



## WESTERN AUSTRALIA.

ANNO VICESIMO QUARTO

# VICTORIÆ REGINÆ.

NO. XV.

An Ordinance to provide for the more effectual Administration of Justice by establishing a Supreme Court.

**W**HEREAS it is expedient to make more effectual Provision for the Administration of Justice, and for such Purpose to establish a Supreme Court: 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:—

Preamble.

I. THAT this Ordinance may be cited for all Purposes as “The Supreme Court Ordinance, 1861.”

Short Title of Ordinance.

II. THAT this Ordinance shall come into Operation and be in Force, immediately from and after the Publication thereof by Proclamation in the Government Gazette.

Commencement of Ordinance.

III. THAT upon this Ordinance coming into Operation, the Ordinances and Parts and Portions of Ordinances respectively set forth and specified in the Schedule hereto, shall be and the same are hereby severally and respectively repealed.

Repeal of Ordinances.

IV.

A Supreme Court to be established, with Jurisdiction of Criminal and Common Law Courts in England, and Chief Justice to hold the Court.

Jurisdiction.

IV. THAT there shall be established in the said Colony a Court of Judicature, which shall be a Court of Record to all Intents and Purposes, under the Style and Title of "The Supreme Court;" and such Court is hereby invested with, and shall exercise within the said Colony and its Dependencies all the Powers, Properties, Rights, Superintendence, Force, Effect, Jurisdiction, Authority, Pre-eminence, and Advantages which belong to and are enjoyed, used, and in any manner practised in England, in and by the Courts of Queen's Bench, Common Pleas, and Exchequer at Westminster; and the said Court shall also be at all Times a Court of Oyer and Terminer and General Gaol Delivery in and for the said Colony and its Dependencies; and such Court shall be holden by and before One Judge, who shall be called "The Chief Justice of Western Australia," and shall exercise the Jurisdiction of the said Court; and the same Powers and Authorities are hereby given to the said Chief Justice, within the said Colony and its Dependencies, that are held, exercised, and enjoyed, in Court or Chambers, by the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer at Westminster, to all Intents and Purposes whatsoever; and the said Chief Justice in Manner aforesaid, is hereby authorised, empowered, and required, to take Cognizance of and hold all Pleas and all Manner of Causes, Suits, Actions, Pleas of the Crown, Prosecutions, and Informations, whether civil, criminal, or mixed, with the same and as full Power within the said Colony and its Dependencies, to hear, judge, determine, and execute therein, as the Courts of Queen's Bench, Common Pleas, and Exchequer at Westminster, and as Justices of Oyer and Terminer and General Gaol Delivery, have or hath in England, and as Justices of the Peace in their Sessions there, have by Law, and as shall be necessary for carrying into effect the several Jurisdictions, Powers, and Authorities committed to the said Supreme Court and Chief Justice respectively; and shall adjudge and determine in all and every the same Matters, according to the Laws and Statutes of Great Britain in Force here, and the Laws of this Colony: And where any Act of Parliament in Force in England on the First Day of June, One Thousand Eight Hundred and Twenty-nine, and applicable to the said Colony, or any Act of Parliament adopted and directed to be applied in the said Colony, shall authorize and direct any Proceeding, Act, Matter, or Thing to be had, done, performed, or executed by or before Her Majesty's Courts at Westminster, or the respective Judges thereof, or by or before the Lord Chancellor or any Equity Judge, in the Administration of Justice, every such Proceeding, Act, Matter, and Thing shall be, and the same is hereby authorized and directed to be had, done, executed, and performed by the Supreme Court or the Chief Justice thereof, in like Manner as if the same had been in and by such Act of Parliament expressly authorized and directed to be had, done, executed, and performed by the said Supreme Court or Chief Justice.

Supreme Court authorized to perform certain Acts required to be performed by the Courts in England.

V. THAT the said Supreme Court shall be a Court of Equity and the Chief Justice therein and at Chambers shall have Power and Authority to administer Justice, and to do, exercise, and perform all such Acts, Matters, and Things necessary for the due Execution of such Equitable Jurisdiction, as the Lord Chancellor of Great Britain can or lawfully may do within the Realm of England, and all such Acts, Matters, and Things as can or may be done by the said Lord Chancellor within the Realm of England in the Exercise of the Jurisdiction to him belonging.

Equity.

With similar Powers as the Lord Chancellor.

