

No. XVII.

MELBOURNE
CORPORATION.

An Act to explain and amend the Acts relating
to the Corporation of the Town of Melbourne.
[31st August, 1847.]

Preamble. **W**HEREAS an Act was passed by the Governor and Legislative
Council of New South Wales in the sixth year of the reign of
Her present Majesty Queen Victoria intituled "*An Act to incorporate
the Inhabitants of the Town of Melbourne*" And whereas the said
recited Act was amended by an Act passed in the eighth year of the
reign of Her present Majesty intituled "*An Act to amend an Act
passed in the sixth year of the reign of Her present Majesty intituled
'An Act to incorporate the Inhabitants of the Town of Melbourne'*"
And whereas a certain other Act was passed by the Governor and
Legislative Council of New South Wales in the third year of the reign
of Her present Majesty intituled "*An Act to authorize the establishment
of Markets in certain Towns in the Colony of New South Wales and for
the appointment of Commissioners to manage the same*" And whereas
a certain other Act was passed in the second year of the reign of Her
present Majesty Queen Victoria intituled "*An Act for regulating the
Police in the Towns of Parramatta Windsor Maitland Bathurst and
other Towns respectively and for removing and preventing Nuisances
and Obstructions and for the better alignment of Streets therein*" And
whereas

6 Vic. No. 7.

8 Vic. No. 12.

3 Vic. No. 13.

2 Vic. No. 2.

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whereas it is expedient to explain and further amend the said recited Acts Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That every Councillor elected to be an Alderman shall continue to be a member of the Council of the said town until the first day of November next following the day on which he shall have ceased to be an Alderman anything in the said secondly recited Act to the contrary notwithstanding Provided always that nothing herein contained shall be taken to repeal or alter the provision in the said secondly recited Act contained as to any Councillor elected to be an Alderman thereby vacating his seat as an elected Councillor.

Councillors elected to be Aldermen to continue members of the Council until the 1st day of November next after the day on which their term of service as Aldermen shall expire.

2. And be it enacted That from and after the passing of this Act all elections of Councillors or Assessors shall be conducted in manner following that is to say the Alderman of the ward for which such election is to be held or other person duly appointed shall preside at a meeting of the burgesses of the ward to be holden at noon on the day of election in some public place within the ward of which at least three days' notice shall be given by advertisement in one or more of the newspapers published within the said town and if there be at such meeting no more candidates nominated than the number of Councillors or Assessors as the case may be then to be elected the Alderman or other presiding officer shall declare such candidate or candidates to be duly elected and in the event of there being more candidates than the number to be elected the Alderman or other presiding officer shall call for a show of hands separately in favor of each candidate and shall after such show of hands declare therefrom on whom the election has fallen and shall make his return accordingly unless a poll be demanded by one of the candidates or by not less than six burgesses of such ward on his behalf and on such demand being made for a poll the polling shall take place on the day next but one following in manner directed by the said first recited Act.

Mode of election of Councillors and Assessors.

3. And be it enacted That all elections of Auditors for the town shall be in the form and manner hereinbefore provided for the election of Councillors or Assessors excepting that the Mayor or other person duly appointed shall preside at a meeting of the burgesses of the town held for the purpose of the nomination of candidates and that in the event of the election being contested notice thereof shall on the same day be given to the Aldermen of the several wards who shall hold their respective Courts for the election of such Auditors on the day next but one following.

Mode of election of Auditors.

3. And whereas in pursuance of the provisions of a certain by-law made and passed by the Council of the said town on or about the sixteenth day of September in the year of our Lord one thousand eight hundred and forty-three intituled "*A Bye-law for regulating the proceedings at future elections of Councillors Auditors or Assessors*" sundry elections to the respective offices of Councillor Auditor and Assessor have from time to time been held and determined without the taking of a poll thereat and doubts have arisen as to the validity of such elections Be it declared and enacted That all elections heretofore held and determined in pursuance of the provisions of the said by-law shall be taken to have been and be as valid and effectual as if the same had been duly held and decided according to the provisions of the Act hereinbefore firstly recited and no act or proceeding of any party so elected shall be held to have been or be invalid or ineffectual on account of any such informal election nor shall the said Corporation be taken to have been or be dissolved thereby nor in any other manner or way damaged or incapacitated as a body corporate.

