concerning the FJ(RE)L 1936 (J).

N. The Cayman Islands Law Reform Commission Report, March 2013

113. The Cayman Islands Law Reform Commission considered the law concerning the enforcement of foreign judgments and interim orders in aid of foreign proceedings during 2012 and 2013. As they explained at the time, they did so in response to concerns raised by the judiciary in several court decisions. What those concerns were they did not say. Initially, in March 2012, they

published an "*Issues Paper*"[55], followed, a year later, by a "*Final Report*" in two parts: Part I[56] dealt with interim orders in aid of foreign proceedings, and Part II[57] dealt with the enforcement of foreign judgments.

114. In Part II of their Final Report, the Commission expressed *inter alia* the following opinions:

114.1 Actions to enforce foreign judgments in the Cayman Islands at common law are expensive, time-consuming, and accompanied by uncertainty as to their eventual outcome (see paragraph 27).

114.2 The only statutory regime for the recognition and enforcement of foreign judgments in the Cayman Islands is the FJREL (CI) and its associated court rules (see paragraphs 29, 32 and 33).

114.3 The only countries to which the FJREL (CI) has been extended are Australia and its External Territories, pursuant to the Cayman Islands Foreign Judgment Reciprocal Enforcement (Australia and its External Territories) Order 1993 (see paragraphs 34 and 37[58]).

114.4 "*By extension it would therefore seem to follow that a judgment from a UK superior court has to be enforced by way of common law proceedings*" and this view "*has been confirmed in the recent case of Masri*" (see paragraphs 38 and 39).

114.5 Under the Cayman Islands Act 1863, "*all the laws of Jamaica applied generally to the Cayman Islands*" (see paragraph 42).

114.6 "*The Cayman Islands Act 1958*" (evidently an incomplete reference to the Cayman Islands and Turks and Caicos Islands Act 1958) "*repealed the Cayman Islands Act 1863 and provided for the Cayman Islands to have a new constitution granted by the Cayman Islands (Constitution) Order in Council 1959…The 1959 Order in Council was revoked by the Cayman Islands (Constitution) Order in*

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[55] Available at http://www.lrc.gov.ky/portal/pls/portal/docs/1/12826506.PDF.

[56] Available at http://www.lrc.gov.ky/portal/pls/portal/docs/1/10110093.PDF.

[57] Available at http://www.lrc.gov.ky/portal/pls/portal/docs/1/10110094.PDF.

[58] There are no paragraphs numbered 35 and 36.

Council 1962…The 1962 Order in Council was however brought into force retrospectively by the Cayman Islands (Constitution) Order 1965…These constitutional instruments sought to keep in force the existing Laws of the Cayman Islands…"[59] (see paragraphs 43, 44 and 46).

114.7 "*[I]t can be argued that [the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985] did not originate the reciprocal arrangements between the UK and Cayman as they relate to the UK enforcement of Cayman judgments. Rather, by virtue of the Cayman Islands being a dependent of the colony of Jamaica at the time, it was the [REJAL 1923 (J)] and the UK 1924 Order in Council[60] which commenced the enforcement of judgment reciprocal arrangements between the UK and the Cayman Islands*" (see paragraph 52).

114.8 "*[I]t can be equally argued that [the FJ(RE)L 1936 (J)] applied to the Cayman Islands insofar as they facilitate reciprocal arrangements between UK and Jamaica*" (see paragraph 53).

114.9 Neither the REJAL 1923 (J) nor the FJ(RE)L 1936 (J) "*featured amongst those Laws that were saved for Cayman purposes*" in the first revised edition of the laws of the Cayman Islands in 1964. "*Logically this meant that though the UK recognised Cayman superior court judgments, the Cayman Islands no longer had a statutory obligation to reciprocate given that it removed itself as dependent of Jamaica*" (see paragraph 56).

114.10 "*[I]t would seem that [sic] UK did not seek to ensure during the change in status of Cayman as a Jamaica dependent that either [the REJAL 1923 (J)] or [the FJ(RE)L 1936 (J)] was saved in the Cayman 1963 Revised Laws or in the alternative, that Cayman enacted legislation similar to that of [the REJAL 1923 (J)] reflecting that Cayman would continue to enforce UK Judgments. This perhaps may*

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[59] This text is lifted nearly verbatim from paragraphs 19 and 20 of the judgment of the Privy Council in Al Sabah.

