

No. VII.

MELBOURNE INCORPORATION.

An Act to incorporate the Inhabitants of the Town of Melbourne. [12th August, 1842.]

Preamble.

Inhabitants of Melbourne incorporated.

WHEREAS for the better protection care and management of the local interests of the Inhabitants of the Town of Melbourne and for the improvement thereof it is expedient that the Inhabitants of the said Town be incorporated Be it therefore enacted by His Excellency the Governor of New South Wales and its Dependencies with the advice of the Legislative Council thereof That from and after the passing of this Act the inhabitants of the said town and their successors inhabitants of the same shall be and they are hereby constituted a body corporate and politic by and under the name style and title of the "Mayor Aldermen Councillors and Burgesses of the Town of Melbourne" and under that name shall have perpetual succession and shall be capable in law by the Council hereinafter mentioned to sue and be sued and to implead and be impleaded in all Courts of Law and Equity and other places in all manner of actions causes and matters whatsoever and to accept take purchase and hold goods and chattels lands and tenements real and personal moveable and immoveable estates and to grant sell alienate assign demise and convey the same and to do and suffer all acts as a body corporate under and subject to the provisions and regulations of this Act and shall and may have a common seal and in all cases of legal proceedings service of notice thereof upon either the Mayor or Town Clerk for the time being shall be deemed and taken as good and sufficient service upon the corporate body.

Extent of town as defined in Schedule A.

2. And be it enacted That the said town shall consist of the two portions of land which are defined in the Schedule to this Act annexed marked A.

Town divided into four wards. Schedule B.

3. And be it enacted That the said town shall be divided into four wards to be called respectively Gipps Ward Bourke Ward La Trobe Ward and Lonsdale Ward and that the said wards shall be those which are described in the Schedule to this Act annexed marked B.

Boundaries of town and wards not to be altered except by legislative authority.

4. Provided always and be it enacted That the boundaries of the said town and of the said several wards shall be and remain as they are hereby respectively fixed and determined until such time as the duly constituted legislative authority of the Colony shall otherwise direct.

Meaning of northward southward eastward or westward in description of boundaries the centre of street or road understood unless otherwise expressed.

5. And be it enacted That whenever in the description of the boundaries either of the whole town or of the wards thereof contained in the said Schedules A and B the word northward or southward eastward or westward be used such word shall only mean the general direction in which such boundary shall proceed and that whenever any street or road be mentioned the centre of such street or road shall always be meant unless otherwise expressed.

Doubts as to situation of houses to be determined by the Mayor and Council.

6. And be it enacted That whenever any doubt shall arise whether any house or other building be within one or any other ward of the said town it shall be competent for the Mayor and Council thereof to decide such doubt and such decision shall be final.

Misnomer or misdescription not to abridge operation of this Act.

7. And be it enacted That no misnomer or inaccurate description contained in this Act shall in any wise prevent or abridge the operation of this Act with respect to the subject of such description provided the same shall be designated so as to be understood.

So much of 2 Victoria No. 2 repealed as empowers the Justices

8. And whereas by an Act of the said Governor and Council passed in the second year of the reign of Her present Majesty Queen Victoria

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Victoria intituled “ *An Act for regulating the Police in the Towns of Parramatta Windsor Maitland Bathurst and other Towns respectively and for removing and preventing Nuisances and Obstructions and for the better alignment of Streets therein* ” it is amongst other things enacted that in order to uphold the limits of the said towns the Police Magistrate of each town shall perambulate with proper assistants the said limits on some convenient day in Easter week in each and every year and whereas it is expedient to transfer the duties so imposed upon the Police Magistrate of the Town of Melbourne to the members of the body corporate established under the provisions of this Act Be it therefore enacted That so much of the said recited Act as relates to the perambulation of the boundaries of the Town of Melbourne shall be and the same is hereby repealed accordingly.

9. And whereas it is expedient that the metes and bounds of the said town and of the several wards into which the same is hereby directed to be divided be constantly maintained and generally known Be it enacted That the Mayor of the said town within six months after the first election of Mayor under this Act shall cause to be set up at the expense of the body corporate permanent and conspicuous boundary marks of iron wood stone or other durable material in exact conformity with or as near as circumstances will admit the respective metes and bounds of the said town and the several wards thereof and in the most public and convenient place along or near the line of such metes and bounds and further within the period of six calendar months after the expiration of every successive period of three years thereafter a circuit of perambulation of the metes and bounds of the said town and of the several wards into which the same is divided shall be made by the Mayor accompanied by the Town Clerk and the Town Clerk shall at the time of making such perambulation inquire whether the name or names whereby the same metes and bounds or any part thereof are or is described have or has been changed and by what name or description the same are or is there commonly known and distinguished and if any change in the description thereof shall have taken place shall note the same in a book to be kept by him for that purpose to be called the “Boundary Book” of the said town and the Mayor is hereby required in the event of any of the said boundary mark or marks as aforesaid being obliterated or defaced to cause the same to be renewed at the expense of the body corporate within three calendar months next after such perambulation as aforesaid.

10. And be it enacted That every Mayor or Town Clerk who shall neglect to perform the duties hereinbefore prescribed shall forfeit and pay the sum of twenty pounds to be recovered by action in the Supreme Court of the District of Port Phillip by any person who shall sue for the same one-half to be paid to the person who shall sue for the same and the other half after deducting the expenses of so suing to be ascertained by such Court to be paid to Her Majesty Her Heirs and Successors for the public uses of the said Colony.

11. And be it enacted That every person who shall wilfully or maliciously pull down deface obliterate injure conceal or destroy any such boundary marks as aforesaid shall for every such offence forfeit and pay in addition to the value of such boundary mark or marks as aforesaid any sum not exceeding forty shillings to be recovered paid and levied according to the provisions of this Act relative to offences against the same punishable upon summary conviction.

12. And be it enacted That every male person of the full age of twenty-one years who on the day of the passing of this Act shall have occupied any house warehouse counting-house or shop of the annual value of twenty-five pounds within the said town during one whole year preceding such date and also during the time of such occupation

under that Act to perambulate the town.

Mayor to set up boundary marks within six months after first election.

And with the Town Clerk to perambulate the boundaries every three years.

Mayor to renew boundary marks effaced.

Mayor or Clerk neglecting to forfeit £20.

Penalty for defacing or injuring boundary marks.

Occupiers of houses warehouses counting-houses and shops duly enrolled entitled to be a burgesses if resident householders within seven miles.

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pation shall have been an inhabitant-householder within the said town or within seven miles of the same shall on being duly enrolled according to the provisions hereinafter contained be a burgess and member of the body corporate of the Mayor Aldermen Councillors and Burgesses of the said town and that every male person of the full age aforesaid who on the last day of August in any year after the incorporation of the said town shall have occupied any house warehouse counting-house or shop within the said town of the annual value of twenty-five pounds clear of all charges thereupon during the whole of one year preceding such date and also during the time of such occupation shall have been an inhabitant-householder within the said town or within seven miles thereof shall if duly enrolled in that year according to the provisions hereinafter contained be a burgess of the said town and member of the body corporate of the Mayor Aldermen Councillors and Burgesses of the same Provided always that no such person shall be so enrolled in any year unless he shall have paid on or before the last day of August as aforesaid all such rates including therein all town rates (if any) directed to be paid under the provisions of this Act as shall have become payable by him in respect of the said premises except such as shall become payable within six calendar months next before the said last day of August Provided also that the premises in respect of the occupation of which any person shall have been so rated need not be the same premises or in the same ward but may be different premises in the same ward or in different wards within the town Provided likewise that no person being an alien shall be so enrolled in any year and that no person shall be so enrolled in any year who within twelve calendar months before shall have received eleemosynary relief in or from any benevolent asylum or other charitable institution or who may have had any child admitted to any school or other establishment for orphan or destitute children in the said Colony or its Dependencies within the preceding three years Provided further that in every case under this Act the distance of seven miles aforesaid shall be computed by the nearest public road or way by land or water from the nearest part of the boundary of the town.

In certain cases where persons occupy premises jointly each person to be entitled to be enrolled a burgess.

13. And be it enacted That where any premises as aforesaid in the said town shall be jointly occupied by more persons than one as owners or tenants each of such joint occupiers shall subject to the conditions hereinbefore contained as to persons occupying premises within the said town be entitled to be enrolled as a burgess thereof or to vote as aforesaid in respect of the premises so jointly occupied Provided that the value of such premises to be ascertained and determined as aforesaid shall be of an amount which when divided by the number of such occupiers shall give for each occupier a sum not less than the sum which would entitle such person to be enrolled or to vote as aforesaid if he occupied separately but not otherwise.

In case of titles by descent &c. how the occupation is to be reckoned.

14. And be it enacted That where any house warehouse counting-house or shop as aforesaid in the said town shall come to any person by descent marriage marriage-settlement or devise such person shall be entitled to reckon the occupancy and rating in respect of the occupancy thereof by the person from or by whom such house warehouse counting-house or shop shall have so come to him as his own occupancy and rating conjointly with the time during which he shall have since occupied and been rated for the same and shall be entitled to be enrolled a burgess and to vote as aforesaid in respect of such successive occupancy and rating provided he shall be otherwise qualified as herein provided and it shall not be necessary in support of the title of the person so to be enrolled or to vote as aforesaid to prove that he was an inhabitant-householder within the said town or within seven miles thereof or that he was an occupant or rated within the

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the same before the title to such house or other property as aforesaid shall have devolved upon him and the rating in the name of the person previously occupying shall be considered a sufficient rating of the person so entitled until a new rate shall be made subsequent to such devolution of title as aforesaid. Provided always that the other person in respect of whose previous occupancy and rating he shall be so partially entitled shall have been enrolled a burgess or to vote as aforesaid at the time of such devolution of title as aforesaid.

15. And be it enacted That on or before the last day of August in every year a person or persons to be called Collector or Collectors shall be appointed by the Mayor of the said town for each ward of the same and such Collector or Collectors shall on the fifth day of September in every year make out an alphabetical list to be called the Burgess List according to the form in the Schedule to this Act annexed marked C of all persons who shall be entitled to be enrolled in the Burgess Roll for that year according to the provisions of this Act in respect of property within such ward and in the event of any person being rated in any ward for property not sufficient of itself to constitute a qualification under this Act but which with the addition of property possessed by the same person and rated in a different ward may be sufficient to constitute a qualification every such person shall be placed on the Burgess List of the ward in which the larger portion of such property shall be situated and the Collector or Collectors so appointed shall sign such Burgess Lists and shall deliver the same to the Town Clerk of the said town on the said fifth day of September in every year and each Collector shall keep a true copy of the list so delivered by him to be perused by any person without payment of any fee at all reasonable hours between the fifth and fifteenth day of September in every year and the Town Clerk shall forthwith cause copies to be printed of all such lists delivered to him and shall deliver a copy of any such list to any person requiring the same on payment of a reasonable price for each copy and shall cause a copy of the Burgess List of each ward to be fixed on some public and conspicuous building within the ward on every day during the week next preceding the fifteenth day of September in each year.

Collectors to make out lists of all persons entitled to be enrolled burgesses. Schedule C.

16. And be it enacted That any person whose name shall have been omitted in any such Burgess List and who shall claim to have his name inserted therein shall on or before the fifteenth day of September in every year give notice thereof to the Town Clerk in writing according to the form in the Schedule to this Act annexed marked D or to the like effect and every person whose name shall have been inserted in any Burgess List may object to any other person as not being entitled to have his name retained in the Burgess List and any person so objecting shall on or before the fifteenth day of September in every year give to the Town Clerk and also to the person objected to or leave at the premises for which he shall appear to be rated in the Burgess List notice thereof in writing according to the form in the Schedule to this Act annexed marked E or to the like effect and the Town Clerk shall include the names of all persons so claiming to be inserted on the Burgess List in a list according to the form in the Schedule to this Act annexed marked F and shall include the names of all persons so objected to as not entitled to be retained on the Burgess List in a list according to the form in the Schedule to this Act annexed marked G and shall cause copies of such several lists to be fixed on the outer doors or walls of the said public or conspicuous buildings respectively within each ward during the eight days next preceding the first day of October in every year and the Town Clerk shall likewise keep a list of the names of all persons so claiming as aforesaid and also a list of the names of all persons so objected

Persons omitted in Collectors' lists to give notice to Town Clerk.

