

WESTERN AUSTRALIAN GOVERNMENT GAZETTE.

(PUBLISHED BY AUTHORITY.)

FRIDAY, OCTOBER 21, 1842.

[NUMBER 327]

*Colonial Secretary's Office, Perth,
October 11, 1842.*

His Excellency the Governor has been pleased to direct it to be notified for the information of those concerned, that Warrants for the payment of the undermentioned accounts have been sent to the Colonial Treasurer during the month of September—

- William Criddle, erection of barracks at Toodyay
- Messrs. Burges, repayment of fine on lands at the Williams
- W. B. Andrews, payment on account of Road Trust
- F. F. Armstrong, expenses of Perth native school
- Do, keep of natives
- Sundry persons, pay list of Police Corps, August
- W. Nairn, repair of guns
- Sundry soldiers, services with Assistant-Surveyor Hillman
- M. A. Pengilly, tuition at Fremantle—July
- W. Rogers, tuition at Perth
- W. Soulbey, services as revenue officer
- R. Maxworthy, do.
- N. Patterson, do.
- Alfred Davies, services as cooper—August and September
- E. Back, hire of boat to Rottnest (two accounts)
- T. Smedley, expenses as witness
- E. Pace, do.
- J. Chipper, do.
- J. Welbourne, do.
- G. Shenton & Co, bucket, &c., supplied
- N. Smith, superintending working party of prisoners
- James Jones, conveyance of York mail, September
- M. Quin, conveyance of Fremantle mail, September
- E. Barron, conveyance of Guildford mail, September
- N. Shaw, conveyance of Toodyay mail, September
- H. L. Cole, hire of cart and horse for conveyance of mail
- J. P. Watts, canvass and boxes supplied
- B. Maycock, sundries at Survey Office
- H. H. Browne, rations to patients at Hospital, August and September
- J. Chipper, carting, &c.
- W. Dalton, addition to Perth Pound
- B. Maycock, sundry work at offices
- Do, timber for Rottnest
- W. Shepherd, cleaning Court-house
- Richard McB. Brown, travelling expenses, August
- John Peril, ferry charges
- T. George, services lighting fires at Offices

*By His Excellency's command,
PETER BROWN.*

*Colonial Secretary's Office, Perth,
October 19, 1842.*

His Excellency the Governor directs it to be notified that he intends bringing under the consideration of the Legislative Council a Bill for extending the remedies of Creditors against the property of Debtors.

*By His Excellency's command,
PETER BROWN.*

*Colonial Secretary's Office, Perth,
October 19, 1842.*

Tenders in triplicate will be received at this Office on Tuesday, the 3d of November, for completing the carpenter's unfinished portion of the contract for the erection of the Public Offices.

or further particulars application to be

made to the Superintendent of Public Works.

*By His Excellency's command,
PETER BROWN.*

*Colonial Secretary's Office, Perth,
October 20, 1842.*

His Excellency the Governor is pleased to direct the general objects of the following Bill now under the consideration of the Legislative Council to be published for general information.

*By His Excellency's command,
PETER BROWN.*

It being expedient that a Court of Requests for the recovery of small sums should be established in certain districts of this Colony it is proposed—

That a Court of Requests shall be established at Perth, and that the Governor is to be empowered to establish Courts in such other towns as he may deem expedient, such Courts to be holden at such times as the said Governor may appoint.

That the Governor be empowered to appoint to and for each of the said Courts a Commissioner to exercise the jurisdiction thereof, and to hold office during Her Majesty's pleasure, and such ministerial officers as may be deemed necessary for the administration of justice therein.

That every such Court shall have summary jurisdiction in all suits for recovery of debts, damages, &c., not exceeding £10 sterling, and not being the disputed balance of an unsettled account originally exceeding ten pounds; nor a debt for any money, &c., won by horse races, cock matches, wager, or any kind of gaming or play.

Causes of action for sums exceeding £10 not to be split into several in order to bring them within the jurisdiction.

That if any action or suit is commenced in the Civil Court for a debt or demand not exceeding the sum of £10, and recoverable in any of the said Courts of Requests, the plaintiff is not, by reason of a verdict, to be entitled to any costs whatsoever; and if the verdict is given for the defendant then such defendant is to have double costs.

