# WESTERN AUSTRALIAN

#### GAZETTE GOVERNMEN

(PUBLISHED BY AUTHORITY.)

### FRIDAY, AUGUST 30, 1844.

INUMBER 420

Colonial Secretary's Office, Perth, August 28, 1844.

His Excellency the Governor has been used to direct it to be notified, that per-as requiring good Seed Barley may be applied from the establishment on Rottnest application at this office.

Terms—5s. the bushel; the barley to be livered by the Government on the beach Fremantle, and to be taken thence at the when expense of the purchaser, who will be muired to furnish sacks or other packages. By His Excellency's command, PETER BROWN.

Colonial Secretary's Office, Perth, August 29, 1844.

His Excellency the Governor has been leased to direct it to be notified for general formation, that G. F. Stone, Esq., lass er appointed to act as Registrar-Glerk (the Civil Court during the absence on by of the Registrar, A. H. Stone, Esq. By His Excellency's command, PETER BROWN.

### Proclamation.

By His Excellency JOHN HUTT, Esq., Governor and Commander in Chief of Western Australia, and Vice-Admiral of the same.

Whereas by the third section of an Act

Council passed in the second year of the en of His late Majesty King William Fourth, No. 4, intituled "an Act to exmilitie jurisdiction and regulate the pro-medings of the Court of Quarter Sessions," is enacted, "that the Sessions of the said burt shall be held at such times and me appoint by Proclamation;" and herens it is deemed expedient that a asion of the said Court shall be held in Town of Albany, in the District of Plantagenet-Now, therefore, I, the Goernor, in pursuance of the power and uthority so vested in me by the said wited Act, by this my Proclamation, do reby appoint and direct a Session of the aid Court to be held at the said Town of Abany on the 3rd day of September next, mas soon after us may be convenient after mearrival there of Her Majesty's Colonial phooner Champion.

Given under my hund and scal at Perth this 28th day of August, 1844. JOHN HUTT,

GOVERNOR, &c. By His Excellency's command, PETER BROWN. Colonial Secretary. GOD SAVE THE QUEEN!!!

# Proclamation.

By His Excellency JOHN HUTT, Esq., Governor and Commander-in-Chief of the Territory of Western Australia and its Dependencies, and Vice-Admiral of the same.

In pursuance of the authority in me yested by a certain Act of the Imperial Parliament of Great Britain and Ireland, passed in the fifth and sixth years of Her hajesty's reign, intituled "an Act for regulating the Sale of Waste Lands belonging with Crown in the Australian Colonies, I do hereby notify and proclaim that the following portion of land in the District of

25th day of September next, at the upset price affixed thereto, on the terms and conditions set forth in certain Land regulations dated the 14th June, 1843:--

Country Grant. Leschenault location No. 59, comprising 284 acres or thereabouts, adjoining north boundary of 7,500 acres assigned to the Western Australian Company, with frontage on Lake Preston, and the east boundary 52 chains 13 links true noth and south .- Upset price 20s. per acre.

Given under my hand and seal at Perth, this twentieth day of August, one thousand eight hundred and forty-four.

JOHN HUTT, Governor and Com.-in-Chief.

By His Excellency's command, PETER BROWN, Colonial Secretary. GOD SAVE THE QUEEN!!

### Proclamation.

By His Excellency John Hutt, Esq., Governor and Commander-in-Chief of the Territory of Western Australia and its Dependencies, and Vice Admiral of the same.

In pursuance of the authority in me vested by a certain act of the Imperial Parliament of Great Britain and Ireland, passed in the 5th & 6th years of Her Mejesty's reign, intituled " an Act for regulating the sale of Waste Lands belonging to the Crown in the Australian Colonies," I do hereby notify and proclaim that the following allotment of land in the District of Perthshire be offered for sale by public auction at the office of the Collector of Revenue, in Perth, on Wednesday, the 25th day of September next, at the upset price affixed thereto, on the terms and conditions set forth in certain Land regulations dated 14th June, 1843-

Suburban Allotment. No. 26, Perth.—Upset price, £10 per

Given under my hand and scal at Perth, this twentieth day of August, one thousand eight hundred and forty-

JOHN HUTT, Governor and Com.-in-Chief. By His Excellency's command, PETER BROWN, Colonial Secretary. GOD SAVE THE QUEEN!!!

