

BEGIN TRANSCRIPTION

Anno Secundo Guliemi IV Regis

No. 1

By His Excellency Captain James Stirling -
Governor and Commander in Chief of the Territory of Western Australia and its
dependencies and ~~Vice Admiral of the same~~ with the advice of the Legislative Council.

An Act for establishing a Court of Civil Judicature

<Recital of 10th Geo. 4th, c. 22, enabling His Majesty to constitute a Legislative Council in Western Australia> Whereas by an Act of Parliament passed in the tenth year of the reign of His late Majesty King George the Fourth interlude “An Act to provide until the Thirty first day of December , One Thousand Eight Hundred and Thirty Four, for the Government of His Majesty’s Settlements in Western Australia on the Western Coast of New Holland” It is enacted that it shall and may be lawful for His Majesty, His Heirs and Successors, by any order or orders to be by him or them made with the advice of his or their Privy Council to make, ordain, and (subject to conditions and restrictions as to him or them should seem meet) to authorize and empower any three or more Persons resident and being within the said Settlement, to make, ordain and establish all such Laws, Institutions and Ordinances and to constitute such Courts and Officers as may be necessary for the peace, order and good government of His Majesty’s Subjects and others resident within the said Settlement.

<Recital of Order in Council constituting Legislative Council> And whereas His Majesty by an Order in Council, bearing date at Saint James the first day of November One, Thousand Eight Hundred and Thirty in Pursuance of the said Act of Parliament was pleased to order that the Governor for the time being of the said settlement of Western Australia, or the Officer administering the Government thereof, the Senior Office of His Majesty’s Land Forces next in Command, the Colonial Secretary of the said Territory for the time being, the Surveyor General thereof thereof for the time being, and the Advocate General thereof for the time being, so long as they shall respectively be resident in the said Settlement, or any three of them (of whom the [DOCUMENT FIRST PAGE ENDS HERE]

<with power to make Laws and to constitute necessary courts> Acting Governor to be one), shall have authority and power, to make, ordain and establish all such Laws and Ordinances and to constitute such Courts and Officers, as may be necessary for the Peace, Order and good Government of His Majesty’s Subjects and others within the said settlements, which Power and Authority shall nevertheless be so exercised subject to the following conditions and restrictions (that is to <Subject to certain conditions and restrictions> say) that all such Laws and Ordinances as aforesaid shall by the Governor or Officer administering the Government be with all convenient expedition transmitted to His Majesty for his approbation or disallowance, through one of his principal Secretaries of State and that the same or any part thereof shall not be in force within the said Settlements after His Majesty’s disallowance thereof, or of any of them, or of any such part thereof, or of any of them aforesaid, shall be made known therein and further, that no such Law or Ordinance shall be made unless the same shall have first been proposed by the said Governor, or Officer administering the said

Government, and further, that in making all such Laws and Ordinances the said several persons shall and do conform to all such instructions as His Majesty shall from time to time be pleased to issue for that purpose. And further, that no Court of Justice be constituted by the several persons aforesaid, within the said Settlements, except by a Law or Ordinance to be by them for that purpose made under and subject to the conditions and restrictions aforesaid:

<Establishment of a Court of Civil Judicature> 1. Be it therefore enacted, by His Excellency the Governor of Western Australia, with the advice of the Legislative Council, that there shall be within the said Colony of Western Australia, a Court of Civil Judicature, which shall be called the Civil Court of Western Australia.

<To be a Court of Record> 2. And be it further enacted, that the said Civil Court shall be a Court of Record.

<Appointment of a Commissioner> 3. And be it further enacted, that the said Civil Court shall consist of and be holden by and before one Judge, who shall be styled “The Commissioner of the Civil Court of Western Australia” <Mode of appointment> and shall be appointed by His Excellency the Governor, by Warrant under the Public Seal of the Colony.

<Duration of His Office. Power of of dismissal> 4. And be it further enacted, that the said Commissioner shall hold his Office during good behaviour, and that it shall be lawful for Excellency the Governor with the advice and consent of the [DOCUMENT SECOND PAGE ENDS HERE]

Executive Council of the said Colony, upon proof of any misconduct of such Commissioner, to discharge him from his said Office, by an Order under the Public Seal of the said Colony.

<Seal of the Court> 5. And be it further enacted that this said Court shall have and use as occasion may require a Seal bearing a Device and Impression of the Royal Arms within an Exergue or label surrounding the same with this Inscription “The Seal of the Civil Court of Western Australia” and that the said Seal shall be kept in the custody of the said Commissioner.

<Subordinate Officers of the Court> 6. And be it further enacted, that there shall be and belong to the said Court the following Officers (that is to say) a Registrar Clerk, one Messenger or Bailiff to be constantly attendant on the Court, and two other Messengers or Bailiffs to be resident at convenient distances from the <Registrar Clerk to be appointed & remunerable by written order of Governor> place where the Court shall hold its sittings. And that such Registrar Clerk shall be appointed by the written order of His Excellency the Governor, and shall be removed on proof of misconduct, by the same authority <Bailiff & Messengers to be appointed by Court> and in like manner. And that all such Messengers and Bailiffs shall be appointed and discharged by and at the discretion of the said Commissioner. <No new officers to be appointed without Governor’s written approval> And that no new Officer shall be appointed to the said Court without the approval and written order of His Excellency.

