



WESTERN AUSTRALIA,
ANNO SEXTO
GULIELMI IV. REGIS.

No. 1.

An Act to amend an Act intituled "An Act for establishing a Court of Civil Judicature."

WHEREAS it is expedient to alter and extend the Provisions of an Act of Council passed in the second year of the reign of His Majesty King William the Fourth, intituled "An Act for establishing a Court of Civil Judicature," so as to provide for several matters relating to the Civil Court, which are not included in the said Act; and whereas by the tenth Section of the said Act it is enacted "that all pleadings in the said Court shall be oral, and made by the Parties to the Suit or Action in person, or by their respective lawful Agents, or Deputies," and whereas it is expedient to adopt some course of proceeding, by which the Commissioner of the said Court, shall be enabled to exercise a proper control over the conduct of such Persons as shall be desirous of acting as recognized Agents, or Practitioners in the said Court;—Be it therefore enacted, by His Excellency the Governor of Western Australia, with the advice of the Legislative Council, that from and after the first day of May next, it shall not be lawful for any Person to act as an Agent or Practitioner in the said Court, without having first obtained from the Commissioner of the said Court, such a

Preamble.

Agent practising in the Civil Court shall obtain a Certificate, to be enrolled and pay a License Fee.

Certificate as hereinafter described, and without having paid to the Collector of Revenue, as a fee for license to act as such recognized Practitioner, such a Sum as shall be appointed by the Governor, or other Person administering the Government of the Colony, by his Proclamation issued from time to time for that purpose, and without having had such Certificate, with the Receipt of the Collector, of Revenue for such License Fee acknowledged thereon, enrolled in the Office of the Registrar of the Civil Court.

Exceptions of persons called to the Bar, and Law Officers of the Crown.

II. PROVIDED that it shall not be necessary for any Person who shall have been duly called to the English, Scottish, or Irish Bar, or for any Person acting as Law Officer of the Crown, to obtain such Certificate, or pay such License Fee.

Person may conduct his own Cause, or employ an unlicensed Agent.

III. AND be it further enacted, by the authority and with the advice aforesaid, that nothing herein contained shall be construed, so as to have the effect of preventing any Person, either from conducting his own Cause, or employing, or procuring any other person than such licensed Practitioner to act for him, or in his stead; Provided that such person so acting for him, or in his stead, shall not be entitled to introduce any charge for his trouble and attendance, into the Costs, as between party and party.

Mode of obtaining, and particulars of Certificate.

IV. AND be it further enacted, that every Person desiring such Certificate, shall make such proof before the Commissioner, as may enable him to certify, whether such person has been duly admitted as a Solicitor, or Attorney of any of the superior Courts of Great Britain, or Ireland, or whether of any other, and what Local, Provincial, or Colonial Court, or whether he is without any such previous qualification.

Amount of License Fee.

V. AND be it further enacted, the License Fee shall be proportioned to the degree of Qualification, so that the amount chargeable shall be less to the qualified, than to the unqualified person.

Certificate to be annually renewed on 1st of March, except in certain cases.

VI. AND be it further enacted, that such Certificate shall be annually renewed, and shall continue in force until the first day of March in each and every year, except in cases hereinafter mentioned.

Commissioner may refuse, forfeit, or suspend Certificate of a Practitioner.

VII. AND be it further enacted, that in case of any improprieties of practice, or conduct of a minor degree, on the part of any such Practitioner, it shall be lawful for the Commissioner to report the same to the Governor; and, upon the sanction of the Governor, by and with the advice of the Executive Council, to declare such Certificate forfeited, for the whole, or a portion of the current year, or to refuse it for a greater or less portion of the ensuing year, according to the nature of the offence, so as to disqualify such person from acting as a recognized Practitioner, for such period as the Certificate shall have been so forfeited or refused.

A Practitioner may be totally disqualified from practising in any Court of this Colony.

