

No. XX.

MELBOURNE  
STREETS &c.

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An Act for regulating the formation drainage and repair of Streets Courts and Alleys on private property within the City of Melbourne. [19th September, 1850.]

Preamble.

WHEREAS there now are and hereafter may be streets courts and alleys within the boundaries of the City of Melbourne as described in the Schedule hereunto annexed formed or set out on private property within the said boundaries which are not or may not be sufficiently paved flagged macadamised levelled sewerd drained or otherwise completed or repaired And whereas it would conduce to the convenience

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convenience comfort and health of the inhabitants of the said City and to the public advantage if provision were made to regulate and enforce the paving flagging macadamising levelling draining and sewerage or otherwise completing or repairing such streets courts and alleys in manner hereinafter mentioned Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the passing of this Act all streets courts and alleys on private property within the said City shall be under and subject to the rules and directions hereinafter contained concerning the same Provided always that nothing in this Act contained shall apply to any such street court or alley unless the owners or occupiers of two or more tenements adjoining or abutting thereupon have the right to use or do commonly use the same.

All streets courts and alleys on private property within the City of Melbourne shall be subject to the provisions of this Act.

Proviso.

2. And be it enacted That where any such street court or alley is now or at any time hereafter shall be formed or set out and shall not be or shall not have been sufficiently paved flagged macadamised levelled drained and sewerage or otherwise completed or repaired to the satisfaction of the Council of the said City it shall be lawful for the said Council at any time and from time to time after this Act shall have come into operation by any writing under the hand of the Mayor or Town Clerk of the said City for the time being respectively to order that any such street court or alley or any part thereof shall be freed from obstruction paved flagged macadamised levelled drained and sewerage or otherwise completed or repaired in such manner and within such time as to the said Council may appear expedient and thereupon the owners of the tenements adjoining or abutting upon such street court or alley on each side thereof shall in such manner and within such time as shall be expressed in such order at their respective costs charges and expenses remove all obstructions and well and sufficiently pave flag macadamise level drain and sewer or otherwise complete or repair so much of the said street court or alley to the centre thereof as may be opposite to and co-extensive with their respective tenements adjoining or abutting on such streets courts or alleys respectively.

Council of said City may order the owners of such streets &c. to repair the same in such manner and within such time as the said Council may deem expedient.

3. And be it enacted That if any such owners shall neglect or omit to remove the obstructions and pave flag macadamise level drain and sewer or otherwise complete or repair such street court or alley in such manner and within such time as expressed in the said order it shall be lawful for the said Council to remove all obstructions and to pave flag macadamise level drain sewer and otherwise complete or repair the same or such parts thereof as shall not have been so done pursuant to the said order and to ascertain determine and charge such respective owners with their several proportionate parts of the costs charges and expenses thereof according to and co-extensive with their respective tenements adjoining or abutting on such street court or alley having regard in such apportionment to the state and condition of the pavement flagging macadamising levelling drainage and sewerage in which such streets courts or alleys respectively or any part thereof shall or may be at the time when the said Council shall make such order as aforesaid and all the costs charges and expenses which the body corporate of the said City shall thereby sustain incur or pay and which the said Council shall so charge upon such owners respectively may be recoverable by action of debt in any Court having competent jurisdiction.

If owners fail to effect such repairs within the time appointed by the said Council the Council may order such repairs to be made at the expense of the owners and may recover all such expenses with costs &c. by action of debt.

4. And be it enacted That if any such owner shall not pay all such costs charges and expenses it shall be lawful for any Justice of the Peace upon the application of the Surveyor of the said Council or any person specially appointed by the said Council to make such application to summon such owner to appear before any Justice of the

Warrant of distress may be issued against property of owner if costs charges &c. not paid.