> WESTERN AUSTRALIA. ANEO OCTAVO.

### VICTORIÆ REGINÆ.

By His Excellency John Hutt, Esq., Governor and Commander-in-Chief in and over the Territory of Western Australia, and its Dependencies, and Vice-Admiral of the same, with the advice and consent of the Legislative Council thereof.

### No. IX.

An Act for the adjustment of Divisional Boundaries of Allotments in Towns, and to prevent litigation from undesigned encroachments on adjoining allotments.

Whereas Surveys of the several Towns Leschenault be offered for sale by public in the Colony of Western Australia are metion at the office of the Sub-Collector of about to be made for the purpose of a proper

respectively; and whereas it is expedient to make provision at the same time for a final adjustment of the Divisional Boundaries of the allotments in such Towns as well in order to correct many inaccuracies which may have occurred therein as also to prevent future litigation amongst the owners of adjoining allotments—Be it therefore enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that it shall be lawful for the Governor to direct the Surveyor-General, that at the same that the external lines of the blocks of allotments in each. Town are laid out for the purpose of defining the proper limits of the Streets thereof he shall cause each block to be sub-divided into its proper number of component allotments, having a special reference to the actual position of any substantial building or durable fence which may at present exist thereon, so as to interfere to as small an extent as possible with any such substantial erections, but at the same time taking care to apportion to each allotment at least the full extent of boundaries contained in any grant thereof made or to be made by the Crown.

II. And be it enacted, that the said Surveyor-General, in order to determine the due lines and positions of Divisional Boundaries, shall cause to be marked out upon each allotment, in some convenient and visible manner, the several terminal or angular points of such allotment, and that for such purpose it shall be lawful for him or any person or persons by his directions to enfor upon any allotment, and to erector construct any mark that may be deemed necessary, and to place, cut, or brand any such mark on any fence existing thereon.

III. And be it enacted, that whensoever and so soon as the several boundaries shall have been ascertained and finally marked as aforesaid, the Surveyor-General shall cause the same to be accurately delineated and expressed in figures on the maps or plans which he is directed to lay before the Governor in Executive Council in and by an Act passed in the present year of Her Majesty's reign intituled "An Act to provide for the Alignment of Streets in the several towns of the Colony of Western Australia," and shall enter a description of each allotment so marked in a Record Book to be kept by him for that purpose; and any such description shall be signed by him and countersigned by the Governor in Executive Council, and notice of every such entry shall be published in three successive Gazettes.

IV. And be it enacted, that all boundaries of allotments so entered and signed as aforesaid shall be deemed and taken to be the true boundaries of such allotments respectively, all former descriptions thereof in any title deed or otherwise notwithstanding, and whether such allotments be in the possession of the original owner or owners or of his, her, or their heir or assignee, and such Record Book, or a certified copy to be made and issued on demand, without any entry in such Book signed by the Surveyor-General, shall and may be taken in evidence of the boundaries of such allotment, in any suit or cause affecting the same.

V. And be it enacted, that in any case in which the boundaries of an allotment as adjusted under the powers of this act shall differ from those contained in any grant thereof from the Crown issued previously to such adjustment it shall be lawful Revenue Bunbury, on Wednesday, the Alignment of the Streets of such Towns for the Colonial Secretary to enderse or

cause to be endorsed upon the back of such deed, if produced to him for that parpose, the boundaries as so adjusted, and of which he shall make and sign' a memorandum in the margin or some other convenient part of the enrolled deed of grant, which dorsement and memorandum shall be signed by him and countersigned by the Governor

in Executive Council.

VI. And be it enacted, that if after such adjustment of boundaries as aforesaid it shall be found that any house or other substantial structure within the limits of any town site has been wholly or partially and undesignedly erected upon land not being the property of the owner of such house or structure, it shall not be lawful for the owner of such land to remove or disturb, for commence any proceedings at law or equity same as hereinafter provided on account of such house, or other substantial structure provided that the owner of such house or other substantial structure shall pay compensation for such land in manner hereinafter provided.

