



ANNO SECUNDO

GULIELMI IV. REGIS.

NO. 1.

An act for establishing a Court of Civil Judicature.

(10th February, 1832.)

WHEREAS by an Act of Parliament passed in the tenth Year of the Reign of His late Majesty King George the Fourth, intituled, "An Act to provide until the Thirty first day of December, One Thousand Eight Hundred and Thirty Four, for the Government of His Majesty's Settlements in Western Australia, on the Western Coast of New Holland," It is enacted, that it shall and may be lawful for His Majesty, His Heirs, and Successors, by any order or orders, to be by him or them made, with the Advice of his or their Privy Council, to make, ordain, (and subject to conditions and restrictions as to him or them should seem meet,) to authorize and empower any three or more Persons resident and being within the said Settlement, to make, ordain, and establish, all such Laws, Institutions, and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order and good Government of His Majesty's Subjects, and others, resident within the said Settlement.

And whereas His Majesty by an Order in Council, bearing date

Recital of 10th Geo. 4th 22, enabling His Majesty to constitute a Legislative Council in Western Australia.

Recital of His Majesty's
Order in Council.

Power to make laws and to
constitute Courts &c.

Subject to approval of His
Majesty.

Civil Court established.

To be a Court of Record.

Appointment of Commis-
sioner.

Power of dismissal.

at Saint James's the first day of November, One Thousand Eight Hundred and Thirty in Pursuance of the said Act of Parliament was pleased to order that the Governor for the time being of the said settlement of Western Australia, or the Officer administering the Government thereof, the Senior Officer of His Majesty's Land Forces next in Command, the Colonial Secretary of the said Territory for the time being, the Surveyor General thereof for the time being, and the Advocate General thereof for the time being, so long as they shall respectively be resident in the said Settlement, or any three of them (of whom the Acting Governor to be one), shall have authority and power, to make, ordain, and establish, all such Laws and Ordinances and to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government of His Majesty's Subjects and others within the said Settlements, which Power and Authority shall nevertheless be so exercised subject to the following conditions and restrictions, (that is to say) that all such Laws and Ordinances as aforesaid shall by the Governor or Officer administering the Government be with all convenient expedition transmitted to His Majesty for his approbation or disallowance, through one of his principal Secretaries of State, and that the same or any part thereof shall not be in force within the said Settlements after His Majesty's disallowance thereof, or of any of them, or of any such part thereof, or of any of them as aforesaid, shall be made known therein, and further, that no such Law or Ordinance shall be made unless the same shall have first been proposed by the said Governor, or Officer administering the said Government, and further, that in making all such Laws and Ordinances the said several persons shall and do conform to all such instructions as His Majesty shall from time to time be pleased to issue for that purpose. And further, that no Court of Justice be constituted by the several persons aforesaid, within the said Settlements, except by a Law or Ordinance to be by them for that purpose made under and subject to the conditions and restrictions aforesaid:

Be it therefore enacted, by His Excellency the Governor of Western Australia, with the advice of the Legislative Council, that there shall be within the said Colony of Western Australia, a Court of Civil Judicature, which shall be called the Civil Court of Western Australia.

II. AND be it further enacted, that the said Civil Court shall be a Court of Record.

III. AND be it further enacted, that the said Civil Court shall consist of and be holden by and before one Judge, who shall be styled "The Commissioner of the Civil Court of Western Australia," and shall be appointed by His Excellency the Governor, by Warrant under the the Public Seal of the said Colony.

IV. And be it further enacted, that the said Commissioner shall hold his Office during good behaviour, and that it shall be lawful for His Excellency the Governor with the advice and Consent of the Ex-

Executive Council of the said Colony, upon proof of any misconduct of such Commissioner, to discharge him from his said Office, by an Order under the Public Seal of the said Colony.

V. AND be it further enacted, that this said Court shall have and use, as occasion may require, a Seal bearing a Device and Impression of the Royal Arms within an Exergue or label surrounding the same with this Inscription, "The Seal of the Civil Court of Western Australia," and that the said Seal shall be kept in the custody of the said Commissioner. Seal of the Court.

VI. AND be it further enacted, that there shall be and belong to the said Court the following Officers; (that is to say) a Registrar Clerk, one Messenger or Bailiff to be constantly attendant on the Court, and two other Messengers or Bailiffs to be resident at convenient distances from the place where the Court shall hold its sittings. And that such Registrar Clerk shall be appointed by the written order of His Excellency the Governor, and shall be removed on proof of misconduct, by the same authority and in like manner. And that all such Messengers and Bailiffs shall be appointed and discharged by and at the discretion of the said Commissioner. And that no new Officer shall be appointed to the said Court without the approval and written order of His Excellency. Subordinate Officers.
Registrar Clerk.
Bailiffs and Messengers.

