

## No. XII.

MELBOURNE  
CORPORATION.

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.*” [19th December, 1844.]

- Preamble. **W**HEREAS an Act was passed by the Governor of New South Wales with the advice of the Legislative Council 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 it is expedient to alter and amend certain parts of the said recited Act and to remove doubts which have arisen concerning certain provisions thereof and to repeal certain portions thereof and to make other provisions in lieu thereof 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 the Town of Melbourne shall consist of the two portions of land which are defined in the Schedule to this Act annexed marked A.
- 6 Victoria No. 7.
- Town of Melbourne to consist of the land defined in Schedule A.
- Wards to be those described in Schedule B.
- Lawful for the Governor to increase the number of wards.
- Occupiers of houses warehouses counting-houses or shops of the annual value of twenty pounds and upwards entitled to be burgesses.
2. And be it enacted That until otherwise provided for as hereinafter directed the wards of the said town shall be those described in the Schedule to this Act annexed marked B.
3. And whereas it is expedient to provide for the increase of the said town and population thereof Be it enacted That it shall be lawful for His Excellency the Governor upon petition from the Council of the said town to increase from time to time the number of wards within the said town by proclamation published in one or more of the Melbourne newspapers and every additional ward so appointed shall have the same rights privileges and immunities as any of the other wards within the said town and the enrolment of the burgesses and the first election of Aldermen Councillors and Assessors of such additional wards shall be conducted in the same manner as is described in the said recited Act for the first enrolment and elections respectively in any existing ward.
4. And be it enacted That from and after the passing of this Act every male person of the full age of twenty-one years who shall on the last day of August in any year have occupied any house warehouse counting-house or shop within the said town of the annual value of twenty pounds or upwards for six months next preceding such date and shall have paid all such rates directed to be paid under the provisions

*Melbourne Corporation.*

provisions of the said Act as shall have become payable by him in respect of the said premises except such as shall have become payable within three calendar months next before the said last day of August shall if otherwise duly qualified and enrolled in that year according to the provisions of the said Act be a burgess and member of the body corporate of the Mayor Aldermen Councillors and Burgesses of the same.

5. And whereas sufficient provision has not been made by the said recited Act relating to objections preferred against the qualifications of persons whose names have been inserted on the Burgess Lists by the Collectors Be it enacted That hereafter any person objecting to any other person as not being entitled to have his name retained on the Burgess List shall in the notice directed by the said Act to be served state concisely the grounds of objection and it shall not be lawful for the Alderman and Assessors in revising the Burgess List to entertain any objection other than that stated in such notice Provided that in case it shall appear to the Alderman and Assessors that any such objection is frivolous or vexatious it shall be lawful for them to award such costs not exceeding twenty shillings as to them shall seem meet against the parties so objecting the same to be recovered in a summary manner as provided for by the hereinbefore recited Act.

Persons objecting to burgesses to state grounds of objection.

6. And be it enacted That at any election of Councillor Auditor or Assessor under this or the said recited Act it shall be lawful and the Presiding Officer is hereby required if the same shall be duly demanded to put the following question to any voter in addition to the questions prescribed in the thirtieth section of the said recited Act and under the same consequences and penalties in the case of refusal to answer or falsely answering as are therein imposed—"Are you still in the occupation of premises within the town rated on the annual value of not less than twenty pounds?"

Form of question to be put to voters.

7. And be it enacted That every person who shall poll more than once or offer to poll more than once at the same election or who shall personate any other person for the purpose of polling at such election shall be guilty of a misdemeanor and upon being thereof convicted shall be imprisoned for any term not more than two years at the discretion of the Judge or Judges who shall try such person and if at any election it shall appear to the satisfaction of the Alderman or the Presiding Officer and the Assessors that any person voting or offering to vote at such election has been guilty of either of the above offences such Alderman or the Presiding Officer may thereupon commit the person so offending for examination before the Bench of Magistrates of the said town.

Persons polling more than once guilty of misdemeanor.