Schedule D.

Schedule E.

Schedule F.

Schedule G.

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objected to aforesaid to be perused by any person without payment of any fee at all reasonable hours during the eight days (Sunday excepted) next preceding the first day of October in every year and shall deliver a copy of each of such lists to any person requiring the same on payment of a sum not exceeding one shilling for each copy.

Alderman and Assessors to revise lists and retain insert and expunge names.

17. And be it enacted That an Alderman and two Assessors to be chosen as hereinafter mentioned in every year by the burgesses of every ward shall hold an open Court within each of such wards respectively for the purpose of revising the said Burgess Lists such revisions to take place at such time as the said Alderman and Assessors shall appoint between the first day of October inclusive and the fifteenth day of October inclusive in each and every year they having first given three clear days' notice of the holding of such Court such notice to be placed on the outer doors respectively of some public and conspicuous building within the said ward and the Town Clerk or person acting as such shall at the opening of the Court produce the said lists and a copy of the lists of the persons so claiming and of the persons so objected to made out in manner aforesaid and the Collectors of Rates under this Act shall attend the Court and shall answer upon oath all such questions as the Court may put to them or any of them touching any matter necessary for revising the Burgess Lists and the said Alderman shall insert in such lists the name of every person who shall be proved to the satisfaction of the Court to be entitled to be inserted therein according to the provisions of this Act and shall retain on the said lists the names of all persons to whom no objection shall have been duly made and shall also retain on the said lists the name of every person who shall have been objected to by any person unless the party so objecting shall appear by himself or by some one on his behalf in support of such objection and when the name of any person inserted in either of the said lists shall have been duly objected to and the person objecting shall appear by himself or by some one on his behalf in support of such objection the Court shall require proof of the qualification of the person so objected to and in case the qualification of such person shall not be proved to the satisfaction of the Court the said Alderman shall expunge the name of every such person from the said lists and shall also expunge therefrom the name of every person who shall be proved to the Court to be dead or to have become disqualified or incapacitated and shall correct any mistake or supply any omission which shall be proved to the Court to have been made in any of the said lists in respect of the name or place of abode of any person who shall be included therein or in respect of the local description of his property Provided always that no person's name shall be inserted by the said Alderman in any such lists or shall be expunged therefrom except in the case of death unless notice shall have been given as is hereinbefore required in each of the said cases.

Power to the Alderman of adjourning any Court.

18. And be it enacted That every Alderman holding any Court under this Act for the revision of the said lists shall have power to adjourn the same from time to time provided that no such adjourned Court shall be held beyond the said fifteenth day of October and the said Alderman shall have power to require any person having the custody of any book containing any rate made for the said town during that or the preceding year to produce the said book and allow the same to be inspected at any Court to be held for the revision of the Burgess Lists and the said Alderman shall have power to administer an oath or oaths as well to the Town Clerk and to the Collectors as to all persons claiming to be inserted in or making objection to the omission or insertion of any name in any of the said lists and to all persons objected to in any such lists and to all persons claiming to have any mistake in any of such lists corrected and to all witnesses who may

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may be tendered or examined on either side by which oath the person under examination shall be required to state the truth the whole truth and nothing but the truth relating to the matter in hand and the said Alderman and Assessors by the decision of the three or any two of them shall upon the hearing in open Court determine upon the validity of such claims and objections and the said Alderman shall in open Court write his initials against the names struck out or inserted and against any part of the said lists in which any mistakes shall have been corrected and shall sign his name to every page of the several lists so settled.

19. And be it enacted That every person authorized by law to make an affirmation instead of taking an oath shall make such affirmation in every case in which by this Act an oath is required to be taken and if any person taking any oath required by this Act or making any affirmation instead of taking such oath shall wilfully swear or affirm falsely such person shall be deemed guilty of perjury and shall be punished accordingly.

Affirmation may be substituted for oath.

20. And be it enacted That the Burgess Lists of each ward so revised and signed as last aforesaid shall be delivered by the said Alderman to the Town Clerk who shall keep the same and shall cause each of the said Burgess Lists to be fairly and truly copied into an alphabetical list in books to be by him provided for that purpose the Burgess List of each ward being kept separate with every name therein numbered beginning the numbers from the first name and continuing them in a regular series to the last name and shall cause such books to be completed on or before the twenty-second day of October in every year and shall deliver such books together with the lists at the expiration of his office to the person succeeding him in such office and every such book in which the said Burgess Lists shall have been copied shall be the Burgess Roll of the burgesses of the several wards of the town entitled to vote after the passing of this Act in the choice of the Councillors Assessors and Auditors of the said town as hereinafter mentioned at any election which may take place between the first day of November inclusive in the year wherein such Burgess List shall have been made and the first day of November in the succeeding year.

Revised lists to be kept by the Town Clerk.

21. And be it enacted That the Town Clerk shall cause copies of the Burgess Roll in every year to be written or printed and shall deliver one copy of each list to the Alderman of each ward and further copies to all persons applying for the same on payment of a reasonable price for each copy and the amount received for such copies and for copies of the Collector's Lists and of the lists of claims and objections as aforesaid shall be paid over to the Treasurer of the said town and shall be applied by him in aid of the Town Fund hereinafter mentioned.

Copies of the Burgess Roll to be written or printed for distribution.

22. And be it enacted That the Council hereinafter mentioned shall take an account of the reasonable expenses incurred by the Collectors and Town Clerk in carrying into effect the several provisions of this Act so far as relates to the said lists and the revision and publication thereof and shall order their Treasurer to pay the same out of the said Town Fund.

Expenses of Collectors and Town Clerk to be defrayed.

23. And be it enacted That in every year at the times and in the manner hereinafter mentioned there shall be elected the number hereinafter mentioned of fit and proper persons who shall be called the Councillors of the said town and the number hereinafter mentioned of fit and proper persons who shall be called the Aldermen of the said town and one fit and proper person who shall be called the Mayor of the said town and such Mayor Aldermen and Councillors for the time being shall be and be called the Council of the said town.

Councillors Aldermen and Mayor to be elected as hereinafter mentioned.

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Every burgess enrolled on the Burgess Roll shall be entitled to vote and none other.

24. And be it enacted That every burgess who shall be enrolled on the Burgess Roll for the time being shall be entitled to vote in the election of Councillors Auditors and Assessors hereinafter mentioned and no person who shall not be enrolled in such Burgess Roll for the time being shall have any voice or be entitled to vote in any such election.

Councillors how to be elected.

25. And be it enacted That upon the first day of November next after the passing of this Act the burgesses so enrolled in every ward shall openly assemble and elect three persons qualified as hereinafter mentioned to be the Councillors of the said town.

One Councillor in each ward to go out of office annually.

26. And be it enacted That on the first day of November in every succeeding year one Councillor in each ward shall go out of office by rotation and that an election be held in each ward to supply his place Provided however that the Councillor so going out of office may be re-elected if still duly qualified.

Way in which Councillors are to go out of office by rotation.

27. And be it enacted That the Councillors first elected under the provisions of this Act in each ward shall go out of office in the following order that is to say the Councillor who was elected by the smallest number of votes shall be the first to go out of office the Councillor who was elected by the next smallest number of votes shall be the next to go out of office and so on and that afterwards the Councillor to go out of office shall always be the one who has been longest in office without re-election Provided however that no Councillor who may be elected to be an Alderman or Mayor shall be compelled to go out of office as Councillor earlier than is hereinafter provided.

Election to be held before Alderman and Assessors.

28. And be it enacted That the election of Councillors within each ward according to the provisions of this Act shall for the first time be held before the Alderman and Assessors for the time being of each ward except as herein is excepted and the voting at every such election shall commence at nine o'clock in the forenoon and shall finally close at four o'clock in the afternoon of the same day and shall be conducted in manner following that is to say every burgess entitled to vote in the election of Councillors may vote for any number of persons not exceeding the number of Councillors then to be chosen by delivering to the said Alderman and Assessors or other presiding officer as hereinafter mentioned a voting paper containing the Christian names and surnames of the persons for whom he votes with their respective places of abode and descriptions such paper being previously signed with the name of the burgess voting and with the name of the street lane or other place in which the property for which he appears to be rated on the Burgess Roll is situated.

Mode of voting.

Booths to be erected or rooms hired for taking a poll if expedient.

29. And be it enacted That at every election in any ward the Mayor if it shall appear to him expedient for taking the poll at such election may cause booths to be erected or rooms to be hired and used as such booths in one place or in several places within each ward as occasion may require and the same shall be so divided and allotted into compartments as to the Mayor shall seem most convenient and the Mayor shall appoint a clerk to take the poll at each compartment and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the wards or parts of wards for which such booth is respectively allotted and no person shall be admitted to vote at any such election except at the booth allotted for the part wherein the house warehouse counting-house or shop occupied by him as described in the Burgess Roll may be but in case no booth shall happen to be provided for any particular part as aforesaid the votes of the persons voting in respect of property situate in any part so omitted may be taken at any of the said booths and public notice of the situation division and allotments of the different booths shall be given two days before the commencement of the poll by the Mayor and

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and in case the booths shall be situated in different places the Mayor may appoint as many persons to act as deputies for the Alderman and Assessors as may be necessary Provided always that no election shall be holden under this Act in any church chapel or other place of public worship.

30. And be it enacted That no inquiry shall be permitted at any election as to the right of any person to vote as a burgess except only as follows that is to say that the Alderman or other presiding officer shall if required by two burgesses entitled to vote in the same ward put to any voter at the time of his delivering in his voting paper and not afterwards the following questions or any of them and no other—

No inquiry of a voter except as to his identity and whether he has voted before on the same election.

FIRST—Are you the person whose name is signed as A B to the voting paper now delivered in by you ?

Forms of questions to be put as to these points.

SECOND—Are you the person whose name appears as A B in the Burgess Roll now in force for this ward being registered therein as rated for property described to be situated in *(Here specify the street described in the Burgess Roll)* ?

THIRD—Have you already voted at the present election ?

And no person required to answer any of the said questions shall be permitted or qualified to vote until he shall have answered the same and if any person shall wilfully make a false answer to any of the questions aforesaid he shall be deemed guilty of a misdemeanor and may be indicted and punished accordingly.

31. And be it enacted That the Alderman and Assessors shall examine the voting papers so delivered as aforesaid for the purpose of ascertaining which of the several persons voted for are elected and so many of such persons being equal to the number of persons then to be chosen as shall have the greatest number of votes shall be deemed to be elected and in case of an equality in the number of votes for any two or more persons the Alderman and Assessors or any two of them shall name from amongst those persons for whom the number of votes shall be equal so many as shall be necessary to complete the requisite number of persons to be chosen and the Alderman shall cause the voting papers to be kept in the office of the Town Clerk during six calendar months at the least after every such election and the Town Clerk shall permit any burgess to inspect the voting papers of any year on payment of one shilling for every search and the Alderman shall publish a list of the names of the persons so elected not later than two of the clock in the afternoon of the day next but but one following the day of such election.

Result of election how to be declared.

32. And be it enacted That the Alderman and Assessors in examining the voting papers as aforesaid shall reject none from mere want of form Provided that the name or designation of the party signing the paper and the names of the parties contained in it be intelligibly expressed and in a manner to be commonly understood.