VII. And be it enacted, that at the Annual Meeting of the Trustees of each Town for the election of Officers, or at any Special Meeting thereof for the following purpose called upon the requisition of any three or more of such Trustees, of which notice shall be published in two successive Gazettes there shall be chosen by ballot those of the said Trustees to act as Valuators of the property hereinafter mentioned in the said Town, until the next such Annual Meeting-Provided that no such Valuator's shall be chosen at any such meeting, annual or special, unless at least seven Trustees

be present thereat

VIII. And be it enacted, that if any person chall have undesignedly erecated within the limits of any town-site previously to an adjustment of boundaries therein under the provisions of this act any house or other substantial structure either entirely or partly upon the land not his own property, it shall be lawful for such Valuators is aforceaid, when called upon to do so by the owner of such house or structure, or the owner of the land upon which the same stands (taking all the circumstance of the case into their consideration), to estimate and award in writing the amount which shall be paid by the owner of such house or structure to the owner of such land as a compensation for the actual piece of land so occupied by such house or structure as aforesaid, and for such further intervening piece of land as may be necessary to give access to such house or structure.

IX. And be it enacted, that in case of any difference of opinion between such Valuators as to the amount of compensation as aforesaid, the opinion of the Majority shall be taken to be the award, and that it shall be lawful for such Valuators, or the majority of them, to employ a Surveyor in order to obtain a correct mensuration and description of the area and boundaries of any piece of land, for which they shall be called upon to award compensation, and to allow and pay to such surveyor for such mensuration and description any sum not exceeding ten shillings and sixpence; and to demand and receive, over and above any sum paid or engaged to be paid to any such surveyor, for each and every award fairly written out (on parchment if furnished to them for that purpose) the sum of one guinea to be equally divided between the Valuators making and signing such award.

X. And, be it enacted, that it shall not be lawful for the said Valuators to issue or

deliver out any award by them made as aforesaid until the amount of compensation thereby awarded shall have been paid to them or any one of them, to be by them paid over in manner hereinafter provided. and that it shall not be incumbent upon them to make or enter upon any such valuation as aforesaid before the sum of one guines, as and for their own fee, and the sum of ten shillings and six pence, as and for a contingent Surveyor's fee (to be repaid if not incurred), be first deposited in the hands to be made by any such Valuators as aforeeaid shall be in the form and to the effect of the form following, the words in parenthesis being merely explanatory (that is to

We, the undersigned, being the Valuators

(or majority of the Valuators, as the case may be) for the Town-site of under Act of Council 8th Victoria No. 9, by virtue and in exercise of the powers vested in us by the said act, do hereby award to (AB) of (residence, and rank or calling) the sum of as compeneation for a piece of land being parcel of Building Allotmens (letter and number in the Surveyor-General's maps) in the aforcsaid Town site, and being now occupied or covered by (here describe generally and briefly the encroaching structure) of which (encroaching structure) (C D) of (residence and rank or calling) was heretofore reputed owner; and which said piece or parcel of land so occupied or covered as aforesaid is of the following superficial area, that is to say , and abuts on the side thereof on land of the said (C D) and

on all other sides thereof, upon the aforesaid allotment (letter and number as above); If the party, in whom land is intended to be vested by the award, choose to have a plan thereof, at his or her own additional expense, drawn upon the award, then add "according to the plan delineated on the margin (or at the foot') of these presents") and we do hereby acknowledge to have received from the said (C D) the said sum of (amount of compensation). As witness our hands the

r hands the day of . XII. Provided always and be it enacted, that the powers of valuation and of awarding compensation given by this act shall not extend to any cases of encroachment by the proprietor of one portion of an allotment (or piece or parcel of land granted by the Crown in one entire or separate lot)

on any other portion of the same allotment.
XIII. And be it enacted, that it shall be lawful for any such Valuators as aforesaid, when called upon to award compensation for any encroachment, to decide and determine whether the structure, alleged to be such encroachment, is a substantial structure within the provisions of this act or otherwise-Provided that no fence other than a stone or brick wall shall be deemed

such a substantial structure.