8. And be it enacted That if at any election in any ward two or more Councillors be returned for such ward by an equal number of votes the majority of the Council for the time being shall determine the order in which the Councillors so elected shall go out by rotation.

If Councillors elected by equal number of votes order of going out to be determined by majority of Council.

9. And be it enacted That so much of the said recited Act as enacts that after the full number of Councillors to be regularly elected in any year shall have declared their acceptance of office no new election of Councillors shall be made by reason of any extraordinary vacancy unless the number of the whole Council Mayor and Aldermen included remaining after such vacancy shall be less than twelve shall be and the same is hereby repealed.

So much of recited Act repealed as relates to the election of Councillors in case of any extraordinary vacancy.

10. And whereas doubts have arisen whether in case of the election of a Councillor to fill the office of Alderman a vacancy is thereby occasioned in the office of Councillor Be it enacted That any Councillor elected to be an Alderman shall be held to have vacated and shall thereby vacate his seat as an elected Councillor and that the person who shall be elected a Councillor in the room of the Councillor

Councillors to vacate their seats as such on being elected Aldermen.

*Melbourne Corporation.*

who shall have been elected an Alderman shall go out of office at the same time at which the Councillor so elected Alderman would have gone out of office if no such election of Alderman had taken place.

Order in which Councillors are to go out of office.

11. And whereas doubts have arisen as to the proper persons to go out by rotation from the office of Councillor of the said town Be it enacted That those persons who were elected as Councillors at the first election of Councillors for the said town by the number of votes next greater than the smallest in their several wards or their successors shall go out of office by rotation as Councillors on the first day of November next after the passing of this Act and the persons who were elected as Councillors at the said first election by the greatest number of votes in their respective wards or their successors shall be the next to retire by rotation as Councillors.

Councillors to be elected in place of those elected to be Aldermen.

12. And be it enacted That on the first day of March next after the passing of this Act there shall be elected besides those above directed such a number of Councillors as may be required to supply such vacancies as may have been occasioned by the election of Councillors to the office of Alderman.

Persons not on the Burgess List not qualified to be elected Aldermen Councillors Auditors or Assessors.

13. And whereas sufficient provision is not made in the said recited Act for preventing persons who are not entitled to be and who are not burgesses of the town from being members of the Council or Auditors or Assessors of the said town Be it therefore enacted That from and after the first day of November next after the passing of this Act no person who shall not be entitled to be and who shall not be on the Burgess Roll of the town shall be qualified to be elected or to be an Alderman Councillor Auditor or Assessor of the town and any Alderman Councillor Auditor or Assessor ceasing to be a burgess of the town shall *ipso facto* cease to hold such office.

So much of recited Act repealed as enacts that no rate shall be raised on buildings not of sufficient value to qualify occupier if otherwise qualified.

14. And be it enacted That so much of the said recited Act as enacts that no assessment or rate shall be raised on any building which may not be of sufficient annual value either of itself or in conjunction with any other building or buildings occupied by the same person to confer on the occupier of it if otherwise qualified the right of voting in the election of Councillors under the said recited Act shall be and the same is hereby repealed and that all buildings and tenements with the appurtenances thereunto belonging within the said town shall be liable to be assessed and rated to the town and other rates as directed by the said recited Act Provided 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 Provided also that when the building tenement or other property shall have been in fact untenanted or occupied by servants solely for the care of the same for the whole period in respect of which the rate is demanded such owner shall be wholly exempt.

Council to have power to enforce rates.

15. And whereas sufficient provision is not made in the said recited Act for the recovery of rates by distress in case of non-payment thereof or for the costs of levy and other matters connected therewith Be it enacted That the Council shall have power to make such regulations as from time to time they may think fit for enforcing such distress and sale for allowing such costs and for returning the overplus if any and for all other matters connected therewith not otherwise provided for by this or the said recited Act Provided always that the costs chargeable on any such distress shall not exceed those enumerated in Schedule D annexed to this Act.