Voting papers not to be rejected for mere want of form.

33. And be it enacted That on the first day of March next following after the first election of Councillors under this Act and on the first day of March in every year thereafter the burgesses of each ward shall elect from persons qualified to be Councillors two burgesses who shall be and be called the Assessors of such ward and every such Assessor shall continue in office one year and the election of such Assessors respectively shall be in the form and manner hereinbefore provided for the election of Councillors Provided that no burgess shall be eligible to be or be elected or qualified to act as Assessor as aforesaid who shall be of the Council or shall be the Town Clerk or the Treasurer of the Corporation.

Election of Assessors.

34. And be it enacted That on the said first day of March in every year after the passing of this Act the burgesses of the said

Election of Auditors.

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town shall elect two fit and proper persons qualified to be but not actually being of the Council to be the Auditors of the said town and the Auditors so elected shall hold office for one year but be capable of being re-elected if still duly qualified.

Vacancies how supplied.

35. And be it enacted That if any extraordinary vacancy shall at any time occur in the office of Auditor by reason of death or otherwise the Mayor of the said town shall appoint a day for the election of a person to supply the place of the Auditor so dying or vacating office within twenty-one days after the occurrence of such vacancy and shall cause an election of an Auditor to be held accordingly.

Mode of election.

36. And be it enacted That in the election of Auditors the burgesses entitled to vote in each ward shall proceed as hereinbefore directed for the election of Councillors but the person or persons elected shall be he or they for whom there shall appear to be a majority of votes in the whole of the wards collectively and that the Mayor shall declare the result of every such election within two days after the holding thereof.

Four Aldermen to be elected.

37. And be it enacted That on the ninth day of November next following after the first election of Councillors under the provisions of this Act the Councillors so elected shall assemble at noon in some convenient building to be fixed by the Superintendent of the Port Phillip District or the Chief Officer of Government residing within such district the doors of the same being closed against all other persons and that then and there they shall elect out of their own body or from persons qualified to be Councillors four fit and proper persons to be Aldermen of the said town and of the four persons so elected two shall continue in office for six years and the other two for three years only.

Mode in which they are to be elected.

38. And be it enacted That before proceeding to such election the Councillors present shall by the majority of their voices appoint one of their own body to preside at the said election and two others of their own body to be Scrutineers at the same and the person so chosen to preside shall first deposit in a box or urn to be provided for the purpose a list or voting paper signed by himself containing the names of the persons not more than four in number for whom he may vote and shall then receive from each Councillor present a similar list signed by the Councillor presenting it and deposit the same in the said box or urn and at the expiration of one hour from the time when the Presiding Officer deposited his paper or sooner if the whole of the Councillors for the town shall sooner have delivered their papers the Presiding Officer and the Scrutineers shall examine the said lists or voting papers and declare the names of the four persons who shall have the majority of votes to be duly elected to be Aldermen which persons shall be the Aldermen of the town and in the event of their being any doubt whether any one or more person or persons be elected by reason of an equality of votes the said Presiding Officer and Scrutineers or any two of them shall decide which of the said persons shall be elected Provided however that if in any such voting paper any Councillor shall include his own name the same shall be struck out by the Scrutineers and if any Councillor shall include in his list more than four names his list or voting paper shall be set aside altogether.

Which of the four so elected are to continue longest in office.

39. And be it enacted That immediately after the election of Aldermen as aforesaid the Councillors present shall declare by the majority of their voices or by ballot in the method aforesaid if the same be called for by any five Councillors which of the four Aldermen so elected shall be the three to remain longest in office as hereinbefore provided.

Aldermen to be appointed to wards.

40. And be it enacted That of the four Aldermen thus elected each shall be Alderman of the ward in which he resides provided no other

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other of the four reside in the same ward but if two or more be resident in the same ward the Alderman in whose favour there is a majority of votes shall be the Alderman of the ward wherein he resides and in the event of an equality of votes in favour of two or more Aldermen resident in the same ward then the majority of the Councillors present at the election shall decide which of the persons so resident in the ward shall be Alderman of the same and shall in either case appoint the other Alderman or Aldermen to another or other wards.

41. And be it enacted That on the same day and at the same Election of a Mayor. place the Aldermen and Councillors shall subsequently proceed to the election out of their own body of a Mayor and that the election shall be conducted in the same manner as hereinbefore prescribed for the election of Aldermen the same person still presiding Provided only that each person entitled to vote shall insert on his voting paper the name of one person only and that that name shall not be his own.

42. And be it enacted That on the ninth day of November in Aldermen to go out by rotation. every succeeding third year one-half of the whole number of Aldermen of the town shall go out of office the Aldermen who go out being always those (except as hereinbefore provided) who have been Aldermen for the longest time without re-election and the course of proceeding at every such subsequent election of Aldermen shall be the same as that which is hereinbefore described for the first election except in so far as it may be varied or altered by any bye-law of the Council and except also that at every subsequent election of Aldermen the Mayor if present shall preside Provided however that any Alderman going out of office if still duly qualified may be re-elected.

43. And be it enacted That in order to supply the places of the Election of Aldermen to supply the place of those who go out by rotation. Aldermen who go out by rotation the whole Council shall on the said ninth day of November in each third year elect out of their own body or from persons qualified to be Councillors a number of persons to be Aldermen equal to the number of those who go out by rotation Provided however that no Alderman going out of office shall be entitled to vote in the election of a new Alderman.

44. And be it enacted That no Councillor elected to be an Aldermen to remain Councillors. Alderman shall cease to be a Councillor during the term of his service as an Alderman nor until at the earliest the first day of November next following the day on which he shall have ceased to be an Alderman.

45. And be it enacted That whenever any extraordinary Extraordinary vacancies how to be filled up. vacancy shall take place in the office of Alderman the Council shall within ten days next after such vacancy shall occur on a day to be fixed by the Mayor for such purpose elect some other fit and proper person to fill such vacancy either from the Councillors or from the persons qualified to be Councillors and every person so elected an Alderman to fill an extraordinary vacancy shall hold such office until the time when the person in the room of whom he was chosen would have regularly gone out of office and he shall then go out of office but may be re-elected if then qualified as herein provided.

46. And be it enacted That the Mayor elected in the manner Council to elect Mayor out of the Aldermen or Councillors annually. hereinbefore provided shall continue in office for one whole year and that on the ninth day of November in every succeeding year the Council shall elect out of the Aldermen or Councillors a fit and proper person to be the Mayor of the said town who shall continue in office for one whole year or until a successor shall be duly elected and enter upon office as hereinafter provided and in case a vacancy shall be occasioned in the office of Mayor during any year by reason of any person who shall have been elected to such office not accepting the same or by reason of his dying or ceasing to hold the said office the Council of the town shall within ten days next after such vacancy elect

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elect out of the Aldermen or Councillors of the said town another fit and proper person to be Mayor thereof for the remainder of the then current year Provided however that nothing herein contained shall prevent the person filling the office of Mayor from being re-elected with his own consent.

Subsequent elections of Mayor or Aldermen to be conducted in same manner as first elections.

47. And be it enacted That at all elections either of a Mayor or of Aldermen to be held subsequent to the first elections under this Act the course of proceeding shall be the same as is herein directed to be followed at the first elections except in so far as such course of proceeding may be modified or altered by any bye-law of the Council passed as hereinafter directed.

Mayor to continue member of Council.

48. And be it enacted That the Mayor shall during the continuance of his office continue to be a member of the Council any thing herein contained as to Councillors or Aldermen going out of office to the contrary notwithstanding and that if he be an elected Councillor he shall not as such go out by rotation earlier than the first day of November next following after the day in which he may cease to be Mayor Provided also that if he be an Alderman he may continue during his Mayoralty to preside at elections within his own ward.

Qualification for Councillor Alderman Auditor or Assessor.

49. And be it enacted That no person being in holy orders or being a regular minister of any religious congregation shall be qualified to be elected or to be a Councillor Alderman Auditor or Assessor under this Act nor shall any person be qualified to be elected or to be a Councillor or an Alderman of the said town who shall not be entitled to be on the Burgess List nor unless he shall be seized or possessed of real or personal estate or both to the amount of one thousand pounds either in his own right or in that of his wife or be rated upon the annual value of not less than fifty pounds nor during such time as he shall hold office or place of profit other than that of Mayor in the gift or disposal of the Council of the said town nor during such time as he shall have directly or indirectly by himself or his partner any share or interest in any contract or employment with by or on behalf of such Council Provided that no person shall be disqualified from being a Councillor Alderman Auditor or Assessor as aforesaid by reason of his being a proprietor or shareholder of any company which shall contract with the Council of the said town for lighting or for supplying with water or insuring against fire any part of the said town Provided also that no person who may under the provisions of this Act have been appointed or elected Assessor for any ward shall whilst he continue to be such be elected a Councillor for the same or any other ward or Auditor of the Town neither shall any Judge or Chairman or any officer or clerk of any Court of Justice nor any ministerial law officer of the Crown be capable of being elected an Alderman or Councillor under this Act.

As to voting of burgesses at elections.

50. And be it enacted That every burgess shall be entitled to vote in the election of the Councillors Auditors and Assessors to be chosen within that ward in which the property for which he shall be enrolled on the Burgess Roll for the time being shall appear to be situate and if any burgess shall be rated to the full amount required by this Act in respect of distinct premises in two or more wards he shall be entitled to vote in such one of the said wards as he shall select but not more than one and if any burgess not rated in any one ward to the full amount required by this Act shall nevertheless be rated in two or more wards in such manner that his whole rating shall collectively amount to the sum required such burgess shall be entitled to be enrolled for and to vote in the ward in which he may be rated to the highest amount or in case of his being rated to an equal amount in any two or more wards he shall be entitled to vote in the ward which he may select.

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51. And be it enacted That if at any election of Councillors any person shall be elected a Councillor or Assessor in more than one of the wards of the said town he shall within three days after notice thereof choose or in his default the Mayor shall declare for which one of the said wards such Councillor or Assessor shall serve and such person shall thereupon be held to be elected in that ward only which he shall so choose or which the Mayor shall so declare.

Manner of proceeding if any person is elected a Councillor or Assessor in more than one ward.

52. And be it enacted That if any extraordinary vacancy shall be occasioned in the office of Councillor or Assessor of any ward the burgesses entitled to vote shall upon a day to be fixed by the Alderman of such ward such day not to be later than fourteen days from the occurrence of such vacancy elect from the persons qualified to be Councillors another burgess to supply such vacancy and such election shall be held and the voting and other proceedings in case of a contest shall be conducted in the same manner and subject to the same provisions as are hereinbefore enacted with respect to the election of Councillors as aforesaid and every person so elected shall hold such office until the time at which the person in room of whom he was chosen would regularly have gone out of office and he shall then go out of office but shall be capable of immediate re-election if then qualified as herein provided Provided always that after the full number of the 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 such extraordinary vacancy unless the number of the whole Council Mayor and Aldermen included remaining after such vacancy shall be less than twelve in which case the number of Councillors for each ward shall be completed.

Occasional vacancies of Councillor or Assessor how to be filled up.

53. And be it enacted That no person elected a Mayor or Alderman or Councillor or Auditor or Assessor under the provisions of this Act shall be capable of acting as such except in administering the declaration hereinafter contained until he shall have taken the oath of allegiance to Her Majesty Her Heirs and Successors and have made and subscribed the said declaration before any two or more such Aldermen or Councillors (who are hereby respectively authorized and required to administer the same oath and declaration to each other) such declaration being in the words or to the effect following that is to say—

Mayor Aldermen Councillors Assessors and Auditors not to act until they make declaration of acceptance of office.

