

No. XXXIX.

MELBOURNE
BUILDING.

An Act for regulating Buildings and Party Walls and for preventing mischiefs by fire in the City of Melbourne. [12th October, 1849.]

Preamble.

WHEREAS it is expedient for the safety health and comfort of the inhabitants of the City of Melbourne and the security of property therein that provision should be made for the better regulation of buildings and party walls and for the prevention of mischiefs by fire in the said City Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the first day of January in the year of our Lord one thousand eight hundred and and fifty all buildings within the portions of the said city described in the Schedule hereunto annexed marked A (except buildings the property of Her Majesty or of the Corporation thereof) shall be distinguished by and divided into the classes and rates of classes of building hereinafter described and shall be under the rules and directions hereinafter contained concerning the same.

Operation of Act.

Power to extend
limits of Act by
by-law.

2. And be it enacted with regard to this Act generally so far as relates to the application thereof to other parts of the City of Melbourne That if from the growing increase of the population or otherwise it shall appear to the Council of the said city that it is expedient that the provisions of this Act should be extended to any other part or parts of the City of Melbourne it shall be lawful for the said Council to direct by by-law that at or from a time to be named in such by-law the

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the provisions of this Act shall apply to such part or parts of the said city and at or from such time all such provisions of whatever nature whether penal or otherwise so far as they are capable of application to such parts shall be and are hereby declared to apply thereto as if such part or parts were expressly named therein.

3. And be it declared and enacted with regard to this Act ^{Construction of} generally so far as relates to the construction of certain terms and ^{terms.} expressions used therein That the following terms and expressions are intended to have the meanings hereby assigned to them respectively so far as such meanings are not excluded by the context or by the nature of the subject matter that is to say—the word “street” to include ^{Street.} every square circus crescent street road place row public mews or lane or place along which carriages can pass or are intended to pass and that whether there be or not in addition to the carriage-way a foot-way paved or otherwise the word “alley” to include any court ^{Alley.} passage or other public place which can be used as a foot-way only the word “square” as applied to any area of building to contain ^{Square.} one hundred superficial feet the “floor” to mean the horizontal ^{Floor.} platform forming the base of any story and to include the timber or bricks or any other substance constituting such platform the word “story” to include the full thickness of such floor as well as the ^{Story.} space between the upper surface of one floor and the under surface of the floor next above it or if there be no floor then the space between the surface of the ground and the under surface of the floor next above it the term “external wall” to apply to every outer wall of ^{External wall.} buildings now built or hereafter to be built which (except the footing thereof on one side) shall stand wholly upon ground of the owner of such buildings and shall not be used or intended to be used as a party wall under the definition hereinafter contained whether the same shall adjoin or not to the other outer or to party walls the term “party ^{Party wall.} wall” to apply to every wall which shall be used or be built in order to be used as a separation of two or more buildings with a view to the occupation thereof by different families or occupiers or which shall be actually occupied by different families or occupiers and also every wall which shall stand upon ground not wholly belonging to the same owner to a greater extent than the projection of its footing on one side the term “already built” used in reference to buildings to apply ^{Already built.} to buildings built prior to the date of this Act coming into operation or commenced before that date and covered in and rendered fit for use within twelve months thereafter and used in reference to streets and alleys to apply to all streets or alleys made or laid out before that day and which shall be formed and rendered fit for use within twelve months thereafter the term “hereafter to be built” used in reference ^{Hereafter to be built.} to buildings to apply to all buildings to be built or commenced after the date of this Act coming into operation or which being commenced shall not be covered in within twelve months thereafter and used in reference to streets and alleys to apply to all streets or alleys not laid out before the said date or which being laid out shall not be rendered fit for use within twelve months thereafter the word “owner” to ^{Owner.} apply generally to every person in possession or receipt either of the whole or any part of the rents or profits of any ground or tenement or in the occupation of such ground or tenement other than as tenant from year to year or for any less term or as tenant at will the term “official referees” to mean the persons appointed in pursuance of ^{Official referees.} this Act to be official referees of buildings within the City of Melbourne the word “surveyor” to apply to the surveyor or surveyors to be ^{Surveyor.} appointed in pursuance of this Act and also of all deputy or assistant surveyors to be appointed under this Act the word “month” to mean ^{Month.} a calendar month the term “the Council” to mean the Mayor Aldermen ^{Council} and

Melbourne Building.

Quarter Sessions.

Justice of the Peace.

The Mayor.

City.

Singular and plural.

Masculine and female.

Corporate body.

Regulations of buildings.

Rates of buildings and thickness of walls and footings and rules concerning buildings.

Buildings not within rates.

Modification of building contracts.

and Councillors of the City of Melbourne for the time being the term "Quarter Sessions" to mean the Court of Quarter Sessions of the Peace stately held at Melbourne the expression "Justice of the Peace" to mean a Justice of the Peace for the City of Melbourne the term "the Mayor" to mean the Mayor of Melbourne for the time being the word "City" to mean the portion or portions of the City of Melbourne to which this Act is made applicable and subject as aforesaid to the context and to the nature of the subject matter words importing the singular number are to be understood to apply to a plurality of persons or things and words importing the masculine gender are to be understood to apply to persons of the feminine gender and the words importing an individual are to be understood to apply to a corporation or company or other body of persons.

4. And now generally for the purpose of regulating the building and the rebuilding upon sites of former buildings and the enlarging and altering of all buildings of what nature soever within the limits aforesaid Be it enacted with regard to every such building hereafter to be built (except as herein otherwise provided) so far as relates to building the same and with regard to every such building either already or hereafter built so far as relates to the rebuilding and the enlarging or altering of the same and that whether such buildings be built or rebuilt on old or new foundations or partly on old and partly on new foundations That every such building shall be built rebuilt enlarged or altered in reference to the walls whether external or party walls and to the number and height of the stories or rooms therein and to the chimneys and to the roofs and to the timbers and to the projections and to any other parts or appendages of every such building in the manner and of the materials and in every other respect in conformity with the several particulars rules and directions which are specified and set forth in the several Schedules B C D E F G H and I to this Act annexed according to the classes of buildings and the rates of such classes to which such buildings are by the Schedule B declared to belong subject nevertheless to any other rules and directions in this Act contained in the same behalf and subject in every case of doubt difference or dissatisfaction in respect thereof between any parties concerned to the determination of the official referees upon a reference of the matter in question.

5. Provided always and be it enacted with regard to any building of whatever kind which is not hereby expressly assigned to any class or rate of a class so far as relates to the application of this Act thereto That if any person be desirous of erecting any building which does not come within any one of the said classes or of any rate of such classes then such buildings shall be built in accordance with such class and rate as shall be directed by the surveyor subject as in other cases of doubt difference or dissatisfaction to an appeal to the official referees.

