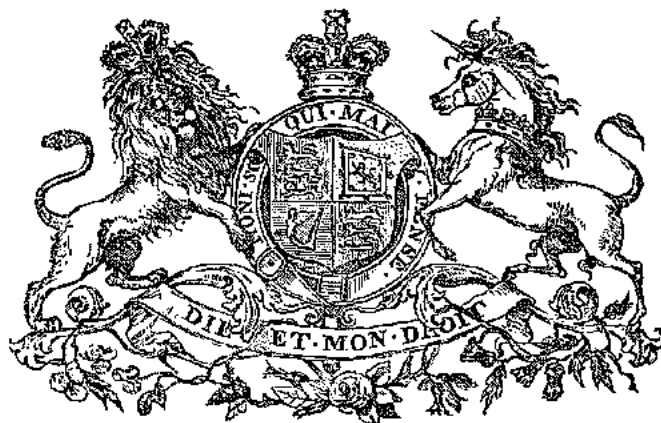




Western Australia.

ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

No. IX.

AN ACT to facilitate the Protection and Recovery of Crown Property, and the Enforcement of Claims against the Crown.

[Assented to, 28th October, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited as the Crown Suits Act, 1898, and shall come into operation on the first day of January, One thousand eight hundred and ninety-nine.

Short title.
Commencement.

2. THIS Act is divided into parts, as follows:—

Division of Act.

PART I.—GENERAL: ss. 3-7:

PART II.—RECOVERY OF DEBTS AND PROPERTY BY
THE CROWN: ss. 8-21:

PART III.—MODE OF ENFORCING CLAIMS AGAINST THE
CROWN: ss. 22-37.

3. IN this Act, unless the context otherwise indicates—

Definitions.

“Court” means the Supreme Court of the Colony of Western Australia, or any Judge thereof:

“Crown” means Her present Majesty, and includes Her heirs and successors:

“Fine” shall include a penalty:

“Justice” means a Justice of the Peace:

“Law Officer” means the Attorney General, or the Crown Solicitor, or some other person authorised by the Attorney General.

Repeal.
First Schedule.

4. (1.) THE Acts mentioned in the First Schedule to this Act are hereby repealed.

Saving.

(2.) Such repeal shall not affect anything lawfully done or commenced under the Acts hereby repealed, or either of them.

Proceedings may be continued, &c.

(3.) All proceedings of whatever kind by or on behalf of or against the Crown commenced before the coming into operation of this Act, and all rights accrued or liabilities incurred or proceedings for causes of action arising prior to the coming into operation of this Act may be enforced, continued, commenced, and prosecuted in like manner as if this Act had not passed.

5. NOTHING in this Act contained shall—

Crown rights preserved.
Crown may take proceedings other than under this Act.

(1.) Prevent the Crown from commencing and taking proceedings for the recovery of any debt, damages, duty, sum of money, land, or goods in any court of competent jurisdiction, which prior to the coming into operation of this Act could have been commenced and taken in any such court;

Statutory and other rights of Crown reserved.

(2.) Interfere with or in any way restrict any privilege, power, or authority, whether conferred by statute or otherwise, which is vested in the Crown or any person on its behalf, in respect of all or any of the matters within the provisions of this Act;

Statutory immunities and liability of Crown not affected.

(3.) Affect or restrain any enactment whereby the Crown or any of its officers, agents, or servants are exempt from liability for anything done under or in pursuance of such enactment, or are subjected to any liability by such enactment.

Reference to repealed Acts.

6. WHENEVER reference is made in any statute or document to any Act hereby repealed or to any part thereof, such reference shall, so far as applicable, be deemed to be made to this Act and the corresponding part hereof.

Crown Suits.

7. (1.) THE judges of the court or any two of them may from time to time make, alter, and repeal such rules as they think necessary for regulating and conducting the practice and mode of procedure under this Act, in all instances in which the practice and mode of procedure in civil actions between subject and subject are or shall be applicable.

Rules of procedure.

(2.) All rules and orders of court in force in the Supreme Court at the time when this Act comes into operation, with reference to matters within the provisions of this Act, are hereby repealed.

Present rules repealed.

(3.) Copies of all rules made under this Act shall be laid before Parliament within fourteen days from the making thereof if Parliament shall be then in session, and, if not, then within fourteen days after the commencement of the next session thereof.