VI. THAT the said Supreme Court shall be a Court of Ecclesiastical Jurisdiction, with full Power to grant Probates, under the Seal of the said Court, of the last Wills or Testaments of all or any of the Inhabitants of the said Colony and its Dependencies, and of all other Persons who shall die and leave Effects therein, and to commit Letters of Administration, under the Seal of the said Court, of the Goods, Chattels, Credits, and all other Effects whatsoever of Persons aforesaid, who shall die intestate, or who shall not have named an Executor resident in the said Colony or its Dependencies, or where the Executor being duly cited shall not appear and sue forth such Probate, annexing the Will to such Letters of Administration when such Persons shall have left a Will without naming any Executor, or any Person for Executor who shall then be alive and resident within the said Colony, and who being duly cited thereunto will not appear and sue forth a Probate thereof, and to sequester the Goods and Chattels, Credits and other Effects whatsoever of such Persons so dying, in Cases allowed by Law as the same is and may be now used in the Courts of Probate in England; and to demand, require, take, hear, examine, and allow, and if Occasion require, to disallow and reject the Accounts of them, in such Manner and Form as is now used or may be used in the said Court of Probate, and to do all other Things necessary and needful in that Behalf: Provided always, that the said Supreme Court shall in such Cases as aforesaid, where Letters of Administration shall be committed with the Will annexed for want of an Executor applying in due Time to sue forth Probate, reserve in such Letters of Administration, full Power and Authority to revoke the same and to grant Probate of such Will to such Executor whenever he shall duly appear and sue forth the same: And the said Supreme Court shall grant and commit such Letters of Administration to any One or more of the lawful Next-of-Kin of such Person so dying as aforesaid, and being resident within the Jurisdiction of the said Court, and being of the Age of Twenty-one Years; and in Case no such Person shall then be residing within the Jurisdiction of the said Court, or being duly cited shall not appear and pay the same, to the Registrar of the said Court, or to such Person or Persons, whether Creditor or Creditors or not of the deceased Person, as the said Supreme Court shall see fit: Provided always, that Probates of Wills and Letters of Administration to be granted by the said

Ecclesiastical.

Probates.

Letters of Administration.

To inquire into Accounts.

To reserve Power to revoke Probates.

Limited to Goods in the Colony.

In case Executor refuses to take out Probate, Court may grant Letters.

said Supreme Court, shall be limited to such Money, Goods, Chattels, and Effects as the deceased Person shall be entitled to within the said Colony: Provided that in all Cases where the Executor or Executors of any Will, upon being duly cited, shall refuse or neglect to take out Probate, or where the Next-of-Kin shall be absent, and the Effects of the Deceased, shall appear to the said Supreme Court, to be exposed, and liable to Waste, it shall be lawful for the said Supreme Court, to authorize and empower the Registrar or other ministerial Officer of the said Supreme Court, to collect such Effects, and hold, or deposit, or invest the same, in such Manner and Place, or upon such Security, and subject to such Orders and Directions as shall be made, either as applicable in all such Cases, or specially in any Case, by the said Supreme Court, in respect of the Custody, Control, or Disposal thereof.

To give Security by Bond with Sureties.

VII. 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 Her Majesty, her Heirs and Successors, for the Payment of a competent Sum of Money, with One, Two or more able Sureties, Respect being had in the Sum therein to be contained and in the Ability of the Sureties to the Value of the Estate, Credits, and Effects of the Deceased; which Bond shall be deposited in the said Supreme Court among the Records thereof and there safely kept, and a Copy thereof shall be also recorded among the Records thereof, and there safely kept, and a Copy thereof shall be also recorded among the Proceedings of the said Supreme Court; and the Conditions of the said Bond shall be to the following effect, "that if the above bounden, Administrator of the Goods, Chattels, and Effects of the Deceased do make or cause to be made, a true and perfect Inventory of all and singular the Goods, Credits, and Effects of the said Deceased, which have or shall come to the Hands, Possession, and Knowledge of him the said Administrator, or to the Hands or Possession of any other Person or Persons for him, and the same so made, do exhibit or cause to be exhibited, into the said Supreme Court, at or before a Day to be then specified, and the same Goods, Chattels, Credits, and Effects, and all other the Goods, Chattels, Credits, and Effects of the Deceased at the Time of his Death; or which at any Time afterwards shall come to the Hands or Possession of such Administrator, or to the Hands or Possession of any other Person or Persons for him, shall well and truly administer, according to Law; and further, shall make or cause to be made, a true and just Account of his said Administration, at or before a Time to be therein specified; and afterwards, from Time to Time, as he, she, or they shall be lawfully required: And all the Rest and Residue of the said Goods, Chattels, Credits, and Effects, which shall be found from Time to Time remaining upon the said Administration Accounts, the same being first examined and allowed of by the said Supreme