Removes doubts as to the validity of certain elections.

5. And for the more easy and effectual recovery of rates ordered by the Council of the said town Be it enacted That so much of

Occupier made primarily liable for rates.

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of the said Act secondly recited as provides that in any case in which such clear annual value shall be under twenty pounds such assessments or rates shall be paid by the owner or owners or proprietor or proprietors thereof and not by the tenant or tenants shall be and the same is hereby repealed and in lieu thereof that except as herein provided the occupier of any house or other property or person in possession at the time when such rates shall be demanded or (in case of a change in such possession in the meantime) the person occupying the premises when the warrant of distress shall be executed shall be deemed to be and be the person primarily liable to the payment of rates under the said recited Acts in respect of any house or other property assessed and in case the premises shall be vacant for a period less than six months and there shall not be sufficient distress found therein then the proprietor or landlord shall be liable Provided that in all cases where any tenant shall be called on to pay any rate where the annual value of the tenement assessed or rated shall be under twenty pounds and shall accordingly pay the same or where the tenant of premises assessed or rated to the annual value of twenty pounds or upwards shall be called upon to pay and shall accordingly pay a greater amount of rate than shall have become due during his term of occupancy then and in every such case it shall be lawful for the said tenant to deduct the amount of rate so paid from any rent which he may then owe to his landlord or from the accruing of any future rent or to recover the same after demand by any action for money paid to such landlord's use in any Court of competent jurisdiction.

Proviso.

Repeals proviso to
25th section of 8
Vic. No. 12.

6. And be it enacted That so much of the said secondly recited Act as provides that nothing therein contained shall be construed to authorize the Council of the said town by any bye-law to impose any license upon any person selling or offering to sell any fish fruit water fuel vegetables milk or victuals of any description in any street ward or place within the limits of the said town or upon the actual maker or the children apprentices agents or servants of and residing with the maker of any goods selling or offering to sell the same in any such ward street or place as aforesaid or to prevent the sale without such license or fee of any goods whatever in any market or fair legally established in the said Colony or in any house or shop occupied by the person so selling or offering to sell the same shall be and the same is hereby repealed.

Proceedings to enforce payment of penalties for non-acceptance or vacation of corporate offices.

7. And be it enacted That if any person who shall have become liable under the said first recited Act to any fine or penalty by reason of non-acceptance resignation or vacation by absence of any corporate office shall neglect to pay such fine or penalty into the hands of the Treasurer of the said town or corporation within such time not exceeding three calendar months as shall be fixed by the said Council then and in every such case it shall be lawful for the said Treasurer and he is hereby required under a penalty of fifty pounds in case he neglect or refuse to do so to make immediate application to the Mayor or some Justice of the Peace having jurisdiction within the said town to have such fine or penalty levied under the warrant of such Mayor or Justice (who is hereby required on the application of such Treasurer to issue the same) by distress and sale of the goods and chattels of the persons so liable to such fine or penalty as aforesaid together with the reasonable costs and expenses of such distress and sale Provided that it shall be lawful for the said Council at their discretion to fix the amount of any such penalty at any sum not exceeding fifty pounds in the case of Alderman Councillor Auditor or Assessor and in the case of Mayor at any sum not exceeding one hundred pounds anything in the said first recited Act to the contrary notwithstanding.

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8. And whereas it is expedient to define the powers of the Council of the said town with regard to the making of bye-laws Be it declared and enacted That it shall be competent for the Council of the said town to fix by any bye-law such penalty or penalties whether fixed or variable as to them shall seem meet for the enforcement of the provisions thereof Provided always that no fine appointed by any such bye-law shall exceed ten pounds and that no bye-law heretofore made by the Council of the said town shall be invalid or inoperative on account of any variable fine or penalty prescribed thereby but shall in regard to such variable fine or penalty be taken to have been and be as valid and operative as if such bye-law had been made and passed after the passing of this Act.

Defines authority of Council to make bye-laws.

