



WESTERN AUSTRALIA.

ANNO SEXTO

VICTORIÆ REGINÆ.

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No. XIII.

**An Act to establish and regulate Courts  
of Requests.**

**W**HEREAS it is expedient that a Court of Requests for the <sup>Preamble.</sup> recovery of small sums should be established in the Town of Perth, and that due provision be made for the future establishment of similar Courts in other Towns and districts of the Colony thereof, as the increase of population and other circumstances may from time to time require—Be it therefore enacted by His Excellency the

Governor may establish  
Courts of Requests.

Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that Courts of Civil Jurisdiction to be called Courts of Requests shall be holden at Perth, and at such other towns and places as the Governor of the said Colony for the time being shall or may from time to time appoint by Proclamation; and the said Courts respectively shall be holden at such times as the said Governor shall in like manner appoint.

Appointment of Commis-  
sioners

II. AND be it enacted, that it shall be lawful for the said Governor to appoint, subject to the approval of Her Majesty, Her Heirs, and Successors, to and for each of the said Courts a Commissioner to exercise the jurisdiction thereof, who shall hold his office during the pleasure of her Majesty, Her Heirs, and Successors, and to suspend such Commissioner, and to appoint some other person to discharge the duties of the said office until the pleasure of Her Majesty, Her Heirs, and Successors, be known.

Appointment of other offi-  
cers.

III. AND be it enacted, that it shall be lawful for the Commissioner of each of the said Courts of Requests to appoint, subject to the approval of the said Governor, such ministerial officers as he may deem requisite for the due administration of justice therein; and to remove and replace such ministerial officers, subject to the like approval, as and when such Commissioner may deem requisite.

Jurisdiction of Court,  
suits below £10, not af-  
fecting real property, or  
future permanent rights.

IV. AND be it enacted, that every such Court as aforesaid shall have jurisdiction to hear and determine in a summary manner, and to award costs in all actions, complaints, and suits, for the payment and recovery of any debts, or damages, for breach of contract, not exceeding Ten Pounds Sterling—Provided that the matter in question do not relate to the title of the freehold or leasehold of and in any lands, tenements, or hereditaments, or of any chattels real whatsoever, or to the taking or demanding of any duty payable to Her Majesty, Her Heirs or Successors, or to any fee of office, annual rent, or such other matters where right in future may be bound, or to any general right or duty.

Not to extend to disputed  
balances of larger account  
originally exceeding £10,  
wager, or gaming debts.

V. AND be it enacted, that nothing in this Act shall give the said Courts jurisdiction in case of any debt being the disputed balance of an unsettled account originally exceeding Ten Pounds; nor of any debt for any money or thing won at, or by means of, any horse race, cock match wager, or any kind of gaming or play,

VI. AND be it enacted, that no cause of action for a sum exceeding Ten Pounds shall be split and divided into grounds of two or more actions, in order to bring the same within the jurisdiction hereby created; and if a plaintiff in any of the said Courts shall have so split or divided his cause of action, his suit shall be dismissed with costs, but without prejudice to his proceedings upon his entire cause of action in any superior court or otherwise -- Provided always, that a plaintiff may sue in any of the said Courts of Requests for the sum of Ten Pounds in full of a larger demand, and in such case the Commissioner of such Court shall and may, if the plaintiff satisfactorily prove his case, make and pronounce a decree for such plaintiff for any sum not exceeding Ten Pounds, and the same shall be expressed in such decree to be, and shall be, in full discharge of such larger demand, and shall be a full and complete bar to any other action, plaint, or suit, in the same or any other Court

Larger claims not to be split in order to bring within Act, but plaintiff may in such case proceed for £10, in full discharge of such larger debt.

VII. AND be it enacted, that if any action or suit in the Civil Court of the said Colony for any debt, demand, or matter, which in the nature thereof, without reference to the sum or value nominally claimed, is by virtue of this Act within the jurisdiction of any of the said Courts of Requests, and recoverable therein, a verdict or judgment shall be given for the plaintiff or plaintiffs for a smaller sum than Ten Pounds, and the Commissioner of the said Civil Court shall certify in the Record book thereof, that such action or suit ought to have been prosecuted in one of the said Courts of Requests, then and in such case such plaintiff or plaintiffs shall not by reason of such verdict or judgment have or be allowed any costs whatsoever; and if the verdict or judgment shall be given for the defendant or defendants in any such action or suit, and the Commissioner of the said Civil Court shall so certify as aforesaid, then such defendant or defendants shall have double costs, and shall have such remedy for recovering the same as any defendant has, or shall have, for recovering ordinary costs in the said Courts of Requests.