VII. AND be it further enacted, by the authority and with the advice aforesaid, that the said Civil Court of Western Australia shall have cognizance of all Pleas and Jurisdictions in all cases as fully and amply in Western Australia, as His Majesty's Courts of Kings Bench, Common Pleas, and Exchequer lawfully have in England. And that the said Civil Court shall have authority to appoint Guardians and Committees over the Persons and Property of Infants, Idiots, and Lunatics within the said Colony; And to grant Probates of Wills, and commit Letters of Administration of the Chattels and Effects of persons dying in the said Colony, in manner and form hereinafter more particularly set forth. Jurisdiction of the Court.

VIII. AND be it further enacted; that all Suits or Actions of Whatever Nature shall be commenced in the said Civil Court by Summons, or other process in the nature of a Summons, and not by Arrest, and that all Process of execution issued out of the said Court shall be directed against Property only and not against the Person. Suits commenced by
Summons only.

IX. PROVIDED always and be it enacted and declared, that if any Person shall have a Claim or Ground of Action of whatsoever nature against any other Person who may be about to leave this Colony, and the party having such claim or ground of Action as aforesaid shall produce to the Commissioner of the said Court, reasonable prima facie Evidence of such his right of Action and of the intention of such other party to leave the Colony; in such case it shall be lawful for the said Commissioner to issue a Warrant under his hand for the apprehension of the party so intending to leave the Colony, who shall there- Arrest when allowed.

Warrant of Arrest	upon give reasonable security at the discretion of the said Commissioner, to abide the result of proceedings in the said Court, to be founded on such right of Action, or else shall be kept in Custody until such proceeding shall have terminated; provided always that the party claiming such Warrant shall prosecute his Claim with all reasonable diligence, otherwise it shall be lawful for the said Commissioners to discharge the party so kept in Custody as aforesaid on his Petition.
Prosecute claim with diligence.	
Pleadings to be oral.	X. AND be it further enacted, that all pleadings in the said Court, shall be oral and made by the parties to the Suit of Action in Person, or by their respective lawful Agents or Deputies.
Cases under £20 to be tried without Jury.	XI. AND be it further enacted, that all Suits or Actions in the said Civil Court in which the Debt or Damages claimed, or the value of the subject matter of such Suit or Action shall not exceed Twenty Pounds Sterling, shall be heard and determined without the intervention of a Jury. And that in all other cases if either party shall be desirous of having the cause tried before a Jury, he or she shall be entitled to have the same so tried, on application to the Registrar Clerk of the said Court, and on paying into the hands of such Registrar Clerk the costs of summoning and remunerating such Jury.
If Jury, costs advanced by whom.	
Courts to grant Probates and Letters of Administration.	XII. AND be it further enacted by the authority and with the advice aforesaid, that the said Civil Court of Western Australia shall have full power to grant Probates under the Seal of the said Court, of the last Wills and Testaments of Persons dying in the said Colony or its Dependencies, and to commit Letters of Administration under the Seal of the said Court, of the goods, chattels, credits, and effects whatsoever, of persons so dying as aforesaid who shall die Intestate, or who shall not have named an Executor, resident within the said Colony, or its dependencies, or where the Executor being duly cited shall not appear and sue forth such Probate, annexing the said Will to the Letters of Administration, when such Person shall have left a Will without naming any Executor; and to sequester the goods, chattels, credits, and effects whatsoever, of such Persons so dying in cases allowed by law, as the same is and may be now used in the diocese of London, and to demand, examine, and allow, or if occasion require disallow, the accounts of them in such manner and form as may be used in the said diocese, and to do all other things whatsoever necessary in that behalf: Provided always, that in all cases where Letters of Administration shall be committed with the Will annexed, for want of an Executor applying in due time to sue forth Probate, there shall be reserved in such Letters of Administration full power and authority to revoke the same, and to grant Probate of the said Will to such Executor whenever he shall duly appear and sue forth the same.
To whom Letters of Administration be granted.	XIII. AND be it further enacted, that such Letters of Administration shall be granted and committed by the said Civil Court to any one or more of the lawful Next of Kin of such Person so dying as aforesaid, and being then resident within the jurisdiction of the said Court, and being of the Age of Twenty-One Years. And in case

there shall be no such person, or in case such person shall not appear when duly cited, then such Letters of Administration shall be committed to the Registrar Clerk of the said Court, or to some Creditor or Creditors of the Deceased as the Court shall see fit.

XIV. AND be it further enacted, that every person to whom such Letters of Administration shall be committed, shall before the granting thereof give sufficient security by Bond to be entered into, to the Registrar Clerk of the said Court and his successors in Office, for payment of a competent sum of money with two able sureties, respect being had (as to the sum therein to be contained and as to the abilities of the Sureties) to the value of the estates, credits, and effects of the Deceased; which bond shall be safely kept among the Records of the said Court, and shall be conditioned for the making and exhibiting a true and just account and Administration of the chattels, credits, and effects of the Deceased to the satisfaction of the said Court, and according to the directions thereof. And in case it shall be found necessary to put the said Bond in suit for obtaining the effect thereof for the benefit of such Person or Persons as shall appear to the said Court, to be interested therein, (such Person or Persons from time to time giving satisfactory security for paying all such costs as may arise from the said suit,) such Person or Persons shall by order of the said Court be allowed to sue the same in the name of the Registrar Clerk of the said Court for the time being.