6. Provided always and be it enacted with regard to any building of whatever class so far as relates to the modification of any written contract or agreement now in force for erecting or altering such building (other than a contract or agreement in the nature of a building lease) That it shall not be lawful to execute such contract otherwise than in conformity with the provisions of this Act but it shall be lawful for either party and he is hereby entitled to deviate from such contract so far as any part thereof may remain to be executed after this Act shall have come into operation and the alterations rendered necessary by this Act shall be performed as if this Act had been in force when such contract was entered into and that if the parties thereto shall disagree about the difference of the cost and expenses of the works when performed according to the provisions of this Act and the works as stipulated for in such contract then upon notice being given

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given in writing by one party to the other it shall be lawful for either party and he is hereby entitled to refer the matter to the official referees who shall determine the same and the award of such official referees shall be final and binding on all the parties and in all respects as if such award had formed part of the contract and the cost of the reference shall be borne by all or any or either of the parties in such manner and proportions as the official referees shall appoint.

7. Provided always and be it enacted with regard to any building of whatever class so far as relates to the modification of any existing lease or agreement for a lease being of the nature of a building lease whereby any person may be bound to erect buildings That notwithstanding anything herein contained if it be made to appear to the official referees that any rules by this Act prescribed will prevent the due observance of or be at variance with any such lease or agreement and that the objects of this Act may be obtained by modifying such rules either entirely or partially in conformity with such lease or agreement then it shall be lawful for the said official referees by their award to authorize such modification and subject to such modification or in default thereof it shall be the duty of such person so bound to erect buildings and he is hereby required to erect every building agreed to be built by such lease or agreement according to the conditions rendered necessary by this Act in the same or like manner as if this Act had been passed and in operation at the time of making such lease or agreement and that on the completion of such works either according to the provisions of this Act or according to such modification aforesaid and on giving to the lessor and other owners of such building fourteen days' notice of his intention to apply to the official referees on this behalf it shall be lawful for the lessee or tenant and he is hereby entitled to require the official referees to ascertain what loss present and prospective has been occasioned by the observance of the provisions of this Act and having regard to the respective terms and interests of the lessee or tenant the lessor and other owners of such building and having regard to any profit benefit or advantage which may have accrued to such lessee or tenant since the execution of such lease or agreement and which may appear to the said official referees not to have been in the contemplation of the parties to such lease or agreement at the time of such execution thereof as aforesaid to determine whether he is entitled to any or what compensation whether by payment of money or reduction of rent or both or otherwise and that on receipt of such requisition and on proof of due notice thereof having been given to the lessor and other owners of such building it shall be the duty of such official referees and they are hereby required to proceed to ascertain if any and what loss has been so occasioned and having regard as aforesaid to such terms and interest as aforesaid and to such profit benefit or advantage as aforesaid to determine if any and what compensation as aforesaid is to be paid in respect thereof and by whom the same is to be paid and in what proportions and their decision in the matter shall be final.

8. And for the purpose of preventing the express provisions of this Act from hindering the adoption of improvements and for providing for the adoption of expedients either better or equally well adapted to accomplish the purposes thereof Be it enacted with regard to every building of whatever class so far as relates to the modification of any rules hereby prescribed That if in the opinion of the surveyor and official referees the rules of this Act imposed shall be inapplicable or will defeat the objects of this Act and that by the adoption of any modification of such rules such objects will be attained either better or as effectually it shall be the duty of such surveyor and official referees to report their opinion thereon stating the grounds of such their opinion to

Reference to official referees.

Modification of building leases.

Application to official referees.

Proceedings thereon.

Council empowered to modify rules of Act by by-law

on report of official referees.

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to the Council of the said city and that if on the investigation thereof it shall appear to the Council that such opinion is well founded then it shall be lawful for the Council to direct by by-law that such modification may be made in such rules as will in the opinion of the Council give effect to the purposes of this Act.

Power to modify
rules as to existing
buildings to be
rebuilt.

9. And be it enacted with regard to buildings already built so far as relates to the rebuilding thereof in conformity with this Act in respect to the required area or in any other respect than the required height and thickness of walls That if a full compliance with the provisions of this Act be attended by great loss and inconvenience then subject to the consent of the official referees and to such terms as the said official referees may impose in that behalf it shall be lawful for the parties concerned to rebuild such buildings on the site of the old buildings as near as may be practicable but so that nevertheless both the party walls and the external walls be of the required height and thickness.

Works to be ex-
ecuted.

10. And be it enacted with regard to the works to be executed in pursuance of this Act so far as relates to the supervision thereof by the surveyors That within four days before the following acts or events that is to say before any building shall be begun to be built and also before any addition or alteration which by this Act is placed under the supervision of the surveyor shall be made to any building and also before any party wall external wall chimney stack or flues shall be begun to be built pulled down rebuilt cut into or altered and also before any opening shall be made in any party wall and also before any other matter or thing shall be done which by the Act is placed under the supervision of the surveyor except as hereinafter provided it shall be the duty of the builder (by which term is to be understood both in this provision and elsewhere throughout this Act the master builder or other person employed to execute any work or if there be no master builder or other person so employed then the owner of the building or other person for whom or by whose order such work is to be done) and he is hereby required to give to the surveyor at his office

Notice to surveyors.

notice in the terms specified in the form (No. 1) contained in Schedule K annexed to this Act or to the like effect and that if any builder neglect to give such notice or begin to build or do any of the things aforesaid before such notice or before the expiration of such period of four days then and in every such case the party offending shall for every such default forfeit and pay to such surveyor treble the amount of fees which such surveyor would have been entitled

£20 penalty if notice
be not given.

to receive for his supervision and inspection of the same and shall also forfeit for every such default a sum of twenty pounds and that if for any period exceeding three months any builder having duly begun any building requiring compliance with the provisions of this Act suspend the progress of such building and again go on with the same or if during the progress thereof the builder be changed then two days before such builder shall enter upon the performance of the work it shall be the duty of such builder to give notice to the surveyor and such notices must be in the terms specified in the forms (Nos. 2 and 3) contained in Schedule K annexed to this Act or to the like effect and must be given to the surveyor or left at the surveyor's office in like manner as is required upon beginning any new building and that if any builder make default or neglect to give or leave such notice he shall forfeit for every such offence a sum of twenty pounds and that if any such building chimney or wall be begun to be built pulled down rebuilt cut into or altered as aforesaid or be proceeded with after any suspension of the progress thereof before such notice has been given or

£20 penalty for not
giving fresh notice.

if such surveyor or the official referees be refused admittance to inspect the premises then such building or work shall be liable to be abated as a nuisance under the provisions herein contained Provided always that

Refusal to admit sur-
veyor or referees.

Emergency.

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that if by reason of any emergency any act matter or thing placed under the supervision of the surveyor be required to be done immediately or before notice can be given to the surveyor then it shall be lawful for the builder or any person to do such act matter or thing so requisite but upon this condition that within forty-eight hours after beginning to execute such work notice thereof be given to the surveyor.

