

WESTERN AUSTRALIA

ANNO TRIGESIMO PRIMO

VICTORIÆ REGINÆ

No. 7

An Ordinance to facilitate Proceedings by Persons having Claims against the Government.

[Assented to 15th July, 1867.]

WHEREAS the ordinary remedy by Petition of Right is of limited operation, and is insufficient to meet all cases that may arise, and is attended with great expense and delay: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Persons having claims against Local Government may petition for redress

Petition shall be referred to Supreme Court for trial

Claims affecting the Royal prerogative to be reserved

Governor to name nominal defendant

Nominal defendant not personally responsible

Chief Justice to make rules

1. In all cases of dispute or difference touching any claim between any person and the Colonial Government, which may have arisen, or may hereafter arise within the said Colony, it shall and may be lawful for any person or persons having such disputes or differences to present a petition to the Governor of the said Colony setting forth the particulars of the claim of such petitioner; and such petition shall be referred by the Governor to his Executive Council; and if the said Governor shall, with the advice of his Executive Council, think fit, the said petition shall be referred to the Supreme Court of the said Colony for trial by a jury or otherwise as such Court shall after such reference direct: Provided always that in case the Governor, with the advice of his Executive Council, shall certify in writing, endorsed on any such petition so to be presented as aforesaid, that in his opinion the subject matter of such petition affects the Royal prerogative, it shall and may be lawful for the Governor, with such advice as aforesaid, to transmit the same to Her Majesty's principal Secretary of State for the Colonies, for the signification of Her Majesty's approval or disapproval; and if such petition be returned with Her Majesty's approval, the same proceedings as are hereinbefore directed shall be taken for the trial of the matter thereof; but in case of such petition being returned without such approval, the same, together with the indorsation thereon, and the reasons assigned for withholding such approval, shall be forthwith published in the 'Government Gazette'; in which case the remedy hereby provided shall not be had.

2. At the time of such reference for trial as aforesaid, the Governor, with such advice as aforesaid, shall name some person or persons to be nominal defendant in the matter of such petition, the petitioner being the plaintiff therein: Provided that nothing in this Ordinance shall be construed to extend so as to subject any such nominal defendant to any individual responsibility in person, goods, chattels, estate or otherwise, by reason of his being such nominal defendant.

3. It shall be lawful for the Chief Justice to make all such general

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rules and orders for the regulation of the pleadings, practice, or proceedings on any such petition as to him shall seem necessary for the purpose aforesaid; and all such rules, orders, or regulations shall be laid before the Legislative Council of the Colony, if then sitting, immediately upon the making of the same, or if the Legislative Council be not sitting, then within fourteen days after the next meeting thereof; and every rule and order so made shall be of the like force and effect as if the provisions contained therein had been expressly enacted: Provided always that it shall be lawful for the Governor, with the advice of the Executive Council, in Her Majesty's name, by proclamation inserted in the 'Government Gazette' at any time within three months after the making of any such rule or order, or for the Legislative Council by any resolution passed at any time within three months next after such rules, orders, and regulations shall have been laid before the Legislative Council, to suspend the whole or any part of such rules, orders, or regulations; and in such case the whole, or such part thereof as shall be so suspended, shall not be binding and obligatory.

4. The parties to any such proceedings shall have the same rights either by way of appeal, rehearing, motion for a new trial, or otherwise, as in ordinary cases at law or in equity. Right of appeal reserved

5. Costs of suit shall follow on either side as in ordinary cases between suitors, any law or practice to the contrary notwithstanding. Costs

6. It shall be lawful for the Governor, with the advice of the Executive Council, to satisfy and pay any judgment or decree recovered by any such petitioner out of any available balance of the revenue of the said Colony, and to perform the judgment or decree of the said Court in terms of such judgment or decree. Claims to be paid out of revenue

J. S. HAMPTON,
GOVERNOR AND COMMANDER-IN-CHIEF.