<Jurisdiction of the Court> 7. And be it further enacted, by the authority and with the advice aforesaid, that the said Civil Court of Western Australia shall have cognizance of all Pleas and Jurisdictions in all cases as fully and amply in Western Australia as His Majesty’s Courts

of Kings Bench, Common Pleas, and Exchequer lawfully have in England. And that the said Civil Court shall have authority to appoint Guardians and Committees over the Persons and Property of Infants, Idiots and Lunatics within the said Colony; And to grant Probates of Wills, and commit Letters of Administration of the Chattels and Effects of persons dying in the said Colony, in manner and form hereinafter more particularly set forth.

<No arrest on indecipherable process or on proof of execution> 8. And be it further enacted; that all Suits and Actions of Whatever Nature shall be commenced in the said Civil Court by Summons, or other process in the nature of a Summons and not be Arrest, and that all Process of execution issued out of the said Court shall be directed against Property only and not against the Person.

<Proviso allowing arrest in case of Debtors preparing to leave the Colony> 9. Provided always and be it enacted and declared that if any Person shall have 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 of Action as aforesaid shall produce to the Commissioner of the said Court [DOCUMENT THIRD PAGE ENDS HERE]

reasonable prima facie Evidence of such his right of Action and of such 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 so 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 <Proviso for diligent prosecution of his claim by party arresting> such proceeding 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 Commissioners to discharge the party so kept in Custody as aforesaid on his Petition.

<Reading to be oral> 10. And be it further enacted that all pleadings in the said Court, shall be oral and made by the parties to the Suit of Action in Person, or by their respective lawful Agents or Deputies.

<Cases involving amounts under 20 Pounds to be exterminated without Jury> 11. And be it further enacted that all Suits or Actions in the Civil Court in which the Debt or Damages claimed or the value of the subject matter of such Suit or Action shall not exceed Twenty Pounds Sterling, shall be <Other cases to be tried before a jury or not at the option of either party> heard and determined without the intervention of a Jury. And that in all other cases if either party shall be desirous of having the cause tried before a Jury, he or she be entitled to have the same so tried, on application <If jury applied for costs of summoning and remunerating to be paid into Court before Law> to the Registrar Clerk of the said Court and on paying into the hands of such Registrar Clerk the costs of summoning and remunerating such Jury.

<Court empowered to grant Probates and Letters of Administration> 12. And be it further enacted by the authority and with the advice aforesaid, that the said Civil Court of Western Australia shall have full power to grant Probates under the Seal of the Said Court of the last Will and Testaments of Persons dying in the said Colony or its Dependencies and to commit Letters of Administration under the Seal of the said Court of the goods, chattels, credits and effects whatsoever of persons so dying as aforesaid who shall die Intestate or who shall not

have named an Executor, resident within the said Colony, or its dependencies, or where the Executor being duly cited shall not appear and sue forth such Probate, annexing the said Will to the Letters of Administration, when such Person shall have left a Will without naming any Executor; and to sequester the goods, chattels, credits and effects whatsoever of such Persons so dying in cases allowed by law, as is the same is and may be now used in the diocese of London [DOCUMENT PAGE FOUR ENDS HERE]

and to demand, examine and allow, or if occasion require disallow, the accounts of them in such manner and form as may be used in the said diocese and to do all other things whatsoever necessary in that behalf: Provided always that in all cases where Letters of Administration shall be committed with the Will annexed for want of an Executor applying in due time to sue forth Probate, there shall be reserved in such Letters of Administration full power and authority to revoke the same, and to grant Probate of the said Will to such Executor whenever he shall duly appear and sue forth the same.

<To what parties Letters of Administration be granted> 13. And be it further enacted that such Letters of Administration shall be granted and committed by the said Civil Court to any one or more of the lawful Next of Kin of such Person so dying as aforesaid and being then resident within the jurisdiction of the said Court and being of the Age of Twenty One Years. And in case there shall be no such person, or in case such person shall not appear when duly cited, then such Letters of Administration shall be committed to the Registrar Clerk of the said Court, or to some Creditor or Creditors of the Deceased as the Court shall see fit.