11. And be it enacted with regard to such buildings and works Supervision of works. so far as relates to the supervision thereof That if in building pulling down rebuilding cutting into or altering any part of any building or party wall or external wall or chimney stack or flue or any work or other thing to be done contrary to or not conformably with the rules and directions of this Act then forthwith it shall be the duty of the surveyor and he is hereby required to give forty-eight hours' notice Notice by surveyor of irregularities. according to the form (No. 4) in Schedule K annexed to this Act or to the like effect to the builder foreman or principal workman on the premises to amend any such irregularity which he shall deem to have been committed and forthwith after the expiration of such notice to proceed to inspect the work and that if the work be so far advanced that he cannot ascertain whether the irregularity has been committed or not or exist or not then it shall be lawful for him and he is hereby Power to cut into works. empowered to order any work to be cut into laid open or pulled down which shall in his opinion prevent his ascertaining whether any such irregularity exists or not and that if within forty-eight hours the builder to whom any such notice shall have been given refuse or fail to amend any irregular work or if any such builder when ordered by the surveyor refuse to cut into lay open or pull down any work which shall in his opinion prevent his ascertaining whether such irregular work exists or not then as soon as conveniently shall be it shall be Notice to official referees. the duty of the surveyor to give information thereof to the official referees and that upon the receipt of such information it shall be the duty of such official referees and they are hereby required to proceed to hear the matter and if any breach of the rules regulations and directions of this Act be found to have been committed or if there appear good reason to suppose any such breach has been committed and is concealed then it shall be lawful for the official referees and they are hereby authorized to direct by their award that such building party wall external wall chimney stack flue or other thing or such part thereof as they shall deem necessary shall be amended removed cut into laid open or pulled down and that all the costs charges and expenses of the said Costs. work and of the said application to the official referees shall be borne by such parties as the official referees shall determine.

12. And be it enacted with regard to buildings and works so far Entry on premises. as relates to the entry thereon for the supervision thereof That at all times during the progress of any operations in respect thereof within the meaning of this Act it shall be lawful for the surveyor and for the official referees and they are hereby respectively authorized to enter upon the premises upon which such operations have been commenced and that if at any time whilst any building is in course of construction demolition alteration or re-construction any person refuse to admit the surveyor or the official referees authorized under this Act during the customary working hours to inspect such building or any person refuse or neglect to afford such surveyor or official referees every assistance or information which may be reasonably required in and about such inspection then in every such case on conviction thereof the party offending shall forfeit for every such offence a sum not exceeding twenty pounds and that if at any time during such customary working hours the surveyor or the official referees be refused admittance to make inspection of any work then for that purpose it shall be lawful for Ferible entry. such surveyor or for such official referees and they are hereby empowered

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All buildings not
according to this
Act declared
nuisances.

Proceedings thereon.

Removal of build-
ings declared
nuisances.

Expenses.

empowered accompanied by a constable or peace officer to enter upon the ground building and premises where the same shall be.

13. And for the purpose of more effectually enforcing the observance of the provisions of this Act Be it enacted with regard to any buildings timber buildings chimneys and flues party walls party fence walls external walls and projections and every other part of every building of every class or rate of any class which shall be hereafter built rebuilt enlarged or altered within the said city contrary to the provisions hereof so far as relates to the removal thereof That if the same be not built rebuilt enlarged or altered in the manner and of the materials and in every other respect according to and in conformity with the several rules and directions which are in this Act particularly specified and if any person build or begin to build or cause the building or beginning to build or alter or cause to be altered or use or cause to be used any part of any ground or building projection or other thing contrary thereunto and if in either of such cases it so appear by the certificate of the official referees then the said building projection or other thing or such part thereof so irregularly built or begun to be built or so irregularly altered or begun to be altered or so used shall be deemed a nuisance and that thereupon it shall be the duty of the surveyor and he is hereby directed and required to summon the builder before any two Justices of the Peace and that if at the time and place appointed in such summons such builder fail to appear then it shall be lawful for the said Justices and they are hereby authorized to issue a warrant under their hands and seals to compel such builder to appear before such Justices or any other two Justices and that thereupon it shall be the duty of such builder and he is hereby required to enter into a recognizance in such sum as the said Justices shall appoint for abating and taking down the same within such convenient time as the said Justices shall respectively appoint or otherwise for amending the same according to such rules and directions as are herein contained and also for paying the costs charges and expenses incurred by the surveyor in laying the information and obtaining the conviction including such compensation for the surveyor's loss of time as the said Justices shall think fit and that if the party so required fail to enter into such recognizance then it shall be lawful for either of such Justices or any Justice and they are hereby required to commit such builder to the common gaol there to remain without bail or mainprize until he shall have entered into such recognizance as aforesaid or until such irregular building shall have been abated or demolished or otherwise amended or until such nuisance shall be abated or demolished by order of such Justices respectively (which order the said Justices are hereby empowered and required to make forthwith) and until the costs charges and expenses thereof and of all operations and proceedings in relation thereto shall have been paid and further that if application be made to any two or more Justices then thereupon it shall be their duty and they are hereby empowered and required to order the surveyor or any other person to abate or demolish such nuisance and to order the persons authorized by them so to abate or demolish the same to sell and dispose the materials thereof and out of the moneys arising by such sale to pay themselves and all persons by them employed for such purpose the reasonable charges for abating or demolishing such nuisance and also such costs and expenses as aforesaid and to pay the surplus moneys arising by such sale (if any) to such owner of the building as the official referees shall determine to be entitled thereto and that if the moneys arising by such sale be not sufficient to pay such charges then it shall be the duty of the person entitled to the immediate possession of such building or the occupier to make good the deficiency subject to

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to reimbursement as hereinafter provided and if he fail then he shall be liable to the same remedies for the recovery thereof as are by this Act provided concerning the expense of taking down ruinous buildings and putting up boards for the safety of passengers.

14. And be it enacted with regard to any buildings or work so far as relates to the non-observance of the provisions of this Act in that behalf by workmen and others That if any workman laborer servant or other person employed in any building or in the alteration fitting up or decoration of any building wilfully and without the direction privity or consent of the person causing such work to be done do anything in or about such building contrary to the rules and directions of this Act then upon conviction thereof before any two Justices of the Peace upon the oath of one or more credible witness or witnesses (which oath the said Justices are hereby empowered and required to administer) every such offender shall be liable to forfeit for every such offence a sum not exceeding five pounds and that if upon or immediately after such conviction any such forfeiture be not paid then it shall be the duty of any two Justices of the Peace to whom application shall be made to commit the offenders by warrant under the hand and seal of such Justices to the common gaol for any term not exceeding three months at the discretion of such Justices.

Imprisonment for
non-payment of
penalty.