Supreme Court, shall and do pay and dispose of, in a due Course of Administration, or in such other Manner as the said Supreme Court shall direct; Then this Obligation to be void and of none Effect, or else to be and remain in full Force and Virtue."

VIII. THAT in Case it shall be necessary to put the said Bond in Suit for the Sake of obtaining the Effect thereof for the Benefit of such Person or Persons as shall appear to the said Supreme Court to be interested therein, such Person or Persons, from Time to Time, giving satisfactory Security for paying all such Costs, as shall arise from the said Suit, or any Part thereof, such Person or Persons shall, by Order of the said Supreme Court, be allowed to sue on the same.

Party interested may sue by Order of Court.

IX. THAT the said Supreme Court shall fix certain Periods when all Persons to whom Letters of Administration shall be granted by the said Supreme Court, shall from Time to Time, until the Effects of the deceased Person shall be fully administered, pass their Accounts relating thereto before the said Supreme Court, and in Case the effects of the Deceased shall not be fully administered, within the Time for that Purpose to be fixed by the said Supreme Court, then or at any earlier Time, if the said Supreme Court shall see fit to direct, the Person or Persons to whom such Administration shall be granted, shall pay, deposit, and dispose of the Balance of Money belonging to the Estate of the Deceased then in his or their Hands, and all Money, Goods, Chattels and Effects and Property whatsoever which shall afterwards come into his, her or their Hands belonging to the Estate of the Deceased, in such Manner, and to such Person or Persons, as the said Supreme Court shall direct, for safe Custody; and the said Supreme 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 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, or its Dependencies, who may be entitled thereto, or any Part thereof, as Creditors, Legatees, or Next-of-Kin, or by any other Right or Title whatsoever, and that it shall be lawful for the said Supreme Court to allow to any Administrator of the Effects of any deceased Person, (except as herein mentioned) such Commission or Per-centage out of the Assets, as shall be just and reasonable for their Pains and Trouble therein: Provided always, that no Allowance whatsoever shall be made for the Pains and Trouble of any Administrator, who shall neglect to pass his Accounts at such Time, or to dispose of any Money, Goods, Chattels, or Security, with which he shall be chargeable, in such Manner, as in pursuance of any general or special Rule or Order of the said Supreme Court shall be requisite; and provided also that every such Administrator, so neglecting to pass his Accounts, or to dispose of any such Money, Goods, Chattels, or Securities with which he shall be chargeable shall

Court to fix Periods for passing Accounts.

Court may allow Commission to Administrator.

Administrator neglecting to pass his Accounts to pay Interest.

shall be charged with Interest at the Rate then current within the said Colony and its Dependencies, for such Sum and Sums of Money as from Time to Time shall have been in his Hands, whether he shall or shall not make Interest thereof.

Power to appoint Guardians and Keepers of Infants, Fools, &c.

X. THAT the said Supreme Court shall have Power to appoint Guardians and Keepers of Infants and their Estates, according to the Order and Course observed in England; and also Guardians and Keepers of the Persons and Estates of natural Fools, and of such as are or shall be deprived of their Understanding or Reason by the Act of God, so as to be unable to govern themselves and their Estates, and to inquire, hear, and determine therein and thereof, by Inspection of the Person, or by such other Ways and Means by which the Truth may be best discovered and known.

Chief Justice shall be a Barrister of England, or a Colonial Barrister.

In Case of a Vacancy Governor to appoint a *locum tenens*.