PART II.—RECOVERY OF DEBTS AND PROPERTY BY THE CROWN.

8. ALL debts, damages, duties, sums of money, land or goods due, payable, or belonging to the Crown, may be sued for and recovered by the means and in the manner prescribed in this Act.

Mode of recovering Crown debts.

9. (1.) WHENEVER any fine, with or without costs, is imposed upon any person, in addition to any other remedy or procedure for the recovery thereof, a judge of the court by which or the justice by whom such fine has been imposed, if the same is not immediately paid, together with the costs (if any), may, by writing under his hand, in the form contained in the Second Schedule to this Act or to the like effect, certify that fact, together with the name and place of abode or business of the person on whom such fine has been so imposed, and the cause and amount of such fine; and shall deliver or send by the post to a law officer such writing.

Fines to be recoverable by judgment.

Second Schedule.

(2.) Upon receipt of such certificate, the law officer may cause a final judgment to be signed in the Supreme Court for the amount of such fine and costs (if any), and a further sum, not exceeding Five pounds for costs of such judgment, to be taxed.

Judgment may be signed.

(3.) Every such judgment may be in the form contained in the Third Schedule to this Act or to the like effect, and shall be final unless the conviction in respect of which such fine has been imposed is set aside or quashed on appeal, where the right of appeal from such conviction exists, in which case such judgment shall be set aside.

Form of judgment. Third Schedule.

10. WHENEVER any person has entered into any recognisance to the Crown, and such recognisance is forfeited, in addition to any other remedy or procedure for the recovery or enforcement thereof, a judge of the court before which or the justice

Debts due by recognisance to be recovered by judgment.

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before whom the same is forfeited may cause such recognisance to be estreated; and every such estreat shall be effected as follows:—

Certificate of
forfeiture.
Fourth Schedule.

(1.) Such judge or justice may, by writing under his hand in the form contained in the Fourth Schedule to this Act or to the like effect, certify that such forfeiture has taken place, and shall deliver or send by the post to a law officer the said recognisance and writing.

Judgment may be
signed.

(2.) Upon receipt thereof the law officer may cause a final judgment to be signed in the Supreme Court for the amount of such recognisance, and a sum not exceeding Five pounds for costs, to be taxed.

Form of judgment.
Fifth Schedule.

(3.) Every such judgment may be in the form contained in the Fifth Schedule to this Act or to the like effect, and no writ of error or appeal shall lie or be had therefrom.

Other debts and
duties to be
recovered by Crown
suit.

11. (1.) WHENEVER any debt, duty, or sum of money is due to the Crown, otherwise than upon or by virtue of any recognisance, the Crown may cause to be sued out of the Supreme Court a writ of summons, or, in case the claim or demand is within the jurisdiction of an inferior court, the ordinary process of such court, in like manner as in actions between subject and subject.

(2.) Every such writ or other process shall be served by the sheriff or any of his officers or agents, or the bailiff or other officer of an inferior court as the case may be, and shall be deemed and taken to be the commencement of a Crown suit.

(3.) It shall not be necessary to indorse the address of the plaintiff on any such writ or other process.

Writ not to be
issued without *fiat*.
Sixth Schedule.

12. NO such writ or other process shall be issued except upon a *fiat* under the hand of a law officer, in the form contained in the Sixth Schedule to this Act or to the like effect.

Form of infor-
mation.

13. (1.) IN lieu of the statement of claim in an action between subject and subject, an information shall be filed or delivered, as the case may be, by a law officer for and on behalf of the Crown.

Complaint to be
stated.

(2.) Such information shall set forth the cause of complaint in the same manner and form as nearly as may be as in any such statement of claim as aforesaid.

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(3.) Every such information shall commence and conclude in the form contained in the Seventh Schedule to this Act or to the like effect.

Seventh Schedule.

14. THE time, form, and manner of process and proceeding in any Crown suit, except where it is otherwise provided by this Part of this Act, shall be the same, as nearly as may be, as by any law or rule of practice or pleading now or hereafter to be in force in the Supreme Court, or inferior court, as the case may be, is directed in any civil action between subject and subject.

Proceedings to be the same as in actions.

15. ALL motions for judgment, and other motions subsequent to trial, and all appeals may be made, granted, and allowed in the same manner and upon the same terms in all respects as by any law or rule of practice is directed in any civil action between subject and subject.

New trial, &c.