9. And be it enacted That all penalties fines and forfeitures inflicted or imposed within the said town under the provisions of this or the said recited Acts or by or under any rule order or bye-law made in pursuance thereof shall (except only such moiety thereof if any as is therein specially directed to be given to the informer) be paid over to the Treasurer of the said town for the local improvement and benefit thereof Provided always that it shall be lawful for the Governor of the Colony for the time being to pardon any offender and to remit the whole or any part of any such fine or forfeiture as the justice of each particular case may seem to require.

Appropriates penalties reserving Royal prerogative of pardon.

10. And be it enacted That whenever it shall become necessary to give evidence as to the existence of any of the bye-laws of the said Council in any Court of Law or Equity or before any Justice of the Peace in Sessions or otherwise the same may and shall be proved by the production of a copy of such bye-law sealed with the common seal of the said Corporation such copy having appended thereto a declaration made before the Mayor for the time being and signed by the party who held the office of Town Clerk at the time when such bye-law came into force testifying as to the correctness of the copy so tendered in evidence and that the original bye-law was duly made by the said Council and that all the other requirements of the ninety-first section of the said first recited Act were complied with in reference thereto.

Attested copies of bye-laws may be given in evidence.

11. And whereas it is expedient that a cattle market should be established within the said town Be it enacted That from and after the passing of this Act the portion of land situate within the said town and known as the cattle market reserve or grant shall be the only place within the said town (except as hereinafter provided) where any market for the sale of any horse mare gelding foal ass mule or any neat cattle or any sheep lamb pig or goat shall be held or kept and if any person shall sell or expose for sale (except as hereinafter provided) any horse mare gelding ass mule or any neat cattle or any sheep lamb pig or goat in any place or places within the said town other than the said cattle market reserve or grant every such person shall upon conviction of such offence before any one or more of the Justices of the Peace for the said town forfeit and pay for every such animal so sold or exposed for sale any sum not exceeding five shillings Provided that nothing herein contained shall be taken to prevent any person from selling or exposing for sale by private contract any horse mare gelding ass or mule in any private stable or yard within the said town.

Cattle market established.

Penalty for selling elsewhere.

12. And be it enacted That the Council of the said town shall possess and enjoy with respect to the said cattle market all the powers of legislation by bye-law and all the authorities duties and immunities which they now possess with respect to the other markets established within the said town in virtue of the said Act hereinbefore thirdly recited and in virtue of the Act passed in the sixth year of the reign of Her present Majesty intituled "*An Act to remove doubts in respect to the exercise of certain powers by the Councils*" of

Powers of Council with respect to cattle market.

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“ of the City of Sydney and Town of Melbourne and to declare the
 “ competency of Witnesses and the jurisdiction of Magistrates in certain
 “ cases within the same.”

Rates of toll or dues.

13. And be it enacted That tolls or market dues not exceeding the following tolls or market dues shall be demanded paid and taken at the said cattle market for all stock sold or exposed for sale therein that is to say for every horse mare gelding foal ass or mule the sum of one shilling for every head of neat cattle the sum of sixpence and for every sheep lamb pig or goat the sum of one penny Provided that the said Council shall have the power from time to time to lower the said tolls or market dues.

Authorizes a loan of
 £6,000 by Savings'
 Bank of New South
 Wales to the Copora-
 tion.

14. And whereas it is expedient to authorize the loan to the said Council of certain sums of money by the Savings' Bank of New South Wales Be it therefore enacted That it shall be lawful for the Council of the said town to borrow in aid of the Town Fund by way of mortgage of the Vice President and Trustees of the Savings' Bank of New South Wales any sum or sums of money not exceeding the sum of six thousand pounds in the whole as in their discretion they shall think fit and it shall and may be lawful for the said Vice President and Trustees of the Savings' Bank of New South Wales to lend the same in their discretion Provided that the sum or sums so lent shall be secured as a first charge or charges upon the entire revenues of the said Corporation from whatsoever source arising and that the interest payable thereon shall be at a rate not exceeding six pounds for every one hundred pounds per annum and shall be paid half-yearly in Sydney from the time of such loan made and the said principal sum shall be covenanted to be repaid together with all interest and charges accruing thereon and shall be and be made recoverable within a period not exceeding six years from the date of such loan.