Plaintiff proceeding in superior Court for debts recoverable under Act, shall not have costs, and defendant if successful entitled to double costs.

VIII. AND be it enacted, that any person under the age of twenty-one years may sue for and recover in any of the said Courts of Requests any amount of wages not exceeding ten pounds in the same manner as if he or she were of full age, and may in like manner be sued therein for the amount of any necessaries not exceeding ten pounds in value supplied to him or her.

Minors may sue for wages and be sued for necessaries.

IX. AND be it enacted, that no person shall be exempt from

No exemption by privilege of officers of superior courts. the jurisdiction of the said Court of Requests by reason of his being an Attorney, or Solicitor, or other Officer of the said Civil Court or of any other superior Court.

Limits of jurisdiction 20 miles.

X. AND be it enacted, that all actions or suits in the said Courts of Requests shall be brought in the court holden nearest to the usual residence of the intended defendant, or of any one of several joint defendants, at the plaintiff's pleasure; and no such defendant shall be summoned to attend any such Court holden at a greater distance than twenty miles from his or her usual place of abode, unless there be two or more joint defendants, in which case the plaintiff may sue them in any Court of Requests within the distance of twenty miles of, and being also the nearest to, the usual place of abode of any one of the said joint defendants; and that as often as any question shall arise respecting any such distance as aforesaid, the same shall be determined by the Commissioner as incident to the cause.

Except where promise in writing to pay at particular place, plaintiff failing to prove promise to be nonsuited with costs,

XI. PROVIDED always and be it enacted, that in case the defendant or defendants shall have given an engagement or promise in writing to pay the debt or sum demanded at a particular place therein specified, and the same shall be stated in the plaint and in the summons, the plaintiff may cause such defendant or defendants to be summoned to attend the court which shall be holden nearest to the place so specified, notwithstanding such court shall be holden at a greater distance than twenty miles from the usual place of abode of such defendant; and if the plaintiff in such case shall fail at the trial to prove such engagement or promise, he or she shall be nonsuited and shall pay all reasonable costs and expenses incurred thereby by any such defendant, and the same shall be recovered in like manner as other costs taxed and allowed by a Commissioner in any of the said courts.

Agents not allowed unless on emergency.

XII. AND be it enacted, that no person whatsoever shall be permitted to appear and act in any of the said courts for and on behalf of any plaintiff or defendant, unless it shall be first proved to the satisfaction of the Commissioner of such Court that such plaintiff or defendant is prevented by some unavoidable necessity, or some good and sufficient cause, from attending such court in person.

Pleadings oral, and bills of particulars in lieu of plaint, &c.

XIII. AND be it enacted, that the pleadings in all the said Courts of Requests shall be oral, and that all actions therein shall

be commenced by delivering in duplicate to the Commissioner thereof, in lieu of a plaint, or declaration, a Bill of Particulars, or a summary in writing of the nature and grounds of the plaintiff's demand; and if the Commissioner shall deem the same not sufficiently particular or precise as to dates, names, sums, or other circumstances, he may at his discretion require the same to be forthwith amended to his satisfaction; and one of such duplicate bills or summaries shall be filed in the said Court of Record, and the other shall be appended to a summons to appear and plead to be thereupon issued by the Commissioner, calling on defendant to appear in court on a certain day and hour to answer the claim set forth in such appended bill or summary.

XIV. AND be it enacted, that if, at the return of any summons to appear and answer a plaintiff's claim in any of the said Courts of Requests, the plaintiff shall appear, but the defendant shall not appear, and the Commissioner shall be satisfied, by the oath or endorsed return of the Bailiff, of the service of such summons, and no reason shall be shown to the satisfaction of the Commissioner for such non-appearance, and the plaintiff's claim shall not exceed the sum or value of Forty Shillings, it shall be lawful for such Commissioner to hear and receive the plaintiff's evidence, and if he shall be satisfied therewith, to give final judgment for such plaintiff, but if such evidence be not satisfactory to such Commissioner, or if the plaintiff's claim shall in any such case exceed such sum, or if the defendant's non-appearance shall be accounted for to the satisfaction of the Court, in such case the Commissioner shall take minutes of the plaintiff's evidence, and judgment by default shall pass and be entered for the plaintiff; and notice of such judgment by default shall thereupon be served upon such defendant, warning such defendant that if he or she do not appear in Court at a certain day and hour and open such judgment and answer the plaintiff's claim, such judgment will become final; and if such defendant shall not appear accordingly, such judgment shall be and become final; but if such defendant shall appear in pursuance of such notice as last aforesaid, and shall pay the reasonable expenses (to be determined by the Commissioner) of the plaintiff's second attendance in court, such defendants shall be admitted to plead and give evidence in defence; but in such case, the minutes aforesaid of the plaintiff's evidence shall be read and received as and for such evidence itself—Provided always, that if a defendant who shall attend court in pursuance of any such notice of judgment by default as aforesaid,