XI. THAT the said Chief Justice shall be a Barrister-at-Law of the English or Colonial Bar, and shall be appointed from Time to Time by Her Majesty, her Heirs or Successors; and such Chief Justice shall hold his Office during the Pleasure of Her Majesty, her Heirs and Successors: Provided that upon this Ordinance coming into Operation it shall be lawful for the Governor to appoint some fit and proper Person to fill the said Office of Chief Justice until a Person shall be appointed by Her Majesty, Her Heirs or Successors and shall enter on the Discharge of his Office: Provided also that in Case of Absence, Resignation, or Death, or in Case of any such Disease or Infirmary as shall render any Chief Justice incapable of discharging the Duties of his Office, or in Case of a Vacancy in the said Office from any other Cause, it shall be lawful for the Governor from Time to Time to appoint some fit and proper Person to act in the Place and Stead of such Chief Justice so being absent, resigning, dying, or becoming incapable, or vacating his Office, as the Case may require, until such Chief Justice shall return to the Execution of his Office, or until a Successor appointed by Her Majesty, shall enter on the Discharge of his Office, and in the Meantime, the Person so appointed by the Governor as aforesaid, shall to all Intents and Purposes be and be deemed and taken to be the Chief Justice of Western Australia.

Oath of Office

XII. THAT the said Chief Justice shall, previously to entering on his Office under this Ordinance, duly qualify himself for the same by taking the usual Oaths prescribed by Acts of Parliament to be taken by Persons holding Public Offices of Trust, and also the following Oath:  
 " I, A. B., (naming himself) do solemnly promise and swear that I will  
 " not deny or delay Justice to any Person, but will with my utmost Care  
 " and Diligence and to the best of my Ability, truly and faithfully execute the Office of Chief Justice of Western Australia, and that I will  
 " to the best of my Skill and Learning do impartial Justice between  
 " the

“ the Queen and her Subjects, and between Subject and Subject, and  
 “ judge and determine in all Matters which shall come before me to  
 “ be adjudged and determined, according to the Laws and Statutes of  
 “ Great Britain in Force in the said Colony and the Ordinances of the  
 “ said Colony, without Interest, Partiality, Prejudice, Fear, Favour, or  
 “ Affection. So help me God;” Which Oath shall be administered to  
 the said Chief Justice by the Governor in Executive Council.

XIII. THAT the said Supreme Court shall have and use as Occasion  
 may require, a Seal bearing a Device and Impression of the Royal Arms,  
 with an Exergue or Label surrounding the same, with this Inscription,  
 “ The Seal of the Supreme Court of Western Australia,” which Seal shall  
 be kept in the Custody of the said Chief Justice: Provided that until  
 such Seal can be procured it shall be lawful to use the private Seal of  
 the said Chief Justice.

Supreme Court to have a  
 Seal.

Seal of the Chief Justice.

XIV. THAT Her Majesty's Attorney General shall be a Barrister-  
 at-Law of the English or Colonial Bar, and shall be appointed from  
 Time to Time by Her Majesty, her Heirs or Successors, and shall hold  
 his Office during Her Majesty's Pleasure, and in Case of a Vacancy in  
 the said Office of Attorney General, the same shall, as often as such  
 Vacancy shall occur, be filled up by Her Majesty, her Heirs or Successors:  
 Provided that in the Meantime, and until a Person appointed by Her  
 said Majesty, her Heirs or Successors, to fill such Vacancy shall  
 assume his Office, the Governor shall appoint some fit and proper Person  
 to perform the Functions of Attorney General; and the said Attorney  
 General shall have, exercise, and enjoy all the Powers, Authorities,  
 and Privileges usually appertaining and belonging to the like Office in  
 England: Provided that all and every the Powers and Duties heretofore  
 conferred upon the Advocate General, shall henceforth be exercised  
 and discharged by the said Attorney General.

Attorney General.

XV. THAT the Sheriff of the Colony shall be an Officer of the  
 Supreme Court and shall attend the Sittings thereof; and there shall  
 be and belong to the said Supreme Court the following other Officers,  
 that is to say, a Registrar, Master, and Keeper of Records, and such  
 and so many other Officers as to the said Chief Justice shall from Time to  
 Time appear to be necessary for the Administration of Justice, and the due  
 Execution of all the Powers and Authorities which are granted to the said  
 Supreme Court by this Ordinance: Provided that no new Office shall  
 be created in the said Supreme Court, unless the Governor shall first  
 signify his Approbation thereof to the said Chief Justice in writing  
 under the Hand of such Governor: and provided that all Persons who  
 shall and may be appointed to the several Offices of Registrar, Master,  
 and Keeper of Records, or to any Office in the said Supreme Court  
 whereof the Duties shall correspond to those performed by the Master,  
 Registrar,

Officers of the Supreme  
 Court.