XIV. And be it enacted, that it shall be lawful for any such Valuators as aforesaid to consider and treat any encroachment, submitted to them for valuation and compensation, as undesigned, unless the owner or owners of the land thereby encroached upon shall give notice in writing to such Valuators before award made of his, her, or their intention to proceed at law for the recovery of such land; and that it shall be lawful for the person or persons giving such notice at any time within three calen-dar months after delivery of such notice to proceed by suit or action for the recovery of such land; but the plaintiff or plaintiffs in such action shall recover nothing therein unless he, she, or they shall prove to the satisfaction of the Court and Jury, or of the Court when there shall be no Jury, that such land was knowingly and wilfully en-croached upon; and if the person or persons giving such notice shall fail to proceed according thereto within three calendar months after delivery thereof, or if such plaintiff or plaintiffs be nonsuited, or discontinue such suit or action, or if verdiet or indoment be for the defendant or defendants, and a certificate thereof under the hand of the Registrar-Clerk of the Civil Court (for which a fee of two shillings shall be demandable) be produced to the Valna-tors of and for the lown-site within which such land shall be situated, it shall be lawful for such Valuators to proceed to award compensation for the same.

And be it enacted, that when by any such adjustment of boundaries as aforesaid any fonce or other erection, not being a substantial structure, within the

XI. And be it exected, that any award | such Valuators as aforesaid, shall be found to be an encroschment, the person or person who previously to such adjustment were the reputed owner or owners thereof shall be allowed one calendar month from the discovery of such encroachment for removal of the same, and shall during the period have right of entry on the land thereby encroached upon, for the remova of such fence or erection; and during such period, the owner of the land so encroached upon, shall not have any right of abite ment, or of otherwise intermeddling with such fence or crection.

XVI. And be it enacted, that whenever throughout this act reference is made to the owner of a structure, which by any adjusment of boundaries under this act shall have been found to be an encroachment the term "owner" shall be deemed and taken to mean and include the person or shall be deemed and persons who previously to such adjustment claimed to be, and was or were reputed the owner or owners of the land occupied by such encroachment, and his, her,

their heirs and assigns.

XVII. And be it enacted, that it shall be lawful for such Valuators as aforesil to make such valuation and award me compensation as aforesaid on the requi sition of any partowner of any encroaching structure, or land thereby encroached upon or if the agent in this Colony of any ab owner or part owner thereof respectively and that any part owner espending mone in payment of compensation, fees or ex penses under any such award as aforeside in respect of such structure may recove the same by contribution from the older part owner or part owners thereof in a action for so much money laid out an expended to and for the use of such other part owner or part owners.

XVIII. And be it enacted, that if any of such Vulnators as aforesaid for any Town-site shall die, or wish to resign he office, or become disabled to act there from mental or bodily infirmity, or she cease to be qualified as a Trustee of sin Town, or shall become pecuniarily interested in the subject matter of any avanor required award, it shall be lawful for co-valuators or co-valuator, or for any thin other Trustees of such town, to convene special meeting of such Trustees, by regal tion published in two successive Gazettes, and the Trustees assembled at such meeling being at least seven in number, shall ela another Valuator, or other Valuators, the place and stead of the Valuator or V luators so dying, disabled, disqualified, o

interested as aforesaid.

XIX. And be it enacted, that the awar of such Valuators as aforesaid may be co-cisely entered on the back of the titleden And be it enacted, that the awar of either or both of the parties if produce to them for that purpose, and that a memorial thereof shall be registered in the usu manner in the Registry Office of this colony at the expense of the owner of such house, or structure as aforesaid, and whe so registered shall have the effect of a valle conveyance in fee simple by all necessary parties of such piece of land to the own of such house or structure; and netwil standing any incapacity or disability only part of the owner or owners of such pier of land at the date of such award, but en ject nevertheless to all settlements, incup brances, estates or interests whatsoever which the person or persons bona file dealing with such land as his her or the own property previously to such away shall have professed to subject the same and subject also to all judgments, incum brances, and claims by operation of lav affecting at the date of such award general property of the person or paramataking such landunder such award.