Court may decide finally on default and evidence of service of summons where debt below 40s., or may let judgment go by default, and give notice to defendant.

shall make affidavit or swear before the Commissioner that such defendant had no knowledge of the summons to appear and plead in time to obey the same, then the expenses of such second attendance as aforesaid of the plaintiff shall not be required to be paid by such defendant as the terms of his or her being admitted to plead, but shall abide the issue of such action.

Commissioner may examine plaintiff and defendant and witnesses on oath, and may adjourn hearing.

XV. AND be it enacted, that it shall be lawful for the Commissioner of any of the said Courts of Requests to examine the plaintiff or plaintiffs, defendant or defendants, viva voce, in open court, on their several corporal oaths, and to administer an oath or oaths to all persons about to give evidence before such Commissioner, and to adjourn the hearing of any cause or matter if the same shall appear to him expedient, to any future day or time.

Commissioner may allow time for payment not exceeding six months.

XVI. AND be it enacted, that it shall be lawful for a Commissioner of any of the said Courts of Requests, if it shall appear to him that the immediate execution of any order, judgment, or decree of his court would occasion ruinous or very great distress to the defendant, and that such distress may be avoided or considerably lessened by granting time to such defendant, to order and direct the amount of such order, judgment, or decree, with the costs, to be levied (if necessary) by instalments, at such times and in such amounts as he may deem reasonable and just—Provided always, that such enlarged time for satisfaction do not exceed six calendar months; and in cases such defendants shall fail to pay any one such instalment agreeably to such order, the plaintiff may proceed to take out execution for the amount of such order, judgment or decree, and costs, then remaining unsatisfied, in like manner as if no such order had been made.

Judgment to extend to property of defendant in any part of the Colony.

XVII. AND be it enacted, that the Judgments, Decrees, and Orders of any of the said Courts of Requests may and shall be carried into execution in any district or place whatsoever within the said Colony where the goods and chattels of the defendant, or any of the defendants, may be found.

Court may issue execution,

XVIII. AND be it enacted, that in order to carry into execution any order or decree of any of the said Courts of Requests for the payment of money, it shall be lawful for the court making such order or decree, at the prayer of the party prosecuting the same, to

issue a precept signed by the Commissioner, in the nature of a writ of fieri facias, directed to a Bailiff of any of the said courts, who is hereby authorised and empowered to levy the amount thereof out of the goods and chattels of the defendant—Provided that such precept may be addressed to one or more special bailiff or bailiffs (who shall in such case have the like powers as an ordinary bailiff of any of the said courts) to be named by such plaintiff, on such plaintiff giving sufficient security against any improper use of such precept.

XIX. PROVIDED always, and be it enacted, that no execution issued out of any of the said courts shall deprive any landlord of the benefit of an Act passed in the eighth year of Her Majesty Queen Anne, entitled "An Act for the better security of rents and to prevent frauds committed by tenants." Act 1. ... lords of limit of statute 8th Anne.

XX. AND be it enacted, that as often as any goods and chattels shall be seized under process of execution of any of the said courts, the officer making such seizure shall deliver to the defendant an inventory thereof, with a notice thereunder written and signed by such officer warning the defendant of such seizure, and that the goods and chattels so seized will be sold at a certain time and place, unless the debt, or damages and costs (stating the amount thereof, and the title of the cause in which the same were recovered), be sooner paid or satisfied; and shall cause a notice of such sale to be affixed to or on the most public part of the house or place in which such seizure shall be made at least twenty-four hours before the time of sale; and shall, if in his discretion he shall deem it necessary, place a person or persons in possession of the goods and chattels so seized until the time of sale; and shall, unless such debt, or damages and costs, be sooner paid or satisfied, sell the goods and chattels so seized by public auction, to any person or persons other than such officer himself, as soon as may be after the expiration of forty-eight hours from the time of seizure; and shall, after deducting all lawful fees and charges, pay over on demand to the plaintiff or his or her appointee, the amount of debt, or damages, and costs so levied and received by such officer, and shall pay on demand to the defendant or his appointee the surplus, if any, of the proceeds of such sale. Office: defendant inventory of goods seized, with notice of sale, and may place person in possession—sale after 48 hours from seizure.