< Administrators to give Bond with two Sureties> 14. And be it further enacted that every person to whom such Letters of Administration shall be committed shall before the granting thereof give sufficient security by Bond to be entered into to the Registrar Clerk of the said Court and his successors in Office, for payment of a competent sum of money with two able sureties, respect being had (as to the sum therein to be contained and as to the abilities of the Sureties) to the value of the estates, credits and effects of the Deceased; which bond shall be safely kept among the Records of the said Court and shall be conditioned for the making and exhibiting a true and just account and Administration of the chattels, credits and < How such Bond to be put in Suit for benefit of parties entitled> effects of the Deceased to the satisfaction of the said Court and according to the directions thereof. And in case it shall be found necessary to put the said Bond in suit for obtaining the effect thereof for the benefit of such Person or Persons as shall appear to the said Court to be interested therein (such Person or Persons from time to time giving satisfactory security for paying all such costs as may arise from the said suit) such person or Persons shall by order of the said Court be allowed to sue the same in the name of the Registrar Clerk of the said Court for the time being. [DOCUMENT PAGE FIVE ENDS HERE]

< Court to make all necessary rules and orders for ensuring due administration of Intestate effects> 15. And be it further enacted that the said Court shall fix certain periods when all persons to whom Probates of Wills and Letters of Administration shall be granted by the said Court, from time to time, until the effects of the Deceased person shall be fully administered, pass their Accounts relating thereto before the said Court and in case the effects of the Deceased shall not be fully administered within the period for that purpose to be fixed by the said Court, the person or persons so obtaining such probate or administration shall pay deposit or dispose of the Balance of money belonging to the Estate of the Deceased then in his or their hands and also all other chattels and effects belonging to the Estate of the Deceased, in such manner and unto such Persons as the said Court shall direct for safe

custody. And the said Court shall from time to time make such order as shall be just for the due Administration of such Assets and for the payment or remittance thereof or of any part thereof as occasion shall require, to or for the use of any Person or Persons, whether resident or not resident in the said colony who may be entitled thereto or to any part thereof, whether as Creditors, Legatees, or Next <And to allow Executory and Administratory reasonable remuneration for trouble> of Kin, or by any other right or title whatsoever. And it shall be lawful for the said Court to allow any Executor or Administrator of the Effects of any deceased Person, such commission or percentage out of their Assets as shall be just reasonable for their pains and trouble therein.

<Executor or Administrator misbehaving to forfeit allowances and pay... Interest in certain cases> 16. Provided always and be it enacted, that no allowance whatever shall be made for the pains and trouble of any such Executor or Administrator who shall neglect to pass his Accounts, at such time, or to dispose of any such goods, chattels, or securities with which he shall be chargeable, in such manner as in pursuance of any general or special Rule or Order of the said Court shall be requisite. And moreover every such Executor or Administrator so guilty of any such neglect shall be charged with Interest at the rate then current in the said colony for such sum or sums of money as from time to time shall have been in his hands, whether he shall or shall not have made interest thereof.

<Court empowered to appoint Guardians over Infants, Idiots & Lunatics> 17. And be it further enacted, by the authority and with the advice aforesaid, that it shall be lawful for the said Court to appoint Guardians and Keepers of Infants and their Estates according to the order and course observed in England, and also Guardians [DOCUMENT PAGE SIX ENDS HERE]

and Keepers of the Persons and Estates of Natural Fools, and of such as are or shall be deprived of their reason by the Act of God so < And to hear and determine questions of Idiocy and Lunacy> as to be unable to govern themselves and their estates, and to enquire, hear and determine all questions of Idiocy or Lunacy, by a Jury, of Twenty-Four good and lawful men, the opinion of the majority of whom shall be taken and received as the verdict of the said Jury.

<Rights of appeal to the Governor in Executive Council in case of Judgements involving amounts not less than 100 Pounds> 18. And be it further enacted, that in all cases in which any final Order, Judgement or Sentence shall be made or pronounced by the said Court for or in respect of any sum or matter of Issue at the value or amount of One Hundred Pounds, or in case such Order Judgement, or Sentence shall directly or indirectly involve any claim, demand, or question respecting property or any civil right, amounting to or of the value of One Hundred Pound, any person feeling aggrieved thereby, may within Twenty-eight days after the same shall have been made or pronounced, appeal therefrom to His Excellency the Governor and the Executive Council of the said Governor, upon giving Fourteen Days Notice of such Appeal to the adverse party, and upon giving reasonable security to the satisfaction of the said Court for the due prosecution of the Appeal, the due performance of such Order or Judgement as the said Governor and Council shall think fit to make, and for payments of the Costs of the Appeal. And it is hereby declared that no evidence shall be received on such Appeals which was not received on the original hearing.

<Judgements of Governor and indecipherable, on appeals, to be executed by Court> 19. And be it further enacted, that in all cases of Appeal as aforesaid the said Court shall conform to,

and execute all such Judgements and orders as his said Excellency and the said Executive Council shall think fit to make in the Premises, in such manner as any original Order, Judgement, or Sentence of the said Court could or might have been executed.

< Governor and Executive Council to make further and necessary Rules and Orders touching modes of Proceeding, Times and Places of Session of said Court - and to alter revoke or amend the same> 20. And be it further enacted, that it shall be lawful for His Excellency the Governor, by and with the advice and consent of the Executive Council of the said colony, to make and prescribe such Rules and Orders touching the Times and Places of Session, Form of Process, Pleadings, and other Business and Proceedings of the said Court, and of the Fees payable therein, as to him and them shall seem fit, and such Rules and Orders from time to time to alter, amend, or revoke as occasion may require.

James Stirling
Governor and Commander-in-Chief

Passed the Legislative Council
This 10th day of February, 1832
M.J. Currie
Clerk to the Council.

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