“ I A. B. having been elected Mayor (or Alderman or Councillor or Auditor or Assessor) for the Town of Melbourne
 “ do hereby declare that I take the said office upon myself
 “ and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability (*and in case of the party being qualified by estate say*) and I do hereby
 “ declare that I am seized or possessed of real or personal estate (*or both as the case may be*) in my own right or in that of my wife to the amount of one thousand pounds (*as the case may require*) over and above what will satisfy my debts and that I have not fraudulently or collusively obtained the same in order to qualify me for the office to which I have been elected ”

And that every person who shall have made and subscribed the foregoing declaration in respect of estate shall once in every period of three years if required in writing so to do by any two members of the Council make and subscribe a declaration that he is qualified to the same amount in real or personal estate or both as the case may then be as the amount mentioned in the declaration originally made and subscribed by him.

54. And be it enacted That every person duly qualified who shall be duly elected to the office of Mayor Alderman Councillor Auditor or Assessor

Every burgess elected to the office of Alderman Councillor

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Assessor or Auditor
and every Councillor
elected to the office
of Mayor shall
accept the office or
pay a fine to the
Town Fund.

Assessor under the provisions of this Act shall accept such office to which he shall have been elected or shall in lieu thereof pay to the corporate body of the said town a fine of not less than twenty-five nor more than fifty pounds in the case of Alderman or Councillor or Auditor or Assessor and a fine of not less than fifty nor more than one hundred pounds in the case of Mayor as the Council of the said town by a resolution to be made in every such case shall determine and such fine if not duly paid shall be levied under the warrant of any Justice having jurisdiction within the said town (who is hereby required on the application of the Council to issue the same) by distress and sale of the goods and chattels of the person so refusing to accept office together with the reasonable costs and expenses of such distress and sale and every such person so elected shall accept such office by taking the oath of allegiance and making and subscribing the declaration hereinbefore mentioned within five days after notice of his election to be served at his usual place of abode otherwise such person shall be liable to pay the said fine as for his non-acceptance of such office and such office shall thereupon be deemed to be vacant and shall be filled up by a fresh election to be made in the manner hereinbefore mentioned. Provided always that no person disabled by lunacy or imbecility of mind or by deafness blindness or other permanent infirmity of body shall be liable to such fine as aforesaid. Provided also that every person so elected to any such office who shall be above the age of sixty-five years or who shall have already served such office (or paid the fine for not accepting such office) within the five years next before the day on which he shall be so re-elected shall be exempted from accepting the same office if he shall claim such exemption within five days after notice of his election. Provided further that nothing in this Act contained shall extend to compel the acceptance of any office or duty whatever by any person holding any civil employment under the Government of this Colony or being a military naval marine commissariat or ordnance officer on full pay either in Her Majesty's service or in that of the Honorable the East India Company.

Provision for resign-
ing office.

55. And be it enacted That every person elected into any corporate office may at any time resign such office on payment of the fine which he would have been liable to pay for non-acceptance of the same office or if he shall become entitled to claim exemption from payment of any such fine or from accepting or serving such office under any provision herein contained.

Penalties on Mayor
Aldermen Collectors
Assessors and Town
Clerk for neglecting
to comply with the
provisions of this
Act.

56. And be it enacted That if the Mayor or any Alderman or Assessor of the said town who shall be in office at the time herein appointed in each year for the revision by them of the Burgess List under this Act or for any election of Councillors Assessors or Auditors which he is required to conduct or declare shall neglect or refuse to revise such Burgess List or to conduct or declare such election as aforesaid every such Mayor Alderman or Assessor shall for every such offence forfeit and pay the sum of one hundred pounds and if any Collector appointed under the provisions of this Act shall neglect or refuse to make out sign and deliver such list as aforesaid or if the Town Clerk shall neglect or refuse to receive print and publish such lists as aforesaid or if any such Collector or Town Clerk shall refuse to allow any such list to be perused by any person having right thereunto every such Collector and Town Clerk respectively for every such offence shall forfeit and pay the sum of fifty pounds and the said penalties hereby in such case imposed shall be recovered with full costs of suit by any person who shall sue for the same within three calendar months after the commission of such offence by action of debt or on the case in the Supreme Court of the District of Port Phillip and the money so recovered shall after payment of the costs and

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and expenses attending the recovery thereof be paid and apportioned as follows that is to say one moiety thereof to the person so suing and the other moiety thereof to the Treasurer to be appointed by virtue of this Act to be by him applied in aid of the Town Fund hereinafter mentioned.

57. Provided always and be it enacted That if any person holding the office of Mayor Alderman Councillor Auditor or Assessor under the provisions of this Act shall be declared bankrupt or shall apply to take the benefit of any Act for the relief of insolvent debtors or shall compound by deed with his creditors or being Mayor shall be absent for more than two calendar months or being an Alderman Councillor Auditor or Assessor shall be absent from the said town for more than six calendar months at one and the same time (unless in case of illness) then and in every such case such person shall immediately become disqualified and shall cease to hold such office respectively and in the case of such absence shall be liable to the same fine to be recovered in the same manner as if he had refused to accept the said office and the Council thereupon shall forthwith declare the said office to be vacant and shall specify the same by a notice in writing under the hands of three or more of them countersigned by the Town Clerk such notice to be affixed on some public place within the town and the said office shall thereupon become vacant but every person so becoming disqualified and ceasing to hold such office on account of his being declared a bankrupt or of his applying to take the benefit of any Act for the relief of insolvent debtors or having compounded with his creditors as aforesaid shall on obtaining his certificate or on payment of his debts in full be capable (if otherwise qualified) of being re-elected to such office and every person becoming disqualified to hold such office on account of absence as aforesaid shall on his return to the said town be capable of being re-elected to such office provided he shall then be otherwise qualified.

Any Mayor Alderman Councillor Auditor or Assessor if he shall be declared bankrupt or insolvent or absent himself from the town shall lose his office.

58. And be it enacted That if any person shall act as Mayor or Alderman or Councillor or Auditor or Assessor under the provisions of this Act without having made the declaration hereinbefore required in that behalf or without being duly qualified at the time of making such declaration or after he shall cease to be qualified according to the provisions of this Act or after he shall have become disqualified to hold any such office he shall for every such offence forfeit the sum of fifty pounds such sum to be recovered together with full costs of suit by any person who shall sue for the same within three calendar months after the commission of such offence by action of debt or on the case in the Supreme Court of the District of Port Phillip and every person so sued by reason of not being so qualified in respect of estate or property shall prove that he was at the time of so acting qualified as aforesaid or otherwise shall pay the said penalty without any further evidence being given than that he acted as the Mayor or as Alderman Councillor Auditor or Assessor under this Act as the case may be Provided always that it shall be lawful for any defendant by Judge's order to be obtained within fourteen days after he shall have been served with process in any such action to require the plaintiff to give security for costs and in such case all further proceedings in the said cause shall be stayed until the plaintiff shall give security to the satisfaction of the proper officer of the Court for the costs of such action in case a verdict shall pass for the defendant or the plaintiff shall become nonsuited or discontinue such action or if upon demurrer or otherwise judgment shall be given against the plaintiff and the defendant shall in either of such cases recover his full costs as between attorney and client Provided also that no such action shall be brought except by a burgess of the said town nor unless the burgess bringing the

Penalty on persons not qualified &c. acting as Mayor Alderman Councillor Auditor or Assessor.

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the same shall within fourteen days after the commission of the offence have served a notice in writing personally upon the party committing such offence of his intention to bring such action and in case the plaintiff in any such action shall obtain a verdict the money so to be recovered shall after payment of the costs and expenses attending the recovery thereof be paid and apportioned as follows that is to say one moiety thereof to the person so suing and the other moiety thereof to the Treasurer to be appointed by virtue of this Act to be by him applied in aid of the Town Fund Provided further that all acts and proceedings of any person in possession of the office of Mayor Alderman Councillor Auditor or Assessor and acting as such shall notwithstanding such disqualification or want of qualification be as valid and effectual as if such person had been duly qualified.

Persons convicted of bribery liable to a penalty and disqualified.

59. And be it enacted That if any person who shall have or claim to have any right to vote in any election of Mayor or Alderman or Councillor or Auditor or Assessor under this Act shall after the passing of this Act ask or take any money or other reward by way of gift loan or other device or agree or contract for any money gift office employment or other reward whatsoever to give or to forbear to give his vote in any such election or if any person by himself or by any person employed by him shall by any gift or reward or by any promise agreement or security for any gift or reward corrupt or procure or offer to corrupt or procure any person to give or to forbear to give his vote in any such election such person so offending in any of the cases aforesaid shall for every such offence forfeit the sum of fifty pounds of lawful money of Great Britain to be recovered with full costs of suit by any one who shall sue for the same by action of debt bill plaint or information in the Supreme Court of the District of Port Phillip and any person offending in any of the cases aforesaid being lawfully convicted thereof shall for ever thereafter be disabled to vote in any election to be held under the provisions of this Act or in any municipal election whatsoever in any part of the said Colony of New South Wales and its Dependencies and also shall for ever be as incapable of holding exercising or enjoying any office or franchise which he then shall be or at any time thereafter may become entitled to as a burgess as if such person were naturally dead.

Persons exempt from penalties in certain cases.

60. And be it enacted That if any person offending in any of the cases last aforesaid shall within the space of twelve calendar months next after such election as aforesaid discover any other person offending in any of the cases aforesaid so that such other person be thereon convicted such person so discovering and not having been before that time convicted of any such offence shall be indemnified and discharged from all penalties and disabilities which he then shall have incurred by any such offence.

Prosecution must commence within two years.

61. Provided always and be it enacted That no person shall be made liable to any incapacity disability forfeiture or penalty by this Act imposed in any of the cases aforesaid unless prosecution be commenced within two years after such incapacity disability forfeiture or penalty shall be incurred any thing herein contained to the contrary notwithstanding.

The Mayor to be a Justice of the Peace for the town.

62. And be it enacted That the Mayor for the time being duly elected under the provisions of this Act shall be *ex officio* a Justice of the Peace of and for the said town and after having been duly sworn in as a Justice it shall and may be lawful for him to act as such within the limits of the same during his continuance in office and during the year immediately succeeding that in which he shall have held office unless disqualified as aforesaid and that such Mayor shall during the period of his Mayoralty have precedence in all municipal proceedings and in all magisterial Courts within the said town and next after the

Precedence of Mayor.

Members

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Members of the Legislative Council on all other occasions and at all other places within the said town.

63. And be it enacted That from and after the term of two months after the first election of a Mayor which shall take place under the provisions of this Act no Justice of the Peace for the Territory of New South Wales shall have jurisdiction within the limits of the said town unless specially empowered in manner hereinafter provided.

Justices of Peace for the Territory not to have jurisdiction in Melbourne.

64. And be it 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.

Governor may appoint Justices of the Peace for town as well as for the adjoining counties or for the territory.

65. And be it enacted That the Council of the said town shall appoint a fit and proper person not being a member of such Council to be the Town Clerk of the same who shall hold his office during pleasure and such Town Clerk may be an Attorney of the Supreme Court of New South Wales or of the District of Port Phillip or of any of Her Majesty's superior Courts in Great Britain or Ireland and the said Council shall in every year appoint another fit and proper person not being a member of such Council to be the Treasurer of the said town or Corporation and shall also appoint a Surveyor of the said town and such other officers as they shall think necessary for enabling them to carry into execution the various powers and duties vested in them by virtue of this Act and may from time to time discontinue the appointment of such officers as shall appear to them not necessary to be re-appointed and shall take such security for the due execution of his office by any such Town Clerk Treasurer or other officer as the said Council shall think proper and in case of a vacancy in any such office as aforesaid by death resignation removal or otherwise the said Council may appoint another fit and proper person in the place of the person so making such vacancy Provided that the Town Clerk and Treasurer shall not be one and the same person Provided also that no macebearers or other officers merely for parade or show shall be appointed.