[60] This is a reference to the Order in Council which was made on 20 February 1924, which extended Part II of the AJA 1920 to Ashanti, Bermuda, Jamaica and Mauritius: see paragraph 21 above.

have been an oversight" (see paragraph 59).

114.11 Jones J in the Masri case "*commended counsel on seeking to apply [the FJ(RE)L 1936 (J)]*" (see footnote 13).

114.12 "*It seemed that at the time when a decision was made not to save the [FJ(RE)L 1936 (J)] and the Reciprocal Enforcement of Foreign Judgments Order 1936[61] it may not have been fully appreciated that those laws were critical in the scheme of reciprocal arrangements with other jurisdictions and should have formed part of our current body of laws by way of saving or the enactment of new legislation*" (see paragraph 60).

114.13 "*[The Commission] sought advice from the Foreign and Commonwealth Office on the obligation of the Cayman Islands in light of [the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985]…it was confirmed that it was within the sole purview of the Cayman Islands to determine whether it wishes to recognise judgments arising from a superior court in the UK or a superior court in any other jurisdiction. In other words, [the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985] does not impose reciprocal obligations upon the Islands"* (see paragraphs 61 and 62).

114.14 Foreign judgment creditors should no longer have to enforce their judgments in the Cayman Islands by actions at common law: instead, there should be a statutory regime for the registration of all foreign judgments. That regime should be "*efficient, expeditious and inexpensive*" (see paragraph 74). There should be no requirement for reciprocity: if the conditions for the registration of a foreign judgment are satisfied, it should be registered, even if Cayman Islands judgments are not registrable in the country in which the foreign judgment originated. This reflects the position at common law (see paragraph 69).

114.15 Cayman Islands attorneys regularly provide opinions for foreign

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[61] This is a reference to the Order made by the Governor of Jamaica on 29 September 1936 under section 3(1) of the FJREL 1936 (J) extending Part I to the United Kingdom: see paragraph 38 above.

> entities contemplating transactions with Caymanian entities which address, among other things, the enforceability of foreign judgments in the Cayman Islands, and a straightforward statutory regime would make the Cayman Islands a more attractive jurisdiction internationally (see paragraphs 73 and 74).

115. The Commission duly prepared a draft bill to give effect to its recommendations. The bill sought to amend the FJREL (CI) in several key respects, in particular by removing the requirement for reciprocity in section 3(1)[62], by extending the judgments to which Part II applies to all final and conclusive judgments for sums of money given by the superior courts of any foreign country, and by removing the obligation on the Grand Court to register foreign judgments which satisfy all the criteria for registration, conferring on it instead a discretion to register such judgments.

116. The Commission recommended, in the alternative, that Part II of the FJREL (CI) should be extended to 11 countries, including the United Kingdom and the three Crown Dependencies. The Commission acknowledged that, while there were arrangements in the United Kingdom for the registration of Cayman Islands judgments under Part II of the AJA 1920, there were no such arrangements in respect of Cayman Islands judgments in any of the other countries, including the Crown Dependencies[63]. Given the requirement for reciprocity in section 3(1)[64], it is not clear how the Commission envisaged that the extensions could be made lawfully, in these circumstances. The Commission took the view that it was merely a question of policy whether to extend Part II to a country which did not provide reciprocal arrangements in respect of Cayman Islands judgments. It might be said that, in advancing this view, the Commission failed to recognise the strictness of the requirement for reciprocity.

117. None of the Commission's proposals were implemented. I assume they were rather too radical to find favour.

118. Although many of the Commission's points were well taken, it will come as no surprise, given the arguments I advance in this article, that I have several

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[62] See paragraph 100.

[63] See page 26 of the Final Report, Part II.

[64] See paragraph 100.

respectful criticisms of Part II of the Final Report.

118.1 The Final Report correctly asserted that the REJAL 1923 (J) and the FJ(RE)L 1936 (J) applied to the Cayman Islands as a dependency of Jamaica, but it failed to elucidate exactly how these laws applied. The Final Report seemed to suggest that they applied by virtue of section 5 of the Cayman Islands Act 1863. Regrettably that was incorrect: as pointed out in paragraph 44.2 above, section 5 directed only that the laws then in force in Jamaica were deemed to be in force in the Cayman Islands. The REJAL 1923 (J) was not enacted until 60 years later, and the FJ(RE)L 1936 (J) not until 73 years later. Instead, the Final Report ought to have referred in this context to section 7 of the Cayman Islands Act 1863. It did not do so – presumably because the significance of the fact that the Supreme Court of Jamaica enjoyed an extensive jurisdiction over the Cayman Islands pursuant to that section was not fully appreciated.

