



12-1847.

1846.

No. 15.

X
Expired

ORDINANCE enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof.

To authorise the Levying of an Assessment in aid of the expense of repairing the Streets within the City of Adelaide.

[30th September, 1846.]

WHEREAS it is expedient to authorise certain rates and assessments to be levied within the Police limits of the City of Adelaide, in aid of the general revenues, to be applied to meet the increased expenditure required for repairing, maintaining, and cleansing the streets therein: Preamble.

BE IT ENACTED, that it shall and may be lawful for any Commissioner of Police and Police Magistrate for the limits of the City of Adelaide, appointed under the provisions of an Ordinance, passed on the seventh day of September, one thousand eight hundred and forty-four, intituled "An Ordinance for regulating the Police in South Australia," to levy and raise from time to time City rates on all houses, lands, and tenements situate within those parts of the City of Adelaide, which now are and which from time to time shall be included within the Police limits, pursuant to the said Ordinance; and every such rate shall be made upon an estimate of the nett annual value of the several hereditaments rated thereunto, that is to say, of the rent at which, one year with another, A city rate to be levied on all houses, lands, and tenements within the police limits.

Rate to be made upon an estimate of the nett annual value of the property rated.

ther, the same might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses (if any) necessary to maintain the hereditaments in their actual state, and all rates, taxes, and public charges (if any) being paid by the tenant; and either by one rate made yearly, or by two or more rates made half-yearly, or otherwise: And the said rates, when collected, shall be paid to the Colonial Treasurer, who shall keep a separate account thereof, under the name of "City Fund," to be applied to the purposes of this Ordinance: PROVIDED that no such City rates shall, in any one year, exceed the rate of sixpence in the pound on the net annual value of the property rated thereto.

Assessors to be appointed by warrant under the hand of Police Magistrate.

II. AND BE IT ENACTED, that the said Magistrate may from time to time, as he finds occasion, by warrant under his hand, appoint one or more proper persons to be assessors, to rate and assess all such houses, lands, and tenements, to such rates and assessments as aforesaid; and such assessors shall within forty days after the delivery to them of the warrant of their appointment, make, sign, and return to the said Magistrate an assessment for the precinct or place named in such warrant; and the assessment shall be fairly written in a book, and shall specify in different columns, the names of the respective owners or occupiers of all houses, lands, and tenements comprised in such assessment, the full and fair annual value of the same, and the amount of rate chargeable thereon respectively, and when the premises shall be unoccupied, the full and fair annual value thereof to let.

Assessment to be entered in a book.

When assessment made, notice thereof shall be given, and all persons included in the assessment shall have liberty to inspect it, &c.

III. AND BE IT ENACTED, that when any such assessment shall have been allowed by the said Magistrate, he shall sign the same and shall cause public notice to be given of such assessment, and of the place where the same may be inspected, by causing such notice to be affixed on the door of the Police Court House, and by advertisement to be inserted in the Government Gazette published in Adelaide; and every person in whose custody such assessment may be, shall permit every owner or occupier of property included in such assessment to inspect the same during ordinary business hours, and to make any extracts therefrom without payment of any fee or reward; and if such person shall wilfully neglect or refuse to permit any such owner or occupier to inspect such assessment, or to make any extract therefrom, he shall on conviction thereof before any two Justices of the Peace, forfeit and pay for every such offence such sum, not exceeding five pounds, as the Justices shall think meet.

Penalty for refusing such inspection.

Appeal against assessment.

IV. PROVIDED ALWAYS, AND BE IT ENACTED, that if any person, who shall have paid the amount of rates charged upon him by the assessment made by any assessor under this Ordinance, shall think himself