So much of recited Act repealed as requires rates to be declared by bye-laws rates may be declared by notice in newspapers.

16. And whereas great inconvenience is occasioned by the delay necessary in declaring rates levied by the Council of the town by means of bye-laws Be it enacted That so much of the said recited Act as requires all rates fixed by the Council to be declared by bye-laws

*Melbourne Corporation.*

laws to be made by the said Council shall be and the same is hereby repealed and that from and after the passing of this Act it shall be lawful to declare such town water and lighting rates by an order of the said Council of which fourteen days' public notice in two or more newspapers published within the said town shall be given Provided that no rate so levied by the said Council shall exceed one twentieth part of the annual value of the property so assessed.

17. Provided however and be it enacted That nothing in this Act contained shall empower the said Council to levy any rate whatever on any lands or buildings the property of Her Majesty and used for a public purpose within the said town nor on any building hired by the Government for any public purpose nor on any hospital benevolent asylum or building used exclusively for charitable purposes nor on any church or chapel or other building used exclusively for public worship nor on any building used as a school provided it be inhabited only by the master or mistress of the school or his or her family and the school be one receiving aid from the Government or otherwise of a public character.

Buildings the property of Her Majesty or used for public purposes churches chapels and schools exempt from rates.

18. And be it enacted That so much of the said recited Act as provides that the charge for supplying water shall not exceed in any year the rate of five shillings for each room any house shall contain kitchens and wash-houses being for this purpose rated as rooms but for public-houses inns sugar-houses manufactories or other establishments requiring a large consumption of water and including stables and gardens the Council shall be at liberty to make such agreement with the parties as may be mutually settled between them shall be and the same is hereby repealed.

Water rate s. 89 of 6 Vic. No. 7 repealed.

19. And be it enacted That every warrant of distress for levying any rate made or to be made by virtue of this or the said recited Act shall be in the words or to the effect of the form set out in the Schedule to this Act annexed marked C.

Warrants of distress for levying any rate to be in the form set out in Schedule C.

20. And be it enacted That the Town Treasurer of the said town shall within one month after the passing of this Act cause to be made for each ward a book containing a full and true account of each property assessed the name of the person rated and the amount of each rate for which he may be so rated as well as the name of the Collector appointed to collect the same which books shall be signed by such Town Treasurer and shall be and shall be called the rate books of the said town and the same shall be altered or a new one made instead thereof within one calendar month after the time that any alteration in the assessment or rating shall render the same necessary and every burgess or rate-payer of the said town shall have access thereto at all convenient times and be permitted to inspect the same without any fee or reward and if the said Town Treasurer shall neglect to make such books or alter the same when necessary within the time aforesaid or shall refuse to allow any burgess or rate-payer to inspect the same as aforesaid then and in every other case such Town Treasurer shall forfeit and pay for every such offence on conviction the sum of five pounds to be recovered and applied as if imposed under the said recited Act.

Town Treasurer to cause rate books to be made for each ward.

21. And be it enacted That if it shall at any time appear to the Council of the said town that the name of any person who ought to be included in such books as aforesaid hath been omitted therefrom or that the name of any person hath been inserted therein as the owner or occupier of any premises or property in respect of which some other person ought to have been rated or that any other alteration or amendment may be necessary in such books then and in every such case it shall be lawful for the said Council to cause to be added or inserted therein the name of the person so omitted together with the

The Council may insert names of persons omitted in such books.

*Melbourne Corporation.*

the sum for which he ought to be assessed and the amount of rate payable in respect thereof and also to cause to be inserted and substituted the name of such person as may be the occupier or owner of any building tenement or other property instead of and for the name of the person incorrectly inserted in such books and that every such addition insertion alteration or amendment to or in such books shall be valid and effectual in law to all intents and purposes and the money charged to any person in consequence thereof shall and may be demanded received and recovered in the same manner as if the name of such person or other alteration or amendment had been inserted or made in such books when the same were originally made.