118.2 The Final Report appeared to claim, inaccurately, that the 1959 Constitution kept in force the existing laws of the Cayman Islands. The Final Report should have referred instead to section 2(3) of the 1958 Act, which, as pointed out in paragraph 60.1 above, provided that the cesser of the Cayman Islands Act 1863 would not affect the continued operation of any other law then in force in the Cayman Islands.

118.3 The Final Report did not refer to:

118.3.1 either section 65(1) of the 1959 Constitution (which as discussed in paragraph 61.2 above imposed a general obligation to construe all existing instruments with any adaptations and modifications as necessary to bring them into accord with the Constitution);

118.3.2 or section 57(1) of the 1959 Constitution (which as discussed in paragraph 61.1 above confined the Supreme Court of Jamaica to the exercise of an appellate jurisdiction only in respect of the Cayman Islands).

118.4 Because of the failure to appreciate that the REJAL 1923 (J) and the FJ(RE)L 1936 (J) applied to the Cayman Islands by virtue of the extensive jurisdiction which the Supreme Court of Jamaica exercised over the Cayman Islands pursuant to section 7 of the Cayman Islands Act 1863, the Final Report did not confront the problem that, with

effect from 4 July 1959, the Supreme Court of Jamaica ceased to exercise any original jurisdiction in respect of the Cayman Islands, being confined to the exercise of an appellate jurisdiction only, and yet these laws continued to operate. And because of the failure of the Final Report to refer to section 65(1) of the 1959 Constitution, there was no acknowledgment that the answer to this problem was to be found in the obligation imposed by that section, which meant that the jurisdiction which had been exercised by the Supreme Court of Jamaica in respect of the Cayman Islands under the REJAL 1923 (J) and the FJ(RE)L 1936 (J) passed to, or devolved upon, the Grand Court.

118.5 The Final Report failed to refer to the fact that the commissioners who were appointed to produce the first revised edition of the laws of the Cayman Islands had no power of repeal, and, further, it failed to point out that, in preparing the Statute Law Revision (Repeals) Law 1963, the commissioners did not ask the Legislative Assembly to repeal either the REJAL 1923 (J) or the FJ(RE)L 1936 (J). The Final Report was thus in error in asserting that the failure of the commissioners to include these laws in the first revised edition in 1964 meant that they were not "*saved for Cayman purposes*".

118.6 The omission of these laws from the first revised edition was rightly described in the Final Report as a possible "*oversight*", but it was an error to suggest that the blame for this lay with the United Kingdom, since the responsibility for compiling the first revised edition fell exclusively on the two commissioners appointed locally.

118.7 The Final Report failed to subject the decision in Masri concerning the continued application of the FJ(RE)L 1936 (J) to sufficient critical analysis. It did not refer to the fact that the decision was, on this point, *obiter*, and not accompanied by detailed reasons. The claim that Jones J commended counsel for seeking to apply the FJ(RE)L 1936 (J) was but barely justified: although the judge remarked that their argument was novel and imaginative, he dismissed it out of hand.

118.8 The Final Report altogether failed to mention the OJREA 1960 (WIF) and the Interim Commissioner (Continuation and Adaptation of Laws) Order 1962. Of course it has never been possible to register in the Cayman Islands a judgment from the superior courts of England and Wales pursuant to this Act, because no order was made by the

Governor-General of the West Indies Federation during the Federation's existence extending this Act to the United Kingdom, and because the Governor of the Cayman Islands has not made any such order since the dissolution of the Federation. Nevertheless, one might have expected a report which considered the law relating to the enforcement of foreign judgments in the Cayman Islands to have at least mentioned these provisions.

118.9 It is difficult to understand why the Commission thought that, because Cayman Islands judgments are registrable in the United Kingdom, the Cayman Islands might be subject to a legal obligation to enact a reciprocal regime for the registration of United Kingdom judgments. The United Kingdom has no general power to require the legislature of the Cayman Islands to exercise its domestic law-making powers in any particular manner, and the idea that a specific obligation to enact a specific law might have been imposed on the Cayman Islands by an English Act and an Order in Council neither of which even purported to have extraterritorial effect was pretty far-fetched. The notion was predictably rejected by the FCO.