XV. AND be it further enacted, that the said Court shall fix certain periods when all persons to whom Probates of Wills and Letters of Administration shall be granted by the said Court, shall from time to time, until the effects of the Deceased person shall be fully administered, pass their Accounts relating thereto before the said Court, and in case the effects of the Deceased shall not be fully administered within the period for that purpose to be fixed by the said Court, then or at any earlier period at the Discretion of the said Court, the person or persons so obtaining such probate, or administration, shall pay, deposit or dispose of the Balance of money belonging to the Estate of the Deceased, then in his or their hands, and also all other chattels and effects belonging to the Estate of the Deceased, in such manner and unto such Persons as the said Court shall direct for safe custody. And the said Court shall from time to time make such order as shall be just for the due Administration of such Assets, and for the payment or remittance thereof, or of any part thereof, as occasion shall require, to or for the use of any Person or Persons, whether resident or not resident in the said colony who may be entitled thereto or to any part thereof, whether as Creditors, Legatees, or Next of Kin, or by any other right or title whatsoever. And it shall be lawful for the said Court to allow to any Executor or Administrator of the Effects of any deceased Person, such commission or per-centage out of their Assets as shall be just and reasonable for their pains and trouble therein.

XVI. PROVIDED always and be it enacted, that no allowance whatever shall be made for the pains and trouble of any Executor or

Administrators to give Bond.

How such Bond to be put in suit

Rules and Orders on granting Administration and Probate.

Remuneration for trouble.

Executor or Administrator misbehaving.

Administrator who shall neglect to pass his Accounts, at such time, or to dispose of any goods, chattels, or securities with which he shall be chargeable, in such manner as in pursuance of any general or special Rule or Order of the said Court shall be requisite. And moreover every such Executor or Administrator so guilty of any such neglect shall be charged with Interest at the rate then current in the said colony for such sum or sums of money as from time to time shall have been in his hands, whether he shall or shall not have made interest thereof.

Appointment of Guardians,
over Infants, Idiots, and
Lunatics.

XVII. And be it further enacted, by the authority and with the advice aforesaid, that it shall be lawful for the said Court to appoint Guardians and Keepers of Infants and their Estates according to the order and course observed in England, and also Guardians and Keepers of the Persons and Estates of Natural Fools, and of such as are, or shall be deprived of their reason by the Act of God so as to be unable to govern themselves and their estates, and to enquire, hear, and determine all questions of Idiocy or Lunacy, by a Jury, of Twenty-Four good and lawful men, the opinion of the majority of whom shall be taken and received as the verdict of the said Jury.

Questions of Idiocy or
Lunacy.

Right of appeal to the
Governor in Executive
Council in 28 days after
Judgments &c. of £100.

XVIII. AND be it further enacted, that in all cases in which any final Order, Judgment, or Sentence shall be made or pronounced by the said Court for or in respect of any sum or matter of Issue at the value or amount of One Hundred Pounds, or in case such Order Judgment, or Sentence shall directly or indirectly involve any claim, demand, or question respecting property or any civil right, amounting to or of the value of One Hundred Pounds, any person feeling aggrieved thereby, may within Twenty-eight days after the same shall have been made or pronounced, appeal therefrom to His Excellency the Governor and the Executive Council of the said Governor, upon giving Fourteen Days Notice of such Appeal to the adverse party, and upon giving reasonable security to the satisfaction of the said Court for the due prosecution of the Appeal, the due performance of such Order or Judgment as the said Governor and Council shall think fit to make, and for payments of the Costs of the Appeal. And it is hereby declared that no evidence shall be received on such Appeals which was not received on the original hearing.

Evidence on Appeal.

Court to execute Orders of
Governor and Council on
Appeals.

XIX. AND be it further enacted, that in all cases of Appeal as aforesaid the said Court shall conform to, and execute all such Judgments and orders as his said Excellency and the said Executive Council shall think fit to make in the Premises, in such manner as any original Order, Judgment, or Sentence of the said Court could or might have been executed.

Governor in Executive
Council to make Rules
and Orders &c.

XX. And be it further enacted, that it shall be lawful for His Excellency the Governor, by and with the advice and consent of the Executive Council of the said colony, to make and prescribe such Rules and Orders touching the Times and Places of Session, Form of Process, Pleadings, and other Business and Proceedings of the said

Court, and of the Fees payable therein, as to him and them shall seem fit: and such Rules and Orders from time to time to alter, amend, or revoke as occasion may require.

JAMES STIRLING,
GOVERNOR AND COMMANDER-IN-CHIEF.

Passed the Legislative Council
This 10th day of February, 1832,
M. J. CURRIE,
Clerk to the Council.

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