Minors may sue in Courts for wages not exceeding £10.

No person to be exempt from the jurisdiction of these Courts by being an Attorney, or Solicitor, or other officer of the Civil Court, or of any other superior court.

All actions or suits in Courts of Requests to be brought in the court holden nearest to the usual place of residence of the intended defendant.

No person to be permitted to act as agent for plaintiff or defendant in court unless such plaintiff or defendant is prevented by sufficient cause from attending such court in person.

Actions in these courts to be commenced by delivering in duplicate to the Commissioner, in lieu of a plaint, a bill of particulars, or a summary in writing of the nature and ground of the plaintiff's demand; one copy to be attached to summons to appear.

That if at the return of the summons the plaintiff appears but the defendant does not, and the Commissioner is satisfied by the oath or endorsed return of the Bailiff of the service of such summons, and no reason is given to the satisfaction of the Commissioner for such non-appearance, and the plaintiff's claim does not exceed forty shillings, the commissioner may hear and receive the plaintiff's evidence, and if he is satisfied therewith, he may give final judgment for plaintiff, but if the evidence be not satisfactory to such commissioner, or if plaintiff's claim exceed forty shillings, or if the defendant's non-appearance is unsatisfactorily accounted for, the commissioner is to take minutes of the plaintiff's evidence and judgment by default is to pass and be entered for the plaintiff, and notice of the same is to be served on the defendant warning him, if he does not appear in court at a certain day and hour, and open such judgment, and answer the plaintiff's claim, such judgment is to be final.

The commissioner to be empowered to examine parties on oaths.

The commissioner to be empowered, if it appears to him that the immediate execution of any order, judgment or decree of his court, would occasion great distress to the defendant, and that such distress may be avoided or lessened by granting time, to order the amount to be levied by instalments.

No execution issued out of any of the said courts to deprive any landlord of the benefit of the act passed in the 8th year of the reign of Her Majesty Queen Anne, entitled "An Act for the better security of rents and to prevent frauds committed by tenants."

That the officer making such seizure in execution is to deliver to the defendant an inventory, with a notice of the seizure, and that the goods will be sold at a certain time and place unless the debt, &c., be paid; the officer also to affix a notice of such sale on the most public part of the house in which such seizure is made at least twenty-four hours before the time of sale; and if he deems it necessary, to place a person in possession until sale.

Process of the courts is to be served by a bailiff or other officer by delivering a copy to the party to be served with it, or, if absent, to any member of his family above the age of 16 years.

No plaints to be removed out of any of the said courts by any writ of a superior court, but the orders, judgments, &c., are to be final.

WESTERN AUSTRALIA,

ANNO SEXTO,

VICTORIÆ REGINÆ.

*By His Excellency JOHN HUTT, Esquire,
Governor and Commander-in-Chief in
and over the Colony of Western Australia
and its dependencies, and Vice-Admiral
of the same, with the advice and consent
of the Legislative Council thereof.*

No. XI.

An Act for the relief of Insolvent Debtors not in custody.

Whereas it is expedient that the rights of creditors, and the property of debtors, should be protected from the injurious consequences of ill-advised and vexatious executions; and that the inducement which at present exists to some creditors to issue executions to the prejudice of the rights of others should be removed; and that every facility should be afforded to debtors desirous to consult the interest of all their creditors—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, from and after the passing of this Act, it shall be lawful for any person or persons, or any public body, company, or trading firm or copartnership, to apply to the Civil Court of this Colony by petition in writing setting forth that

he, she, or they, is or are insolvent and praying that he, she, or they, may be declared insolvent by the court, and that his, her, or their effects may be distributed for the benefit of his, her, or their creditors, and for a full and perfect discharge from all his, her, or their then existing debts and liabilities; which petition shall be subscribed by such petitioner or petitioners, and after presentation to the said court or to the commissioner thereof at chambers, shall be filed therein of record.