himself aggrieved by such assessment, on the ground that such assessment includes any property for which he is not rateable under this Ordinance, or that it assesses his rateable property beyond its full and fair annual value, or that any person is omitted out of such assessment; or that the property of any person is assessed below its full and fair annual value, the person so considering himself aggrieved may appeal to the next Court of General Quarter Sessions which shall be holden within the said City, not less than twenty-one days after public notice of such assessment shall have been given as hereinbefore mentioned: PROVIDED that the person so intending to appeal, shall give to the Colonial Treasurer a notice in writing of such appeal, and of the cause and matter thereof ten clear days at the least, before such Sessions; and shall also, within three days after this notice of appeal, enter into a recognizance before some Justice of the Peace, with two sufficient sureties, conditioned to try such appeal at the said Sessions, and to abide the order of the Court thereupon, and to pay such costs as shall be by the Court awarded; and in case such person shall appeal on the ground that any person is omitted out of the assessment, or that the property of any person is assessed below its full and fair annual value, the party so appealing shall not only give such notice of appeal to the Colonial Treasurer, and enter into such recognizance as aforesaid, but shall also give a like notice of appeal to the person so interested in the event of such appeal as aforesaid, and shall enter into a like recognizance within the times hereinbefore respectively mentioned, and the person so interested shall, if he shall desire it, be heard upon the appeal; and the Justices of the Peace at such Sessions, or some adjournment thereof, upon due proof of the notice having been given, and of the recognizances having been entered into as aforesaid, shall hear and determine the matter of the appeal in a summary manner, and shall make such order therein, with or without costs to either party, as the said Justices shall think proper; and in case the said Justices shall think the appellant entitled to relief, they shall order the assessment to be amended in such manner as may be necessary for giving him relief, and shall also order any money paid by him which he was liable to pay to be returned to him by the said Colonial Treasurer; and in case he shall have appealed on the ground that any person is omitted out of the assessment, the said Justices may order the name of such person to be inserted in the assessment, and to be therein rated at such amount as they shall deem just; and in case the appellant shall have appealed on the ground that the property of any person is assessed below its full and fair annual value, the said Justices may order the amount at which such person is rated in the assessment to be altered in such manner as they shall deem just; and the proper officer of the Court shall in each of the cases aforesaid, forthwith amend the assessment accordingly, but the assessment shall not be quashed, or altered with respect to any other

The assessment may be altered to relieve the appellant without altering any other part of it.

other persons named therein and the determination of the Justices at any such Sessions, or adjournment, shall be final and conclusive.

Where value of property does not amount to £5 the lessor may be rated instead of the occupier.

V. AND BE IT ENACTED, that where any house or tenement liable to assessment under this Ordinance, shall be of less annual value than five pounds, if the occupier and his immediate lessor by any writing under their hands, shall require, and if the said Magistrate shall by a minute agree thereto, such immediate lessor shall be rated instead of such occupier, and such rebate from the rate may be made (not exceeding ten per centum) as the said Magistrate may by such minute allow; and such minute, until altered as hereinafter provided, shall bind such lessor, his heirs and assigns, unless the said Magistrate shall at any time disallow the same, or any part thereof, which shall thenceforth, so far as the same shall be disallowed, be of no effect; and such minute shall in no case be altered or rescinded by the said Magistrate until twelve months after the making or last previous alteration thereof, nor within six months after the consent of the occupier and lessor to be affected by the alteration shall have been given to such alteration: PROVIDED NEVERTHELESS, that the occupier of any property, the immediate lessor of whom shall have been so charged, shall be entitled to be rated, on giving to the said Magistrate six months' notice, according to the form contained in the Schedule to this Ordinance annexed.

Rates on Lodging Houses how to be paid.

VI. AND BE IT ENACTED, that when any house shall be let out in apartments, the immediate lessor or landlord under whom all the different holdings in such house are derived, shall be rated or assessed for the same, and the rate payable in respect thereof may be recovered from such lessor or landlord, whose goods and chattels, where-soever found, shall be liable to be distrained for payment of such rate, as if found on the premises chargeable: PROVIDED ALWAYS, that where such rate shall be in arrear and unpaid for the space of thirty-one days after the same shall have become due, it shall be lawful for the Collector, or other person authorised to demand payment thereof, to give notice in writing to the person or persons in occupation of the house in respect whereof such arrears shall be due, to pay to the said Collector or other person the rent reserved upon his holding; after the service of which notice, by leaving the same at the premises chargeable, every such tenant, occupier, or lodger, shall pay all rent thereafter accruing due from him pursuant to the requisition of such notice; and from and after the delivery of such notice, and until satisfaction of all such arrears, such Collector or other person shall have all such rights, powers, and authorities for recovering and enforcing the payment of the rent due and payable by any such tenant, occupier, or lodger, as the immediate landlord of such tenant, occupier, or lodger, might have had; and after satisfaction of such arrears of rates by the receipt

receipt of such rent as aforesaid, the overplus, deducting therefrom one shilling in the pound, and so rateably for any smaller sum, shall be paid over to the said landlord.