16. (1.) THE possession of land belonging to the Crown may be recovered and obtained by proceedings in the same form, as nearly as may be, as in an action for the recovery of land between subject and subject.

Suits relating to land or goods.

(2.) The possession of goods, or damages for detaining, taking, damaging, or for converting goods, or for trespassing upon land, or for breach of contract, may be recovered in the same manner as is hereinbefore directed with respect to any debt, duty, or sum of money due to the Crown otherwise than upon or by virtue of a recognisance.

Suits relating to goods and damages.

(3.) In any Crown suit the Crown shall be entitled to the like remedies, by way of injunction or otherwise, as are available to the plaintiff in an action between subject and subject.

Crown entitled to like remedies as subject.

17. IN all Crown suits in the nature of ejectment or detinue, such writs of execution as by any law or rule of practice are or can be issued in any civil action of the same nature between subject and subject for the recovery of land, goods, or writings may be issued on behalf of the Crown.

Execution in ejectment and detinue.

18. IN all pleadings and proceedings under this part of this Act, and in all affidavits, notices, consents, summonses, and rules to be used therein, the title of the cause or proceedings shall be stated to be "The Crown" against the person sued (naming him), and no other title whatsoever shall be necessary; and the Crown shall be entitled to full costs of suit in all cases in which a plaintiff in any civil action between subject and subject would be entitled thereto.

Title of the cause and costs of suit.

Crown Suits.

19. WHENEVER a defendant, in any proceedings under this Part of this Act, is entitled to a beneficial interest in any lands situate within Western Australia,—

Lien on real estate may be filed.

Ninth Schedule.

(1.) A memorandum of the commencement of such proceedings, in the form contained in the Ninth Schedule to this Act or to the like effect, under the hand of a law officer, may be filed with the Registrar of Deeds and Registrar of Titles, who shall forthwith enter the particulars of such memorandum in a book to be called "The Registry of Crown Debts."

Memorandum to create a lien.

(2.) Every such memorandum shall create a lien upon such lands for all moneys and costs which are recovered by the Crown against the defendant in such proceedings, and shall have priority over all claims against such lands which are unregistered or not protected by caveat at the time of filing such memorandum.

Lien discharged on production of certificate.

(3.) Upon the production of a certificate of a law officer that such proceedings have been terminated and the claim of the Crown satisfied, the Registrar of Deeds or Titles (as the case may require) shall make an entry in the Registry of Crown Debts that such lien has been discharged.

When Crown successful in proceedings, Crown may recover costs.

20. IN all legal proceedings whatsoever, instituted by or on behalf of the Crown against any corporation or person or persons, a law officer shall be entitled to recover costs for and on behalf of the Crown whenever a judgment, order, or decree is given or made in favour of the Crown, in the same manner and under the same rules, regulations, and provisions as are in force touching the payment, recovery, or receipt of costs in proceedings between subject and subject.

Defendant entitled to costs where Crown unsuccessful.

21. WHENEVER in any legal proceedings under this part of this Act a judgment, order, or decree has been given or made against the Crown, the defendant shall be entitled, subject to the provisions of this Act, to recover costs in like manner and subject to the same rules, regulations, and provisions as though such proceedings had been between subject and subject, and such costs shall be paid by the Colonial Treasurer, on the warrant of the Governor, out of the Consolidated Revenue Fund.

PART III.—MODE OF ENFORCING CLAIMS AGAINST THE CROWN.

Subjects enabled to sue the Crown.

22. (1.) SUBJECT to the provisions of this part of this Act, whenever any person has any claim or demand against the Crown which has arisen or accrued within Western Australia since the

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coming into operation of this Act, such person may set forth in a petition the particulars of his claim or demand as nearly as may be in the same manner as in a statement of claim in an action in the Supreme Court between subject and subject.

(2.) Such petition shall be in the form contained in the Ninth Schedule to this Act or to the like effect, and shall be filed in the Supreme Court in order that such court may proceed to hear and determine the same as hereinafter mentioned; and the filing of such petition in the manner aforesaid shall be the commencement of the suit, but an office copy of such petition shall be delivered at the office of the Crown Solicitor, and such delivery shall be equivalent to service of a writ, and delivery of statement of claim in an ordinary action.

Form of Petition.
Ninth Schedule.

