

WESTERN AUSTRALIA

ANNO SECUNDO

GUL. IV. REGIS

No. 5

An Act to secure the Payment of Debts due to the
Crown. [*Assented to 6th March, 1832.*]

Preamble

WHEREAS the mode of enforcing the payment of debts due to the Crown as practised in England by extents in chief is unsuited to the present circumstances of the Colony, and it is expedient to provide a more simple method of securing payment of the same, saving always to all parties legally entitled the right of disputing the claim of the Crown: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, with the advice of the Legislative Council, that as soon as conveniently may be after the passing of this Act, the Colonial Secretary of the said Colony shall furnish to the Registrar Clerk of the Civil Court thereof a list of all persons indebted to the said Government; and that when and so often as any final judgment shall be recovered by any private suitor in the said Court against any debtor whose name shall be contained in the said list (under which judgment process of execution could be issued against the real and personal property of such debtor), it shall be incumbent upon the said Registrar Clerk within twenty-four hours after entry of such judgment to give notice in writing, according to the form (No. 1) in the Schedule hereunto annexed, to such debtor that unless he appear in the said Court on a certain day, to be named in such notice (not being less than three days from the date of such notice), and show cause to the contrary, execution will be awarded against him for the debt so due to the said Government, as well as for the amount recovered by such judgment as aforesaid, and at the same time the said Registrar Clerk shall give a notice in writing, according to the form (No. 2) in the said Schedule, to the party recovering such judgment.

Colonial Secretary to furnish Registrar Clerk with a list of debtors to the Crown

Whenever final judgment against any such debtor, the Registrar Clerk shall give notice

If debtor fail to appear on the day appointed, execution in favour of the Crown

2. And be it further enacted that if such debtor on the day so appointed for showing cause as aforesaid (until which day execution shall be stayed upon the said judgment) shall not appear and dispute the claim of the said Government, then upon proof of his having been personally served with the said notice to show cause, the said Court shall award execution to be forthwith issued against the body, lands and goods of the said debtor in precedence and exclusion of all other process of execution previously issued at the instance of any private suitor, and under which no arrest of person or sale of lands and goods shall have been actually made at the date of such award.

If debtor appear on the day appointed, the matter shall be heard

3. And be it further enacted that if on the day appointed for showing cause as aforesaid the said debtor shall appear and offer to show cause against the claim of the said Government, it shall be law-

Debts due to the Crown

ful for the said Court to hear and determine the matter of such cause in such and the same manner as if the same had been brought before the said Court by summons; and if the judgment of the Court shall be in favour of the said Government, execution shall be forthwith awarded against the body, lands and goods of the said debtor in precedence and exclusion as aforesaid; but if the judgment of the Court shall be against the said Government, process of execution shall be forthwith issued in favour of the party recovering such judgment as aforesaid.

If judgment against the Crown, execution awarded for the private suitor

4. And be it further enacted that in case the debt so due to the said Government, together with costs, shall not be paid within five days after the day of date of the process of execution, the lands and chattels attached under such process (or so much thereof as shall be sufficient to discharge the said debt and costs, together with the fees and expenses of sale) shall be sold by public auction by the Sheriff of the said Colony, who shall with all convenient dispatch pay into the hands of the Treasurer or Acting-Treasurer for the time being of the said Colony, the debt and costs so levied as aforesaid on account of the said Government.

If execution for the Crown, and debts and costs not paid, the property sold by public auction

5. Provided always, and be it further enacted, that if any debtor to the said Government shall make default by not appearing in the said Court on the day appointed to show cause as aforesaid, and shall within five days after the date of process of execution issued against him, in consequence of such default, satisfy the said Court that such default was not wilful or negligent, it shall be competent for the said Court to stay execution upon such process, and to admit the said debtor to show cause, if any he may have, against the claim of the said Government.

Debtor making default in appearance, may show cause why

6. And be it further enacted, that if the property of any debtor to the said Government against whom process of execution shall have been awarded as aforesaid shall be sufficient to answer the amount directed by such process to be levied, it shall not be lawful for the said Sheriff to arrest the person of such debtor; and if the personal property of such debtor shall not be sufficient to answer the said last mentioned amount, it shall not be lawful for the said Sheriff to attach the real property of the said debtor.

If property sufficient, Sheriff not to arrest, and if the personal property sufficient, not attach his real property

7. And be it further enacted that the process of execution to be issued out of the said Court for the levying of any debt due to the said Government shall be in the Form (No. 3) in the said Schedule.

Form of execution for the Crown

8. And in order that no private creditor may be prejudiced by suing any debtor to the said Government, not knowing him to be such: Be it further enacted that the said Registrar Clerk shall inform without fee, and whenever called upon so to do, any creditor suing or about to sue any other person in the said Court, whether the person so sued or about to be sued is a debtor to the said Government, and to what amount.

Creditors to be informed without fee, who are debtors to the Crown, and the amount

JAMES STIRLING,
GOVERNOR AND COMMANDER-IN-CHIEF.

Debts due to the Crown

SCHEDULE REFERRED TO BY THE ABOVE ACT

FORM No. 1

*Civil Court of }
Western Australia }*

Mr. A. B.,

Take notice that unless you appear and show cause to the contrary on the
day of next, at the hour of in the noon,
Execution will be awarded against your body, lands and goods, on account of a sum
of now due by you to the Local Government of the said Colony.

Dated the

day of
Signed

C. D.,
Registrar Clerk.

FORM No. 2

*Civil Court of }
Western Australia }*

Between C. D., Plaintiff, and A. B., Defendant

Mr. C. D.,

Take notice that the sum of is claimed to be due from the
above-named A. B. to the Local Government of the said Colony, and that unless
due cause be shown to the contrary by the said A. B. on or before the
day of next, Process of Execution will be awarded on account of the
said claim against the body, lands and goods of the said A. B. in
preference of the judgment by you recovered in the said cause, and that in the
meantime execution is stayed upon the said judgment.

Dated the day of

E. F.,
Registrar Clerk.

FORM No. 3

*Civil Court of }
Western Australia }*

To the Sheriff of the said Colony

These are to require you to attach the body, lands and goods of A. B.,
of on account of a certain sum of (debt and
costs) now due by the said A. B. to the Local Government of the
said Colony, and that you cause the said sum of together with your
charges about the same, to be levied of the said lands and goods within six days
from the date hereof, unless the said sum of together with your
charges as aforesaid, shall be sooner paid and satisfied, and return to the Registrar
Clerk of the said Court what you shall have done by virtue hereof, for which this
shall be your warrant.

Given under my hand this

day of

C. D.,
Commissioner of the said Court.