

WESTERN AUSTRALIA

ANNO VICESIMO NONO

VICTORIÆ REGINÆ

No. 8

An Ordinance to explain and amend the Law for facilitating the Recovery of Debts.

[Assented to 7th July, 1865.]

WHEREAS by an Ordinance passed in the twenty-fifth year of 25 Vic., No. 8 the reign of Her Majesty, intituled 'An Ordinance to facilitate the Recovery of Debts,' reciting that by 'The Supreme Court Ordinance, 1861' it was enacted that all process of execution issued out of the Supreme Court shall be directed against property and not against the person, and further reciting that it was expedient, while debarring the creditor of the power of imprisoning his debtor, that all the property of the debtor, both real and personal, legal and equitable, in possession or otherwise, should be available for the levying and satisfaction of debts, it was among other things enacted:—

Firstly. That the houses, lands and other hereditaments and real estate, situate or being within the said Colony of Western Australia or its Dependencies, belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands of what nature or kind soever owing by any such person to Her Majesty or any of her subjects, and shall and may be assets for the satisfaction thereof, and shall be subject to the like remedies, proceedings, and process in the Supreme Court of Law or Equity in the said Colony of Western Australia or its Dependencies, for seizing, extending, selling or disposing of any such houses, lands and other hereditaments and real estates towards the

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satisfaction of such debts, duties and demands, and in like manner as personal estates in the said Colony are seized, extended, sold or disposed of for the satisfaction of debts.

Secondly. That a bill of sale under the hand and seal of the Sheriff of or for any lands, tenements and hereditaments so taken and sold by process of execution shall give unto the plaintiff or other buyer thereof as good and effectual an estate and title therein and thereunto as the defendant from whom they are taken hath or can or may have of in or to the same lands, tenements and hereditaments.

And whereas questions may arise as to the construction of the said recited enactment, and it may be doubted whether lands so made subject to debts are considered and to be dealt with as chattels till the creditors are satisfied, and then pass to the heir or devisee, or whether the heir or devisee, as the case may be, take the real estate, subject to being charged in respect of debts due and owing by the deceased testator or intestate in his life time and at the time of his death; and whereas it is expedient to remove such doubts: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Real estate liable for payment of debts in like manner as personal property

1. The said recited provisions of the said Ordinance, passed in the twenty-fifth year of the reign of Queen Victoria, No. 8, of 1861, shall be construed and deemed and taken to render lands and all title whatsoever to lands vested and contingent, legal and equitable, liable, and available for payment and satisfaction of debts in like manner as personal property, and that all lands and all interest therein, legal and equitable, so made liable for payment of debts, pass to the personal representative of a deceased debtor, and are legal assets in the hands of such representative for payment of debts, to be seized or disposed of in like manner, in all respects, as personal estate can be seized or disposed of, and that the executor or administrator may sell such real estate or any part thereof for the payment of the debts of his testator or intestate, and make a good title to a purchaser.

Real estate passes to the personal representative of deceased debtor for payment of debts, and are available in his hands

Executor or administrator may be charged with full amount of real estate

2. In any suit or action to be commenced and prosecuted against an executor or administrator for the recovery of any debt or demand due and owing by his testator or intestate in his life time and at the time of his death, such executor or administrator shall and may be charged the full amount in value of the real estate, not exceeding the actual net proceeds of sale when sold by the Sheriff, as assets in the hands of such executor or administrator to be administered.

This Ordinance incorporated with 25 Vic., No. 8

3. This Ordinance shall be deemed to be incorporated with the said recited Ordinance, twenty-fifth of Victoria, No. 8, of 1861, and shall be construed as if the said recited Ordinance and this Ordinance were one Ordinance.

J. S. HAMPTON,
GOVERNOR AND COMMANDER-IN-CHIEF.