

WESTERN AUSTRALIA

ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ

No. 5

An Ordinance for the more speedy Levying of forfeited  
Recognizances. [*Assented to 18th November, 1861.*]

**W**HEREAS it is expedient to improve the Practice for the  
Recovery of forfeited Recognizances: Be it therefore enacted  
by His Excellency the Governor of Western Australia and its Depen-  
dencies, by and with the advice and consent of the Legislative Council  
thereof:—

Preamble

1. That the Registrar of the Supreme Court shall, and he is  
hereby required and enjoined, within fourteen days after each sitting  
of the said Court, to return under his hand to the Chief Justice for the  
time being one complete abstract of all recognizances, sum or sums of  
money forfeited in the said Court, as well as those that may have been  
certified as forfeited by or before any Justice or Justices of the Peace;  
and the said Registrar of the said Court shall, within fifteen days after  
the rising of the said Court, send a copy of such abstract, with a writ

Registrar of  
Supreme Court  
to return within  
14 days after  
each sitting of  
the Court, to the  
Chief Justice,  
abstract of all  
forfeited recog-  
nizances

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*Forfeiture of Recognizances, &c.*


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Within 15 days after the rising of the Court Registrar shall send copy of abstract with a writ to Sheriff to levy such recognizances, &c., as in Form A.

of *distringas* and *capias* or *feri facias* and *capias*, according to the form and effect in the Schedule marked A, to the Sheriff, which shall be the authority to such Sheriff to proceed to the immediate levy and recovery of such recognizances, sum or sums of money, on the goods and chattels, lands and tenements, of such several parties, or for taking into custody the bodies of such persons in case sufficient goods and chattels, lands and tenements, shall not be found whereon levy can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until the next sitting of the said Court, there to abide the judgment of the said Court.

Party against whom writ issues may give security for his appearance at the next sitting of the Court, there to abide its decision, and thereupon the Sheriff shall discharge him from custody.

2. Provided always that if any person on whose goods and chattels, lands and tenements, such Sheriff shall be authorised to levy any such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, shall give security to the said Sheriff for his appearance at the next sitting of the said Court, then and there to abide the decision of the said Court, and for the payment of such forfeited recognizance or sum of money in lieu or satisfaction thereof, together with all such expenses as shall be ordered and adjudged by the Court, it shall be lawful for such Sheriff, and he is hereby authorised and required to discharge out of custody such person so giving security: Provided also that in case such party so giving security shall not appear in pursuance of his undertaking, it shall be lawful for the Court forthwith to issue a writ of *distringas* and *facias* or *feri facias* and *capias* against the surety or sureties of the person so bound as aforesaid.

Proviso for non-appearance

Court on appeal of party in its discretion to order discharge of forfeited recognizance, &c.

3. That the said Court before whom any person so committed to gaol or bound to appear shall be brought is hereby authorised and required to inquire into the circumstances of the case, and shall, at its discretion, be empowered to order the discharge of the whole of the forfeited recognizance or sum or sums of money paid or to be paid in lieu or satisfaction thereof; and such order shall be made in form or to the effect of the Schedule marked B, and shall be signed by the said Registrar of the said Court, which said order shall be a discharge to such Sheriff on the passing of his accounts; and it shall and may be lawful to and for the said Court to award such costs, charges and expenses to be paid by either party to the other as to the said Court shall seem just and reasonable.

A. E. KENNEDY,  
GOVERNOR AND COMMANDER-IN-CHIEF.

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## SCHEDULE A

## FORM OF WRIT

*Western Australia.*

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

To the Sheriff of Western Australia and its Dependencies.

Greeting: You are hereby required and commanded that you omit not by reason of any custom or practice, but that of all the goods and chattels, lands and tenements of all and singular the persons in the several abstracts to this writ annexed, you cause to be levied all and singular the debts and sums of money

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*Forfeiture of Recognizances, &c.*

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upon them in the same abstracts severally imposed and charged, so that the money may be ready for payment at the next sitting of the Supreme Court, to be paid over to the Colonial Treasurer for the time being, and if any of the said several debts or sums of money cannot be levied by reason of no goods or chattels, lands or tenements being to be found belonging to the parties, then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts and lodge them in the Common Gaol, there to await the decision of the Judge at the next Court, unless the parties shall give sufficient security for their appearance at the next Court, for which you will be held responsible; and have you there this Writ.

Witness our Chief Justice of our said Colony at Perth, the  
day of \_\_\_\_\_, in the \_\_\_\_\_ year of our reign.

SCHEDULE B

FORM OF ORDER

To the Sheriff of Western Australia and its Dependencies.

Whereas \_\_\_\_\_ hath appeared before the Supreme Court, held at the Court House, at Perth, on the \_\_\_\_\_ day of \_\_\_\_\_ having forfeited the sum of \_\_\_\_\_ and having made it appear to the satisfaction of the said Court that he should be relieved from the payment of the said sum of \_\_\_\_\_ (or if the penalty is mitigated, state from part thereof), you are therefore hereby required to discharge the said sum of \_\_\_\_\_ from the Estreat Roll or abstract delivered to you after the Court held on the \_\_\_\_\_ day of \_\_\_\_\_, for which discharge this Warrant shall be your authority, and shall exonerate you from the said charge on the passing of your accounts.

By order of the Court.

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