Power to appoint Town Clerk Treasurer and other officers.

To take security for due execution of office.

66. And be it enacted That it shall and may be lawful for the said Council to order the payment to the Mayor Town Clerk and Treasurer and to every such other officer to be employed as aforesaid of such allowance or salary as to the said Council shall seem reasonable and proper Provided that the salary of the Mayor if any be fixed within ten days after his acceptance of office and that such salary be in lieu of all fees perquisites and other emoluments.

Power to make allowance to Mayor and pay salaries to officers.

67. And be it enacted That after the appointment of the Treasurer as aforesaid the rents and profits of all lands houses market dues tolls and other hereditaments which shall belong to and be vested in the Corporation of the said town and the interest dividends and annual proceeds of all monies dues chattels and valuable securities belonging or payable to the Corporation or levied under this Act shall be paid to the said Treasurer and all the monies which he shall so receive shall be carried by him to an account to be called the "Town Fund" and such fund shall be applied towards the payment of the allowance if any be made to the Mayor and of the respective salaries of the Town Clerk Treasurer Surveyor and Collectors and of any other officer whom the Council shall appoint and also towards the payment of the expenses incurred from time to time in preparing and printing Burgess Lists and notices and in other matters attending such elections as are herein mentioned and towards the expense of purchasing or erecting and maintaining the corporate and other buildings

All corporate property and all fines received to be paid to the Treasurer and carried to account in a fund to be called the "Town Fund."

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In aid of the Town
Fund rates may be
levied.

In case of non-pay-
ment of rate to be
levied by distress.

Treasurer to pay
no money but by
order of the Council.

Mayor and Justices
to appoint annually
a certain number of
persons to act as
special constables.

buildings which may belong to the said Corporation and towards the payment of all other expenses not herein otherwise provided for which shall be necessarily incurred in carrying into effect the provisions of this Act and the said Council is hereby authorized and required from time to time to estimate as correctly as may be what amount in addition to such fund will be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of this Act and in order to raise the amount so estimated the said Council is hereby authorized and required from time to time to order a Town Rate to be made within the said town and for that purpose the said Council shall have full power and authority to order and direct an assessment to be made of every building within the limits of the said town according to its full fair and average annual value clear of all out-goings and on the assessment so made the said Council is hereby authorized and required from time to time to cause such rate or rates to be levied not exceeding one shilling in the pound in any one year as to the said Council may seem proper the same to be declared by a bye-law to be made by the said Council and the said Council shall be and are hereby empowered in case of non-payment thereof to order warrants to be from time to time issued to some constable or other person to be named therein to levy the same by distress and sale of the goods and chattels of the persons occupying the property so assessed and rated and in the event of no goods and chattels of the tenant being found on the premises to satisfy such distress the landlord or his agent if the landlord be absent from the Colony shall be liable for the amount such amount to be recovered by distress and sale of the goods and chattels of such landlord if any be found on the tenant's premises or by ordinary action of debt Provided 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 this Act Provided also that no sale of such goods and chattels shall take place until after the expiration of three days after the seizure thereof and all such warrants shall be signed by the Mayor and sealed with the seal of the Corporation and all such sums levied in pursuance of such Town Rate shall be paid over to the account of the Town Fund and shall be subject to all the provisions hereinbefore contained and shall be applied to all necessary purposes under and by virtue of this Act Provided further that if any person shall think himself aggrieved by any such rate it shall be lawful for him to appeal to the Justices at the next Court of Quarter Sessions held within the said town and such Justices shall have power to hear and determine the same and to award relief in the premises as the justice of the case may require and the decision of such Justices shall be final and conclusive as regards the matter of such appeal.

68. And be it enacted That the said Treasurer shall pay no money on account of the Mayor Aldermen and Burgesses save only in all or any of the cases provided for by this Act or upon the order in writing of the Council signed by three or more members thereof and countersigned by the Town Clerk.

69. And be it enacted That the Mayor and one or more of the Justices of the Peace having jurisdiction with the said town are hereby authorized and required in the month of October in every year to nominate and appoint by precept in writing under their hands so many as they shall think fit of the inhabitants of the same (not legally exempt from serving the office of constable) to act as special constables within the same whensoever they shall be required by the warrant of any

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any of such Justices so to act and not otherwise and every such warrant shall recite that in the opinion of the Justice granting the same the ordinary police force of the town is insufficient at that time to maintain the peace of the same and every person so appointed a special constable shall take the following oath that is to say—

“ I (A. B.) do swear that I will well and truly serve our
 “ Sovereign Lady the Queen in the office of special
 “ constable for the Town of Melbourne without favour or
 “ affection malice or ill-will and that I will to the best of
 “ my power cause the peace to be kept and preserved and
 “ prevent all offences against the persons and properties of
 “ Her Majesty’s subjects and that while I continue to hold
 “ the said office I will to the best of my ability skill and
 “ knowledge discharge all the duties thereof faithfully
 “ according to law—So help me God ”

And every person so appointed a special constable shall receive out of the Town Fund for every day which he shall be called out to act as such the sum of three shillings and sixpence and no more.

70. And be it enacted That in order to raise the amount necessary to provide for the payment of such a number of constables and such other police establishments within the said town as may from time to time in the opinion of the said Council be required the said Council is hereby authorized and required once at least in every year to estimate as correctly as may be what amount will be sufficient for payment of the salaries allowances and rewards to be paid to such constables and special constables and of all other expenses attending police purposes within the said town and in order to raise the amount so estimated the said Council is hereby authorized and required half-yearly to order a Town Rate to be made and collected and for this purpose the said Council shall have all and the like powers as are hereinbefore vested in them for making and levying a Town Rate for other purposes and the said rate shall be called the Police Rate and the amount when collected shall be paid to the Treasurer of the Corporation who shall keep a separate account thereof under the name of “ Police Fund ” and from time to time pay out of the said Police Fund for the support of the police or for police purposes such sums as he may be required or directed to pay by warrant under the hand of the Mayor countersigned by the Town Clerk Provided that such Police Rate shall in no one year exceed the sum of sixpence in the pound sterling on the full and fair annual value of all rateable property within the said town.

Separate rate for police purposes to be imposed and kept distinct.

71. And be it enacted That the Council of the said town shall have the same powers authorities duties and immunities in respect to markets as are given to the Commissioners to be elected and appointed under and by virtue of an 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.* ”

Mayor and Councillors to have the same power and authority for the regulation of markets as Commissioners elected in pursuance of 3 Vict. No. 19.

72. And be it enacted That from and after the first election of a Mayor under the provisions of this Act all the functions duties and responsibilities which at present are performed by or belong to the Commissioners elected under the provisions of the said last recited Act shall be transferred to the Council of the said town and all the functions of the said Commissioners shall thereupon cease and determine.

Functions of the said Commissioners to be transferred to the Council.

73. And be it enacted That it shall be lawful for the said Council in their corporate capacity to accept and have vested in them the use of and interest in any property real or personal conveyed made

Mayor Aldermen and Councillors may accept property for charitable purposes.

over

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over devised or bequeathed to them in their said corporate capacity in trust for any charitable purposes for which any such property real or personal may be so conveyed made over devised or bequeathed and it shall also be lawful for the said Council to act as trustees in the administration of any such property to such charitable purposes.

Corporation empowered to make a Lighting Rate yearly.

74. And be it enacted That it shall be lawful for the said Council and they are hereby required once in every year to assess by a just and equitable assessment and to rate under the name of "Lighting Rate" the several occupiers of tenements and other property within the limits of the said town liable to be rated under this Act in any sum not exceeding four-pence in the pound by the year computed upon the annual value of such property Provided however that no tenement or other property shall be so assessed or rated which may be situated in any portion of the town that is not lighted at the expense of the Corporation.

Buildings the property of Her Majesty or used for public purposes church chapel or public school exempt from rate.

75. 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.

Lamps to be set up and lighted with gas oil or otherwise.

76. And be it enacted That it shall be lawful for the said Mayor Aldermen and Councillors and they are hereby empowered from time to time to purchase and provide such and so many lamps of such sorts and sizes and such and so many lamp irons and lamp posts and other posts and rails as they shall judge necessary and to direct the same to be put or fixed upon or against the walls rails or palisadoes of any houses or buildings or upon or against any other walls or places or to be put up and erected in such other manner within all or any of the streets highways market-places and other public ways or places within the limits of the said town as they shall think proper and to cause the same to be taken down altered or renewed when and as often as they shall think fit and to cause the said lamps to be lighted with gas or oil or otherwise for such number of hours in every twenty-four hours and during such times and seasons of the year as the said Mayor Aldermen and Councillors shall deem necessary and proper for lighting all or any of the streets market-places or other public ways or places within such town.

Penalty for wilfully breaking lamps.

77. And be it enacted That if any person shall wilfully take away or wilfully break throw down or otherwise destroy or damage any lamp which shall be erected by or by order of the said Council or by any person or persons at his or their own expense for the purpose of lighting any of the streets market-places or other public ways or places within such town or any post iron cover or other furniture thereof or shall wilfully extinguish the light of any such lamp it shall be lawful for any Justice of the Peace having jurisdiction within the limits of the said town and he is hereby required upon complaint made to him of any such offence to issue a warrant for apprehending the party accused and it shall be lawful for any person who shall see such offence committed to apprehend and also for any person to assist in apprehending the offender and by authority of this Act without any other warrant to deliver him into the custody of a constable in order to be secured and conveyed before some Justice having jurisdiction as aforesaid and such Justice shall proceed to examine upon oath any witness

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witness or witnesses who shall appear or be produced to give evidence touching such offence and if the party accused shall be convicted of such offence either by his own confession or on evidence on oath as aforesaid then and in every such case he shall for such offence and if more than one for each several offence forfeit and pay any sum not less than one nor more than five pounds and shall besides make full satisfaction (to be ascertained by such Justice) for the damage which shall have been done thereby and in case such offender shall not upon conviction forthwith pay such penalty and also make such satisfaction as aforesaid such Justice is hereby required and empowered to commit such offender to any gaol or house of correction there to be kept to hard labor (if such Justice shall so order) for any time not exceeding three calendar months unless such penalty shall be sooner paid and satisfaction made.

78. And be it enacted That if any person shall carelessly or negligently break destroy or damage any lamp which shall be set up by order of the said Council or by any person or persons at his or their own expense or any post iron cover or any furniture thereof respectively and shall not upon demand make satisfaction for the damage so done then and in every such case it shall be lawful for any Justice of the Peace having jurisdiction as aforesaid and he is hereby required upon complaint thereof made to him on oath to summon before him the party complained of and upon hearing the parties on both sides or on the non-appearance of the party complained of (oath having been made that the party complained of had been served with such summons or that the same had been left at his usual place of abode) to examine into the matter of such complaint and award and order such sum of money (by way of satisfaction) to be paid by the party complained of to the complaining party as to such Justice shall appear just and reasonable and in case the sum so awarded shall not be paid forthwith the same together with the expenses attending the recovery thereof shall be levied and recovered by distress and sale of the offender's goods and chattels with the reasonable charges of such distress and sale and for want of sufficient distress such offender may be committed to gaol for any term not exceeding one calendar month unless full satisfaction be sooner made.

Satisfaction to be made for negligently breaking lamps.

79. And be it enacted That it shall be lawful for the Council as aforesaid from time to time to contract with any Gas-Light Company now or hereafter to be established or with any one or more persons or with any Corporation for lighting the streets highways market-places and other public ways or places within the limits of the said town with gas oil or otherwise from year to year or for any number of years and upon such terms and conditions in all respects as the said Council shall from time to time think proper and to provide and fit up lamps lamp posts lamp irons and all other works necessary for such purposes within the same.