119. Whether the failure of the Cayman Islands to enact a reciprocal regime for the registration of United Kingdom judgments imperils the ability to register Cayman Islands judgments in the United Kingdom is a separate point. The Commission did not consider that possibility. It is to this point that I now turn.

O. Possible consequences concerning the ability to register Cayman Islands judgments in the United Kingdom if *Masri* was correctly decided

120. For the reasons discussed in this article, I suggest that the requirement for reciprocity in section 14(1) of the AJA 1920 was not overlooked when Part II of that Act was extended to the Cayman Islands, and that the Cayman Islands were properly added to the consolidated list of countries to which Part II had been extended by the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985. But what if, contrary to my argument, and in accordance with the *obiter* views of Wood J in Masri, judgments from the superior courts of England and Wales have not been capable of being registered in the Cayman Islands since the publication in 1964 of the first revised edition of the laws of the Cayman Islands, by reason of the omission of the REJAL 1923 (J) and the FJ(RE)L 1936 (J)? Does the requirement for reciprocity in section 14(1) mean that the absence of reciprocity since 1964 renders the inclusion of the Cayman Islands in the consolidated list invalid? In short, are Cayman Islands judgments not

registrable in England and Wales after all?

121. The lawfulness of statutes cannot be challenged in court, except where authorised by Parliament. By contrast, it is well established that the lawfulness of statutory instruments and other subordinate legislation can be challenged in court. Since the power to make a statutory instrument is conferred by an Act of Parliament, it follows that every exercise of that power must be in accordance with the mandate conferred by the Act in question. Statutory instruments depend for their validity on the proper exercise of this mandate: if a statutory instrument has been made otherwise than in accordance with this mandate, it will be *ultra vires* and of no effect[65]. Typically a challenge to the validity of subsidiary legislation will be made directly by way of judicial review, but such challenges may also be made by way of collateral attack in private law litigation, even where the minister or other public body which made the subsidiary legislation is not a party to the proceedings[66]. In principle, a statutory Order in Council made at a meeting of the Privy Council is no less susceptible to challenge on the ground that it was made *ultra vires* than any other statutory instrument[67].

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[65] See F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry [1975] AC 295, 349 per Lord Morris of Borth-y-Gest; see too R (Public Law Project) v Lord Chancellor [2016] UKSC 39 at paras 20-26 per Lord Neuberger, and R (Al-Enein) v Secretary of State for the Home Department [2019] EWCA Civ 2024 at paras 26-29 per Singh LJ.

[66] See the discussion in De Smith's Judicial Review, 8th edition, para 3-123 et seq. See too the recent observation of Sir Geoffey Vos in Arkin v Marshall [2020] EWCA Civ 620 at para 15 "*…it is acknowledged in O'Reilly v Mackman [1983] 2 AC 237…, and has been illustrated in a string of cases since Wandsworth London Borough Council v Winder [1985] AC 461, that there are circumstances in which considerations of justice and pragmatism may make it appropriate for a public law challenge – including a challenge to the validity of secondary legislation – to be determined in the context of private law proceedings*."

[67] Perhaps the most vivid example of a successful challenge to the lawfulness of an Order in Council is the decision of the Supreme Court in R (Miller) v Prime Minister [2019] UKSC 41. As is well known, in that case the Supreme Court quashed the Order in Council which provided for a 5-week prorogation of Parliament during September and October 2019. The Order in Council was quashed because it was unlawful, on account of the fact that it was founded on advice which the Prime Minister had had no power to give, and which was

122. I do not see any reason, therefore, why it would be procedurally objectionable for a Grand Court judgment debtor to seek to defend an application to register the judgment in the High Court of England and Wales on the grounds that the Cayman Islands were not lawfully included in the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985 because, contrary to section 14(1) of the AJA 1920, when that Order was made there were no reciprocal legislative provisions in place in the Cayman Islands providing for the enforcement in the Cayman Islands of judgments obtained in the High Court of England and Wales.

123. The key question, to my mind, is whether the requirement for reciprocity in section 14(1) had to be satisfied when that Order was made, or whether it only had to be satisfied in February 1924, when the original Order extending Part II of the AJA 1920 to Jamaica was made.