Savings' Bank not
 to see to application
 of loan.

15. And be it enacted That it shall not be necessary for the said Savings' Bank to see to the application of the said loan and the corporate seal of the said Corporation when affixed to the instrument of mortgage such mortgage being signed by the Mayor and countersigned by the Town Clerk for the time being shall be conclusive and binding upon the said Corporation as to the powers terms time or times of repayment covenants provisoes and agreements of and to be contained in the said instrument of mortgage and any instruments auxiliary thereto and for all intents and purposes whatsoever.

Removes doubts as
 to mode of recovery
 of penalties.

16. Whereas by sundry sections of the said first recited Act special modes of procedure are provided for the recovery of certain fines penalties and forfeitures and doubts having arisen whether such provisions are not interfered with or altered by the one hundredth section of the said Act Be it enacted That nothing in the one hundredth section of the said first recited Act contained shall be taken to interfere with or alter the special modes of procedure for the recovery of certain fines penalties and forfeitures therein by previous clauses provided nor shall anything in such one hundredth clause contained be interpreted or taken to render a demand for any such fine penalty or forfeiture necessary previous to the issue of summons for the recovery of the same.

As to costs of appli-
 cation for mandamus.

17. And be it enacted That in case any person whose name may have been omitted at the revision of the Burgess Roll shall apply for a mandamus for the insertion of his name in such roll then it shall be lawful for the Judge by whom the case is decided to make such order with regard to the costs of the appellant and respondent or either or both of them as to him the said Judge on inquiry into the case may seem meet and it shall also be lawful for the said Judge to order the costs as aforesaid to be paid by the Alderman and one or both of the Assessors or by both Assessors only.

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18. And be it enacted That so much of an Act passed in the second year of the reign of Her present Majesty intituled "*An Act for regulating the Police in the Towns of Parramatta Windsor Maitland Bathurst and other Towns respectively and for removing and preventing Nuisances and Obstructions and for the better alignment of Streets therein*" as enacts that any person who shall run roll drive draw place or cause or permit or suffer to be run rolled driven drawn or placed upon any of the said footways of any street or public place within any of the said towns any wagon cart dray sledge or other carriage or any wheel wheelbarrow handbarrow or truck or any hogshead cask or barrel or shall wilfully lead drive or ride any horse ass mule or other beast upon any of the footways aforesaid then and in every such case every person so offending upon conviction before any Justice of the Peace or upon the view of any such Justice shall forfeit and pay a sum not exceeding forty shillings nor less than five shillings shall be and the same is hereby repealed in so far as regards the crossings made and established in pursuance of the provisions hereinafter contained.

Repeals portion of 15th section of 2 Vic. No. 2.

19. And whereas it is necessary to provide proper crossing places for the transit of wheeled carriages horses and other beasts across the footways of the said town Be it enacted That it shall be lawful for the said Council to fix by bye-law the width form materials and construction of crossing places across the footways of the said town and in like manner to vary the same from time to time and thereafter upon the application of the owner or owners or of the majority in number and value of the owners of any premises communicating with such crossing place the Council shall construct such crossing place or cause or permit the same to be constructed and the cost thereof shall be paid in rateable proportions by the owners or occupiers of all such premises to be levied and recovered in like manner as the town rate but to be irrespective of and in addition to any town rate which may be then due or may thereafter become payable in respect of such premises.

Power to Council to form crossing places on application of owners of adjoining properties.

20. And be it further enacted That if it shall appear necessary to the said Council to make or repair any crossing place across any such footway and the owners or occupiers of the adjoining premises communicating therewith have not applied for the making or repairing of the same it shall be lawful for the said Council to give notice by advertisement published in one or more of the Melbourne newspapers to the occupiers of the premises of their intention to make or repair the same and unless the said parties shall within thirty days from the publication of such notice shew cause to the satisfaction of the Council why such crossing place should not be made or repaired it shall be lawful for the said Council by a vote of two-thirds at least of the members in attendance at any meeting duly convened to make or repair the same and recover the cost thereof in manner hereinbefore directed.

The like without such application.