Power to contract for lighting.

80. And be it enacted That from and after the first election as aforesaid of the Mayor Aldermen and Councillors the formation repair and ordering of all public roads lanes streets highways and passages and other public ways and places within the said town shall be wholly under the management and direction of the said Council and the same shall be performed and carried on under the superintendence of the Surveyor or Surveyors to be by them from time to time appointed as hereinbefore mentioned.

The formation and repair of streets to be under direction of Council.

81. And be it enacted That the Surveyor or Surveyors so to be appointed by the said Council shall have and enjoy all the powers privileges and immunities which are had and enjoyed by the Surveyor General or his deputy acting under the provisions of an Act passed in the second year of the reign of Her present Majesty Queen Victoria

Powers given to the Surveyors duly appointed by the Council under the provisions of the Act 2 Victoria No. 2.

intituled

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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.*”

Council to keep
streets in repair.

82. And be it enacted That it shall be lawful for the said Council and they are hereby authorized empowered and required from time to time when and as often and in such manner as they shall think proper and necessary to order and cause the several streets roads ways (as well carriage as foot-ways) foot-crossings passages and places in the said town which now are or hereafter shall be declared to be and are or shall be adopted as public or common highways and thoroughfares and each and every of them respectively to be altered widened diverted turned or extended paved flagged macadamised or otherwise constructed improved repaired or amended supported and kept in good order and condition with such materials as the said Council shall think proper and also from time to time to cause the pavements flagging or other materials of such public or common highways and thoroughfares to be taken up and relaid or renewed and the ground and soil thereof to be raised lowered or altered in such manner and with such materials as the said Council shall deem proper or direct and also from time to time to cause proper and convenient sewers gutters drains and water-courses to be made along or under the said several streets roads lanes highways passages or other public places for carrying off water mud or other filth from the same and to cause grates to be placed on or over any of the said sewers gutters drains or water-courses and to remove renew alter or vary the situations of the grates now placed or hereafter to be placed on or over the same in such manner as the Council shall think proper Provided however that nothing herein contained shall be deemed to authorize the said Council to open alter widen divert turn or extend any street within the said town until such opening alteration widening diversion turning or extension shall have been previously notified and confirmed by order of the Governor with the advice of the Executive Council under the provisions of the Act of the said Governor and Legislative Council passed in the fourth year of the reign of His said late Majesty King William the Fourth intituled “ *An Act for making altering and improving the Roads throughout the Colony of New South Wales and for opening and improving the Streets in the Towns thereof.*”

4 William IV. No. 11.

Penalty for damag-
ing materials or
sewers.

83. And be it enacted That if any person shall wilfully or maliciously or by negligence break up injure destroy or otherwise damage any of the flagging or pavement or the foot-ways or carriage-ways of the said streets roads lanes public passages or places or any of the sewers or gratings or any of the posts pales and rails or fences or any of the works done by such Council in pursuance of this Act every person so offending shall for each and every such offence if there shall be more than one forfeit and pay a sum not exceeding ten pounds and shall also make full satisfaction for the injury done thereby and in default thereof the same shall be levied by distress and sale of the offender's goods and chattels in manner aforesaid and in case of the insufficiency of such distress such offender shall be imprisoned in any gaol or house of correction for any term not exceeding six calendar months unless such penalty shall be sooner paid and satisfaction made.

Power to place bars
across the streets
under repair.

84. And be it enacted That it shall be lawful for the Surveyor of the said Council during such time as any of the said streets roads lanes highways passages or public places within the said town shall be under repair or during the making or repairing of any sewers or drains therein to cause so many bars posts rails and chains or other obstructions to be fixed set up and placed across or along any of the streets

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streets lanes highways passages or other public places within the said town to prevent the passing of carriages carts and drays horses and cattle whilst such works and repairs are in progress as to the said Surveyor may seem proper and if any person or persons shall throw down break remove damage or injure any of the said bars posts rails chains or other obstructions every person so offending shall for every such offence forfeit and pay a sum not exceeding forty shillings to be recovered together with costs and the expense of repairing the injury done in manner hereinbefore prescribed in other cases.

85. And be it enacted That it shall be lawful for the said Council from time to time to erect and set up in such parts of the said streets lanes highways passages and other public places as they may think necessary any posts pillars stones rails bars chains or any other permanent or temporary fence or fences for the purpose of preserving any of the footways within the said town clear from annoyance by horses cows swine or other animals and for the purpose of keeping off carriages carts drays and other vehicles from any of the said footways and for the prevention of accidents and also to paint repair and replace any posts pillars stones rails bars chains or other fence-work from time to time whenever it shall appear to be requisite and also from time to time to order and cause the removal of all or any posts rails pales and fences which are or shall be in any of the said streets roads lanes highways passages or public places and which the Council shall deem to be an useless obstruction to the free passage along the same.

Power to set up
posts for guarding
footways.

86. And be it enacted That it shall and may be lawful for the said Council to cause such and so many common sewers drains and water-courses public wells and pumps of such materials dimensions and forms as they may think fit and necessary to be constructed and made or continued in along or across any of the streets lanes roads highways passages or other public places within the said town and also to adopt any of the common sewers drains or water-courses wells or pumps which now are or hereafter shall be made within the same and to cause the same to be altered enlarged repaired or cleansed as the said Council may deem proper and to enter upon and conduct through and make upon any private lands whether the same shall have been or shall be acquired by the owner or owners occupier or occupiers thereof by grant or purchase from the Crown or from any private individual or individuals or in any other manner whatsoever all or any such sewers drains water-courses wells or pumps as may be deemed necessary having first given fourteen days' notice of their intention so to enter upon such lands to the owner or owners occupier or occupiers thereof and in case it shall be found necessary to enter upon any such private lands as aforesaid for the purpose of altering or completing any of the aforesaid sewers drains or water-courses wells or pumps which now are or hereafter may be within the said town it shall be lawful for such Council to enter upon such lands and alter or continue such sewers drains or water-courses wells or pumps having first given fourteen days' notice in manner aforesaid Provided however that such lands be not in either of the cases last-mentioned occupied as courts yards or gardens or by dwelling-houses or as approaches to any dwelling-house And provided further that if the owners or occupiers of any lands or grounds into or through or upon which any sewer drain or water-course wells or pumps shall be made altered and continued as aforesaid shall be injured thereby and such owners or occupiers shall refuse to treat or cannot agree with the said Council as to the recompense to be paid for such injury such owners or occupiers may apply to the next Court of General Quarter Sessions of the Peace and the Justices there assembled shall have power to empanel a jury then attending

Power to make
common sewers.

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to assess the recompense which ought to be paid to such owners or occupiers for such injury as aforesaid and thereupon the said Justices shall order the sum assessed by such jury to be paid to such owners or occupiers accordingly and such judgment shall be final to all intents and purposes and the said Justices may award costs to either party at their discretion.

Council to hold construct and maintain waterworks.

87. And whereas it will greatly contribute to the health comfort and convenience of the inhabitants of the said town that an abundant supply of fresh water be provided therein Be it enacted That it shall be lawful for the said Council to hold construct and maintain such waterworks as may be necessary for such purposes and such as may at any time be constructed and erected according to the provisions hereinafter contained.

Council empowered to make the waterworks.

88. And be it enacted That it shall be lawful for the said Council by their officers their deputies agents workmen and assistants to make construct erect maintain lay down and keep waterworks reservoirs cisterns tanks cuts aqueducts conduits engines waste gates stop gates stop locks sluices banks bridges pumps pipes tunnels works machinery and conveniences in and through the said town and from time to time to regulate and conduct continue cleanse open widen enlarge alter amend and use or discontinue the same and make and maintain other works as such Council shall think fit and proper and to bore dig trench and remove earth stone gravel and any other matter or thing which may be dug or met with in and for the making and perfecting repairing and maintaining of any such waterworks as aforesaid or which may obstruct the making perfecting repairing or maintaining of the same and for effecting the purposes aforesaid the said Council and their officers deputies agents workmen and assistants are hereby empowered to go enter and pass in upon over under and through all or any of the rivers brooks streams and waters highways roads waste lands streets lanes alleys and passages in the said town or its vicinity and also shall construct erect do and perform all other matters and things which shall be deemed necessary and convenient for making completing improving and continuing such waterworks and for bringing a sufficient supply of water for the said town and through all the streets lanes roads alleys passages courts and public places in such town and for conveying and distributing such water to the respective houses factories hospitals prisons warehouses workshops offices and all other buildings and premises within the same Provided the said Council their officers workmen and assistants shall do as little damage as may be in the execution of the several powers to them hereby granted and shall make full satisfaction to the owners or occupiers of and all persons interested in any lands tenements or other hereditaments which shall be taken used removed or injured for all damage by them sustained in or by the execution of any of the powers hereby granted.

Rate for water how to be fixed.

89. And be it enacted That the rate to be charged by the said Council for the supply of water shall be fixed and regulated by the said Council Provided always that in case the owner or occupier of any house or premises shall be dissatisfied with such rate it shall not be compulsory on such owner or occupier to be supplied with water by the Corporation Provided also that the charge for supplying water shall not exceed in any year the rate of five shillings for each room any such 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.

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90. And be it enacted That if any person shall wilfully and maliciously damage or injure the waterworks or shall cast filth into or otherwise spoil or foul or illegally abstract or divert or impede the course of the water wherewith the said town is supplied every person being lawfully convicted thereof before two or more Justices of the Peace having jurisdiction within the said town shall be liable to the payment of a fine not exceeding fifty pounds sterling and not less than five pounds and in failure of payment thereof the offending party shall be committed to the Gaol of Melbourne for any period which such Justices may in their discretion direct provided the period of imprisonment under such committal does not in any instance exceed six months whether the offence be committed within the limits of the said town or otherwise.

Penalties on persons
doing injury to
waterworks.

91. And be it enacted That it shall be lawful for the said Council to make publish alter modify amend or repeal such bye-laws and regulations as to them shall seem meet for regulating their proceedings and for conducting the election of Mayor Aldermen Councillors or other corporate officers in any matters which may not be sufficiently provided for by this Act and which may not be inconsistent therewith and for the good rule and government of the said town and for the prevention and suppression of all nuisances whatever and for regulating the quality and the place and manner of selling butchers' meat for regulating bathing in the waters adjoining the town for the suppression and restraint of disorderly houses and houses of ill-fame and repute for prohibiting forestalling and regrating and every kind of fraudulent device and practice in relation to the sale of marketable commodities for compelling the owners or occupiers of cellars tallow-chandlers' shops soap factories and tanneries and the owners of privies sewers slaughter-houses and other houses or places which may be in an unwholesome or offensive state or be likely to become so to cleanse the same from time to time and in such manner as the said Council may think necessary and proper with a view to promote the health and comfort of the inhabitants of the said town and for the regulation and government of carters porters and drivers and for regulating slaughter-houses subject to the provisions of an Act of the Governor and Legislative Council of New South Wales passed in the fifth year of the reign of His late Majesty King William the Fourth intituled "*An Act for regulating the slaughtering of Cattle*" for suppressing and restraining noisome and offensive trades billiard tables gaming tables and gambling of every description for preventing obstructions and incumbrances in and upon the streets wharves and waters of the said town for regulating the flagging paving and repairing of the streets and roads and for keeping the same clear from dirt and also to appoint by such bye-laws such fines as they shall deem necessary for the prevention and suppression of such offences and for enforcing such regulations Provided that no fine so to be appointed shall exceed the sum of ten pounds and that no such bye-laws shall be made unless two-thirds at least of the whole number of the Council shall be present Provided also that no such bye-law shall be of any force until the expiration of forty days after the same or a copy thereof sealed with the seal of the Corporation shall have been sent to His Honor the Superintendent of the District of Port Phillip or the Chief Officer of Government residing within the said district for the time being nor until a copy of such bye-law shall have been affixed to the outer door of the Town Hall or in some other public place within the town nor until a copy of the same shall have been published in one or more newspapers published in the said town for at least one week and if at any time within the said period of forty days the said Superintendent or other Chief Officer as aforesaid shall

Council to have
power to make bye-
laws.