Rate books to be received as evidence.

22. And be it enacted That the rate books so made by the Treasurer as aforesaid and all entries made therein shall be received in all Courts in the said Colony as *prima facie* evidence of the facts therein set out.

Any rate may be remitted on account of poverty.

23. And be it enacted That it shall be lawful for the said Council from time to time upon the complaint of any person liable to the payment of any rate under this or the said recited Act to remit or excuse the payment thereof or any part thereof on account of the poverty of the person rated.

Council may hold property for the inhabitants and appropriate sums to maintain same.

24. And be it enacted That it shall and may be lawful for the said Council to accept and hold any property for the benefit or recreation of the inhabitants of the said town and to appropriate such sums from their revenues as may from time to time be required to procure construct and maintain the same.

May authorize hawking.

25. And be it enacted That from and after the passing of this Act it shall be lawful for the Council of the said town to authorize the hawking of marketable commodities within the said town subject to such regulations as to them shall seem meet the same to be declared by a bye-law or bye-laws from time to time to be made by the said Council anything contained in a certain Act of the Governor and Legislative Council passed 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*" to the contrary notwithstanding Provided that nothing herein contained shall be construed to authorize the Council of the said town by any such 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.

3 Vic. No. 19.

But may not impose a license on sellers of fruit &c. or makers of goods or their servants &c.

Any person may apply for mandamus to have his name inserted as burgess.

26. And be it enacted That it shall be lawful for any person whose claim shall have been rejected or name expunged at the revision of the Burgess Roll of the said town to apply before the end of the term then next following to the Resident Judge of the Supreme Court for the District of Port Phillip for a mandamus to the Alderman of his ward to insert the name of such person upon the Burgess Roll and thereupon for the Court to inquire into the title of the applicant to be so enrolled and if the Court shall award such mandamus the Alderman shall be bound to insert the name upon the Burgess Roll and shall add thereunto the words "*by order of the Supreme Court*" and shall subscribe his name to such words and thereupon the person whose name shall be so added to the Burgess Roll shall be deemed a burgess and entitled to vote and act as a burgess in all respects as if his

*Melbourne Corporation.*

his name had been put upon the Burgess Roll at the Revision Court of his ward and upon every such application the Court shall have power to make such order with respect to the costs as to the Court shall seem fit.

27. And be it enacted That after the passing of this Act in case no election shall be made of the Mayor or of any of the Aldermen Councillors or other corporate officers of the said town upon the day or within the time appointed by the said recited Act or by this Act for any such election or such election being made shall afterwards become void whether such omission or avoidance shall happen through the default of the officer or officers who ought to preside at such election or by any accident or other means whatsoever the Corporation shall not thereby be deemed or taken to be dissolved or disabled from electing such Mayor Alderman or Councillor or other corporate officer for the future but in any case where no such election shall be made as aforesaid the election for any such Mayor Alderman Councillor or other corporate officer may be held and proceeded with upon the day next after the day on which such election ought to have been made unless such day shall happen to be on a Sunday and then upon the Monday following and every act necessary to be done in order to and for the completing such election shall and may be then done and the same shall be as effectual and valid for all purposes as if the election had been made on the proper day appointed for that purpose.

Provides for omission in election of Mayor Aldermen Councillors and other officers.