XXI. AND be it enacted, that all serviceable process of any one of the said Courts of Requests may be addressed to, and if so Service of process.

addressed, shall be served by any Bailiff or other officer of any other of the said Courts of Requests, and the service of all such process shall be effected by delivering a copy thereof, and shewing at the same time the original, to the person intended to be served therewith, or, if he or she be absent from his or her usual place of residence, to any member of his family or household above the age of sixteen years, with a verbal notification of the purport and object thereof; and every process requiring the appearance of any person in any of the said courts shall be served at least twenty-four hours before the return thereof, if such person be resident within three miles of the place of session of such court; but if such person be resident at a greater distance than three miles, the Commissioner issuing such process shall and may regulate the interval between the service and return thereof as, according to the circumstances of each case, he may deem fair and reasonable.

Service of process on one partner sufficient.

XXII. AND be it enacted, that service of any process of any of the said Courts of Requests upon any one of several partners, or upon any one of several persons jointly liable, shall be deemed service upon all such partners or persons—Provided that the Court out of which such process shall have been issued be the Court nearest to the residence of the person served therewith,

Witnesses disobeying summons liable to same punishments as in Civil Court. Commissioner may fine or imprison for contempt.

XXIII. AND be it enacted, that all persons summoned as witnesses to attend any of the said Courts of Requests shall be subject to the like actions and attachments for disobeying such summons as they would be subject to for disobeying a summons out of the said Civil Court of the Colony; and also that it shall be lawful for any of the said Courts of Requests to punish in a summary way by fine not exceeding Forty Shillings to the use of her Majesty, Her Heirs, and Successors, for the public service of the Colony, or by imprisonment (either in the first instance, or on default in payment of any such fine as aforesaid) not exceeding a fortnight, any person or persons guilty of any contempt before such court,

Perjury.

XXIV. AND be it enacted, that if it shall appear to the Commissioner of any of the said Courts of Requests that any person in any examination, oath or affirmation, or in any affidavit or affirmation had, taken, or made respectively before such Commissioner, has committed wilful and corrupt perjury, it shall be lawful for such Commissioner forthwith to order such person into the custody of



any officer of the said court, and to require such person to give bail by recognizance with one or more sureties to the satisfaction of such Commissioner for his or her appearance to take his or her trial for such offence; or in default of bail, to commit such person for trial, and to bind over all necessary parties to prosecute or give evidence against such person; and in every such case such Commissioner shall certify in writing to the Crown Solicitor of the said Colony, (or in cases such trial is intended to take place before any competent District Court, then to the proper officer of such last mentioned court) the affidavit or affirmation or material part of the examination or evidence of the person so bailed or committed upon which perjury is intended to be assigned; and on any trial for any such perjury alleged to have been committed in the course of any trial in any of the said Courts of Requests, it shall not be necessary, in order to prove the fact of such last mentioned trial, to produce and give in evidence any Record of such Court of Requests, but the fact of such last mentioned trial may be proved by any person present thereat.

XXV. AND be it enacted, that no Commissioner, Bailiff or any, other Officer of any of the said Courts of Requests shall be compellable to issue or serve any process, or to do, take, or enter any act, proceeding, matter or thing relating to his official duties under the provisions or this Act (save and except the sale of goods seized in execution) before or until his lawful fee or fees for or in respect of the same be duly paid.

Officer entitled to fee before compellable to act, except in case of execution.

XXVI. AND be it enacted, that no plaint, order, judgment, or decree, or other proceeding shall be removed out of any of the said Courts of Requests by any writ of any Superior Court, or otherwise howsoever, but the orders, judgments, and decrees, of every such Court of Requests shall be final and conclusive to all intents and purposes whatsoever.

Jurisdiction final

XXVII. AND be it enacted, that it shall be lawful for the Commissioner of any of the said Courts of Requests, on complaint to him made of any extortion, neglect of duty, or other misconduct on the part of any Bailiff or other ministerial officers of such court to summon such Bailiff or officer before him to answer such complaint, and to summon and examine upon oath all necessary witnesses touching the matter of such complaint, and to hear and determine the same in a summary manner; and if such extortion, neglect of duty, or

Court to determine charges against its officers.

other misconduct, shall be proved to the satisfaction of such Commissioner, it shall be lawful for such Commissioner to fine the offender any sum not exceeding Ten Pounds, and to levy the same, if not paid according to order, by distress and sale of such offender's chattels, or if any such chattels, or a sufficiency thereof, cannot be found, to commit such offender to any common jail to hard labour for any term not exceeding three calendar months; and to suspend such offender from his said office, and to appoint some fit and proper person to do the duties of such office until the pleasure of His Excellency the Governor concerning the same be notified, and it shall be further lawful for such Commissioner to award any portion not exceeding one moiety of such fine to the party aggrieved by such extortion, neglect, or other misconduct; and the residue of such fine shall go to Her Majesty, Her Heirs, and Successors, for the public service of the said Colony.