Appointments to be made  
 by Her Majesty.

Registrar, Prothonotary, or Keeper of Records of any or either of the Courts of Record at Westminster, shall be appointed from Time to Time by Her Majesty, her Heirs or Successors; and that all Persons who shall and may be appointed to any other Office within the said Supreme Court, shall be so appointed by the Governor; and the several Officers of the said Supreme Court so to be appointed as aforesaid by Her Majesty, her Heirs and Successors, and the Governor respectively, shall hold their respective Offices during Her and their Pleasure: Provided that so often as the said last named Offices, or any of them, shall be or become vacant, it shall be lawful for the Governor, by Warrant under his Hand, to appoint a Person to exercise and discharge the Powers and Duties of the Office so being or becoming vacant, until some Person duly nominated and appointed thereto by Her Majesty, her Heirs and Successors, shall assume Office.

Admission of Barristers,  
&c.

XVI. THAT the said Supreme Court shall approve, admit, and enrol to act as well in the Character of Barristers as of Solicitors, Attorneys and Proctors in the said Supreme Court, all such Persons as have hitherto been so admitted and are now practising in the Civil Court of the said Colony, and all such Persons are hereby authorized to appear and plead and act for Suitors in the said Supreme Court: Provided that no other Person shall hereafter be admitted to practise the Law in the said Colony, until he shall have proved to the Satisfaction of the said Supreme Court that he hath been admitted a Barrister in England or Ireland, or hath kept such a Number of Terms at One of the Inns of Court in England as would entitle him to be called to the Bar there, or hath been duly admitted and practised as a Barrister in One of Her Majesty's Colonies, or has regularly served Five Years in the Office or Offices of some Barrister of this Colony as hereinafter provided.

Affidavit of Service for  
Five Years.

XVII. THAT previously to any Person who may have served in an Office or Offices within the said Colony for the Term aforesaid being admitted, he shall produce to the said Court an Affidavit of the Person or Persons with whom or in whose Office he has served the said Time as follows:—"I, A. B., do swear that C. D. of the said Colony has regularly for the Space of Five Years, attended at my Office in the said Colony, for the Purpose of studying the Law, with a View of being called to the Bar of this Colony, and that I consider him by his Skill and Ability, Integrity and good Conduct, qualified to be admitted as a Barrister of the said Court, and that he has complied with the Requisitions of the Law in that Respect. So help me God:" And if the Service shall have been performed in the Offices of different Barristers in this Colony, or partly in this Colony and partly in any other Colony, then the several Barristers shall make Oath to the Effect hereinbefore mentioned, as to the respective Periods of Service in their  
respective



respective Offices, and such Person shall also produce a Certificate signed by some other practising Barrister of the said Supreme Court to the Effect following: "I, A. B., do hereby certify that C. D., has been personally known to me for the Space of Five Years; that during that Time he has been attentive to the Study of the Law; and that I believe him to be qualified by his Integrity and moral Conduct to practise as a Barrister of this Court. So help me God:" Provided that when the Service shall be performed in different Offices as aforesaid, the same shall be so performed as nearly continuously as reasonably may be, under the Circumstances occasioning such Services being performed in more than One Office.

XVIII. THAT previous to any Person entering in future into the Office of any Barrister in this Colony, for the Purpose of studying the Law with Intent to be called to the Bar, he shall cause his Name to be entered with the Registrar, Master, and Keeper of Records of the said Supreme Court, to be put in the Records of the said Supreme Court as such Student at Law, and also shall lodge with the Registrar, Master, and Keeper of Records a Certificate under the Hands of Two Barristers of the said Supreme Court, that he is duly qualified by previous Education to enter upon the Study of the Law, and the Name or Names of the Barrister in whose Office he shall so enter for the Purpose aforesaid; and also in the Case of any Change of the Office which he shall so attend for the Purpose aforesaid, that such Change shall also be entered with the Registrar, Master, and Keeper of Records.

Students to enter their Names and lodge Certificates of Qualification.

