

No. XIX.

MARKETS.

An Act to authorize the establishment of Markets in certain Towns of the Colony of New South Wales and for the appointment of Commissioners to manage the same. [22nd October, 1839.]

Preamble.

In any town on application of twenty-five free householders the Police Magistrate may call a public meeting.

If at such meeting a resolution in favour of establishing a Market be adopted such resolution on being approved by the Governor to be notified in the *Government Gazette*.

Market Commissioners to be elected.

How many Commissioners to be elected.

WHEREAS several of the Towns of the Colony of New South Wales have of late years greatly increased and are still increasing in population and buildings by reason whereof Markets for supplying the inhabitants of the said towns with meat fish poultry butter vegetables and other provisions and also for buying and selling goods wares and merchandise are required to be held therein Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That whenever application in writing shall be made to the Police Magistrate of any town in said Colony such application being signed by twenty-five free householders of any such town it shall and may be lawful for such Police Magistrate to call a public meeting of the inhabitants of said town at such time and place therein as he may deem most convenient for the purpose of taking into consideration the propriety of establishing a Market therein and such Police Magistrate shall preside at such meeting.

2. And be it enacted That if at such public meeting a resolution be adopted in favour of establishing a Market in any such town the same shall be communicated by the said Police Magistrate to the Colonial Secretary for the information of His Excellency the Governor and if the said Governor with the advice of the Executive Council of said Colony shall approve of the establishment of such Market the same shall be notified in the *New South Wales Government Gazette*.

3. And whereas the management of Markets can be best conducted by local Commissioners to be elected from the proprietors of land and householders within the limits of the town in which such Market is intended to be held Be it therefore enacted That the said Governor and Executive Council shall (in case they approve of said Market being held) fix the number of Commissioners for such management in proportion to the population of the town and the number so fixed shall be elected from the proprietors of land and householders within such town in the manner hereinafter mentioned.

4. And be it enacted That whenever the population of any such town shall exceed four thousand inhabitants it shall and may be lawful for the Governor of said Colony with the advice of the Executive Council thereof to cause the said town to be divided into wards not less than three in number and to fix the number of Commissioners to be

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be elected by each ward and there shall not be less than two such Commissioners at the least for any one ward and the election for such wards shall be separate and distinct from each other.

5. And be it enacted That it shall and may be lawful for the Governor to appoint said Governor to nominate and appoint some fit and proper person to preside either at elections to be held for the whole town or for each ward of said town, ^{a person to preside at elections.}

6. And be it enacted That it shall and may be lawful for the Scrutineers to be said Governor to nominate and appoint three scrutineers for each ^{appointed by the} Governor. such election whether the same be for an entire town or for each separate ward as aforesaid.

7. And be it enacted That within fourteen days after the Police Magistrate of any town shall receive the *Government Gazette* containing the notice aforesaid of approval for the establishment of a Market in such town he shall cause a notice to be posted on the door of the Police Office fixing the time and place for holding such election for the whole town or for each ward as the case may be such time not to be less than twenty-eight days from the day of posting such notice nor more than fifty-six days and if there shall be a newspaper published in such town the said Police Magistrate shall cause such notice to be also inserted therein.

8. And be it enacted That the time for the holding of such elections to be concluded in one day. shall be between the hours of nine o'clock in the morning and three o'clock in the afternoon and the whole shall be concluded and ended in the same day.

9. And be it enacted That the persons entitled to vote at such elections shall be the inhabitants of said town being householders or occupiers of houses of the annual value of twenty pounds at the least and proprietors whether resident or non-resident of land or buildings of the value of two hundred pounds.

Persons entitled to vote—qualification of electors.

10. And whereas it is necessary that all persons having a right to vote at such elections should be ascertained previous thereto Be it enacted That no person shall be admitted to vote at any such election unless he shall register his qualification within twenty-one days before the day of election in manner following that he shall at a Court of Petty Sessions for the town for which the election is to be held make and subscribe a declaration in the form or to the effect following—

“ I of do declare I am free Declaration of
“ and an inhabitant of and that I am in electors.
“ the occupation of a tenement of the clear annual value
“ of at least twenty pounds (as the case may be) or that I
“ am a proprietor of freehold property in said town of the
“ value of two hundred pounds and that the said property
“ belongs to myself *bonâ fide* and was not conveyed to me
“ fraudulently or with any secret understanding for the
“ purpose of voting.”