23. THE proceedings in the suit commenced by such petition shall be conducted in the same manner and subject as nearly as may be to the same rules of practice as in an ordinary action between subject and subject; and a law officer or any solicitor of the Supreme Court appointed by him for that purpose may, for and on behalf of the Crown, deliver a statement of defence in answer to such petition within twenty-eight days after such delivery as aforesaid of a copy thereof, or such further time as the court may allow.

Proceedings on
petition.

24. NOTWITHSTANDING anything in this part of this Act contained, the Governor may, at any time after the filing of such petition, on the certificate of a law officer that in such law officer's opinion the matter of such petition affects the prerogative of the Crown, transmit the same to the principal Secretary of State for the Colonies for the signification of the Crown's approval, and, until such approval be given, all proceedings in such petition shall be stayed.

Governor may
reserve petition
affecting preroga-
tive of Crown for
its approval.

25. IF such approval is not given by the Crown on the return of such petition, the same, with the indorsement thereon and the reasons assigned for withholding such approval, shall be forthwith published in the *Government Gazette*, and no further proceedings shall be taken upon such petition, which shall be deemed to be dismissed without costs.

Reasons to be
published in *Gazette*
if petition not
approved.

26. ALL pleadings after such petition shall be respectively delivered between the petitioner and a law officer, or such solicitor as aforesaid; and the statement of defence to such petition may be in the form contained in the Tenth Schedule to this Act or to the like effect, and shall, together with all subsequent pleadings, be entitled of the said court and of the day and of the month and the year when the same is filed or delivered and shall bear no other time or date.

Form and date of
petition and pro-
ceedings.
Tenth Schedule.

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27. (1.) THE court shall give and pronounce such and the like judgment, order, or decree on any such petition as such court would give and pronounce in any action between subject and subject.

Appeal. (2.) An appeal from any such judgment, order, or decree shall lie and be had in the same manner as from any judgment, order, or decree of the court in any action between subject and subject.

Costs. (3.) The costs shall follow on either side as in ordinary cases in actions between subject and subject, any law or practice to the contrary notwithstanding.

Security for costs may be required in certain cases. **28.** IF the petitioner in any suit in the Supreme Court is an uncertificated bankrupt or has, within twelve months from the commencement of the suit, liquidated or compounded with his creditors or is a person without fixed domicile in this Colony, a law officer may, upon affidavit setting forth the facts, apply to the court or to a judge thereof in chambers for an order that all proceedings in the suit be stayed until security for the costs thereof be given to the satisfaction of the Master of the Court, and upon being satisfied of the facts the court or judge shall order that all proceedings in the suit be stayed until such security is given.

Execution against the Crown. **29.** EXCEPT as hereinafter mentioned, no execution or attachment or process in the nature thereof shall be issued out of the court in any such action; but after any such judgment, order, or decree as aforesaid against the Crown has been given or pronounced, the Registrar of the Supreme Court shall give to the petitioner a certificate in the form contained in the Eleventh Schedule to this Act or to the like effect, and sealed with the seal of the Supreme Court.

Effect of certificate. **30.** ON receipt of such certificate the Governor may cause to be paid out of the Consolidated Revenue Fund such damages as under the authority of this part of this Act are assessed to or in favour of any such petitioner, and also any costs which are adjudged or awarded to him by the court, and may also cause to be carried out any decree or order which is pronounced or made by the court.

Execution against the petitioner. **31.** NOTWITHSTANDING anything hereinbefore contained, the Crown may enforce any such judgment, order, or decree as aforesaid against the petitioner by execution, attachment, or other process in the same manner as a defendant in any action between subject and subject could or might enforce the same.

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32. SO far as they are applicable, the laws, statutes, and rules in force as to pleading, evidence, hearing, trial, security for costs, amendment, special cases, the means of procuring and taking evidence, set-off, limitations, judgment, appeal, and all other laws, statutes, and rules available as between plaintiffs and defendants in actions between subject and subject, and the practice and course of procedure of the court in its legal and equitable jurisdiction respectively, for the time being, in reference to such actions shall, unless the court otherwise orders, be applicable and extend to proceedings on a petition under this Part of this Act.

Statutes and rules as to procedure, &c., to apply to petitions.

33. NO claim or demand shall be made against the Crown under this Part of this Act unless it is founded upon and arises out of some one of the causes of action mentioned in this section. Provided that nothing herein contained shall be deemed to give a cause of action for breach of contract which would not have arisen in like circumstances before the passing of this Act.

What claims are within this Act.