XX: And be it enacted, that any com pensation exceeding twenty pounds while shall be awarded as hereinbefore mentions for any land shall be paid by the Valuator receiving the same, to the person or person who at the date of such award shall ! beneficially entitled to the rents and profit

and benefit, or in cases of infancy, idiotcy or lunacy, or other incapacity shall be paid to his, her or their Guardian or Guardians, Committee or Committees, Trustee or Trustees, to and for the use and benefit of such persons respectively; or in case the person or persons so for the time being beneficially entitled shall be absent from this colony then such compensation shall ormay be paid to any his, her, or their agent within this Colony holding any general authority in writing to receive monies on account of such absentee or absentees.

XXI. And be it enacted, that when any compensation exceeding twenty pounds shall be awarded as aforesaid in respect of land under mortgage or strict settlement, or any other settlement, or belonging to a femme covert, infant, idiot, lunatic, or to any person under any other disability or licapacity, or in case compensation to any amount, below or above the said sum of twenty pounds, shall be awarded as afore-said in respect of land, the title of which shall be in dispute between several claim. ants, or of which the owner cannot be discovered, or shall refuse to receive such compensation, or shall be absent from this Colony without any known agent competent to give a receipt for such compensa-tion, then and in any of the said cases it shall be lawful to pay the amount of such compensation into the hands of the Registrer Clerk of the Civil Court to abide the order, control, and disposition of the said Court; which said Court, on the applicahon of any person making claim to such compensation, or any part thereof, on motion or petition, is hereby empowered in-summary way of proceeding or otherwise to order payment thereof to the person, or distribution thereof among the persons, satisfied to such land in such manner, time, and proportion, and upon such terms or otherwise as to the said Court shall seem just and reasonable; and the said Registrar Clerk shall give a receipt for any amount of compensation so paid to him, specifying therein by whom the same was paid, and in respect of what land according to such particulars as shall be furnished to him by the person paying the same, and shall be entitled to demand for such receipt the num of one shilling.

XXII. And be it enacted, that when any compensation awarded as aforesaid shall have been paid by any mistake of fact or law to a person or persons not law-fully entitled to receive the same, such mispayment shall not affect the title of the party paying the same to the land in respect of which the same shall have been paid, nor shall such land be subject to any lien for the sum so mispaid; but the persons lawfully entitled to receive such compen-sation, or his, her, or their lawful repreuntatives, shall and may recover the same within eighteen months from the date of such payment by action for money had and received against the person receiving such mispayment, or his or her lawful reprementative.

XXIII. And be it enacted, that this act may be altered, amended, or repealed by any act to be passed during this present Session.

"JOHN HUTT,"

Passed the Council, August 22, 1844. §
Edward C. Souper, Clerk of the Council.

#### No. X.

An Act to extend the remedies of Creditors against Debtors about to leave the Colony.

Whereas by the ninth section of an Act of the Legislative Council of this Colony passed in the second year of the reign of King William the Fourth, intituled "an Act for establishing a Court of Civil Judi-cature," it is enacted, that if any person

of action as aforesaid shall produce to the Commissioner of the Civil 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 intending to leave the Colony, who shall thereupon 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 proceedings 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 Commissioner to discharge the party so kept in custody as aforesaid on his petition; and whereas it is expedient to empower some other person to issue such warrant as aforesaid during the occasional absence on Circuit of the said Commissioner-Be it therefore enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that during any occasional absence on Circuit of the Commissioner of the Civil Court it shall be lawful for His Excellency the Governor, upon the written application of any party desiring such Warrant as aforesaid, or such Warrant as hereinafter mentioned, to appoint some fit and proper person to receive such evidence and to issue such Warrant as aforesaid, or as hereinafter mentioned, and to do all things incident to and collateral therewith as the said Commissioner is empowered to do by the said section of the Act aforesaid, or by this Act.