II. And be it enacted, that with such petition shall in like manner be presented to the said court a schedule containing a full true and particular account and description of all the persons to whom such petitioner shall then be indebted, or who to his knowledge or belief shall claim to be his creditors, together with the nature and amount of their debts and claims respectively, and the bonâ fide considerations of, or for, such debts and claims respectively, distinguishing admitted debts or claims from debts or claims disputed; with the additions and places of abode of all such creditors or persons claiming to be creditors respectively; and a full true and particular account and discovery of all the estate and effects, real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, which such petitioner, or any person in trust for him, or for his use, or benefit, in any manner shall then be seized, or possessed of, or interested in, or entitled unto, either solely, or jointly, with any other person, or persons, or which such petitioner or any person in trust for him, or for his benefit, either solely or jointly with any other person or persons, at the time of the presentation of such schedule shall have any power to dispose of, or charge for the benefit of him the said petitioner; together with a full true and particular account of all debts then owing to such petitioner, or to any person in trust for him, or for his benefit, either solely, or jointly with any other person, and the names, additions, and places of abode of the persons from whom such debts shall be due, and which, and what part, or parts, of such estate and effects shall at the time of the presentation of such schedule be in any manner applicable to the discharge of the demands of his creditors, or can be made available for their benefit; which schedule shall be subscribed by the petitioner in the presence of two witnesses, and after the presentation thereof as aforesaid be by the petitioner filed in the said court of record, together with all books, papers, deeds and writings in any way relating to such petitioner's estate or effects in his or her possession, custody or control—Provided that in case it shall upon any examination or hearing as hereinafter mentioned appear, that any schedule is defective by reason of any unintentional mistake or omission therein, it shall be lawful for the court to permit the same at the discretion of such court to be thereupon forthwith amended, and that every creditor of the said insolvent shall be entitled to view the said schedule at all reasonable times, and to make extracts therefrom for his her or their private use.

III. AND be it enacted, that thereupon, or as soon after as conveniently may be, a day and place shall be appointed by the said court, or by the said Commissioner at chambers, for the hearing of the matters of the said petition, and the said court or Commissioner shall at the said time order notice to be given by the petitioner, or some person on his behalf, in one or more of the public newspapers, and in such other manner as the said court or Commissioner may in each case think fit, to the several creditors of the petitioner, or their agents, of the presentation and filing of such petition and schedule, and of the day and place so appointed; and in the meantime, if it appear to the said court to be expedient, it shall be lawful for the said court or Commissioner to appoint some officer of the court, or other person, as and to be provisional assignee

of the estate and effects of the said petitioner.

IV. AND be it enacted, that such petitioner shall, immediately after the presentation of such petition as aforesaid, duly execute a conveyance and assignment to the provisional assignee of the court, in the form in the annexed schedule, of all the estate, right, title, interest, and trust of such petitioner in and to all the real and personal estate and effects of the said petitioner, both in this Colony and elsewhere, and of all future estate, right, title, interest, and trust, of such petitioner in or to any real or personal estate or effects within this Colony or elsewhere, which such petitioner may purchase or which may revert, descend, be devised, or bequeathed, or come to him, or her, or become due to him or her before the day so appointed as aforesaid for hearing the matter of his or her petition, and of all debts due or growing due or to be due to him or her before the day last aforesaid which conveyance and assignment, so executed as aforesaid, in form aforesaid, shall vest all the real and personal estate and effects of such petitioner, and all such future estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid, in the said provisional assignee—Provided always that it shall be lawful for the said court immediately after the execution of such conveyance and assignment to order and direct that the provisional or other assignee shall pay or allow to such debtor out of any assets which may come to the hands of such assignee under or by virtue of such conveyance or assignment such daily or other periodical sum as the court in its discretion shall seem meet for the sustenance of such debtor and his family between the date of such order and the day appointed for the hearing the matters of his petition.

V. And be it enacted, that from and after the due execution of such conveyance and assignment as aforesaid no process of execution shall issue against the property of the petitioner for, or in respect of, any debt or liability which shall have been included in such schedule, or amended schedule, as aforesaid, unless and until his petition be dismissed by the said Court as hereinafter mentioned, except such process as may issue by order of the said court on any judgment to be entered up under any such warrant of attorney as hereinafter mentioned.