11. And be it enacted That the Clerk of the Bench of such Declaration to be Petty Sessions shall enter in a book in alphabetical order according to registered. the surnames of the persons registered the substance of every such declaration in order that the same may be produced (if required) at the time of election.

12. And be it enacted That every Clerk of such Petty Sessions shall upon such registry and at the request of any such registered voter deliver unto him a certificate of such registry for which he shall be entitled to receive the sum of one shilling. Certificates of registration to be given if required on payment of a fee of one shilling.

13. And be it enacted That every person being qualified and registered as aforesaid and intending to vote at such election shall deliver to the presiding officer on the day of election a ticket with the names Votes to be given by means of tickets.

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names of the persons written thereon for whom he intends to vote the number of such persons not to be greater than the number of persons to be elected otherwise the said vote to be null and void and the said ticket signed by the person presenting it after being read aloud by the presiding officer shall be forthwith deposited in a box and shall not be withdrawn therefrom until the same shall be delivered to the scrutineers.

Election to close at three p.m. and scrutineers to certify the election within forty-eight hours.

14. And be it enacted That at the hour of three o'clock on the day of election the said box shall be delivered to the scrutineers and they shall within forty-eight hours from the said time of delivery certify in writing to the Police Magistrate the names of the persons who shall be elected and the Police Magistrate shall thereupon declare in a public notice to be posted upon the Police Office the names of the said persons so elected.

Scrutineers to reject the tickets of unqualified persons.

15. And be it enacted That it shall be lawful for the said scrutineers before certifying such election to reject the tickets of those who in their opinion or in the opinion of the majority of them are not qualified to vote and such rejection shall be final.

Persons who have been convicts not entitled to vote until they have been free three years at the least or received a free pardon.

16. And be it enacted That no person who having come to the said Colony under sentence of transportation shall not have been free for the space of three years at the least shall be qualified to vote at such election unless such person shall have received a free pardon.

Persons may vote in one or more wards if qualified in each.

17. And be it enacted That any person qualified to vote in one or more wards of any one town may vote in each of such wards.

Persons certified by scrutineers to be elected collectively to be the Commissioners of Markets.

18. And be it enacted That the persons so certified by the scrutineers to be elected shall collectively be the Commissioners of Markets for the whole town with the addition of the Police Magistrate thereof who shall be *ex officio* a Commissioner.

Commissioners to hold office for three years.

19. And be it enacted That the said Commissioners shall hold office for the period of three years at the expiration of which time new elections shall take place in the same manner as hereinbefore prescribed Provided however that all such future elections shall take place on the first Tuesday in the month of July without any further notice thereof than the publication of the same on the door of the Police Office of said town and by insertion in a newspaper if any be published in such town in the manner and for the period aforesaid.

How Commissioners dying or resigning are to be replaced.

20. And be it enacted That if any of the Commissioners so elected as aforesaid shall die resign or become disqualified or incapable before the expiration of his or their time of office the remaining Commissioners or a majority of them shall within fourteen days from the time of such vacancy elect another or others in his or their room or stead.

Commissioners may take hold and sell property.

21. And be it enacted That the said Commissioners shall be and they are hereby authorized and empowered from time to time to purchase any lands messuages tenements and hereditaments for the purposes of this Act and also to accept take receive and hold any lands messuages tenements and hereditaments money property and effects whatsoever for the like purposes.

May appoint officers elect a Chairman and make bye-laws for their own government.

22. And be it enacted That it shall be lawful for the said Commissioners and they are hereby authorized to appoint and also to remove from time to time a Treasurer Secretary Clerk of the Market and Inspectors as well as any inferior officers that may be necessary and to award to them such salary as may be deemed by them reasonable and also to nominate a Chairman among themselves and to pass such bye-laws for the regulation of their own proceedings as they may deem expedient.

May erect Market-houses &c. wherein only Markets are to be held.