II: And be it enacted, that if any person has or shall, before or after the passing of this act, become the sole acceptor of any Bill of Exchange, or sole maker of a promissory note, or has or shall have entered into any other valid contract, writ-ten or verbal, by which Bill, Note, or Con-tract such person is or shall be solely bound or liable to pay within this Colony to any other person or persons any sum of money on or before a certain day or time (the payment of such money not being secured by mortgage or pledge), and if the person for the time being entitled to the benefit of such Bill, Note, or Contract, or his or her agent, shall, by the affidavit of himself or herself, or of any other person, shew to the satisfaction of the Commissioner of the Civil Court that the person so liable as aforesaid is about to leave this Colony before the time of payment specified by such Bill, Note, or Contract, without having satisfied the same, and without giving or tendering reasonable security (other than such Bill, Note, or Contract itself) for the due satisfaction thereof, it shall be lawful for the said Commissioner, or for any person appointed to act during his absence as aforesaid, to order that the person so about to leave this Colony be forthwith arrested to answer an action to be forthwith commenced against him or her by, or in the name of, the person by whom, or in whose behalf, such order shall have been obtained, for the amount secured by, or remaining due upon, such Bill, Note, or Contract, as for a debt already payable; and thereupon it shall be lawful for the person on whose behalf such order shall have been obtained, or for his or her agent, forthwith to commence such action and to sue out of the said Court a writ or warrant, in the form sanctioned by the present or any future rules and orders of the said Court for the arrest of the person so about to leave this Colony as aforesaid.

III. And be it enacted, that if any person arrested under any such order as Ring William the Fourth, intituled "an aforesaid shall pay to the Sheriff, or Sheat for establishing a Court of Civil Judicature," it is enacted, 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 | Court) for the interval between the time of such actual payment and the time of payment according to contract, together with the Sheriff's lawful fees and charges for such arrest, and the sum of thirty shillings to answer plaintiff's costs; or if the personso arrested shall make such deposit, or givesuch other security as is or shall be required by the rules and orders of the said Court to procure the discharge of a person arrested for a present ground of action, then, and in any of the said cases, the person arrested to any of the said cases, the person arrested to a said cases. under any such order as aforesaid shall be forthwith discharged from the custody of the Sheriff without an order for that

purpose.

IV. And be it enacted, that if any such order as person arrested under any such order as-aforesaid, shall fail to make such payment to the Sheriff or Sheriff's Officer, or give such security as aforesaid he or she shall remain in the custody of the Sheriff till final judgment or nonsuit; and it shall be-lawful for the plaintiff in any such action as aforesaid to prosecute the same in like manner as for a debt already payable; but the plaintiff shall not be entitled to recover by such action more than the difference between the amount contracted to be paid: by the defendant therein, and the interest on such amount after the rate aforesaid for the interval between the date of judgment in such action, and the time fixed by contract for the payment of such amount— Provided always, that if the plaintiff in such action shall fail to prosecute the same with all reasonable diligence, it shall be lawful for the said Commissioner to dis-

charge the party so kept in custody as aforesaid on petition or motion.

V. And be it enacted, that the Sheriff shall dispose of any sum or sums paid intohis hands under the provisions of this act in like manner as he is directed by the rules and orders for the time being of the said Court to dispose of any sums paid to-him in cases of ordinary arrest.

VI. And be it enacted, that this act may be altered, amended, or repealed by any act to be passed during this present: Session.

"JOHN HUTT," GOVERNOR:

Passed the Council, Aug. 22, 1844. EDWARD C. SOUPER, Clerk of the Council.

Commissariat Office, Porth, Aug. 23, 1844.

NO be sold by public auction, at the Commissariat Store, on Tuesday, the 3rd Sept. next-

A quantity of Bran. W. H. DRAKE, Dep.-Asst.-Com.-General:

> General Post Office, Pertha, Aug. 28, 1844.

List of Unclaimed Letters.

Baker, James and Geo. (2) Ball, Richard

Causton, Charles:

(2) Derecourt, Wm. Grapes, Edward. Hall, Joseph. Hardy, Thos. Keely, Timothy Knight, Jas., at Mr. Tanner's. Legg, Daniel:

Letts, James (2) M'Cullock, J. Stoner, John.

Thompson, Peter-Townshend, Alex. Tyler, Handey

> H. CAMFIELD, Postmaster-General.

Printed by CHARLES MACHAVIL, Government Printers.