



WESTERN AUSTRALIA.
ANNO SEXTO
GULIELMI IV. REGIS,
No. 3.

AN ACT for attaching Debts, Money, Goods, or Effects in
the hands of third Parties.

[11th April, 1836.]

WHEREAS it is expedient to facilitate the Recovery of Debts in
this Colony, where the Law of Arrest for Debt does not prevail,
and whereas it appears that a power for attaching Debts, Money,
Goods or Effects, in the hands of third Parties in the manner of pro-
cess by writ of Foreign Attachment would be beneficial for that end:
Be it therefore enacted by His Excellency the Governor of Western
Australia, with the advice and consent of the Legislative Council, that
from and after the commencement of this Act, it shall be lawful for
any Plaintiff, who shall have obtained a Judgment, or who shall have
commenced an action against any Defendant in the Civil Court of this
Colony for the recovery of any Debt, Damages or Sum of Money, to
apply to the Commissioner of the said Court for a Rule or Summons
in the nature of a Writ of Foreign Attachment.

Preamble.

Plaintiff may apply to the
Commissioner for a Rule in
the nature of Writ of
Foreign Attachment.

II. AND be it further enacted, that the application for such Rules
or Summons shall be grounded upon, or accompanied by, an Affidavit,
to the effect, either that the said Judgment still remains unsatisfied
or that the said Debt, or a portion thereof, still remains due; and also
of the Deponent's belief that the party against whom he applies for
such rule is indebted to the Defendant to some amount, or that he has
money goods or effects in his hands or possession belonging to the said

Such application to be
grounded on affidavit of
debt due, &c.

Defendant; which Affidavit may be made before the Commissioner of the said Court, or any Justice of the Peace for the said Colony.

The Rule is to be directed to the Defendant, as well as to such third Party.

III. AND be it further enacted, that the Rule or Summons to be issued shall be directed, as well to such third Party, in whose hands the property is to be attached, as also to the Defendant, calling upon both, or either of them, to appear at a time and place therein appointed, and shew cause why such Debt, Money, Goods or Effects, or a requisite portion thereof, should not be paid or delivered over to the Plaintiff, in satisfaction or towards the discharge of his Debt; and such Rule shall also contain, at the foot, a Notice to such third Party, warning him not to pay over such Debt, or deliver over such Money, Goods or Effects so attached in his hands, to the Defendant, or any other person on behalf of the Defendant, until the hearing of the matter by the said Commissioner.

Sheriff or other Officer to take an Inventory of Property attached, and cause an appraisement to be made of value

IV. AND be it further enacted, that the Sheriff, or other Officer serving such Rule, shall take an Inventory of such Property belonging to the Defendant, as shall be so attached in the hands of such third Party so warned as aforesaid, and shall cause an appraisement to be made of the value of such Property, and shall return such Inventory, with such appraisement to the Court; and in order to effect such return, the Sheriff or other lawful Officer may call upon two competent, and disinterested Individuals, on oath, to appraise such Goods or Effects, and to require any Packages, Bale or any other thing containing property, to be opened, for the purpose of such appraisement.

If the Party warned shall pay over the debt, &c. to Defendant, Judgment may be entered against him for amount.

V. AND be it further enacted, that if the Party so warned shall pay over such Debt, or deliver over such Money, Goods or Effects, to the Defendant, or any person on his behalf, after the service of such Rule or after the disallowance of the cause shewn, then, in that case, Judgment may be forthwith entered up against such person for the full amount of such debt, or money, or the appraised value of such goods or effects, together with all costs of the proceedings connected therewith.

Party not obliged to make payment in other manner than he agreed to pay the Defendant.

VI. PROVIDED always, that if the Party so warned shall, upon the service of the Rule, agree to pay the said Debt to the Plaintiff, then, in that case, he shall not be obliged to make such payment in any other manner, or at any other period, than he had agreed to pay such Debt to the Defendant.

Receipt of the Plaintiff to be a sufficient discharge. Third Party may stop his costs out of amount.

VII. AND be it further enacted, that the Receipt of the Plaintiff shall be a sufficient discharge against the Defendant for such amount of Debt, Money, or appraised value of Goods, as shall be handed over to the Plaintiff by such third Party, in whose hands such debt, money or other property shall have been attached; and such third party shall be entitled to reimburse himself for all reasonable expenses, out of the money or other property which has been so attached in his hands.

VIII. AND be it further enacted, that if such third Party, who shall have been so warned, shall signify to the Registrar Clerk of the Civil Court before, or on the day of hearing, his consent in writing, to pay the Plaintiff the amount of such Debt, Money, or the appraised value of the Goods so attached in his hands; it shall not be necessary for such party to appear in Court on the day appointed for the hearing of the Cause; but a memorandum of such consent shall be entered by the Registrar Clerk; and if the Debt or Amount shall not be paid or satisfied, according to the terms of such consent, then, upon application of the Plaintiff to the Commissioner, leave may be given to enter up Judgment against such third Party, for the whole, or so much of the Amount as shall still remain unpaid, together with such Costs, as shall have been incurred by the Plaintiff upon it.

If the Party so warned shall signify to the Registrar Clerk his consent to pay, he need not appear in Court; memorandum made by the Registrar Clerk, &c.

Debt not paid Judgment against third party.

IX. AND for the purpose of preventing, or punishing frivolous, or vexatious Applications, or Opposition, be it further enacted, that it shall be lawful for the Commissioner to allow, or disallow Costs or to give full, or exemplary Costs, against either, or any of the said parties, as the circumstances of the case may appear to require.

Commissioner to allow or disallow costs, &c. &c.

X. AND be it further enacted, that all such Rules and Decisions as the Commissioner may make, either with respect to the costs, or upon the merits of the Case, shall be entered of record, and have the same force and effect as any other Judgment of the Court.

Rule and Decision made by Commissioner to have the same force as Judgment.

XI. AND be it further enacted, that nothing herein contained is to make it lawful to attach the Salary, Pay, or Pension of any Government Officer, Naval or Military Officer, Seaman, Soldier, or other person in the service or pay of the British, or Colonial Government.

Not to affect pay &c., of Public Officer, &c.

JAMES STIRLING,

GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council,
this 11th day of April, 1836,*

PETER BROWN,
Clerk of the Council.