23. And be it enacted That it shall and may be lawful for the said Commissioners to fix the place or places within such town for the holding of Markets and there to erect and build or cause to be erected

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erected or built a Market house or houses with shambles stalls and other convenient buildings and the said Market place or places shall be the only places within the said town where any Market for the sale of corn (except corn or grain sold by sample) butchers' meat poultry eggs fresh butter vegetables or other provisions shall for the future be held and kept and if any person shall sell or expose to sale any of said articles or other provisions usually sold in Markets in any of the streets lanes entries or other public passages or places other than the place or places which may be so appointed by the Commissioners as aforesaid every such person shall on conviction thereof before a Justice of the Peace for every such offence forfeit and pay the sum of five pounds Provided that nothing herein contained shall be construed to extend to prevent any person from selling or exposing for sale any of the articles aforesaid in his or her dwelling-house or shop in any part of said town.

Penalty for infringement.

24. And be it enacted That for the better regulating and managing the said Markets when established it shall be lawful for the Commissioners elected in manner aforesaid and they are hereby authorized from time to time to make provide constitute and ordain such rules orders and bye-laws as they shall think fit and necessary for the better regulation and government of any such Market and for the cleansing letting occupying and using such Market-place or any part or parts thereof and also for regulating ordering and governing the officers appointed by them and all other persons both buyers and sellers thereto coming or resorting and all matters which do or may concern or relate to such Market And the said Commissioners for the time being may from time to time as they shall think fit repeal alter add to or amend any such rules orders bye-laws or any of them and shall ascertain and therein set down what pecuniary and other penalties and forfeitures shall be incurred by persons breaking or evading such rules orders bye-laws or any of them Provided that no such pecuniary penalty shall exceed the sum of five pounds for any one offence and such rules orders and bye-laws shall not be repugnant to either the laws of England or of New South Wales or to the provisions of this Act And all persons so as aforesaid coming and resorting to the said Market are hereby required to observe and keep such rules orders and bye-laws under such penalties and forfeitures respectively as shall be ascertained and set down as aforesaid And all such rules orders or bye-laws or any of them after having been signed by the said Commissioners or the majority of them shall be painted on boards and put up or affixed in some conspicuous place or places in the said Market which boards shall from time to time be renewed and replaced when and as often as the said rules orders or bye-laws or any of them shall be altered obliterated or defaced but no rule order or bye-law shall have any force or effect until ten days next after the same shall have been affixed as aforesaid and all convictions and determinations shall be subject to appeal in manner hereinafter mentioned.

And may repeal alter or amend such rules or regulations and rules regulations and penalties to be made public.

25. And be it enacted That whenever the number of Commissioners shall exceed seven it shall and may be lawful for them to appoint a sub-committee of said Commissioners of not less than three which sub-committee shall exercise all the functions of the whole number subject notwithstanding to the approval of the entire number of the said Commissioners or a majority of them at a general meeting of said Commissioners and such general meeting shall be held at least once in every quarter and at such other times as may be required.

Committee may be appointed if the number of the Commissioners exceed seven.

26. And be it enacted That the person or persons appointed as Inspector or Inspectors of provisions in any such Market shall and may

Inspectors may seize and destroy unwhole- some food.

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and is and are hereby authorized and required to seize and destroy all unwholesome meat fish or other provisions which shall be offered or exposed for sale in said Market.

Offenders to be taken before Justices and how to be dealt with.

When Market ready for public use Commissioners to give ten days' notice.

Ten days after notice of Market-place being established Commissioners shall demand and receive the several tolls dues &c. to be appointed by them from time to time to be paid and received by and from persons offering for sale any marketable commodity or renting any stall or standing therein.

Commissioners may demise or let to farm tolls and Market dues for any time not exceeding twelve calendar months.

Articles exposed for sale may be taken in distress for rent or Market dues.

27. And be it enacted That it shall and may be lawful for the said Commissioners or any of them or their Collectors or other officers respectively and such person or persons as they or any of them shall call to their or his assistance without any warrant or other authority than this Act to seize and detain any person or persons (being unknown to such Commissioners Collectors or other officers) who shall commit any such offence or offences against this Act or any of the provisions thereof or against any rule order or bye-law to be made in pursuance thereof and to take him her or them immediately before any Justice of the Peace and such Justice is hereby required to proceed and act with respect to such offender or offenders according to the provisions of this Act.