XIX. THAT in case any considerable Time shall have elapsed between the Completion of the Service of Five Years hereinbefore mentioned, and the Application of the Party to be admitted to the Bar, such Party shall not be entitled to be called to the Bar as of course, upon producing the aforesaid Certificates, but he shall also be obliged to show that his intermediate Employment or Employments have been such as shall be consistent with his being admitted to practise the Law at the Bar of this Colony: Provided nevertheless that the said Supreme Court may, notwithstanding the Production of the above mentioned Requisites, upon good Cause assigned for so doing, still refuse to admit such Person to the Bar of the said Supreme Court or to practise therein as shall seem to the said Supreme Court improper to be admitted: Provided that any Person at present prosecuting his Studies in the Office of any legal Practitioner of this Colony shall, on the Passing hereof, be entered as of the Day of the Commencement of his Studies, from which Day the said Five Years shall be computed to run.

Respecting Lapse of Time between Study and Application for Admission.

Power to refuse to Admit any Applicant.

Saving Clause as to present Students at Law.

XX. THAT the said Chief Justice, upon Application on behalf of any Candidate for Admission, shall inquire as to the Qualification for

Application for Admission as a Barrister.

Oath to be taken by Barristers.

for Admission of such Person, and when satisfied thereof, such Oaths are to be administered in open Court as are required by Acts of Parliament to be taken by Persons in Office or Places of Trust, and also the following Oath: "I, A. B., do swear I will truly and honestly demean myself as a Counsel of the Supreme Court, and also as an Attorney, Solicitor, and Proctor of the said Court, or of any other Court of Law or Equity, in which I shall practise in Western Australia. So help me God."

Crimes to be Prosecuted by Information.

XXI. THAT all Crimes, Misdemeanours, and Offences cognizable in the Supreme Court, shall be prosecuted by Information in the Name of Her Majesty's Attorney General, or some Counsel for the Crown, duly authorized in that Behalf, and such Information, when filed with or delivered to the proper Officer of the said Supreme Court, shall have the like Effect in all Respects as an Indictment, as to Trial or otherwise, and no Objection shall be allowed thereto except such as may be made to Indictment. And a Precept in the nature of a *Venire Facias* tested in the Name of the Chief Justice shall issue at least Seven clear Days before the Sitting of the Court directing the Sheriff to summon Jurors to attend such Court, and the Sheriff shall thereupon proceed in the Execution of such Writ agreeably to the Provisions of the twelfth Section of "The Jury Ordinance 1858," and the Jurors so summoned shall form a Panel for the Trial of all such Informations as may be filed or stand for Trial at such Court.

How Issues are to be tried.

XXII. THAT in any Action at Law to be brought in the said Supreme Court, whenever the Parties, Plaintiff or Defendant in any such Action, shall join Issue on any Matter of Fact, the Trial of such Issue shall be by and before the Chief Justice, and the said Chief Justice presiding at any such Trial, shall give his Judgment upon every such Issue or Issues of Fact as aforesaid: Provided always that if either of the Parties, Plaintiff or Defendant, in any such Action, shall be desirous of having any such Issue or Issues of Fact as aforesaid tried by a Jury, he shall be at liberty so to do. And in all such Cases the Jury shall be convened as prescribed by "The Jury Ordinance 1858."

Either Party may have a Jury.

All Actions to commence by Writ of Summons.

XXIII. THAT all Actions at Law of whatsoever Nature in the said Supreme Court, shall be commenced by Writ of Summons and not by Arrest of the Person; and all Process of Execution issued out of the said Supreme Court shall be directed against Property, real as well as personal, and not against the Person; except when otherwise provided by any Law in Force in the said Colony.

Process of Execution against Property only.

XXIV. THAT under any and every Process of Execution, which shall be issued on any Judgment recorded in the said Supreme Court, directed to the Sheriff of the said Colony, the said Sheriff shall and may

Process of Execution against Property only, issued to Sheriff.

may seize and sell, in such Manner and at such Times as shall be prescribed by any Rules and Orders of the said Supreme Court, or by any Ordinance or Ordinances, all the Defendant's real and personal Estate in the said Colony, or such Part thereof respectively as may prove sufficient to realize a Sum to satisfy such Judgment, Costs, Fees, and Expenses of Seizure and Sale.

XXV. THAT if any Person or Persons shall have a Claim or Ground of Action, of whatever Nature, Matter, or Thing, of Twenty Pounds and upwards, against any other Person who may be about to leave the said Colony, and the Party having such Claim or Ground of Action as aforesaid, shall produce to the said Chief Justice 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 Chief Justice to Issue a Writ under his Hand, for the Apprehension of the Party so intending to leave the said Colony, who shall thereupon give reasonable Security at the Discretion of the said Chief Justice, to abide the Result of Proceedings in the said Supreme Court, to be founded on such Claim or Right of Action, or else shall be kept in Custody until such Proceedings shall have terminated: Provided that the Party claiming such Writ shall prosecute his Claim with reasonable Diligence, otherwise it shall be lawful for the said Chief Justice, on Application, to discharge the Party so kept in Custody as aforesaid.