15. And forasmuch as from time to time occasion will hereafter arise to execute the following works in relation to adjoining buildings and premises parted by the same party wall or fence wall but belonging to different owners or occupied by different persons or to buildings intermixed belonging to different owners or occupied by different persons namely--The reparation of the party walls by which such premises shall be parted the pulling down and rebuilding of such party walls the raising of such party walls the reparation of party fence walls the rebuilding of such party fence walls the raising of such party fence walls the pulling down of timber partitions which part buildings the property of different owners or occupied by different persons and building in lieu thereof proper party walls the pulling down of buildings built over or upon public ways or having rooms or stories the property of different persons or occupied by different persons lying intermixed for the purpose of building proper party walls or party arches and generally the performance of other necessary works incident to the connection of such party walls or party fence walls with the premises adjoining it is expedient to make provision as well for facilitating the execution of such works by any such owner desirous to execute the same (who is herein denominated the "building owner") as for protecting the interests of the owner of the adjoining premises (who is herein denominated the "adjoining owner") now for that purpose Be it enacted with regard to all premises parted by a party wall or party fence wall or parted by timber partitions and with regard to all intermixed properties not so parted so far as relates to the execution of any such works by any owner of any such premises That if the adjoining owner shall have consented thereto or if without such consent the required notice of such work shall have been given by or on the part of the building owner to such adjoining owner then subject to such modification as shall be made by virtue of the provision in that behalf and subject to the provision for supplying the want of consent of the owners and subject moreover to the respective conditions hereby prescribed with regard to such works respectively as well as to the payment of the costs of such works and to the sanction or to the award of the surveyor or of the official referees as hereby prescribed in reference thereto it shall be lawful for every such building owner and he is hereby authorized and required to execute such works.

Adjoining properties
party walls party
fence intermixed
buildings.

Execution of works.

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Consent of or notice
to adjoining owners.

16. And be it enacted with regard to such works so far as relates to the notice thereof That unless the adjoining owner consent thereto it shall not be lawful for the "building owner" to execute such works until he have given notice thereof to such "adjoining owner" and every such notice with regard to the pulling down rebuilding or repairing of party walls or party fence walls must be given three months at the least before the work is commenced and every such notice with regard to pulling down and rebuilding intermixed walls and timber partitions must be in the form or to the effect of the notice (No. 6) for that purpose contained in Schedule K hereunto annexed.

Modification of work
to suit adjoining
owners.

17. And be it enacted with regard to every such work so far as relates to the modification thereof in order to render it suitable to the premises of the adjoining owner or his tenant That if the adjoining owner at any time within two months after the receipt of the said notice from the building owner give notice of his desire that any modification be made in the work so as to render it suitable to his premises according to the form (No. 16) in Schedule K hereunto annexed or to the like effect then within seven days after the receipt of such notice it shall be the duty of the building owner and he is hereby required to signify his consent to or dissent from such modification or delay and that if the building owner dissent from or do not within such seven days signify his consent to such modification then it shall be lawful for the adjoining owner and he is hereby entitled to require the building owner not to commence the work until the official referees shall have determined thereon and that if within seven days thereafter application be made in writing to the official referees according to the form (No. 17) in Schedule K hereunto annexed or to the like effect and notice thereof be given to the building owner according to the other form (No. 18) then within ten days after such application it shall be the duty of the official referees to signify their decision thereon and it shall be the duty of the building owner not to commence the work till the decision of such official referees shall have been given and that if within the period of three months from the date of the first notice such adjoining owner do not make any objection or any requisition in conformity with this enactment then subject to the provisions of this Act with regard to such works it shall be lawful for the building owner and he is hereby authorized to proceed to execute the same.

Authority to build.

Delay of work to suit
adjoining owners.

18. And be it enacted with regard to every such work so far as relates to the modification thereof in order to render it suitable to the premises or to the convenience of the adjoining owner or his tenant That if the adjoining owner at any time within three months after the receipt of the said notice from the building owner give notice of his desire that the work be delayed so as to cause it to be executed at a more seasonable or a more convenient time in reference to the business or to the family or domestic arrangements of such adjoining owner or his tenants according to the form (No. 16) in Schedule K hereunto annexed or to the like effect then within seven days after the receipt of the notice thereof it shall be the duty of the building owner and he is hereby required to signify his consent to or dissent from such modification or delay and that if the building owner do not within such seven days signify his consent to such modification or delay then it shall be lawful for the adjoining owner and he is hereby entitled to require the building owner to delay the work until the official referees shall have determined thereon and that if within seven days thereafter application be made in writing to the official referees according to the form (No. 17) in Schedule K hereunto annexed or to the like effect and notice thereof be given to the building owner according to the other form (No. 18) then within ten days after such application it shall be the duty of the official

Application to
official referees.

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official referees to signify their decision thereon and it shall be the duty of the building owner to delay the same till the decision of such official referees shall have been given and that if within the period of three months from the date of the first notice such adjoining owner do not make any objection or any requisition in conformity with this enactment then subject to the provisions of this Act with regard to such works it shall be lawful for the building owner and he is hereby authorized to proceed to execute the same.

19. And be it enacted with regard to any such works hereby authorized to be done in relation to party walls party arches party fence walls or such other structures belonging to the owner of adjoining buildings or party adjoining premises so far as relates to supplying the want of consent of the adjoining owners That if the adjoining premises be unoccupied or if the owner thereof cannot be found or if the owner although found cannot by reason of legal disability or otherwise consent to the work or if the owner will not consent thereto or if differences arise amongst the parties concerned then the notice required to be given in respect of such work must be served on both the surveyor and on the official referees in addition to such other parties entitled to notice under the Act upon whom such notice can be served which must be according to the form (No. 7) in Schedule K hereunto annexed or to the like effect and that forthwith on the receipt of such notice it shall be the duty of the surveyor and he is hereby required to give notice to the parties by whom such work is to be executed and to any one or more surveyors or other agents by them appointed as to the day and hour when he will view the premises according to the form (No. 8) in Schedule K hereunto annexed or to the like effect and at such time it shall be the duty of the surveyor and he is hereby authorized to proceed to inspect such premises accordingly and to certify to the official referees—First whether such work ought to be done or not secondly if the same ought to be done whether it ought to be done in the proposed manner and thirdly the site whereon the party wall should be built and with regard to intermixed buildings what party arches may be necessary over or under any rooms of such buildings so intended to be rebuilt and fourthly the quantity of the soil or ground or other parts of the premises (if any) necessary to be laid to or taken from the house of the person desirous to rebuild to the house of the person permitting him to erect a party wall or party arch and fifthly the compensation (if any) which should be made and paid by either the building owner or adjoining owner to the other in lieu of the lessening either of the said buildings by such party wall or party arch or as a satisfaction for such other injury (if any) as shall be done or occasioned thereby to any of the said parties and that upon the receipt of such certificate it shall be the duty of the official referees and they are hereby required to cause notice thereof to be given to the parties or to such of them as are known and that if within seven days after such notice to the parties the certificate be not appealed against and if the official referees be of opinion that the work is proper to be done and the compensation is fair then it shall be lawful for the official referees to confirm such certificate and to authorize the building owner to proceed with the work as if the consent of the adjoining owner had been obtained and that if any party concerned shall appeal against the certificate of the surveyor as to the work to be done or as to the compensation or as to any other matter referred to in such certificate in pursuance of the above provisions then it shall be the duty of the official referees and they are hereby required to appoint one of their number to survey the building in question and that for that purpose it shall be the duty of the official referee so appointed and he is hereby required to give notice

Supplying want of
consent of adjoining
owner.