28. And be it enacted That whenever a Market-place shall be appropriated and set apart and ready for public use the said Commissioners shall by a printed advertisement to be posted on the Police Office and also circulated in said town and its neighbourhood give ten days' notice of such Market-place having been so established appropriated and set apart for public use previous to the day on which such Market-place shall be opened in pursuance of this Act.

29. And be it enacted That from time to time and at all times after the expiration of ten days from such advertisement as aforesaid it shall and may be lawful for the said Commissioners for the time being by themselves their collectors officers or servants to ask demand recover receive and take of and from all and every person and persons exposing or offering for sale or selling any corn grain hay straw goods wares merchandise or any other marketable provisions in said Market or who shall rent hire or use any stall or standing place in the said Market the several tolls dues or sum or sums of money which shall at any time or from time to time be fixed and appointed by them to be paid for the same not exceeding the several tolls dues or sum or sums of money mentioned and specified in an Act passed in the second year of the reign of His late Majesty King William the Fourth intituled "*An Act for regulating the rates of Tolls or Dues to be levied at the Markets of Sydney and Parramatta*" And which several tolls dues or sum or sums of money the said Commissioners shall cause to be painted on boards and affixed and stuck up and continued and renewed as often as the same shall be obliterated and defaced upon a conspicuous place or places in said Market-place in large and legible characters.

30. And be it enacted That it shall and may be lawful for the said Commissioners or the majority of them as aforesaid to demise or let to farm the tolls or Market dues or any part thereof demandable under this Act for any time not exceeding twelve calendar months or to let or demise any number of stalls or standings in the said Market for any period not exceeding the said term of twelve calendar months.

31. And be it enacted That in case any person or persons renting holding or using or in any manner occupying any of the said buildings stalls standings shambles or other conveniences in said Market-place or who shall bring or place or expose or offer for sale in the said Market any provisions goods wares or merchandise for or in respect of which any rents tolls or dues may be demanded or taken thereon shall not upon demand thereof made by the said Commissioners their officers or collectors to be appointed by them to receive such tolls forthwith pay the same it shall be lawful for the said Commissioners their officers or collectors to levy the same by distress and sale of all or any of the goods articles or things so exposed

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exposed to sale or other the goods and chattels of such person or persons so neglecting refusing or evading to pay as aforesaid and the said distress so to be taken to sell forthwith rendering the overplus (if any) after deducting the expenses attending such distress and sale to the owner on demand.

32. And be it enacted That in all cases in which under and by virtue of this Act or by any rule order or bye-law as aforesaid any penalty or forfeiture is imposed and made recoverable it shall and may be lawful for any Justice of the Peace to whom complaint shall be made of any such offence to summon the party complained against before him and on such summons to hear and determine the matter of such complaint in a summary way and to summon any witness or witnesses and to examine him her or them on oath and on proof of the offence to convict the offender and to adjudge him her or them to pay the penalty or forfeiture incurred and to proceed to recover the same although no information in writing shall have been exhibited or taken by or before such Justice and all such proceedings by summons without information shall be as good valid and effectual to all intents and purposes as if an information in writing was or had been exhibited.