VII. AND BE IT ENACTED, that if any person shall neglect or refuse to pay the rates or arrears thereof to which he may be liable under this Ordinance, for the space of ten clear days after personal demand thereof by the Collector, or demand in writing left at the house, land, or tenement rated and assessed thereto; and after a second demand thereof made in any such like manner after the expiration of the said ten clear days, then and in such case it shall and may be lawful for the Collector appointed to receive such rates, and his assistant, by warrant under the hand and seal of the said Magistrate (who is hereby authorised and required to grant such warrant) to enter into any part of any house, land, or tenement, so rated and assessed, and to distrain the goods and chattels therein or thereon, or to enter into any part of any other house, lands, or tenements occupied by the person so rated and assessed, and to distrain the goods and chattels of such person therein or thereon; and if the sums for which such distress shall have been taken shall not be paid within five days after such distress made, together with the costs of making such distress, to be ascertained by the said Magistrate, then to sell so much, and such part thereof as shall be sufficient to pay such amount of rates and arrears as aforesaid, together with all costs and charges attending the said distress and sale, returning the overplus, if any, to the person liable so to pay the same: PROVIDED ALWAYS, that when any sum payable under this Ordinance, in respect of any rate or assessment, shall be levied off, or from, or paid by any person occupying any house or tenement, whose lessor or landlord shall be liable, by reason of any contract or otherwise, to pay such rate or assessment, or occupying part of any house or tenement let out in apartments, such person shall and may deduct such sum from any rent payable by him, to the landlord or lessor of such house or tenement, and the receipt of such payment shall be a sufficient discharge for so much of the said rent, and shall be to all intents and purposes a payment thereof; and if no rent shall be due at the time of such levy or payment, the person paying such sum, or from whom the same may be levied, shall in such cases be entitled to, and may recover the same from such lessor or landlord, with treble costs, in any Court of competent jurisdiction.

VIII. AND BE IT ENACTED, that it shall and may be lawful for any Collector appointed under this Ordinance to sue for, recover, and receive, of and from the person thereto liable, any rate or assessment payable under the provisions of this Ordinance, in any Court of competent jurisdiction; and for the purposes of any action or suit such

such rate or assessment shall be deemed to be due and payable to such Collector.

The book of assessment, or a compared and certified copy, to be evidence of the contents.

IX. AND BE IT ENACTED, that after the making and signing by the said Justices or one of them, of every such assessment, and after the time for appealing against the same shall have expired, and as to any other matter therein contained which shall be the subject of appeal after such appeal shall have been determined, the original book or document of such assessment, or true and compared copies of such assessment, or of so much and such parts thereof as shall be material or necessary to be given or read in evidence (such copies to be certified by such Justices, or one of them), shall be legal and sufficient evidence in all Courts and places of the contents of such assessment.

Police Magistrate to appoint one or more persons to levy the amount of rate charged in every such assessment.

X. AND BE IT ENACTED, that the said Magistrate shall from time to time nominate and appoint one or more persons to be Collectors, who shall levy the amount of rates charged in every such assessment, and duly account for and pay over the amount collected to the Colonial Treasurer, according to the provisions of this Ordinance, or in default thereof shall be deemed and taken to have embezzled the same, and be proceeded against as by law provided for the punishment of the crime of embezzlement; and all money received by any such Collector may, from the receipt thereof by him, be deemed the money of the said Treasurer for the time being, and may be so described in any indictment or other proceeding.

Collector to give security for faithful discharge of his duty, and to account on oath.

XI. AND BE IT ENACTED, that every Collector or other person appointed to levy the said rates and assessments, shall give sufficient security, to the satisfaction of the said Magistrate appointed under this Ordinance, by bond payable to Her Majesty, her Heirs and Successors, which bond the said Magistrate is hereby empowered and required to take, conditioned for the due and faithful execution and discharge of his said office and duty; and every such Collector or other person shall, under his hand, at such time and times as the said Magistrate shall direct deliver to him true and perfect accounts in writing, of all moneys which shall have been received by him by virtue and for the purposes of this Ordinance, and of all moneys paid by him to the said Colonial Treasurer, together with the proper vouchers for such payments; and all the said persons so accounting as aforesaid shall verify their accounts upon oath (which oath the said Magistrate is hereby empowered and required to administer;) and if any such person shall refuse or neglect to make or render, or shall neglect or refuse to verify upon oath any such account, or to produce or deliver the vouchers relating to the same, or to make payment as aforesaid, or shall not deliver to the said Magistrate, within ten days after being thereunto required, all the books,

books, papers, and writings, in his custody or power relating to the trust reposed in him, or shall refuse or neglect to pay such moneys as upon the balance of any account shall appear to be in his hands to the said Colonial Treasurer, every such person shall, for every such neglect, respectively forfeit the sum of fifty pounds, to be recovered in any court of competent jurisdiction.