28. And be it enacted That after the passing of this Act all the powers authorities and jurisdictions by an Act of the eleventh year of the reign of His late Majesty King George the First intituled "*An Act for preventing the inconveniences arising from want of elections of Mayors or other Chief Magistrates of Boroughs or Corporations being made upon the days appointed by the charter or usage for that purpose and directing in what manner such elections should be afterwards made*" given to Her Majesty's Court of Queen's Bench in cases where no election shall be made of the Mayor Bailiff or Bailiffs or other chief officer or officers of cities boroughs or towns corporate upon the day or within the time appointed by charter or usage for that purpose and that no election is made pursuant to the directions in that Act prescribed or such election being made shall afterwards become void as in that Act mentioned shall and the same are hereby extended to the Resident Judge of the Supreme Court of New South Wales for the District of Port Phillip in all cases in which no election shall be made of any Mayor Alderman Councillor or other corporate officer or other person to any corporate office on the day or within the time appointed for any such election under the provisions of the Act of the sixth year of the reign of Her present Majesty intituled "*An Act to incorporate the Inhabitants of the Town of Melbourne*" or of this Act and the Resident Judge of the said Supreme Court is hereby empowered in all such cases to award a mandamus and to cause such proceedings to be had thereupon and to make such orders and to do all other acts matters and things in respect thereof as fully and effectually as the said Court is now by law authorized in any other cases of mandamus for the election of any officers of Corporation and the elections to be held under such mandamus shall be held and the proceedings thereon conducted within the town in the same manner and under the like regulations and provisions as are in the said Act of His late Majesty King George the First enacted and provided.

As to elections held under mandamus.

29. And be it enacted That after the passing of this Act every application to the Resident Judge of the Supreme Court for the purpose of calling upon any person to shew by what warrant he claims to exercise the office of Mayor Alderman Councillor Auditor Assessor

Application to be made to Supreme Court within six months after election calling on Mayor Aldermen &c. to

or

*Melbourne Corporation.*

shew by what warrant they claim to exercise the office.

or Burgess of the said town shall be made before the end of six calendar months after the election or the time when the person against whom such applications shall be directed shall have disqualified and not at any subsequent time.

All matters required to be done by Police Magistrate may be done by Mayor.

30. And whereas by divers Acts of the Governor and Legislative Council of New South Wales various matters are required to be done by the Police Magistrate of the district wherein such matters are required to be done and whereas there is no Police Magistrate for the Town of Melbourne Be it enacted That all such matters and things shall from and after the passing of this Act be done by the Mayor of the said town but in case of his incapacity then during such incapacity by any Justice of the Peace for the said town.

Justices of the Peace for the town as well as for the adjoining county &c. must reside within the town or within seven miles of it and be qualified to be burgesses.

31. And whereas by the said first recited Act passed in the sixth year of Her Majesty's reign it is enacted that it shall be lawful for the Governor of New South Wales for the time being or person administering the Government from time to time to assign to so many persons as he shall think proper the Commission of the Peace to act as Justices of the Peace in and for the said town as well as for the adjoining county or for any more or less extensive jurisdiction which the said Governor may deem it proper to confer provided always that the persons so appointed shall be resident within the town or within seven miles thereof and that no unpaid Magistrate be so appointed who is not qualified to be a burgess of the said town and to vote as such in elections under the provisions of the said recited Act and whereas it is expedient to enlarge in manner hereinafter mentioned the qualification of persons who may be appointed to the Commission of the Peace for the said town Be it therefore enacted That in addition to the persons so qualified as aforesaid it shall be lawful for the Governor for the time being or person administering the Government from time to time to assign to so many persons as he shall think proper the Commission of the Peace to act as Justices of the Peace in and for the said town as well as for the adjoining county or for any more or less extensive jurisdiction which the said Governor or person administering the Government may deem it proper to confer Provided that the persons so appointed being unpaid Magistrates shall be qualified to be electors of the electoral district of the said town and to vote as such in elections under the provisions of an Act of the Imperial Parliament passed in the fifth and sixth year of Her Majesty's reign intituled "*An Act for the Government of New South Wales and Van Diemen's Land*" and an Act of the Governor and Legislative Council of this Colony passed in the sixth year of Her Majesty's reign intituled "*An Act to provide for the division of the Colony of New South Wales into Electoral Districts and for the election of Members to serve in the Legislative Council.*"

Same person may be Collector for two wards.

32. And be it enacted That it shall be lawful for the Mayor to appoint the same person to be Collector for two of the wards of the said town anything in the fifteenth section of the said Act to the contrary notwithstanding.

