

WESTERN AUSTRALIAN  
GOVERNMENT GAZETTE.

(PUBLISHED BY AUTHORITY.)

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[NUMBER 328

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

His Excellency the Governor has been pleased to appoint Edward C. Souper, Esq., acting Clerk of the Councils during the indisposition and consequent leave of absence of Walkinshaw Cowan, Esq.

By His Excellency's command,  
PETER BROWN.

Colonial Secretary's Office, Perth.  
October 25, 1842.

His Excellency the Governor has been pleased to approve of Mr. Edward Back performing the duties of Harbor Master during Mr. Daniel Scott's absence on leave.

By His Excellency's command,  
PETER BROWN.

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.

[CONTINUED.]

XII. And be it enacted, that upon the day so appointed as aforesaid for hearing the matters of such petition and upon every or any day to which such hearing shall be adjourned, it shall be lawful for the insolvent and any of his creditors to be heard before the said Court, either in person or by counsel, in support of, or in opposition to, his petition, and the whole matter and substance of such petition shall, or may, be enquired into and examined by the said Court, or by any such creditor or creditors, as well respecting the claims of the creditors who shall be absent, as of those who shall be present, and it shall be lawful for the said Court upon any such hearing, or at any time within six months after the presentation of the insolvent's petition, upon the application in a summary form of any assignee or creditor of such insolvent, as often as occasion may require, to summon such insolvent, or his wife, or any other person who shall be known or suspected to have any of the estate or effects of such insolvent in his, or her, possession or control, or any person whom such assignee or creditor shall believe to be indebted to the insolvent, or to be capable of giving information to enable the said court or the assignees more easily to discover, or obtain possession of, the estate and effects of such insolvent, or any person professing, or stated in the schedule, to be a creditor of such insolvent, and to examine the said insolvent, or his wife, or such other person as aforesaid, or such professed or stated creditor, before the said court in the same way as any witness may be examined before the said court in any action at law— Provided, that where any such person shall reside more than sixty miles from the place of sitting of the said court, or shall be incapable of attending by reason of sickness or infirmity, it shall be lawful for the said court to permit interrogatories to be exhibited to such person for his, or her, examination and cross-examination upon oath before any person to be by the said court for that purpose appointed.

XIII. And be it enacted, that before any adjudication shall be made in the matter of any such petition, the said court shall require the petitioner to execute a Warrant of Attorney to authorise the entering up of a judgment against such petitioner in the said court, in the name of the assignee or assignees of such petitioner, or of such provisional assignee, if no other assignee shall have been appointed and shall have accepted such office, for the amount of the debts stated in the schedule of such person to be due or claimed to be due from such petitioner, or as much thereof as shall appear at the time of executing such warrant of attorney to be due and unsatisfied, and the order of the said court for entering up such judgment shall be a sufficient authority to the proper officer for entering up the same, and such judgment shall have force of a recognizance; and if at any time it shall appear to the satisfaction of the said court that such petitioner is of ability to pay such debts, or any part thereof, or that he or she is dead, leaving assets for that purpose, the said court may permit execution to be taken out upon such judgment for such sum of money as under all the circumstances of the case the said court shall order, such sum to be distributed rateably among the creditors of such petitioner; and such further proceedings shall and may be had upon such judgment as may seem fit to the discretion of the said court from time to time, until the whole of the debts due to the several persons against whom such discharge shall have been obtained shall be fully paid and satisfied, together with such costs as the said court shall think fit to award; and no *scire facias* shall be necessary to revive such judgment on account of any lapse of time but execution shall at all times issue thereon by virtue of the order of the said court— Provided always, that in case any such application shall appear to the said court to be ill-founded and vexatious, it shall be lawful for the said court, not only to refuse to make any order on such application, but also to dismiss the same with such costs against the party or parties making the same as to the said court shall appear reasonable, and the said costs shall be paid accordingly.

XIV. And be it enacted, that the real estate of any such petitioner either in possession, reversion, or expectancy, shall be sold at such time or times in such mode or manner and at such place or places as shall be approved in writing under their hands, by the major part in value of the creditors of such petitioner, who shall meet together on notice of such meeting published thirty days previous thereto in the Government Gazette and in some other newspaper published within this Colony.

XV. And be it enacted, that the assignee or assignees for the time being of every such insolvent shall once in every three months or oftener if the said Court shall so order render into the office of the Registrar of the said Court a just and true account in writing of all the effects, monies, and property collected, received, or possessed by him, or them, as such assignee or assignees and of the sale, disposal, appropriation, or distribution thereof respectively; and every such account shall be signed by the assignee, or assignees, so rendering the same, and be afterwards filed in the said Court of Record. And it shall be lawful for the said Court at any time, upon any application of, or complaint made in a summary way by the insolvent, or any person interested in the due distribution of such insolvent's estate, or without any such application or com-