(1.) Breach of any contract entered into by or under the lawful authority of the Governor on behalf of the Crown or of the Executive Government of the Colony, whether such authority is express or implied.

Breach of contract

(2.) A wrong or damage, independent of contract, done or suffered in, upon, or in connection with a public work as hereinafter defined.

Torts.

(3.) For the purposes of this section "public work" means any railway, tramway, road, bridge, building, electric telegraph, telephone, steamboat, dredge, harbour works, quarries, water works, jetties, cranes, or other work of a like nature, used by the Government of the Colony or constructed by such Government, and the revenues derived from which form part of the Consolidated Revenue of the said Colony.

(4.) No action shall lie against the Commissioner of Railways under the Railways Act, 1878, or any amendment thereof, in respect of any claim or demand unless the same be founded upon, or arise out of some one of the causes of action before mentioned in this section, and subject to the provisions of the next following section.

34. NO person, or the representatives or relatives of any person deceased, shall be entitled to sue for or recover from the Crown, or any Minister or officer of the Crown, any sum of money exceeding Two thousand pounds for or by reason of any personal injury sustained by such person.

Limitation of damages.

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Claims within jurisdiction of inferior courts.

35. (1.) WHENEVER any person has any claim or demand within the jurisdiction of any inferior court, such person may apply to a law officer for his consent to the hearing and determination of such claim or demand in any such inferior court to be named in the application.

With consent of law officer may be taken in inferior courts.

(2.) The law officer may, in his discretion, give or withhold such consent, and upon such consent being given, the claim or demand may be heard and determined in such inferior court, in like manner in all respects as in actions between subject and subject, and in all other respects, and so far as applicable, the provisions of this Part of this Act shall apply to such actions.

Notice of filing petition to be sent to law officer.

36. NO petition shall be filed unless and until one month's previous notice in writing has been given to or left at the office of the Crown Solicitor, or forwarded by post to a law officer, signed by the party intending to file such petition, and such notice shall set out the nature of the claim and the relief sought.

Petition to be filed within twelve months.

37. NO person shall be entitled to prosecute or enforce any claim or demand under this Part of this Act unless the petition setting forth the relief sought is filed within twelve months after the claim or demand has arisen.

In the name and on behalf of the Queen I hereby assent to this Act.

ALEX. C. ONSLOW, Governor's Deputy.

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SCHEDULES.

First Schedule.

Section 4.

Date of Act.	Title of Act.	Extent of Repeal.
2 Will. IV., No. 5	<i>"An Act to secure the payment of Debts due to the Crown."</i>	The whole.
31 Vict., No. 7 ...	<i>"An Ordinance to facilitate proceedings by persons having Claims against the Government."</i>	The whole.

Second Schedule.

"The Crown Suits Act, 1898."

Section 9, Sub-
section (1.)

CERTIFICATE OF UNPAID FINE.

This is to certify to the Law Officers of the Crown that at the
this day holden at the several persons, whose names and
places of abode or business are specified in the Schedule below, were fined the
several sums set opposite to their respective names in the said Schedule, and the
cause of such fine is duly and truly set forth in the same Schedule.

THE SCHEDULE.

Surname and other Names at full length.	Place of Abode or Business.	Cause of Fine.	Amounts of fine and costs (if any).		
			£	s.	d.
Total £					

Given under my hand this day of 189 .

Judge
or
Justice } (*As the case may be*).

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Third Schedule.

Section 9, Sub-
section (3.)

"The Crown Suits Act, 1898."

JUDGMENT ON UNPAID FINE.

WESTERN AUSTRALIA (to wit): Be it remembered That [*here insert name of Law Officer*] Attorney General (or Crown Solicitor) of the Colony of Western Australia, for and on behalf of the Crown, gives the Court here to understand and be informed that at the General Sessions of the Peace (*or as the case may be*), holden at on the day of before [*insert name of Judge or Justice*], a fine of pounds was imposed and inflicted upon for that he the said [*insert charge in respect of which fine is imposed*], as by the certificate of , now filed of record appears. Therefore, on the day of it is adjudged by the Court here that the Crown do recover against the said the said sum of and also the sum of for costs (if any), and the further sum of for costs of judgment, making together the sum of .

Fourth Schedule.

Section 10, Sub-
section (1.)

"The Crown Suits Act, 1898."

CERTIFICATE OF FORFEITED RECOGNISANCES.