VIII. AND be it further enacted, that in case of any such gross misconduct on the part of such Practitioner as would occasion an Attorney to be struck off the Rolls in England, it shall be lawful for the Commissioner to report such case to the Governor, or other person ad-

administering the Government of the Colony, with a recommendation that such person shall be disqualified from practising ever after in any Court of Law in the Colony; and on the written approval of such recommendation being subscribed to such report by the Governor, or other person administering the Government, with the advice of the Executive Council, it shall be lawful for the Commissioner on the next Court day, to pronounce a Judgment to that effect; and immediately on the delivery of such Judgment, such Practitioner shall be disqualified accordingly.

IX. AND be it further enacted, that all Fees for such Licenses payable under this Act, shall be reserved to the use of His Majesty His Heirs and Successors.

Appropriation of License Fees.

X. And whereas the practice of enforcing observances of an Award by attachment of the person, is unsuited to the present state of this Colony, as well by reason, of the want of a proper prison for the reception, and safe custody of persons committed on such account, as also of the want of proper funds applicable to the maintenance of persons so committed; Be it therefore enacted, by the authority and with the advice aforesaid, that when any Award, shall have been made under the authority of the Civil Court of this Colony, it shall be lawful for the Commissioner of the said Court, to direct, that such Award shall be recorded, and proceeded upon in like manner, as if it were a Judgment of the Court.

Recital.

Awards, recorded and enforced as Judgments.

XI. AND whereas, it is expedient to prevent any doubt being entertained, as to the validity of the Title acquired by the Purchaser of any real Property, sold by the Sheriff, or other proper Officer, under process of Execution, issued out of the Civil Court; Be it therefore enacted, that any Certificate, or instrument, whether hereafter, or heretofore executed, of the tenor, and effect mentioned in the Schedule hereunto annexed, duly obtained from the Registrar Clerk, and signed by the Commissioner of the said Court, shall be, to all intents, and purposes, as valid and effectual, to transfer, and convey to the said Purchaser, all Right, Title, and Interest, of the person whose property was so sold under Execution, in and to the said Property as any other more formal Deed, Conveyance, or Assurance, duly executed between the parties, and signed by the person whose property was so sold under such Execution.

Recital.

An Instrument, of a given form, effectual to transfer Real Property sold under Execution.

XII. AND whereas, it is expedient more effectually to relieve Sheriffs, and other Officers, executing process against property, whether real or personal, to which third parties shall advance any claim; Be it therefore enacted, by the authority and with the advice aforesaid that upon any such claim being made, to any property taken, or intended to be taken in Execution such Sheriff, or Officer, may apply to the Commissioners of the said Court, before, or after the return of the process, and before, or after any action brought against such Sheriff, or Officer, to call before, him, by rule of Court, as well the party issuing

If claim be made by third party to any property seized under Execution, the Court may decide upon such claim in a summary way.

such process, as the party making such claim, and, for the adjustment of such Claims, it shall be lawful for the said Commissioner, to make such Rules and Decisions as shall appear just; and the costs of such Proceedings, shall be in the discretion of the Court; and such Rules and Decisions shall be entered of record, and have the same force, and effect as any other Judgment of the Court.

JAMES STIRLING,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council
This 11th Day of April, 1836.*
PETER BROWN,
Clerk to the Council.

SCHEDULE REFERRED TO BY THE ANNEXED ACT.

*Form of Certificate or Instrument from the Civil Court to Party
Purchasing Real Property sold under Execution.*

Civil Court of } TO ALL to whom these Presents shall come,
Western Australia } Greeting :
to wit. } WHEREAS in a certain Cause, wherein A. B. was
Plaintiff, and C. D. was Defendant, a Judgment was obtained on the day of
in this Court by the said Plaintiff, and whereas, a Warrant of Execution was issued, under and by virtue of which, the real (or a portion of the real) Property of the Defendant was sold by public auction on the day of
and at such sale E. F. became the Purchaser of (here describe the property sold) for the sum of £ , which sum has been paid into Court, and possession of the said premises given to the said E. F. by the proper Officer of the Court, as appears by the Return of the said Officer : NOW KNOW ALL MEN, that the said E. F. hath thereby acquired all the Right, Title and interest of the said Defendant, in and to the Premises aforesaid. Given under my hand and the seal of the Court this day of , in the Year of Our Lord.