Notice of inspection
by surveyor.

Notice to parties by
official referees.

Confirmation by
official referees.

Appeal.

Survey.

*Melbourne Building.**Award.*

notice to the parties and to any one or more surveyors or other agents by them appointed as to the time when he will view the premises and that at such time it shall be the duty of such referee and he is hereby authorized to view such premises accordingly and to inquire into the matters appealed against and to certify to the official referees his opinion thereon and that upon such certificate being made it shall be lawful for the official referees to make their award thereby either confirming or reversing or modifying as to them the case may seem to require the certificate of the surveyor and appointing by whom and in what proportion the expenses of the surveys and of the reports thereon are to be paid and such award shall be final and conclusive and with regard to any works by such award authorized so far as relates to the proceedings of the building owner that if upon the making of the award the period of the notices by this Act prescribed with regard to works of that nature have elapsed then immediately upon the making of the award but if such periods have not elapsed then as soon after the making of the award as such period shall have elapsed it shall be lawful for the building owner his agents servants and workmen to proceed to execute the work.

Repairs of party wall or fence.

20. And be it enacted with regard to any party wall party arch or external wall used wholly or in part as a party fence wall so far as relates to the reparation and rebuilding thereof at the joint expense of the owners of the buildings parted thereby That if such party structure be so defective or so far out of repair as to render it necessary to pull down and rebuild the same or any part thereof then on notice being given by the owner of one of the buildings to the adjoining owner according to the form (No. 6) in Schedule K hereunto annexed or to the like effect it shall be lawful for the building owner to require a survey certificate and award authorizing the execution of such reparation or rebuilding according to the provisions hereinbefore contained in that behalf.

Rebuilding of party walls.

21. And be it enacted with regard to sound party walls so far as relates to the rebuilding thereof at the expense of the building owner That if the owner of one of the buildings desire to rebuild such party wall then on giving to the adjoining owner the required notice according to the form (No. 12) in Schedule K hereunto annexed or to the like effect it shall be lawful for such building owner and he is hereby entitled to pull down and rebuild such party wall but upon condition that he do reinstate and make good all the internal finishings and decorations of the adjoining premises and pay all the costs and charges thereof and also all the expenses incidental to the execution of the work including therein the fees and expenses of the survey and the fees of the surveyor and any fees in respect of any services performed by the official referees and also such reasonable compensation as to the said official referees may seem proper for any loss which the adjoining owner shall have incurred by reason of such work.

External wall required against party wall in certain cases.

22. And be it enacted with regard to any party wall so far as the rebuilding thereof That if the owner of one of the buildings parted by such party wall rebuild such building of a higher rate and do not pull down such party wall and build a proper wall in lieu thereof then it shall be his duty and he is hereby required to build up an external wall against such party wall.

Damage to party wall by erection of external wall.

23. And be it enacted with regard to an external wall built against a party wall so far as relates to the operations incident thereto and to the making good any damage occasioned thereby That if it be necessary to excavate or dig out the ground against the wall of any adjoining building for the purpose of erecting a wall thereon or for any other purpose then it shall be lawful for the building owner and he is hereby entitled so to do but upon condition that the said building owner

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owner do at his own costs shore up and underpin such wall or such parts thereof to its full thickness and to the full depth of such excavation with good sound bricks or stone and tiles or slates bedded in cement or with other proper and sufficient materials and such underpinning to be done in a workmanlike and substantial manner and that if for the purpose of erecting such external wall it be necessary to cut away part of the footings of such party wall on the side next to the wall so to be built and any part of the chimney breasts and chimney shafts belonging to the building about to be rebuilt as shall project beyond the vertical face of such party wall in the lowest floor thereof then in giving notice of such intention in writing to the owner of the adjoining building at least one month before commencing operation according to the form (No. 13) in Schedule K hereunto annexed or to the like effect and on the expiration of such notice it shall be lawful for the building owner and he is hereby authorized to cut away such portion of the footings breasts and chimney shafts aforesaid but so that the same be done and the brick or stone work where cut be again made good in cement or other approved material under the superintendence and to the satisfaction of the surveyor.

24. Provided always and be it enacted with regard to such party wall so far as relates to the making good of any such damage. That if it be so damaged and injured by such cutting away as in the opinion of the adjoining owner or occupier to be ruinous or dangerous then upon application for that purpose it shall be the duty of the surveyor and he is hereby required to survey such wall and if upon survey the survey thereof it be found ruinous or dangerous then to condemn it and that thereupon it shall be the duty of the building owner to pull down and rebuild such party wall and that if in the opinion of the surveyor or an appeal of the official referees such damage or injury shall have been occasioned by want of due care on the part of the building owner then it shall be the duty of such building owner and he is hereby required to pull down and rebuild such party wall and that at his own cost and charges including therein all the costs and expenses incident to such survey and the pulling down and rebuilding of such party wall and the reinstating and making good all the internal finishings and decorations damaged thereby and that if the owner of the building to be rebuilt do not proceed with all due dispatch to pull down and rebuild such party wall and to reinstate and make good all the internal finishings and decorations of the adjoining premises and to pay the costs and charges and expenses of the survey then it shall be lawful for the adjoining owner so to do and he is hereby entitled to recover all the costs and expenses in respect thereof from such building owner his heirs executors administrators or assigns together with such reasonable compensation as to the said official referees may seem proper for any loss which the adjoining owner shall have incurred by reason of such work.

25. And be it enacted with regard to any sound party wall against which an external wall shall have been built and which shall have been suffered to remain so far as relates to the rebuilding thereof. That if while such party wall continues sound the adjoining building be pulled down or rebuilt and such party wall be pulled down then the owner of such adjoining building shall not be entitled to more than his just proportion of the materials thereof nor to more than his just proportion of the ground on which said party wall was built nor shall he build on more than his just proportion of the said ground unless he shall have agreed with and satisfied the owner of the building so previously rebuilt for his half thereof and that if the said owners cannot agree concerning the division of such materials or of such ground

Cutting into footings and chimneys.

Making good such damage.

Damage from carelessness.

Rebuilding.

Rebuilding of sound party walls.