Arrest for Debt on Claim above £20 in certain Cases only.

XXVI. THAT all Powers, Authorities, and Jurisdictions vested by any Ordinance or Ordinances of the Legislative Council of the said Colony in the said Civil Court, or in the Commissioner thereof, or in the Court of General Quarter Sessions of the Peace, shall be and are hereby severally and respectively vested in and exerciseable by the said Supreme Court and the said Chief Justice, in as full and ample a Manner to all Intents and Purposes, as if the same had been originally vested in the said Supreme Court and the Chief Justice thereof respectively, by such Ordinance or Ordinances respectively; and all Proceedings pending in or before the said Civil Court, or before the Commissioner thereof, at the Time this Ordinance shall come into Operation, shall be continued, heard, determined, adjudicated, and decided upon by the said Supreme Court or the said Chief Justice respectively, as if such Proceedings had originated in or before such Supreme Court or before such Chief Justice.

Powers of Civil Court transferred to Supreme Court.

XXVII. THAT all Moneys, Records, Documents, Books, Papers, Property, Estates, Effects, and other Property and Things in the lawful Custody or Control of and belonging or appertaining to the said Civil Court or the Commissioner thereof, or any and every Officer thereof shall, on this Ordinance coming into Operation, be forthwith delivered over

All Moneys, Records of Civil Court, transferred to Supreme Court.

over to the said Supreme Court and the Custody of the proper Officer thereof; and all such Moneys, Records, Documents, Books, Papers, Property, Estates, and Effects, and other Things shall be deemed and taken to form a Part of the Moneys, Records, Documents, Books, Papers, and other Things belonging to such Supreme Court and shall and may be treated accordingly.

Confirms certain Acts of  
the Civil Court.

XXVIII. THAT all Proceedings in the Nature of Equity Suits in the Civil Court and all Orders and Decrees in such Equity Suits, purporting to have been made or pronounced in the Civil Court in Equity, and which have been heard, determined, enrolled, or recorded in the said Civil Court; and all Sales of Land and Tenements by the Sheriff, under and in pursuance of Writs of Execution issued out of the said Civil Court on recorded Judgments of the said Civil Court, shall be and are respectively hereby made and rendered as good, valid, legal, and binding at Law and in Equity, to all Intents and Purposes, as if the same respectively had been made, pronounced, heard, determined, enrolled, recorded, or effected under and in pursuance of the Provisions of this Ordinance.

An Appeal given against  
Judgment, &c., above £500.

XXIX. THAT it shall be lawful for the Plaintiff or Plaintiffs, Defendant or Defendants, against whom any Final Judgment, Decree, or Order of the said Supreme Court shall be given or pronounced, which Final Judgment, Decree, or Order shall directly or indirectly involve any Claim, Demand, or Question respecting Property or any civil Right, amounting to or of the Value of Five Hundred Pounds and upwards, if no Appeal therefrom shall lie to Her Majesty's Privy Council, to appeal therefrom to the Court of Appeal hereinafter mentioned; and the Party or Parties appealing from such Final Judgment, Decree, or Order, shall, within Fourteen Days from the Passing thereof, give Notice to the adverse Party or Parties of such Appeal, and within Twenty-eight Days from and after such Judgment, Decree, and Order, enter into sufficient Security, to be approved by such Chief Justice, to satisfy or perform such Judgment, Decree, or Order of the said Supreme Court respectively, in case the same shall be affirmed, or the Appeal dismissed, together with such further Costs as shall be awarded thereon; and in all Cases of Appeal, when Notice shall be given and Security perfected as aforesaid, Execution shall be stayed and not otherwise.

Court of Appeal Estab-  
lished.