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Peace to shew cause why a warrant of distress should not issue against the property of such owner to levy thereon such costs charges and expenses and at the time and place to be mentioned in such summons any Justice before whom the matters thereof may come on to be heard shall proceed to inquire and determine in a summary way whether any such costs charges or expenses are payable under the provisions hereof by such owner and (if he shall find that any such are payable) the amount thereof and in such last mentioned case it shall be lawful for the said Justice and he is hereby required to issue a warrant of distress against the property of such owner and to levy such amount as aforesaid together with such reasonable costs as such Justice shall award by sale of such property and every such distress shall be irrepleviable and no proceeding before any Justice shall be removable into the Supreme Court or any other Court by *certiorari* or otherwise howsoever and every such Justice may adjudicate in respect of the matters of any such summons whether the party to be thereby summoned shall appear thereto or not Provided that in case such person shall not appear it shall be proved to the satisfaction of such Justice that such summons was duly served forty-eight hours at the least before the time appointed for the hearing of the matters thereof upon the person summoned thereby and all moneys to be recovered under any such warrant of distress shall after deducting therefrom the costs of carrying the same into execution and rendering the overplus (if any) to the owner of the property distrained upon be paid over to the Treasurer of the said City for the local improvement and benefit thereof.

And may in the option of the said Council be recovered from the occupier of and premises with relief to him against the owner.

5. And be it enacted That it shall be lawful for the said Council in the first instance and whether any demand shall have been made upon such owner or not to require the payment of all or any part of such costs charges and expenses from any person who shall then or at any time thereafter occupy any tenement adjoining or abutting upon any such street court or alley and in default of payment thereof by such occupier on demand by the said Council the same may be levied by distress (a summons to shew cause having been previously issued) and any Justice of the Peace may and is hereby required to issue his warrant accordingly and the owner shall allow every such occupier to deduct all sums of money which he shall so pay or which shall be so levied by distress as aforesaid from and out of the rent from time to time becoming due to him in respect of the said tenements as if the same had been actually paid to him as part of such rent.

Or from several occupiers or any one or more thereof.

6. And be it enacted That in case it shall happen that two or more of such tenements in the occupation of separate persons adjoining or abutting on any such street court or alley as aforesaid shall belong to the same owner each of the persons occupying the same shall be liable to pay the whole or any part of the said costs charges and expenses to which such owner shall be liable in respect of all or any of such tenements without reference to the particular tenement or the extent of the frontage thereof occupied by any such person and the same may be levied by distress accordingly.

Provided that no occupier shall be liable to an extent beyond the rent due or becoming due by him.

7. Provided always and be it enacted That no occupier shall be liable to pay more money in respect of such costs charges and expenses as aforesaid than the amount of the rent due from him at the time of demand made upon him and such as may from time to time thereafter become due by such occupier as the same shall arise until the whole amount of such costs charges and expenses shall be paid Provided nevertheless that if after notice in writing from the said Council delivered to such occupier personally or left with some inmate at the place of his occupation as aforesaid requiring him to pay such costs charges and expenses to the said body corporate such occupier

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occupier shall be liable to pay to the said body corporate in respect of such costs charges and expenses the amount of the rent becoming due by him after such notice until all such costs charges and expenses shall be fully paid and in default thereof the same may be recovered from him by warrant of distress as aforesaid.

8. Provided also and be it enacted That every such order for paving flagging macadamising levelling draining sewerage or otherwise completing or repairing any street court or alley as aforesaid shall be published twice in two successive weeks in the *Government Gazette* and in one or more of the Melbourne newspapers and that such order shall not begin to take effect until the end of one calendar month next after the last publication thereof in such *Gazette* or newspaper which order and the publication thereof as aforesaid shall be and the same are hereby declared and deemed to be a good sufficient and valid notice to all such owners lessees tenants occupiers and others interested in the premises to all intents and purposes.

Provided also that every such order for paving flagging &c. shall be published twice in two successive weeks in the *Government Gazette* and in one or more of the Melbourne newspapers.

9. And be it enacted That if any person shall obstruct take up or make any alteration in the pavement or carriageway or footway of any such street court or alley without the consent in writing of the said Council or of their surveyor then upon conviction thereof before any one or more Justice or Justices of the Peace upon the oath of one or more credible witness or witnesses (which oath the said Justice or Justices are hereby empowered and required to administer) every such offender shall be liable to forfeit and pay for every such offence any sum not exceeding five pounds together with such costs attending the conviction as such Justice or Justices shall think fit and that if upon or immediately after such conviction any such forfeiture be not paid then it shall be the duty of any one or more Justice or Justices of the Peace to whom application shall be made to commit such offender by warrant under the hand and seal or hands and seals of such Justice or Justices to the common gaol for any term not exceeding three calendar months at the discretion of such Justice or Justices.