VI. And be it enacted, that it shall be lawful for the said provisional assignee to take possession himself, or by a messenger of the court, or other person or persons, appointed by him, of all the real and personal estate and effects of every such petitioner; and, if the court shall so order to sell or otherwise dispose of such estate and effects, and out of the proceeds thereof to defray all such costs and expenses of taking possession and disposing of the same, as shall be allowed by the court; and to account for the produce of such sale or disposition to the court.

VII. And be it enacted, that it shall be lawful for the said provisional assignee to sue in his own name, if the court shall so order, for the recovering any estate, debts, effects, or rights of any such petitioner.

VIII. And be it enacted, that if such provisional assignee shall resign, or be removed from his office, such estates, monies, and effects, so vested in him by virtue of any such conveyances or assignments as aforesaid, shall not remain in him, nor be vested in his assigns, heirs, executors or administrators, but shall in every such case go to, and be vested in, his successor in office appointed by the said court.

IX. And be it enacted, that, if upon the day appointed for the hearing of any such petition as aforesaid no creditor shall appear to oppose the same, it shall be lawful for the said court to give the said petitioner (upon his or her swearing to the truth of his or her schedule) a full and perfect discharge from all the debts in the said sche-

dule, and from all liability arising therefrom or in its discretion to postpone the hearing of such application to a future period; or to dismiss such petition.

X. And be it enacted, that if upon the day so appointed as aforesaid for hearing the matters of such petition it shall appear to the satisfaction of the court that the petitioner is in fact insolvent then the said court shall declare him to be insolvent accordingly, and thereupon the said provisional assignee shall summon a meeting of the creditors of the said petitioner by notice in the Gazette and such other newspaper or newspapers, as the said court shall direct for any day not less than one month nor more than three months from the day of such hearing as aforesaid to choose an assignee or assignees of the estate and effects of such insolvent, by the votes of a majority in numbers and value of such creditors or their lawful agents present at such meeting.

XI. And be it enacted that the choice of an assignee or assignees at any such meeting as aforesaid shall have the effect of immediately transferring to and vesting in such assignee or assignees, subject to the orders of the court, in trust for the creditors and thereupon and thenceforth of divesting from the provisional assignee all and every the estate and effects both real and personal, rights, duties, claims, choses in action, and powers of such insolvent, previously vested in such provisional assignee, together with all deeds and writings respecting the same and every such assignee or assignees during the term of his or their appointment shall have such and the like means of collecting, recovering, and disposing of, the said estate, effects and property, and of enforcing the said rights, claims, and interests, and of executing the said powers, in his, or their, name, or names, as such assignee, or assignees as the insolvent would, or might, have had if he had not been declared insolvent—Provided always, that it shall be lawful for the court to direct such assignee or assignees to permit the insolvent to retain to his own use such of the wearing apparel, bedding, and other necessaries of such insolvent and his family, not exceeding in the whole the value of fifty pounds, as the said court shall think fit, and all such articles so permitted to be retained, shall thenceforth be exempted from the operation of this Act, any thing in this Act contained to the contrary notwithstanding.

(To be continued.)

*Colonial Secretary's Office, Perth,
October 11, 1842.*

His Excellency the Governor has been pleased, under the Act of Council 4th Victoria No. 6, to approve of the undermentioned Ministers of the Church of England officiating as Chaplains in this Colony at the several stations noted opposite their respective names—

The Rev. W. Meares, York, Yorkshire.
The Rev. J. R. Woollaston, Bunbury, Wellington.
The Rev. Wm. Mitchell, Guildford, Perthshire.

*By His Excellency's command,
PETER BROWN.*

*Colonial Secretary's Office, Perth,
September 29, 1842.*

His Excellency the Governor has been pleased to appoint, subject to the approval of the Right Honorable the Secretary of State for the Colonies, Mr. Alfred Searle to the situation of Assistant-Surveyor, which has become vacant in consequence of the melancholy death of Mr. Robert Ray.

*By His Excellency's command,
PETER BROWN*

*Printed by CHARLES MACEAULL,
Government Printer.*