No action against officer without one month's notice nor after tender of sufficient amends.

XXVIII. AND be it enacted, that no action or suit shall be commenced against any Commissioner or other officer of any of the said Courts of Requests for anything by him done in the execution of his office until notice in writing of such intended action or suit shall have been delivered to, or left at the usual place of abode of the intended defendant at least one calendar month before the commencement of such action; in which notice shall be clearly set forth the cause and grounds of such intended action; nor shall the plaintiff or plaintiffs recover in any such action if tender of sufficient amends shall have been made to him, her, or them, or to his, her, or their Attorney by or on behalf of the intended defendant or defendants before such action brought.

Limitation of actions against officers, 3 months.

XXIX. AND be it enacted, that no action or suit shall be commenced against any person or persons for anything done in pursuance of this Act, after three calendar months next after the cause of action shall have arisen; and if any such action or suit shall be brought before the expiration of such month's notice as aforesaid, or after sufficient satisfaction made and tendered as aforesaid, or after the time limited as aforesaid for bringing such action or suit, in every such case the Court or Jury shall find for the defendant or defendants; and upon such judgment or verdict the defendant shall have his costs, and the same remedies for recovering the same as any defendant shall have in other cases.

1842.

6th Vict. No. 13.

XXX. AND be it enacted, that no Justice of the Peace in and for the said Colony shall take, receive, hear or determine, within the distance of three miles of the place of session of any of the said Courts of Requests, any complaint or matter which, but for the provision hereby made, would be cognizable by such Justice under and by virtue of an Act of Council passed in the present year of Her Majesty, entitled "An Act to provide a summary remedy in certain cases of Breach of Contract," when and so often as such complaint shall be for the recovery of wages or compensation not exceeding ten pounds.

Justices not to determine claim under 6th Victoria No. 5, within three miles of place of session of Court.

XXXI. AND be it enacted, that in every such Court of Requests as aforesaid there shall be kept a book or register, ruled in columns, in which shall be severally entered the names of the plaintiff or plaintiffs and of the defendant or defendants, the cause or ground of action, the date of summons to appear, the date of trial or hearing, and the judgment, order or decree, the date of issuing process of execution, if issued, and the result of such execution; and such entries shall be signed by the Commissioner, and when so signed shall be evidence of the proceedings of such Court in all other Courts whatsoever.

Register of Courts.

XXXII. AND be it enacted, that the fees limited and expressed in the table of fees in the schedule to this Act annexed, and no larger fees on any pretence whatsoever, shall be demandable and receivable by the several Commissioners, and other officers respectively, of the said Courts of Requests for and in consideration of the execution of their several and respective duties; and the said Commissioners are hereby required to hang up or place a copy of such table of fees in fair and legible writing and figures in some conspicuous part of the Court or place where they hold their respective sittings.

Fees.

XXXIII. AND be it enacted, that it shall be lawful for the Commissioner of each of the said Courts of Requests from time to time to frame rules and orders for regulating the practice or course of proceeding in the Court over which he presides upon all matters or particulars for which express provision is not made by this Act—Provided always that no such rates or orders shall have any force or authority until the same shall have been

Commissioner may make rules, &c., to be approved by Commissioner of Civil Court.

6th Vict. No. 13,

1842,

submitted to the Commissioner of the said Civil Court, and shall have been approved of under the hand of such last mentioned Commissioner.

JOHN HUTT,  
GOVERNOR.

*Passed the Council* }  
*10th Nov., 1842.* }

EDWARD C. SOUPER,  
Acting Clerk of the Council.



	£	s.	d.	£	s.	d.	£	s.	d.
For serving an order, rule or notice, } same as above summonses. .... }									
Attendance in Court at hearing. ....			6		1				2
For each witness sworn, including } plaintiff and defendant. .... }			3			6			9
For receiving money out of Court } (otherwise than under execution) } and paying over same. .... }			6		1				2
For every execution. ....	5			7	6				10