33. And be it enacted That all such fines penalties and forfeitures as aforesaid shall and may in case of non-payment thereof be recovered in manner aforesaid in a summary way by the order and adjudication of one or more Justice or Justices of the Peace and afterwards levied as well as the costs of such proceedings on non-payment by distress and sale of the goods and chattels of the offender or offenders or person or persons liable to pay the same by warrant under the hand and seal or hands and seals of such Justice or Justices and the overplus (if any) of the money so to be recovered and levied after discharging the fine penalty or forfeiture for which such warrant shall be issued and the costs and expenses of recovering and levying the same shall be returned on demand to the owner of the goods and chattels so seized or distrained and in case such fines penalties and forfeitures shall not be forthwith paid upon conviction then it shall be lawful for such Justice or Justices to order the offender or offenders so convicted (if it shall seem necessary so to do) to be detained in safe custody until return can be conveniently made to such warrant of distress unless such offender or offenders shall give sufficient security to the satisfaction of such Justice or Justices for his her or their appearance before him or them on such day or days as shall be appointed for the return of such warrant of distress such day or days not being more than ten days from the time of taking any such security and which security the said Justice or Justices is and are hereby empowered to take by way of recognizance or otherwise but if upon the return of such warrant it shall appear that no sufficient distress can be had whereupon to levy the said fines penalties forfeitures and such costs as aforesaid and the same shall not be forthwith paid or in case it shall appear to the satisfaction of such Justice or Justices either by the confession of the offender or offenders or otherwise that he or she or they hath or have not sufficient goods and chattels whereon such fines penalties and forfeitures costs and expenses can be levied if a warrant of distress were issued such Justice or Justices shall not be required to issue such warrant of distress and thereupon it shall be lawful for such Justice or Justices and he and they is and are hereby authorized and required by warrant under his or their hand and seal or hands and seals to cause such offender or offenders to be committed to the common gaol or house of correction of and in such town there to remain without bail or mainprize for any term not less than one calendar month and not exceeding three calendar months unless such fines

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fines penalties and forfeitures and all reasonable charges shall be sooner paid and satisfied.

Form of conviction.

34. And be it enacted That for the more speedy and effectual conviction of offenders against this Act all and every the Justice or Justices of the Peace before whom any person or persons shall be convicted of any offence against this Act or the provisions thereof or against any bye-law to be made as aforesaid shall and may cause the conviction to be drawn up in the form or to the effect following (that is to say)—

NEW SOUTH WALES }
TO WIT. }

Given under my (or our) hand (or hands) and seal (or seals) the day and year first above written.

How persons aggrieved in the levying of distress may proceed.

(seals) the day and year first above written.

35. And be it enacted That when any distress shall be made for any sum or sums of money by virtue of this Act the distress itself shall not be deemed unlawful nor shall the party or parties making the same be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards done by him or them but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage in an action upon the case.

Commissioners may borrow money.

36. And be it enacted That it shall and may be lawful for the said Commissioners for the time being from time to time to borrow and take up at interest such sums of money as they shall judge necessary not exceeding in the whole the sum of two thousand pounds upon the credit of the tolls dues and sum or sums of money derivable from said Market to be collected by virtue of this Act and by writing under their hands and seals or the hands and seals of any three or more Commissioners where the number of Commissioners shall not exceed five and of any five or more where the number shall exceed five to assign all or any part of the said tolls dues and sum or sums of money to such persons as shall lend or advance any money thereon or their trustees as a security for the principal money to be advanced with interest thereon not to exceed ten per centum per annum and the costs and expenses of such assignment shall from time to time be defrayed by the said Commissioners out of the monies so to be borrowed and every such assignment shall be by deed in which

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which the consideration money for the same shall be truly stated and may be in the words or to the effect following (that is to say)—

We being of the Commissioners duly elected for the regulation and management of the Markets in the town of in consideration of pounds lent and advanced by A. B. of upon the credit of and for the purposes of an Act passed in the third year of the reign of Her Majesty Queen Victoria 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*" do hereby grant and assign to

(or his trustee) his executors administrators and assigns such proportion of the tolls dues and sum or sums of money arising by virtue of the said recited Act from the Market in said town of as the same doth or shall bear to the whole sum which shall have been or may at any time be borrowed or become due or owing or be charged upon the credit of the said tolls dues and sum or sums of money respectively from this day of until the said sum of pounds

with interest at per centum per annum for the same shall be repaid and satisfied.

In witness whereof we have hereunto set our hands and seals this day of

And all such assignments shall be numbered commencing with number one and so proceeding in an arithmetical progression ascending and every such security shall be good valid and effectual and shall entitle the person to whom the same shall be made his executors administrators and assigns to the payment of the money thereby secured and to all profits and advantages thereof according to the intent and meaning of this Act and copies of such securities shall be entered in a book to be kept for that purpose by the Clerk or Secretary of said Commissioners within fourteen days after such assignments shall be made as aforesaid and all persons to whom any such assignment shall have been made or who shall be entitled to the money thereby secured may from time to time transfer their right title or interest therein and to the principal money and interest thereby secured to any person whomsoever and every such transfer shall be by deed in which the consideration money for such transfer shall be truly stated and may be in the words or to the effect following (that is to say)—

I (or we) of in consideration of pounds paid by of do hereby transfer the assignment within written or hereunto annexed (as the case may be) with all my (or our) right and title to the principal money thereby secured and to all the interest now due upon the same unto A. B. his (or her) executors administrators and assigns.