plaint, to remove any assignee or assignees so appointed for neglect of duty in that or any other respect, and to appoint another, or other, assignee or assignees, in his, or their, place and stead, and also to appoint a new assignee or assignees, in the place or stead of any assignee or assignees who may have died in the Colony or may be desirous to depart therefrom, or may become incapable to act from sickness or otherwise; and every such appointment shall have the effect of divesting from any assignee so displaced or replaced, and of vesting in such new assignee or assignees (together with the surviving or continuing assignee or assignees, if any) all and every the estate and effects both real and personal, rights duties claims, choses in action and powers of such insolvent then remaining to be distributed under the provisions of this act; and no action, suit, or proceeding, relative to the affairs of such insolvent's estate shall abate or be otherwise prejudiced, by reason of any such death, departure, or new appointment; but the same may be continued by, or in the name or names of the continuing or surviving assignee or assignees, or the assignee or assignees so newly appointed— Provided that if it shall at any time be made to appear that no further assets of the insolvent remain to be distributed or disposed of, or are likely to be collected, by any such assignee or assignees, then it shall be lawful for the said Court to audit and allow all such accounts of such assignee or assignees, and to grant to him or them thereupon his or their discharge in respect thereof.

XVI. And be it enacted, that in case any such assignee so removed or replaced as aforesaid or the heirs, executors, or administrators of any deceased assignee, or any of them shall not account for and deliver up all the effects, monies, and property books, papers, writings, deeds and evidences of, or belonging to the estate, of any insolvent in his, her, or their hand or hands to the surviving or continuing or new assignee or assignees of such insolvent in obedience to the order of the said Court made thereupon, and after service of a copy of such order, it shall and may be lawful for the said Court to order the person or persons so offending to be arrested and committed to any Common Gaol there to remain without bail until such person or persons shall have complied with such order or until the said Court shall make order to the contrary.

XVII. Provided always and be it enacted, that if the majority in numbers and in value of the creditors of the insolvent shall, by writing under their hands attested respectively by two witnesses, consent absolutely to release and forego all claim to and interest in the future or after acquired property of such insolvent, then upon the production to the Court of such written consent and upon affidavit at the same time made and filed by the insolvent that such consent was fairly obtained by him and without any money or other consideration paid or given, or to be paid or given, or contract or security of any kind entered into, by such insolvent, or, to the best of his knowledge and belief, by any other person, to persuade or induce any creditor to sign or give such consent, the Court shall direct the Warrant of Attorney (if any) executed by such petitioner to be given up to such petitioner, or his or her lawful representative to be cancelled, and the judgment, (if any) entered up thereon to be vacated; and that thenceforth every debt included in such schedule as aforesaid shall be and be deemed absolutely released and discharged to all intents and purposes whatsoever— Provided that no creditor signing such consent as aforesaid, whose

debt is below Ten pounds, shall be reckoned in number, but his debt shall only be computed in value. Provided further that no damages recovered against any such insolvent in any action for criminal conversation, or seduction, or breach of promise of Marriage, or for a malicious prosecution, or for libel slander, or any other malicious injury, or any costs recovered in any such action, shall be deemed to be discharged by any such release as aforesaid unless the party entitled to such damages or costs shall join in and sign such release.

XVIII. Provided always and be it enacted, that if at any time within twelve months after the making of any such order of discharge from liability as aforesaid it shall, upon the application of any creditor of the insolvent, appear to the satisfaction of the Court that such insolvent hath obtained such order of discharge by or through the means of any fraud, deceit, concealment, misrepresentation, or undue practice whatsoever, it shall be lawful for the Court to declare such order of discharge to be absolutely null and void, and thereupon and thenceforth it shall be lawful for every creditor of such insolvent to proceed against such insolvent, and against all his then unapplied, and all his future or after acquired property and effects, the same as if such order of discharge had never been obtained. — Provided that in case any such application shall appear to the Court to be vexatious, or ill founded, it shall be lawful for the Court in its discretion to dismiss the same with costs.

XIX. And be it enacted, that if any such petitioner as aforesaid shall execute such conveyance and assignment as aforesaid but shall fail to obtain such release or discharge from the Court or from his creditors as is hereinbefore mentioned, and it shall be made to appear at any time thereafter to the satisfaction of the said Court that all the debts stated in the schedule of such petitioner have been paid or satisfied; it shall be lawful for the said Court on the application of such petitioner or his lawful representatives to order and compel the assignee or assignees for the time being forthwith to execute a re-conveyance and re-assignment to such petitioner, his or her heirs, executors, administrators or assigns of all property remaining in the possession or subject to the control of such assignee or assignees by virtue of such conveyance and assignment or otherwise by virtue of his or their office of assignee or assignees, and in every such case the said Court shall direct the Warrant of Attorney (if any) executed by such insolvent to be given up to him to be cancelled and the judgment (if any) entered up thereon to be vacated.