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Bye-laws not to be repugnant to laws of Colony and no penalty under the Act 2 Victoria No. 2 to be increased to more than £10.

As to breaches of bye-laws.

All acts of the Council done by a majority of the Councillors present being one-third part of the whole to be deemed acts of the whole Council.

disallow such bye-law or any part thereof such bye-law or the part thereof so disallowed shall not come into operation Provided likewise that in the case of any such bye-laws as shall be allowed it shall be lawful for the said Superintendent or other Chief Officer as aforesaid at any time within such forty days as aforesaid to enlarge as he shall think fit the period within which any such bye-laws shall remain inoperative and no such bye-law shall come into force until after the expiration of such enlarged period Provided further that no bye-law to be passed by the said Council shall be repugnant to this Act or to the general spirit and intendment of the laws in force within the Colony of New South Wales and that no penalty imposed by an Act passed in the second year of the reign of Her present Majesty Queen Victoria intituled "*An Act for regulating the Police in the Towns of Parramatta Windsor Maitland Bathurst and other Towns respectively and for removing and preventing Nuisances and Obstructions and for the better alignment of Streets therein*" shall be increased so as to make the whole penalty amount to more than ten pounds.

92. And be it enacted That all the provisions hereinafter contained relative to offences against this Act punishable upon summary convictions shall be taken to apply to all offences committed in breach of any bye-law or regulation made by virtue of this Act.

93. And be it enacted That all acts whatsoever authorized or required by virtue of this Act save as respects the passing of bye-laws as hereinbefore mentioned to be done by the said Council and all questions of adjournment or others that may come before such Council may be done and decided by the majority of the members of the Council who shall be present at any meeting held in pursuance of this Act the whole number present at such meetings not being less than one-third part of the number of the whole Council and at all such meetings the Mayor if present shall preside and the Mayor or in the absence of the Mayor such Alderman as the members of the Council then assembled shall choose to be Chairman of that meeting or if there be no Alderman present such Councillor as may be chosen to preside shall have a second or casting vote in all cases of equality of votes and minutes of the proceedings of all such meetings shall be drawn up and fairly transcribed into a book to be kept for that purpose and shall be signed by the Mayor Alderman or Councillor presiding at such meeting and the said minutes shall be open to the inspection of any burgess at all reasonable times on payment of a fee of one shilling Provided always that previous to any meeting of the Council held by virtue of this Act a notice of the time and place of such intended meeting shall be given three clear days at least before such meeting by fixing such notice on the outer door of the Town Hall or on some other public place within the said town and such notice shall be signed by the Mayor who shall have power to call a meeting of the Council as often as he shall think proper and in case the Mayor shall refuse to call any such meeting after a requisition for that purpose signed by at least eight members of the Council shall have been presented to him it shall be lawful for the said eight members to call a meeting of the Council by giving such notice as hereinbefore required in that behalf such notice to be signed by the said members instead of the Mayor the said members stating therein the business proposed to be transacted at such meeting and in every case a summons to attend the Council specifying the business proposed to be transacted at such meeting signed by the Town Clerk shall be left at the usual place of abode of every member of the Council or at the premises in respect of which he is enrolled a burgess or sent to him by post three clear days at least before such meeting and no business shall be transacted at such meeting other than is specified in such notice Provided always that there shall be
four

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four quarterly meetings in every year at which the Council shall meet for the transaction of general business and no notice shall be required to be given of the business to be transacted on such quarterly days and the said quarterly meetings shall be holden at noon on the ninth day of the months of November February May and August respectively or any such quarterly meeting may be holden on any other day within three days next following any of the days so respectively appointed as the Council at any quarterly meeting next preceding the same shall determine and that the first business transacted at the quarterly meeting in November shall be the election of Mayor.

94. And be it enacted That it shall be lawful for the said Council to appoint out of their own body from time to time such and so many Committees either of a general or a special nature and consisting of such number of persons as they may think fit for any purposes which in the discretion of such Council would be better regulated and arranged by means of such Committees Provided always that the acts of every such Committee shall be submitted to the Council for their approval.

Council may appoint Committees.

95. And be it enacted That the Treasurer of the said Council shall in books to be kept for that purpose enter true accounts of all sums of money by him received and paid and of the several matters for which such sums shall have been received or paid and such books shall at all times be open to the inspection of the Mayor or any of the Aldermen or Councillors and all the accounts with all vouchers and papers relating thereto shall in the months of March and September in every year be submitted by the Treasurer of the town to the Auditors hereinbefore provided to be elected and to such member of the Council as the Mayor shall name on the first day of March in every year or in case of an extraordinary vacancy within ten days next after such vacancy for the purpose of being examined and audited from the first day of September in the year preceding to the first day of March and from the first day of March to the first day of September in the year in which the said Auditors were elected and named and if the said accounts shall be found to be correct the Auditors and the member of the Council appointed by the Mayor as aforesaid shall sign the same and after such accounts shall have been so examined and audited in the month of September in every year the Treasurer shall make out in writing and shall cause to be printed a full abstract of his accounts for the year and the copy thereof shall be open to the inspection of all the rate-payers of such town and copies thereof shall be delivered to all rate-payers of such town applying for the same on payment of a reasonable sum to be fixed by the Council for each copy.

Accounts of receipts and disbursements.

96. And be it enacted That the Town Clerk Treasurer Collector and every officer appointed by the Council as aforesaid shall at all such times and in any such manner as the said Council may direct whilst any such officer shall continue to hold office and also within two months after he shall have ceased to hold such office deliver to the said Council or to such person as they shall authorize for that purpose a true account in writing of the matters committed to the charge of such officers respectively by virtue of this Act and of all monies which shall have been received by him in virtue and for the purposes of this Act and how much thereof shall have been paid and disbursed and for what purpose together with proper vouchers for such payments and also a list of the names of all such persons as shall not have paid the monies due from them for the purposes of this Act specifying the amount due from each of them and every such officer shall pay to the Treasurer for the time being or to any person whom the said Council may authorize to receive the same the balance due by him if any of all the monies so received and disbursed and if any such officer shall refuse

Officers to account &c. according to orders of Council.

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refuse or wilfully neglect to deliver such account and the vouchers relating to the same and such list as aforesaid or shall refuse or wilfully neglect to make payment of such balance as aforesaid or to deliver to the said Council or to any person whom they may authorize in that behalf within three days after being thereunto required by notice in writing under the hands of any three or more of the said Council such notice to be given to or left at the last place of abode of such officer all books accounts papers and writings in his custody or power relating to the execution of this Act or shall refuse or wilfully neglect to give satisfaction to the said Council or to any person whom they may so authorize as aforesaid respecting the same then and in every such case upon complaint made on behalf of the said Council by such person as they shall authorize for that purpose of any such refusal or wilful neglect as aforesaid to any Justice of the Peace having jurisdiction within the said town or other jurisdiction wherein such officer so refusing or neglecting shall be or reside such Justice is hereby authorized and required to issue a warrant under his hand and seal for bringing such officer before any two Justices of the Peace having jurisdiction within the said town or other jurisdiction as aforesaid and upon the said officer appearing or not being found it shall be lawful for such Justices to hear and determine the matter in a summary way and if it shall appear to such Justices that any monies remain due from such officer such Justices may and they are hereby authorized and required upon non-payment thereof by warrant under their hands and seals to cause such monies to be levied by distress and sale of the goods of such officer and if sufficient goods shall not be found to satisfy the said monies and the charges of the distress and sale or if it shall appear to such Justices that such officer has refused or wilfully neglected to deliver such account and the vouchers relating thereto and such list as aforesaid or that any books accounts papers or writings relating to the execution of this Act remain in the hands or in the custody or power of such officer and that he has refused or wilfully neglected to deliver the same or to give satisfaction respecting the same as aforesaid then and in every such case such Justices shall and they are hereby required to commit such offender to some common gaol or house of correction there to remain without bail until he shall have paid such monies as aforesaid or shall have compounded with the said Council for such monies and shall have paid such composition in such manner as they shall appoint (which composition the said Council are hereby empowered to make and receive) or until he shall have delivered a true account as aforesaid or until he shall have delivered up such books accounts papers and writings or shall have given satisfaction in respect thereof to the said Council or to such person appointed by them as aforesaid as the case may be. Provided always that no person so committed shall be detained in prison for want of sufficient distress only for a longer space of time than three calendar months. Provided also that nothing in this Act contained shall prevent or abridge any remedy by action against any such officer so offending as aforesaid but such officer shall not be sued by action and also proceeded against in a summary manner by virtue of this Act for the same cause.

Officers to be removable by Council.

97. And be it enacted That the Council elected under this Act shall have power from time to time to remove from office any and every Town Clerk Treasurer Collector and other ministerial and executive officer or officers of the body corporate as shall have been elected or appointed by the said Council under and by virtue of the provisions of this Act and every officer so removed who shall be in possession or receipt of any monies goods valuable securities books accounts and papers belonging to or concerning the body corporate shall deliver up and account for the same to the Council immediately upon such removal

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removal as aforesaid and the Council shall have the same remedy against such officer for the recovery and satisfactory account of the same as is hereinbefore provided.

98. And be it enacted That it shall and may be lawful for the said Council to borrow on the credit of the said Corporation by mortgage or otherwise any sum or sums of money Provided that the sum or sums so borrowed do not exceed the average amount of the revenue of the said Corporation exclusive of the Police Rate for the period of five years And provided also that no sum or sums of money be so borrowed which would if added to the previous debt or debts of the Corporation make the aggregate of their debt or debts to exceed the amount of five years' average revenue of the Corporation exclusive of the Police Rate as aforesaid Provided further that no sum or sums of money be borrowed by mortgage or otherwise on any aid of money given by the Government towards defraying any portion of the expenses of the said Corporation.

Council may borrow money but not to exceed the aggregate of five years' average revenue.

99. And be it enacted That the charters deeds muniments and records of the Corporation or relating to the property thereof shall be kept in such place as the Council from time to time shall direct and the Town Clerk for the time being shall have the charge and custody thereof and be responsible for the same.

Charters deeds muniments and records where and by whom to be kept.

100. And be it enacted That all penalties fines and forfeitures inflicted or imposed under the provisions of this Act or by or under any rule order or bye-law made in pursuance thereof may in case of non-payment be recovered in a summary way by the order and adjudication of any one Justice of the Peace having jurisdiction within the town on complaint made to him on the oath or affirmation of any person or persons so complaining or on the confession of the parties offending (which oath affirmation or confession such Justice is hereby authorized and required to administer and receive) and in default of immediate payment of any such penalty fine or forfeiture the same shall be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal of such Justice and shall be paid over to the Treasurer of the Council for the local improvement and benefit of the town rendering the overplus if any on demand to the party or parties whose goods and chattels shall be so distrained and sold the reasonable charge of such distress and sale being first deducted and in case such penalties fines and forfeitures shall not be forthwith paid it shall be lawful for such Justice and he is hereby authorized and required to order such offender or offenders to be detained and kept in safe custody until return can conveniently be made to such warrant of distress unless such offender or offenders shall give sufficient security to the satisfaction of such Justice for his or her or their appearance before such Justice or before some other Justice of the Peace for such jurisdiction 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 taking of any such security which security the said Justice is 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 penalty or penalties and such costs as aforesaid and the same shall not be forthwith paid or in case it shall appear to the satisfaction of any such Justice upon confession of the offender or offenders or otherwise that he she or they hath or have not sufficient goods and chattels whereupon such penalties forfeitures costs and expenses can be levied if a warrant of distress were issued such Justice shall not be required to issue such warrant of distress and thereupon it shall be lawful for such Justice and he is hereby authorized and required by warrant under his hand and seal to commit such offender or offenders to any common gaol or house of correction there

Penalties &c. how to be recovered.