Penalty on persons obstructing or making alterations in any such street without leave.

10. And be it enacted with regard to any such penalty or forfeiture so far as relates to the recovery and appropriation thereof That it shall be lawful for the said Council or any Surveyor of the said City duly appointed by the Council thereof to sue or proceed for the same on information before any one or more Justice or Justices of the Peace who are hereby authorized and required to hear and determine the same in a summary manner and that the money arising from any such penalty or forfeiture when recovered shall be paid the one moiety thereof to Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof as may be appointed by any Act of the said Governor and Legislative Council and the other moiety to and for the use of the party prosecuting who shall be entitled to their or his costs and charges over and above such penalty or forfeiture such costs and charges to be ascertained and assessed by the Justice or Justices before whom the case is heard 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 penalty or forfeiture as the justice of each particular case may seem to require.

Recovery and appropriation of penalties &c.

Governor may pardon offender and remit the whole or any part of penalty.

11. And be it declared and enacted with regard to this Act generally so far as relates to the construction of certain terms and expressions used therein That the following terms and expressions are intended to have the meanings hereby assigned to them respectively so far as such meanings are not excluded by the context or by the nature of the subject matter that is to say the word "street" to include every street road place row or public mews or lane along which carriages can pass or are intended to pass and that whether there be

Construction of terms.

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or not in addition to the carriageway a footway paved or otherwise the word "court" to signify any space wherein any carriage may or is intended to enter the same not being a thoroughfare the word "alley" to include any court alley passage or other place which can be used or is intended to be used as a footway only the word "owner" to apply generally to every person in possession or receipt either of the whole or any part of the rents or profits of any tenements adjoining or abutting on any street court or alley as aforesaid the word "Surveyor" to apply to the Surveyor or Surveyors appointed or to be appointed by the Council of the said City the term "the Council" to mean the Mayor Aldermen and Councillors of the City of Melbourne for the time being the expression "Justice of the Peace" to mean a Justice of the Peace for the City of Melbourne and the words "tenements adjoining or abutting on such street court or alley" to mean tenements or premises the owners or occupiers of which communicate with or have the right to use or commonly use any such street court or alley or part thereof and subject as aforesaid to the context and to the nature of the subject matter words importing the singular number are to be understood to include the plural number and words importing the plural number are to be understood to include the singular also and words importing the masculine gender are to be understood to apply also to persons of the feminine gender and the words importing an individual are to be understood to apply to a corporation company firm or other body of persons.

Act to apply only to such portions of the said City as are set forth in the Schedule hereto annexed.

12. And be it enacted That this Act shall be deemed and construed to apply only to such portions of the said City the boundaries whereof are set forth and described in the Schedule hereunto annexed.

Act to be a Public Act.

13. And be it enacted That this Act shall be deemed to be a Public Act and shall be judicially taken notice of as such by all Judges Justices and other persons whomsoever without specially pleading the same.

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SCHEDULE REFERRED TO.

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The two following portions of Land viz. :—

1st. The parish of North Melbourne bounded on the north by a line bearing east 240 chains being distant one mile north from the centre of Batman's Hill extending two miles east to its north-east corner on the east by a line bearing south 110 chains on the south by the Yarra Yarra River and on the west by a line bearing north 94 chains to its north-west corner.

2nd. The suburb of Newtown otherwise called "Collingwood" consisting of 320 acres County of Bourke bounded on the south by the parish boundary line of Melbourne being a line bearing east 40 chains on the east by a road of 1 chain wide which separates it from suburban allotments Nos. 52 68 73 81 and 86 being a line bearing north 80 chains on the north by a road of 1 chain wide which separates it from Crown Land being a line bearing west 40 chains and on the west by a road of 1 chain wide being a line bearing south 80 chains.

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