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Reference to official referees.

Raising of future buildings.

Raising of existing buildings.

Chimneys of adjoining building to be raised.

Use of raised buildings.

Repairing and rebuilding of party fence walls.

Deficient party fence walls.

Limitation of height of party fence walls.

ground or of the building thereon or concerning the reimbursement of the party first rebuilding as aforesaid then the price and all matters in difference including the sale and purchase of the ground in question shall be settled by a reference to the official referees whose award shall be final.

26. And be it enacted with regard to every building hereafter to be built so far as relates to the raising thereof That it shall be lawful to raise any building so that nevertheless the party and external walls and chimneys thereof when so raised be of the materials and of the several heights and thicknesses hereinbefore described for party and external walls and chimneys of the rate such building shall be of when so raised and with regard to buildings already built so far as relates to the raising thereof that although the walls of such buildings be not of the thickness prescribed by the Act if in the opinion of the surveyor such walls be sufficiently secure to allow of the raising thereof then it shall be lawful to raise any such building already built to an additional height not exceeding ten feet and with regard to any building adjoining one which shall be raised so far as relates to the raising of the chimneys thereof that if any building be raised it shall be the duty of the owner of such building and he is hereby required to build up at his own expense the party wall between his own and any adjoining building and all flues and chimney stacks belonging thereto and with regard to any building raised so far as relates to the use thereof by the adjoining owner that if at any time the owner of any such adjoining building make use of any portion of the part raised of such party wall by building against it or otherwise it shall be lawful for the owner of the premises so first raised to claim and he is hereby entitled to recover the cost of a proportionate part of the portion which shall be so used together with the cost of such parts of the chimney stack as belong thereto the same to be assessed by the official referees in manner hereinbefore required.

27. And be it enacted with regard to party fence walls by which term is to be understood any boundary wall parting the ground belonging to different owners or occupied by different persons which so far as regards the thickness thereof shall stand upon ground not wholly belonging to the same owner with respect to the reparation and rebuilding and raising thereof That if the owner of any of the premises parted thereby give one month's notice of his intention to the adjoining owner to repair pull down and rebuild the same it shall be lawful for him so to do and if the wall be below the height of nine feet from the ground on either side then either to raise it to that height or pull it down and to rebuild it to that height but upon condition that he do pay all the expenses thereof and that if a building be to be erected against such party fence wall and such wall be not conformable to the requisites prescribed for a proper party wall for a building of that class and rate then it shall be lawful for the building owner and he is hereby entitled to pull down such party fence wall but upon condition that he do pay all the expenses thereof and also that he do make good every damage which shall accrue to such adjoining premises by such rebuilding Provided always with regard to the expense of so pulling down such party fence wall and rebuilding the same that if thereafter the adjoining owner use such party fence wall for any purpose to which if it had not been pulled down and rebuilt it would not have been applicable then to such extent as such adjoining owner shall so use such wall the building owner shall be entitled to be reimbursed the expenses of so pulling down and rebuilding such wall Provided also with regard to any such party fence wall so far as relates to the limitation of the height thereof that if any party desire to raise such wall so as to screen from view any offensive

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offensive object or neighbourhood then on application to the surveyor it shall be lawful for him to authorize such work but not so as to obstruct the free circulation of the air or to injure the property adjoining to or in the neighbourhood of such wall Provided further that nothing contained in this Act shall be construed to give the owner of any adjoining land the power of repairing pulling down rebuilding or otherwise interfering with any party fence wall or boundary wall standing upon land solely belonging to any other person or persons.

28. And be it enacted with regard to the party timber party lath and plaster or party brick-nogged partitions of existing buildings belonging to different owners so far as relates to the pulling down thereof and any wall under or over the same That if one of the buildings be rebuilt or if one of the fronts of any such building be taken down to the height of one story or for a space equal to one-fourth of such front from the level of the second floor upwards then without the consent of the adjoining owner but upon giving the requisite notice according to the forms (Nos. 9 10 11) in Schedule K hereunto annexed or to the like effect it shall be the duty of the building owner and he is hereby required to pull down such timber lath and plaster or brick-nogged partitions and the wall under or over the same and in lieu thereof to build a proper party wall and that at the expense of the owners of all the premises parted thereby.

29. And be it enacted with regard to buildings built over public ways or having rooms or stories the property of different persons lying intermixed so far as relates to the pulling down and laying the parts thereof to each other That if a party wall or party arch cannot be built without pulling down such buildings and so laying the parts thereof to each other and if in default of the consent of all proper parties the official referees authorize such works then it shall be lawful for the owner of either of the said buildings to execute the same but so that the party walls or party arches be conformable to the provisions of this Act and the directions of the said official referees in their award made in that behalf.

30. And be it enacted with regard to buildings divided into rooms or chambers offices or counting houses let out or to be let in separate suites or sets so far as relates to the building of party walls That the walls or divisions between the several rooms and chambers in such buildings belonging to and communicating with each separate and distinct staircase shall be deemed to be party walls within the meaning of this Act and as such must be built in conformity with the regulations and clauses herein contained relating to party walls.

31. And for the purpose of facilitating and power of regulating the execution of any works authorized by this Act or by any award in pursuance thereof in respect of any party wall or party arch parting the buildings or grounds belonging to different owners or in the occupation of different persons or in respect of intermixed buildings Be it enacted with regard to any such works so far as relates to the power to enter the adjoining premises in order to execute the same That if such work have been duly authorized either by the consent of the parties competent to give such consent or by the award or certificate of the official referees then at any time between the hours of sunrise and sunset (Sundays excepted) it shall be lawful for the building owner or any other person acting on his behalf accompanied by a constable or other officer of the peace and they are hereby respectively empowered to enter on the premises of the adjoining owner so far as may be necessary for the executing such work and that if the outer door of such building be shut and being thereunto required the person therein refuse to open the same or if such building be empty and unoccupied then it shall be lawful to break open

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open such outer door and if any fixtures goods furniture or other thing obstruct the building of such intended party wall or party arch or the pulling down any wall partition or other thing necessary to be pulled down and removed in order to the building such intended party wall or party arch then to remove such fixtures goods furniture and things to some other part of the same premises or if there be no room on the premises sufficient for that purpose to remove them to some other place of safe custody and that from and after such entry and at all usual times of working it shall be lawful for the builder employed to erect such intended party wall or party arch and for his servants and all others employed by him to enter into and upon the premises and abide therein the usual times of working as well for the shoring up of the said building so broken into and entered upon and for taking down and removing any party wall partition wainscot or other thing necessary to be taken down and removed for the purpose aforesaid as to build such intended party wall or party arch and that if in any manner any such owner or other person hinder or obstruct any workman employed for any of the purposes aforesaid or wilfully damage or injure the said works then every such person so offending shall forfeit for every such offence a sum not exceeding ten pounds.

Penalty for hinderance.