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there to remain for any time not exceeding three calendar months unless such penalty or forfeiture shall be sooner paid and satisfied together with all the costs and charges attending such proceedings to be ascertained by such Justice or unless such offender or offenders shall otherwise be discharged in due course of law.

Distress not unlawful
for want of form.

101. And be it enacted That where any distress shall be made for any money to be levied under this Act or under any bye-law of the said Council the distress itself shall not be deemed unlawful nor the party or parties making the same be deemed a trespasser or trespassers 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 or parties distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards committed by the party or parties distraining but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage in an action on the case.

For securing tran-
sient offenders.

102. And be it enacted That it shall be lawful for any officer of the said Council or for any other person or persons to seize and detain any person or persons who shall commit any offence or offences against this Act or against any bye-law made in pursuance thereof and to convey him her or them before any one or more Justice or Justices of the Peace having jurisdiction within the said town without any other warrant or authority than this Act for so doing and such Justice or Justices is and are hereby respectively empowered and directed to proceed immediately to the conviction or acquittal of such offender or offenders.

Offenders to be dealt
with summarily
under 5 William IV.
No. 22.

103. And be it enacted That all proceedings in respect to offences committed against the provisions of this Act or any bye-law authorized as aforesaid which are hereby directed to be had before any one or more Justice or Justices of the Peace shall be heard and determined in a summary way according to the provisions of an Act passed by the Governor and Legislative Council of the said Colony in the fifth year of the reign of His late Majesty King William the Fourth intituled "*An Act to regulate summary proceedings before Justices of the Peace*" except only where some other special course of proceeding may be directed by this Act Provided however that in case of non-payment of any penalty under this Act above the amount of five pounds and no sufficient distress can be found it shall and may be lawful for the convicting Justice or Justices by his or their warrant or warrants to commit any person convicted in any such penalty to any of Her Majesty's gaols for any term not less than one nor more than three calendar months to be computed from the day on which such offender shall have been actually arrested and not from the date of such warrant and for the purpose of ascertaining the date of such arrest the constable or other person who shall make the same is hereby required to indorse on the back of such warrant the date of such arrest under a penalty of five pounds which shall and may be recovered before any one or more Justice or Justices of the Peace Provided also that in case of any constable neglecting so to indorse the said warrant as aforesaid the same shall not vitiate any such arrest but in such case the time of imprisonment shall be computed from the date of such warrant.

Except where other-
wise directed by
this Act.

And in cases above
five pounds for want
of sufficient distress
may be imprisoned.

Witnesses not
attending or refusing
to give evidence may
be fined.

104. And be it enacted That if any person shall be summoned as a witness to give evidence before any Justice or Justices of the Peace touching any of the matters aforesaid either on the part of the prosecution or of the person or persons accused and shall neglect or refuse to appear at the time and place to be for that purpose appointed without a reasonable excuse for such neglect or refusal to be allowed by such Justice or Justices or appearing shall refuse to be examined according

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according to law and give evidence before the Justice or Justices before whom such prosecution shall be depending then every such person shall forfeit for every such offence a sum not less than two pounds nor more than twenty pounds to be recovered in a summary way before any two Justices of the Peace.

105. And be it enacted That any person who shall think himself or herself aggrieved by any fine or penalty above the sum of five pounds imposed under the authority of this Act may appeal against the same to the Court of Quarter Sessions according to the provision of the law which shall be in force for the time being for the general regulation of appeals of such or the like nature.

Appeal allowed in cases above five pounds.

106. And be it enacted That all informations and convictions under this Act shall be according to the provisions of the Act before mentioned passed in the fifth year of the reign of His said late Majesty King William the Fourth intituled "*An Act to regulate summary proceedings before Justices of the Peace*" and that no conviction under this Act nor any adjudication made on appeal therefrom shall be quashed for want of form or be removed by *certiorari* or otherwise into the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein.

Proceedings not to be quashed for want of form nor removed by certiorari.

107. And be it enacted That no action at law shall lie against any Justice of the Peace constable or other peace officer for or on account of any matter or thing whatsoever done or to be done or commanded by him in the execution of his duty or office under this Act against any party or parties offending or suspected to be offending against the provisions of this Act or any bye-law made in pursuance thereof unless there be direct proof of corruption or malice and unless such action be commenced within three calendar months after the cause of action or complaint shall have accrued and if any person shall be sued for any matter or thing which he has so done or shall have done in the execution of his duty under this Act he may plead the general issue and give the special matter in evidence.

As to actions against Justices and others for things done under this Act.

108. And whereas at the first elections to be held after the passing of this Act the provisions of this Act cannot be complied with unless certain officers be appointed to preside at such elections and to exercise all other necessary functions Be it enacted That it shall and may be lawful for His Honor the Superintendent or the Chief Officer of the Government residing within the District of Port Phillip for the time being by warrant under his hand to appoint some fit and proper person to preside at each of such elections and also to appoint in like manner such and so many persons as may be necessary to perform any of the acts hereinbefore required to be done by the Mayor Aldermen Councillors Town Clerk Collectors or other officers before such officers can be appointed or elected under the provisions of this Act and every such appointment shall be notified in one or more of the public newspapers published in the said district.

His Honor the Superintendent may appoint persons to preside and perform other necessary functions at first elections.

109. And whereas certain matters are directed to be done under the provisions of this Act on certain days herein specified and whereas it may be impossible or inconvenient that they should be done in the present year at the times so respectively fixed Be it therefore enacted That it shall be lawful for His Honor the Superintendent or the Chief Officer of the Government residing within the District of Port Phillip for the time being to fix the same or some other more convenient times for the performance of the several matters hereby required to be done during the present year provided that notice thereof shall be previously given in one or more of the public newspapers published in the said district and that the same intervals of time between the performance of each particular matter shall be allowed as are herein fixed and directed.

The Superintendent of Port Phillip to appoint the times for performance of matters under this Act in the present year.

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Act not to affect the rights of Her Majesty.

110. Provided always and be it declared and enacted That nothing in this Act contained shall be deemed to affect or to interfere with any right title or interest of Her Majesty Her Heirs and Successors or in any way to limit the Royal Prerogative.

If by death or otherwise any officer is prevented from doing any matter required under this Act Council to appoint a person.

111. And be it enacted That whenever in consequence of death absence or any lawful impediment it shall not be possible for any Alderman or for the Town Clerk or any other officer or person to perform any particular matter or thing which by this Act he is directed to perform it shall and may be lawful for the Mayor for the time being to appoint any other Alderman or person to perform the same and if by reason of death absence or any lawful impediment the Mayor shall be prevented from performing any matter or thing which he may by the provisions of this Act be required to perform the Council may either perform the same or by the majority of their voices appoint some other person to perform it.

Any thing to be done on a holiday to be done on the day following.

112. And be it enacted That whenever any matter or thing shall by this Act be directed to be performed on a certain day and that day happen to be Sunday Good Friday or Christmas Day the said matter or thing shall be performed on the next succeeding day.

Not to repeal alter or amend in any greater degree than specially directed any provisions of the Acts—

113. And be it declared and enacted That nothing herein contained shall be construed to repeal alter or amend in any greater degree than may be specially directed or authorized in this Act any of the provisions or enactments of the following Acts passed by the Governor and Council of New South Wales to wit—An Act passed in the second year of the reign of Her present Majesty Queen Victoria intituled “*An Act for regulating the Police in the Towns of Parramatta Windsor Maitland Bathurst and other Towns respectively and for removing and preventing Nuisances and Obstructions and for the better alignment of Streets therein*” and an Act passed in the fifth year of the reign of His late Majesty King William the Fourth intituled “*An Act for regulating the slaughtering of Cattle*” and an Act passed in the fourth year of the reign of Her said present Majesty intituled “*An Act for the further and better regulation and government of Seamen within the Colony of New South Wales and its Dependencies and for establishing a Water Police.*”

2 Vict. No. 2.

5 Wm. IV. No. 2.

4 Vict. No. 17.

Governor implies person administering the Government.

114. Provided always and be it enacted That wherever in this Act the word “Governor” is used the same shall be held to mean the Governor or person administering the Government of the said Colony for the time being.

Act may be altered or repealed either wholly or in part.

115. And be it declared and enacted That nothing contained in this Act shall at any time be held or construed to prevent the alteration or repeal of the whole or any part thereof whether such repeal or alteration shall affect the franchises immunitiss or privileges of the corporate body created thereby or otherwise.

SCHEDULES REFERRED TO.

A.

THE two following portions of land viz.—

1. 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.

2. 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

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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.

B.

The four Wards of the Town of Melbourne shall be the four parts into which the town will be divided by the drawing of the two following lines intersecting each other at right angles viz.—lines drawn along the centres of the two streets named Bourke-street and Elizabeth-street and intersecting each other at the points where Bourke-street crosses Elizabeth-street and by the prolongations of the said lines until such prolonged lines reach either the boundaries of the town or the Yarra Yarra River and the said wards shall respectively be called the north-east or Gipps Ward the north-west or Bourke Ward the south-east or La Trobe Ward and the south-west or Lonsdale Ward.

C.

THE List of Burgesses in the

Ward in the Town of Melbourne.

Christian Name and Surname of each Person at full length.	Nature of the property rated.	Street Lane or other place in this Ward where the property is situated for which he is now rated.
Ashton John	Shop	No. 23 Clarence-street
Bates Thomas.....	House	Brook's Farm.

(Signed)

A. B. }
C. D. }

Collectors of the

Ward.

D.*Notice of Claim.*

To the Town Clerk of Melbourne.

I hereby give you notice that I claim to have my name inserted in the Burgess List of the Town of Melbourne that I occupy (*here describe the house warehouse counting-house or shop then occupied by claimant*) in the Town and that I have been rated in the Ward (*here state the ward or several wards and the time during which the claimant has been rated in each of them within the town necessary for his qualification*).

Dated the

day of

in the year

(Signed)

JOHN ALLEN of

(place of abode).

E.*Notice of Objection.*To the Town Clerk of Melbourne (*or the person objected to as the case may be*).

I hereby give you notice that I object to the name of Thomas Bates of Brook's Farm in the Ward of the Town of Melbourne (*describe the person objected to as described in the Burgess List*) being retained on the Burgess List of the Town of Melbourne.

Dated the

day of

in the year

(Signed)

JOHN ASHTON of (*here state the place of abode and property for which he is said to be rated in the Burgess List*).

Aid to Melbourne Police and Town Fund.

F.

List of Claimants.

THE following Persons claim to have their names inserted on the Burgess List of the Town of Melbourne.

Christian Name and Surname of each Claimant.	Nature of the property for which he is now rated.	Situation of the property for which he is now rated.	Ward (or Wards) in which he has been rated as stated in the claim.
Allen John	House.....	No. 17 King-street..	Rated in the last year in the — Ward (or Wards) and in the whole of the preceding year in the — Ward (or Wards).

(Signed) A. B. Town Clerk.

G.

List of Persons objected to.

THE following Persons have been objected to as not being entitled to have their names retained on the Burgess List of the Town of Melbourne.

Christian Name and Surname of each Person objected to.	Nature of the property for which he is now rated.	Situation of the property for which he is said to be now rated in the Collector's List.	Ward (or Wards) in which is the property for which he is now said to be rated in the Collector's List.
Bates Thomas.....	House.....	Brook's Farm	— Ward.

(Signed) A. B. Town Clerk.