XX. And be it enacted, that if any such insolvent or person praying to be discharged under the provisions of this Act shall wilfully embezzle, secrete, conceal, or omit to discover any part of his real or personal estate or effects above the value of two pounds, with intent to defraud his creditors or to diminish the funds or amount to be distributed amongst them, or shall knowingly and wilfully insert, or omit, or cause to be inserted or omitted, in his schedule any matter or thing whatsoever contrary to, or for the purpose of concealing, the truth, such insolvent or petitioner shall be deemed guilty of felony, and shall be liable to be imprisoned for any term not exceeding three years, or to be transported for any term not exceeding seven years, as the Court shall think fit to order. And any such insolvent or petitioner or any other person who shall upon any occasion wilfully swear himself in any oath taken under the provisions of this Act shall suffer such punishment as by law may be inflicted for wilful and corrupt perjury.

XXI. And be it enacted, that in all

cases in which no provision or no sufficient provision in that behalf is by this Act made it shall be lawful for the said Court from time to time, upon any application in a summary way made for that purpose, or without any such application, to make and prescribe all such rules and orders, touching and concerning the discovery, collection, disposal, and distribution of the estate, debts, and effects of the insolvent, and the manner of proceeding before, or applying to, the said Court, under this Act, and likewise in respect of the several Fees payable by or to any person or persons, and otherwise for facilitating or more fully carrying into effect the objects of this Act, as to the said Court shall seem expedient, and such Rules and Orders from time to time to revoke and alter, as to the Court shall seem requisite; and all Rules and Orders so made and prescribed shall be of the same force and effect as if they had been inserted in this present Act; And the said Court shall in all cases whatsoever of application made to, or proceedings had, or taken, before, or by authority of, the said Court, have full power to award or refuse costs at its discretion, such costs to be paid out of the insolvent's estate or by, and to, such party, or parties as the Court shall in each case think fit to order.

XXII. Provided always and be it enacted, that this Act shall not extend to or affect any debt or sum of money due to Her Majesty.

XXIII. And be it enacted that this Act may be amended or repealed by any Act to be passed during the present Session.

"JOHN HUTT,"  
GOVERNOR.

Passed the Council }  
20th Oct., 1842. }  
EDWARD C. SOUPER,  
Acting Clerk of the Council.

SCHEDULE REFERRED TO.

FORM OF CONVEYANCE AND ASSIGNMENT.

This indenture made the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand &c., between A B of \_\_\_\_\_ in the Colony of Western Australia of the one part, and C D provisional assignee of the estate and effects of the said A B pursuant to an Act of Council passed in the sixth year of the reign of Her Majesty Queen Victoria in that behalf of the other part. Whereas the said A B has this day filed his (or her) petition to the Civil Court praying for his (or her) discharge from his (or her) existing debts and liabilities by virtue of the said Act. Now this indenture witnesseth that in obedience to the said Act he (or she) the said A B doth hereby convey, assign, transfer and set over unto the said C D as such Provisional Assignee as aforesaid, his successors and assigns, all the estate, right, title, interest, and trust of the said A B in and to all the real and personal estate and effects of the said A B both in the said Colony and elsewhere, together with all deeds, evidences, and writings touching and concerning the said estate and effects, and all future estate and effects within the said Colony or elsewhere which the said A B 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 appointed by the said court for hearing the matter of his (or her) petition, together with all deeds, evidences, and writings touching and concerning the same, and all debts due or growing due to the said A B to have, hold, receive, and take all and every the said estate and effects of the said A B real and personal vested and future of every nature and kind what-

soever, with their and every of their rights and appurtenances unto the said C D his successors and assigns according to the respective natures, properties, and tenures thereof. In trust nevertheless to and for the use, benefit and advantage of the creditors of the said A B under the provisions of the said Act. Provided always and these presents are upon the express condition that in case the petition of the said A B shall be dismissed by the said court then these presents and the conveyance and assignment hereinbefore made shall from the dismissal of such petition be null and void to all intents and purposes.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered by the above named A B and C D in the presence of

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.

For 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 27, 1842.

The following notice issued by the Resident Magistrate of Fremantle relative to the sale of a town allotment is published for general information.

By His Excellency's command,  
PETER BROWN.

Public Offices, Fremantle,  
October 25, 1842.

The Sub-Collector of Revenue will put up to sale by public auction, at the Public Offices, Fremantle, on Tuesday, the 22nd day of November next, at one o'clock, the undermentioned town allotment—  
Fremantle lot, No. 418.

For further particulars application to be made to the Resident Magistrate, or Surveyor-General.

R. McB. BROWN,  
Resident.

COMMISSARIAT NOTICES.

Commissariat Office, Perth,  
October 26, 1842.

To be sold by auction at the Commissariat Store, on Wednesday, November 9th, at 12 o'clock, a quantity of Bran.

Also, some old weather boards.

W. H. DRAKE,  
Dep.-Asst.-Com. General.

Commissariat Office, Perth,  
October 28, 1842.

Tenders in triplicate will be received at this office on Tuesday, 8th November, 1842, for the undermentioned repairs at the Commissariat Office, Perth, viz.—

Boarding two rooms  
Painting doors and windows  
Whitewashing walls.

Further particulars may be known on application at this office, or to the Superintendent of Public Works.

W. H. DRAKE,  
Dep.-Asst.-Com.-General.

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