This is to certify to the Law Officers of the Crown that at the this day holden at the recognisances hereunto annexed were forfeited, and were then and there caused to be estreated.

Given under my hand this day of 189 .

Judge } (*As the*
or } *case*
Justice } *may be*).

Fifth Schedule.

Section 10, Sub-
section (3.)

"The Crown Suits Act, 1898."

JUDGMENT ON FORFEITED RECOGNISANCES.

WESTERN AUSTRALIA (to wit): Be it remembered That [*here insert name of Law Officer*], Attorney General (or Crown Solicitor) of the Colony of Western Australia, for and on behalf of the Crown, gives the Court here to understand and be informed that at the General Sessions of the Peace (*or as the case may be*), holden at on the day of before [*here insert name of Judge or Justice*] the recognisance of one by .

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which he acknowledged to owe to the Crown the sum of was forfeited
and estreated as by the said recognisance and the certificate of the said
now filed of record appears. Therefore, on the day of
it is adjudged by the Court here that the Crown do recover against the said
the said sum of and also the sum of
for costs, making together the sum of

Sixth Schedule.

Section 12.

"The Crown Suits Act, 1898."

FIAT FOR WRIT OF SUMMONS OR OTHER PROCESS.

IN THE SUPREME COURT OF }
WESTERN AUSTRALIA (or }
IN THE LOCAL COURT). }

The Crown *against* A.B.

Let a writ of Summons (or process) issue in this suit against the above-named A.B.

Dated this day of 189 .

Attorney General [*or* Crown Solicitor].

Seventh Schedule.

Section 13,
Sub-section (3.)

"The Crown Suits Act, 1898."

FORM OF INFORMATION.

IN THE SUPREME COURT OF }
WESTERN AUSTRALIA. }

The Crown *against* A.B.

The day of in the year of our Lord
[*Insert name of Law Officer*], Attorney General [*or as the case may be*] of
Western Australia, for and on behalf of the Crown, sues , who
has been summoned to answer the Crown by a writ issued on the
day of

For, &c. [*proceed as in ordinary Statements of Claim*]. And the Crown
claims

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Section 19,
Sub-section (1.)

Eighth Schedule.

"The Crown Suits Act, 1898."

MEMORANDUM OF COMMENCEMENT OF PROCEEDINGS.

IN THE SUPREME COURT OF }
WESTERN AUSTRALIA (or }
IN THE LOCAL COURT). }

The Crown against

Proceedings to recover the sum of £ [or as the case may be] have been commenced in this Honourable Court against [insert defendant's name] of [state address and description].

Dated this day 189 .

(Signature.)

Attorney General [or Crown Solicitor].

Section 22.
Sub-section (2.)

Ninth Schedule.

"The Crown Suits Act, 1898."

PETITION OF RIGHT.

IN THE SUPREME COURT OF }
WESTERN AUSTRALIA. }

The day of

TO YOUR MOST GRACIOUS MAJESTY,

Your faithful subject [insert name of petitioner], of [insert address and description], humbly sheweth :—

That, &c. [set out grounds of petition].

Your petitioner therefore most humbly prays that Your Majesty will be most graciously pleased to order that right be done in this matter, and that the Attorney General [or other Law Officer] of Western Australia, may be required to answer the same, and that your suppliant may henceforth prosecute his complaint in the said Court, and take such other proceedings as may be necessary. And your suppliant, as in duty bound, will ever pray.

Section 26.

Tenth Schedule.

"The Crown Suits Act, 1898."

IN THE SUPREME COURT OF } A.B. v. THE CROWN.
WESTERN AUSTRALIA. }

DEFENCE.

The day of

[Name of Law Officer], Attorney General [or Crown Solicitor] of Western Australia, for and on behalf of the Crown, saith that, &c.

Crown Suits.

Section 29.

Eleventh Schedule.

"The Crown Suits Act, 1898."

IN THE SUPREME COURT OF } A.B. v. THE CROWN.
WESTERN AUSTRALIA. }

CERTIFICATE OF JUDGMENT.

I do hereby certify that _____ of [insert address and description], did
on the _____ day of _____ obtain a judgment [order or decree] of this
Honourable Court in his favour, and that by such [judgment] the sum of _____
was awarded to him, and £ _____ for costs of suit.

Dated this day of 18 .

(Signature.)

Registrar of Supreme Court.