XII. AND BE IT ENACTED, that each and every of the said Collectors or other persons shall, on the Saturday in each week, or at such other times as the said Magistrate shall appoint, furnish a just and true account of all moneys received by him in the course of that week, in such manner as shall be directed by the said Magistrate; and in case any such Collector, or other person, shall refuse or neglect so to do, such Collector, or other person, shall, for such default, be subject and liable to such fine as the said Magistrate shall think proper, not exceeding five pounds for each and every such offence, to be levied by warrant under his hand and seal out of the goods and chattels of such offender.

Collectors to furnish their accounts of receipts weekly.

XIII. AND BE IT ENACTED, that every Collector or other person appointed to levy the said rates and assessments shall, on the Saturday in every week, or at such other times as may be appointed by the said Magistrates, pay to the Colonial Treasurer all moneys received by him, and then in his hands, by virtue of this Ordinance.

And pay their balances to the Colonial Treasurer weekly.

XIV. AND BE IT ENACTED, that the said Magistrate, as often as it shall appear to him that the said several Collectors, or other persons, or any of them, have not done their duty, shall give orders for the attendance of such Collector; or other person, at his office, to answer touching such matter, and shall for the first offence fine the Collector or other person in any sum not exceeding twenty shillings, and for every succeeding offence impose a fine not exceeding three pounds, nor less than twenty shillings; the said fines to be levied by warrant under his hand and seal, out of the goods and chattels of such offender.

Magistrate may order any collector to attend, and fine him for offences.

XV. AND BE IT ENACTED, that all moneys arising from the collection of the said rates, and all fines, penalties, forfeitures, and sums of money whatever, levied or recovered under this Ordinance, shall be paid to the Colonial Treasurer, on behalf of Her Majesty, her Heirs and Successors, to be appropriated in defraying the expenses of making, repairing, improving, maintaining, and cleansing the streets and public thoroughfares of the City of Adelaide, within the limits assessed, and carrying into effect the purposes of this Ordinance, in such manner as the Governor, with the advice and consent of the Legislative Council, may from time to time

Appropriation clause

time order and determine, by any vote passed, as in the case of ordinary money payments for public purposes.

Appropriation for
1846 and 1847.

XVI. AND BE IT ENACTED, that from and out of the said City Fund, or in the event of such fund being insufficient, then out of any unappropriated moneys forming part of the general revenues of the Province, there may be issued and applied under warrant of the Governor, for and during the half year ending the thirty-first day of March one thousand eight hundred and forty-seven, the following sums:

For salary to such person as may be appointed to perform the duties of Town Surveyor, the sum of One hundred pounds.

Towards repairing the streets of Adelaide, any sum not exceeding Six hundred pounds.

And for and during the year ending the thirty-first day of March one thousand eight hundred and forty-eight, the following sums:

For salary to a Town Surveyor the sum of Two hundred pounds.

Towards repairing the streets of Adelaide any sum not exceeding One Thousand pounds.

Accounts to be laid
before the Council
annually.

XVII. AND BE IT ENACTED, that an account of all moneys received and expended for the purposes of this Ordinance, made up to the thirty-first day of December in each year, shall annually be laid before the Legislative Council within thirty days thereafter, if Council be then sitting, or within thirty days after the first meeting of Council subsequent to the thirty-first day of December; and such accounts shall specify the total sum received for every tax, rate, rent, duty, or other charge, for the purposes of this Ordinance; and such account shall also specify the different heads of expenditure for the purposes of this Ordinance, and the amounts actually expended under each.

Assessor, with his
necessary assistants,
may enter land,
houses, gardens, &c.,
in the execution of
this Ordinance.

XVIII. AND BE IT ENACTED, that for the execution of the purposes of this Ordinance, it shall and may be lawful for any such Magistrate, and for any assessor appointed under this Ordinance, with his necessary assistants, and they are hereby respectively authorised and empowered, from time to time, to enter into and upon, and to go through, and over any land or ground, or into any house of any person whomsoever, for the purpose of making and carrying on any valuation or assessment authorised by this Ordinance: PROVIDED ALWAYS, that in every case in which it shall be necessary for any such Magistrate, or assessor, with his necessary assistants, to enter any house, or any walled garden or orchard, or pleasure ground, such Magistrate or assessor shall give three days' notice to the occupier of such house, garden, orchard, or pleasure ground, of their
intention

intention so to do, and that such Magistrate and assessor, shall do as little damage as may be in the execution of the powers to them granted by this Ordinance; and shall make reasonable satisfaction (if required) to the owners of, and other persons interested in any such houses, lands, gardens, orchards, or pleasure grounds, which shall or may be any way hurt or damaged, for the damage in any way sustained by them in or by the execution of all or any of the powers of this Ordinance; and this Ordinance shall be sufficient to indemnify such Magistrate or assessor with his necessary assistants, or any persons acting in aid or under the orders of any of them, in the execution of this Ordinance, for what they or any of them shall do in respect thereof by virtue of the powers by this Ordinance granted to them respectively. Indemnity.