Stopping of openings in external walls abutting on other premises.

Costs thereof.

Certificate of official referees.

Recovery of costs.

Building of party wall next vacant ground.

Consent of adjoining owner.

32. And now for the purpose of further protecting the interests of adjoining owners Be it enacted with regard to external walls adjoining the ground or building of another owner so far as relates to the making of openings therein That if without the consent in writing of the owner of such ground or building any opening be made in any such wall then it shall be lawful for such owner and he is hereby entitled to require the owner of the premises in which such openings shall be made to stop up the same with brick or stone work as the case may be according to the form (No. 5) in Schedule K hereunto annexed or to the like effect and that if within one month after such notice such stoppage be not effected then it shall be lawful for such owner and he is hereby entitled either by himself or his workmen with tools implements and materials to cause such openings to be stopped and he is also hereby entitled to be repaid the costs thereof and with regard to such costs so far as relates to the adjustment thereof that if such owner refuse to make payment thereof or if there be any dispute as to the amount thereof then on application for the purpose to the official referees by either of the parties concerned it shall be lawful for the person by whom they have been incurred and he is hereby entitled to refer the matter of such dispute to the official referees and to have their determination thereon and that it shall be the duty of such official referees to give the applicant a certificate in relation thereto and that if any party liable to pay any sum of money under such certificate fail to do so then it shall be lawful for the party entitled to such costs to recover the same in the manner hereinafter provided for the recovery of the costs charges and expenses of executing any works in pursuance of this Act.

33. And be it enacted with regard to walls so far as relates to the building thereof on vacant ground at the line of junction of premises belonging to different owners or in different occupations That one month before the owner of any piece of vacant ground or ground not hitherto built upon shall build any building adjoining to another piece of vacant ground or ground not hitherto built upon or build a fence wall for such piece of ground it shall be his duty and he is hereby required to give the owner or occupier of such adjoining vacant ground a notice which must be in writing and must set forth his desire to build a party wall or party fence wall and describe the thicknesses and dimensions of such desired party wall or party fence wall according to the form (No. 14) in Schedule K hereunto annexed or to the

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the like effect and that if within such period of one month such adjoining owner shall signify his consent in writing according to the form (No. 15) in Schedule K hereunto annexed or to the like effect then the same must be built partly on the ground of one of the said owners or occupiers and partly on the ground of the other owner and such last mentioned part is to be paid for as is hereinafter directed by such other owner or occupier but if he do not signify such consent then it shall be the duty of the building owner to build an external wall for such building and fence wall for such ground entirely upon his own ground except as to the footings of any such wall.

34. And be it enacted with regard to any new party wall built on the line of junction of premises belonging to different owners so far as relates to the providing of chimney breasts and their accommodation for the adjoining owner that when the owner of any piece of vacant ground shall have obtained the consent of the adjoining owner to build a party wall on the line of junction of their respective premises then ten days at least before beginning to build such party wall it shall be the duty of the building owner to give the adjoining owner notice thereof according to the form (No. 14) in Schedule K hereunto annexed or to the like effect and that if in due time the adjoining owner shall give instructions in writing or by a plan and elevation or other sufficient drawings then it shall be the duty of the building owner to construct if practicable such and so many chimney jambs breasts and flues of chimneys in all such parts of such party wall as shall be by such instructions required and to leave such recesses in every such wall as may be required but so that they be conformable with the directions of this Act concerning party walls and chimneys and that thereupon it shall be lawful for the building owner to claim and he is hereby entitled to recover from the adjoining owner all the expenses of constructing such chimney jambs breasts and flues of chimneys and recesses as provided by this Act in that behalf.

35. And whereas buildings within the limits of this Act are often either from litigated titles thereto or from the obstinacy neglect or poverty of the owners thereof or of the parties interested therein or from other causes in so ruinous a condition that passengers are endangered thereby now for the purpose of making provision in that behalf Be it enacted with regard to ruinous buildings or parts of buildings so far as relates to repairing or pulling down the same That upon receiving information of any building being in a ruinous or dangerous condition it shall be the duty of the surveyor forthwith to make a survey of such building and that thereupon it shall be the duty of such surveyor to act in all respects as in the case of a survey of party walls and that upon the receipt of the certificate of the surveyor it shall be lawful for the official referees and they are hereby required to cause a copy thereof to be transmitted to the Mayor or person acting as such and that thereupon it shall be the duty of the Mayor or person acting as such to cause with all convenient speed any such ruinous buildings to be securely shored or a proper and sufficient board to be put up for the safety of all passengers and to cause notice in writing to be given to the owner of such building to repair or pull down the same or any part thereof as the case may require within fourteen days then next ensuing and that if within the said fourteen days the repair or demolition thereof be not begun and be not completed as soon as the nature of the case will admit then on a declaration being made before the said Mayor or person acting as such of such notice having been given (which declaration the said Mayor or person acting as such is hereby empowered and required to receive) it shall be lawful for the said Mayor or person acting as such and he is hereby authorized and required out of the money in the hands of the Treasurer of the said

Building of chimney
breasts &c. in new
party wall for adjoining
owner.

Reimbursement of
the expenses.

Repairing ruinous
buildings.

And securing same

In default of owner
Mayor to cause
ruinous buildings to
be repaired or
demolished at ex-
pense of town fund.

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city with all convenient speed to order and cause such building or such part thereof so certified to be in a ruinous and dangerous condition as shall be necessary for the safety of the passengers to be repaired or pulled down or secured in such manner as shall from time to time be requisite Provided always that if the Mayor or person acting as such appeal against such certificate it shall be the duty of the official referees to proceed to survey to certify and to award in all respects as in the case of an appeal from the certificate of the surveyor with reference to party walls or intermixed buildings and that if such official referees certify that the said premises are ruinous and dangerous it shall be the duty of the said Mayor or person acting as such to repair or pull down such building.

Sale of materials to repay expenses.

36. And be it enacted with regard to any such ruinous buildings so pulled down so far as relates to the disposal of the materials thereof and to the application of the proceeds That it shall be lawful for the said Mayor or person acting as such to cause to be sold and disposed of such of the materials as he shall judge necessary and out of the moneys arising from the sale thereof to reimburse to the surveyor and official referees and to every person by them respectively employed for the purposes aforesaid all the charges of the survey and appeal and of putting up and raising such board and of repairing and pulling down and securing such premises and of making good the pavement or footpath and of selling the said materials as aforesaid or as much thereof as the moneys arising by such sale will extend to and that if there be any surplus after payment of all expenses then upon demand thereof made by such owner it shall be the duty of the said Mayor or person acting as such to cause the surplus if any arising from such sale to be paid over to the owner of such building or if there be any question as to the person entitled to such surplus or as to the priority of title to such sum of such persons so entitled or as to the proportions to which such persons are so entitled then it shall be lawful either for the said Mayor or person acting as such or for any person claiming to be so entitled to refer the matter to the determination of the official referees and their decision shall be final and that if no such demand be made then such surplus shall be paid to the Treasurer of the said city in aid of the Town Fund Provided nevertheless that at any time within five years from the deposit of such surplus it shall be lawful for any such owner his executors or administrators to claim and he and they are hereby entitled to receive such surplus and the said Treasurer is hereby required to pay such surplus out of the Town Fund of the said city.