In witness whereof I (or we) have hereunto set my hand (or our hands) this day of

A. B.

Witness

which transfer shall be produced and notified to the said Clerk or Secretary of the said Commissioners who shall within fourteen days next after such production cause an entry or memorial to be made thereof containing the date and name of the parties and sums of money in a book to be kept for that purpose for which the said Clerk shall be paid the sum of five shillings and after such entry made and not

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not until then such assignment shall entitle such assignee his (or her) executors administrators and assigns to the benefit thereof and payment thereon and every such assignee shall and may in like manner from time to time assign again and it shall not be in the power of the person making such assignment to make void annul or discharge the same or any money thereby secured or any part thereof and all money so to be advanced and lent and the interest thereof shall be and is hereby charged upon and shall be paid and payable from time to time out of the tolls dues and sum or sums of money hereby granted and all persons who shall be possessed of the said securities shall be creditors on the said tolls dues and sum or sums of money in an equal degree without preference in respect to the priority of their advancing the money thereon.

Commissioners may sue and be sued in the name of the Chairman.

37. And be it enacted That all actions and suits against any person or persons indebted to the said Commissioners and all the proceedings at law or in equity to be instituted and prosecuted by and on behalf of the said Commissioners and wherein the said Commissioners shall be in any way concerned against any person or persons whatsoever shall and may lawfully be instituted in the name of the person who shall be Chairman of the said Commissioners at the time such action suit or other proceeding shall be instituted as the nominal plaintiff complainant or petitioner on behalf of the said Commissioners and that all actions suits and other proceedings in law or in equity to be commenced instituted or prosecuted against the said Commissioners shall be commenced instituted and prosecuted against the said Chairman and that in all indictments and informations it shall be lawful to state the property of the said Commissioners to be the property of the said Chairman for the time being and any offender or offenders may thereupon be lawfully convicted of such offence and the death resignation or removal of such Chairman whose name shall be made use of in any such proceeding shall not abate any such action suit or other proceeding but the same may be continued where it left off and be prosecuted and carried on in the name of any person who may be or become Chairman for the time being of the said Company.

Fines and penalties to be paid to Commissioners and to be by them applied for the purposes of the Market.

Proceedings not to be void for want of form.
No *certiorari*.

Limitation of suits.

Where no Police Magistrate Governor may appoint any other person being a Magistrate to do and perform what may be done and performed by a Police Magistrate.

Rights of Her Majesty not be affected.

38. And be it enacted That all fines and penalties which shall be levied and enforced under this Act shall be paid to the said Commissioners to be applied by them for the purposes of such Market.

39. And be it enacted That no proceedings to be had and taken in pursuance of this Act shall be made void quashed or vacated for want of form or be removed by *certiorari* or any other writ or process whatsoever into the Supreme Court any Law Act or Statute to the contrary notwithstanding.

40. And be it enacted That no fine penalty or forfeiture shall be recoverable by and under any of the powers given by this Act unless proceedings shall be commenced or taken for the same within one calendar month after the commission of the offence.

41. And be it enacted That in case there shall be no Police Magistrate in any town or place wherein a Market may be established under this Act or wherein the inhabitants may desire to establish such Market it shall and may be lawful for the said Governor to appoint a person being a Magistrate and residing within five miles of such town or place to do and perform the several acts which the Police Magistrate of such town or place is herein directed authorized or required to do or perform and all acts done or performed by the person so appointed shall have the same force and effect as if they were done or performed by a Police Magistrate as aforesaid.

42. Provided always and be it enacted That nothing in this Act contained shall be deemed to affect or apply to any right title or interest

St. James' Church, Sydney.

interest of Her Majesty Her Heirs and Successors excepting such as are mentioned herein.

43. And be it enacted That from and after the passing of this Act 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 relates to the establishing of Markets and the making of regulations for the same shall be and the same is hereby repealed.