XXX. THAT the Governor in Executive Council shall, from Time to Time, hold a Court, to be called "The Court of Appeal of Western Australia," which Court shall have Power in all such Cases as last aforesaid, to receive and hear Appeals from the final Judgments, Decrees, and Orders of a civil Nature of the said Supreme Court as aforesaid, and to affirm, alter, or reverse the said Final Judgments, Decrees, or Orders, in Whole or in Part, or to dismiss the said Appeals,  
with

with Costs or otherwise as may seem just: Provided that the said Court of Appeal may, in their Discretion, be assisted in the Hearing and Determining all Appeals from the said Supreme Court by the Chief Justice of such Supreme Court: And provided that the Record of any Final Judgment, Decree, or Order to be pronounced by the Court of Appeal, shall by such Court be remitted to the said Supreme Court, whence the Appeal was brought, to be by such Court carried into Effect, according to Law: Provided also, that upon any Appeal to be brought to the said Court of Appeal, from any Final Judgment, Order, or Decree found on a Verdict of a Jury, the said Court of Appeal shall not reverse, alter, or inquire into the said Final Judgment, Decree, or Order, excepting for Error in Law apparent on the Record.

XXXI. THAT it shall be lawful for the said Chief Justice, from Time to Time, to make and prescribe such Rules and Orders, touching and concerning the Times and Places of holding the said Supreme Court, and the Adjournments thereof respectively; the Forms and Manner of Proceeding; and the Practice and Pleadings upon all Indictments, Informations, Actions, Suits, and other Matters, to be therein brought; the Appointing of Commissioners to examine Witnesses, the Form and Manner of Bail, the Taking of Examinations *de bene esse*, and allowing the same as Evidence; the Granting of Probates of Wills, and Letters of Administration; the Appointing of Guardians and Keepers of Infants; the Proceedings of the Sheriff and other ministerial Officers; the Process of Attachment and all other the Process of the said Supreme Court, and the Mode of executing the same; the Fees, Costs, Poundage, or Perquisites to be lawfully demanded by any Officer, Barrister, Attorney, Solicitor, or Proctor in the said Supreme Court, and the Proceedings in Judges Chambers on Summonses; and otherwise; and all other Matters and Things whatsoever as to such Chief Justice shall seem meet for the Conduct of Business in such Supreme Court, and as may be adapted to the Circumstances and Conditions of the said Colony; and such Rules and Orders from Time to Time to alter, amend, or revoke as to such Chief Justice shall seem requisite; and all Rules and Orders so to be made and prescribed as aforesaid, shall be of such and the like Force and Effect, as if the same had been inserted in the present Ordinance: Provided always, that the Legislative Council may by Resolution disallow the same, or any One or more of them, and upon such Disallowance being signified through the Governor, the Rule and Order or Rules and Orders so disallowed, shall become void and of no Effect: Provided further, that until such Rules shall be so framed as aforesaid, and also in Cases where no such Rules shall apply, and no Rule shall be prescribed by Ordinance of the said Colony, the Practitioners and Officers of the said Supreme Court shall, as near as they can, govern themselves in Common Law Procedure by the Rules and Practice of  
the

Chief Justice to make Rules.

the Courts of Common Law at Westminster; and in Equity or Chancery Practice, by the Rules and Practice of the Courts of Equity in England, which several Rules and Practices, except where they are, shall, or may be altered in and by this or any other Ordinance, or by the Rules of Practice to be made as aforesaid, shall be in Force and govern the Proceedings in the Supreme Court, as far as the same can or may be applicable thereto.

A. E. KENNEDY,

GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council,  
this 17th day of June, 1861.*

HENRY WAKEFORD,

*Clerk of the Council.*

**L.S.**

## SCHEDULE referred to in the foregoing Ordinance.

DATE.	TITLE.	HOW MUCH REPEALED.
2 Will. 4, No. 1 of 1832.	An Act for establishing a Court of Civil Judicature.	The whole.
2 Will. 4, No. 4 of 1832.	An Act to extend the Jurisdiction and regulate the Proceedings of the Court of Quarter Sessions.	The whole.
5 Will. 4, No. 2 of 1834.	An Act to amend certain Acts of the Governor with the Advice of the Legislative Council, so far as the same relate to the Mode of Appointment and Tenure of Office of certain Officers thereby respectively constituted.	So much as relates to the Office of Commissioner of the Civil Court and Registrar Clerk of the Civil Court.
6 Will. 4, No. 1 of 1836.	An Act to amend an Act entitled "An Act for establishing a Court of Civil Judicature."	The whole.
18 Vic. No. 9 of 1855.	An Ordinance for the further Regulation of Practitioners in the Civil Court.	The whole.