124. I can see arguments both ways.

125. On the one hand it could be said with some justification that section 14(3) of the AJA 1920[68], which contains the power to consolidate the earlier Orders in Council, does not in terms require that the Crown must satisfy itself afresh as to the existence of reciprocal provisions before in the exercise of that power a country can be included in the consolidated list. The only requirement in section 14(3) is that the earlier Order in Council must still be in force when the consolidating Order is made. All the Orders in Council which extended Part II of the AJA 1920 remain in force, unless and until they are varied or revoked by a subsequent Order under section 14(2). Thus the fact that (on the Masri hypothesis) the reciprocal provisions which were in force in the Cayman Islands until the publication of the first revised edition ceased to be in force upon its publication in 1964 is neither here nor there: the original Order which extended Part II to Jamaica was still in force when the Cayman Islands were added to the consolidated list in February 1986.

126. On the other hand it could be said that the power to consolidate is not of a purely administrative nature, at least not when deciding whether to exercise that power so as to identify the Cayman Islands in the consolidated list in their own right, separate and distinct from Jamaica. The original order

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therefore itself unlawful.

[68] See paragraph 104 above.

extending Part II to Jamaica did not need additionally to identify the Cayman Islands because they were a dependency of Jamaica at the time: the extension of Part II to Jamaica was effective under English law (specifically under or by virtue of section 7 of the Cayman Islands Act 1863) to include the Cayman Islands within its scope. But as a result of subsequent changes in English law (specifically the cesser of the Cayman Islands Act 1863 on 4 July 1959, the conferring of separate constitutions on Jamaica and the Cayman Islands on the same date, the grant of independence to Jamaica and the conferring at the same time of new constitutions on Jamaica and the Cayman Islands on 6 August 1962) the Cayman Islands ceased to be a dependency of Jamaica. This fundamental change in the status of the Cayman Islands meant that, in order to include the Cayman Islands in the consolidated list, they would need to be named in their own right: whereas it had been sufficient to name Jamaica and not the Cayman Islands in February 1924, that was clearly not sufficient when the consolidated list was published in 1984. This was the very mistake which necessitated the amendment of the consolidated list by the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Amendment) Order 1985. The Cayman Islands' independence from Jamaica was brought about by instruments which, while preserving existing laws, also conferred independent law-making power on the Legislative Assembly of the Cayman Islands. That power is an inseparable aspect of the change in the Cayman Islands' status. Accordingly, when considering whether to include the Cayman Islands in the consolidated list, the Crown was compelled to consider whether reciprocal provisions had been made by the legislature in the Cayman Islands providing for the enforcement of judgments obtained in the superior courts of the United Kingdom. If no such provisions had been made – and on the Masri hypothesis they had not – then the requirement for reciprocity in section 14(1) was not satisfied, with the consequence that the inclusion of the Cayman Islands in the consolidated list was *ultra vires*.

127. I am not sure that it is possible to predict which of these competing arguments would ultimately prevail, and I have no doubt that they could be further developed, and better expressed. Nevertheless anyone seeking to register a Cayman Islands judgment in England and Wales might be well advised to consider how best to take account of the difficulties that they may face, unless and until there is a definitive ruling from the Grand Court recognising the continued application of the REJAL 1923 (J) and the FJ(RE)L 1936 (J) in Cayman Islands law. One answer may be to proceed with an application for registration and, only if the application is refused, then seek to enforce the judgment by an action at common law. That may be an attractive route if the complexities of the underlying claim are such that the action at common law would be cumbersome and expensive. Another

answer, particularly in more straightforward cases, might be to dispense with registration altogether and enforce the judgment solely by means of an action at common law. That may carry some potential risk in costs, given the terms of section 9(5) of the AJA 1920[69], but the risk might be worth running. A judgment debtor may want to throw as many obstacles as possible in the judgment creditor's path, particularly if the debtor's assets in the United Kingdom are valuable and illiquid.

P. Conclusion

128. Whatever misgivings Jones J may have had in 2010 about overturning, as he saw it, "*what has been understood to be the law of this country and the established practice in this court for almost 50 years*", I respectfully suggest that, for the reasons set out above, those misgivings should not hold sway any longer.

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[69] See paragraph 41 above.