XIX. AND BE IT ENACTED, that for the purposes aforesaid, the said Magistrate, and all other persons acting in the execution of this Ordinance, shall have all the powers, remedies, and privileges incident to and necessary for ordering, making, assessing, levying, raising, collecting, and paying the said rates, as fully as any persons empowered to assess and levy rates in the nature of city or borough rates have by law in England, or as near thereto as the nature of the case will admit. Powers of persons acting in execution of this Ordinance.

XX. AND BE IT ENACTED, that all proceedings under this Ordinance, in so far as not otherwise expressly provided, may be had and taken, and all summonses to parties and witnesses, and warrants (where necessary) for enforcing the same, may be issued and served, or executed respectively; and all fines imposed, and all sums of money ordered to be paid, may be recovered before any one of Her Majesty's Justices of the Peace, and shall be appropriated and applied; and every person feeling aggrieved by the imposition of any such fine or by any order under this Ordinance, shall be entitled to appeal therefrom in manner and form, and on the terms respectively, which are prescribed by the Laws of the Province in force for the time being, for regulating summary proceedings before Justices of the Peace. Proceedings for penalties, appeals, &c.

XXI. AND BE IT ENACTED, that no person, although liable to the payment of rates under this Ordinance, shall, by reason thereof, be deemed to be an incompetent witness, before any Court or Justice of the Peace, in any proceedings whatever for any offence against this Ordinance, or in any matter relating to such rates, or in any other matter mentioned in this Ordinance; and no Justice of the Peace shall be disabled from acting in the execution of this Ordinance. Rate payers may give evidence or act as Justices.

Ordinance by reason of his being liable to the payment of any rates under this Ordinance.

No *certiorari* as to informality in warrant, &c.

XXII. AND BE IT ENACTED, that no conviction, order, warrant, or other matter made or purporting to be made, by virtue of this Ordinance, shall be quashed for want of form, or removed by *certiorari* or otherwise into the Supreme Court; and no warrant of commitment shall be held void by reason of any defect therein, provided that it be therein alleged that the party has been convicted, and that there be a good or valid conviction to sustain the same; and where any distress shall be made for levying any money by virtue of this Ordinance, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto; nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity afterwards committed by him; but the person aggrieved by such irregularity may recover full satisfaction for the special damage, if any, in an action upon the case.

As to proceedings against persons acting under this Ordinance.

Notice of action.

General issue.

Tender of amends.

If judgment be against plaintiff.

XXIII. And for the protection of persons acting in the execution of this Ordinance--BE IT ENACTED, that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Ordinance, shall be commenced within two calendar months after the fact was committed, and not otherwise: and notice in writing of such action, and of the cause thereof, shall be given to the defendant, one calendar month at least before the commencement of the action; and in any such action, the defendant may plead the general issue, and give this Ordinance, and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought; or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, together with the costs incurred up to that time; and if a verdict shall pass for the defendant, or the plaintiff become nonsuited, or discontinue any such action after issue joined, or if upon demurrer, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs, as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon.

Commencement.

XXIV. AND BE IT ENACTED, that this Ordinance shall commence

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mence and take effect from and after the passing hereof, and shall
continue in force for a period of not more than two years.

FREDK. H. ROBE,
Lieutenant Governor.

*Passed the Legislative Council, this thir-
tieth day of September, One Thousand
Eight Hundred and Forty-six.*

W. L. O'HALLORAN,
Clerk of Council.

The

The Schedule to which the foregoing Ordinance refers.

I, A. B., occupier of [*describe the property as nearly as possible in the manner in which it is described in the valuation*] in respect of which B. C. [*the lessor*] is now rated, hereby require to be rated as the occupier of the same; and I do hereby undertake to pay all rates lawfully made in respect of such property under the authority of the Ordinance, passed on the thirtieth day of September, one thousand eight hundred and forty-six, intituled an Ordinance "To authorise the levying of an assessment in aid of the expense of repairing the streets within the City of Adelaide."