Surplus to be paid over to owner or representative if claimed within five years.

Owner to defray any expense which the proceeds of sale of materials shall not liquidate.

37. And be it enacted with regard to such ruinous buildings so far as relates to the expenses of any such survey and appeal putting up such board repairing pulling down and securing such building and selling the materials beyond the amount thereof which shall have been satisfied by the application thereto of the proceeds of the materials That if the moneys arising from such sale be insufficient to repay all such expenses then from time to time such deficiency shall be paid by the owner of every such building being the person entitled to the immediate possession thereof if known and that if on demand thereof such owner fail to pay such deficiency then it shall be lawful for the Mayor of the said city or any two Justices of the Peace to levy the amount thereof by warrant under their hands and seals by distress and sale of the goods and chattels of such owner if any such can be found and that if no such owner can be met with or being met with shall not on demand pay the said deficiency and no sufficient distress of the goods and chattels of such owner can be found then it shall be lawful for the person who shall at any time thereafter occupy such building or the ground where the same stood and he is hereby authorized and required to

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to pay and deduct the same out of the rent thereof and that if he neglect or refuse to pay such deficiency then it shall be lawful for the said Mayor or any two or more Justices as aforesaid and they are hereby empowered and required to cause the same to be levied by distress and sale of the goods and chattels of any occupier of the premises together with the costs of every such distress and sale and it shall be the duty of the person by whom the same shall be received and he is hereby required to pay the amount to the Treasurer of the said city to be by him placed to the credit of the said Town Fund.

38. And be it enacted with regard to ruinous chimneys roofs and projections so far as relates to the repairing thereof That if a chimney shaft chimney pot or other thing thereon or eaves or parapet or coping or slates or tiles on the roof or any projection from the front walls of any building be in danger of falling then it shall be the duty of such surveyor and he is hereby required to require the occupier of such building or if there be no occupier then the owner thereof to take down or secure the same within thirty-six hours after notice thereof shall have been given and that if within the time specified such occupier or some other person interested in such building do not begin to take down or secure the same and as soon as the nature of the case will admit complete such taking down or securing of the same then it shall be the duty of such surveyor to give information thereof to the Mayor or in his absence to any Justice of the Peace and thereupon it shall be the duty of such Mayor or Justice to proceed to cause such chimney shaft chimney pot or other thing thereon or the eaves or parapet or coping or slates or tiles on the roof or projection from the front or side wall of such building as shall be considered by such surveyor in danger of falling to be forthwith taken down or secured and that if there be no occupier or known owner then it shall be lawful for such Mayor or Justice to direct that the reasonable expenses to be certified by the official referees be paid by the Treasurer of the said city out of the Town Fund and if thereafter the owner of such building become known or if the building become occupied then it shall be lawful for the said Treasurer and he is hereby entitled to recover the amount of such expenses from such owner or from such occupier as in the case of ruinous buildings hereinbefore provided for and that if within the time limited the occupier or some other person interested in such building do not take down or secure the same then for every day during which the same shall so remain unrepaired or not sufficiently secured such occupier or the owner if there be no occupier shall forfeit and pay a sum not exceeding five pounds and that such occupier or owner shall also pay the surveyor's fees and other costs charges and expenses attendant upon any such taking down or securing the building and all such surveyor's fees and other costs charges and expenses may be recovered and levied in the same manner as such penalty Provided always that if the occupier of such building be not bound by virtue of any lease or other instrument to repair reinstate or secure the premises then such occupier is hereby entitled to retain out of the rent payable in respect of such premises all such penalties costs charges and expenses attendant upon or arising out of the taking down or securing or the repairing or rebuilding of the same as in the case of any other works the costs of which he is hereby required to pay in the first instance.

39. And be it enacted with regard to adjoining buildings so far as relates to the making good any damage arising from the falling down of parts thereof (except any such part of a party wall as shall belong to and be used conjointly by the owners or occupiers of the buildings parted thereby) That if at any time any injury or damage be caused to any part of an adjoining building or to the internal decorations and furniture goods wares and merchandise such building by

Owner to reimburse
to adjoining owner
any damage done by
the falling down of
chimney shaft &c.

the

Ruinous chimneys
roofs and projections
must be secured or
pulled down by
owner or if owner be
unknown then the
Mayor or in his
absence any Justice
of the Peace may
order the same to be
taken down or
secured.

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the falling down from any other building of any chimney shaft chimney pot parapet coping or other thing then it shall be the duty of the owner of the building from which such part shall fall and he is hereby bound and required to reimburse the expense to which the owner or occupier may be put in making good such injury or damage in like manner as herein directed concerning the reimbursement of the expenses of ruinous party walls and such costs shall be recoverable in the manner hereinafter directed for the recovery of the costs and expenses of executing works in pursuance of this Act.

Building owner to be reimbursed for erection of any party structure and until repaid is entitled to the sole property of the party structure and the ground whereon it stands.

40. And for the purpose of reimbursing any building owner for the expense of works incurred in respect of any party structure Be it enacted with regard to the following works so far as relates to the reimbursement by the adjoining owner of expenses incurred by the building owner in respect of any party structure built to part the building or premises belonging to other owners from the buildings or premises belonging to himself that is to say—first with regard to any party wall hereafter built on the line of junction of any two buildings and second with regard to any party wall hereafter built on the line of junction of any building and any vacant ground or vacant premises belonging to different owners or occupiers and third with regard to nuisances and defective party walls pulled down and rebuilt either with the consent of the adjoining owner or in pursuance of the condemnation thereof according to this Act except a party wall condemned on account of the injury done thereto by any building owner and the expenses of which and of other incidental works the official referees shall have awarded to be paid by such building owner by virtue of the provision in that behalf and fourth with regard to one or more timber partitions between any two or more buildings pulled down and a party wall built in lieu thereof and fifth with regard to a new party wall or party arch built in lieu of any party wall or party arch between intermixed properties pulled down either with the consent of the adjoining owner or in pursuance of the condemnation of such party wall or party arch and sixth with regard to any party wall built on the site of a party fence or party fence wall and used otherwise than as a party fence wall by the person who shall not have built the same and seventh with regard to every other case of reimbursement in respect of any party structure that if the party structure be built in the manner and of the materials and of the thicknesses of such structure as required by this Act in reference thereto then it shall be lawful for the building owner at whose expense such work shall have been executed to claim and he is hereby entitled to be paid and to recover from the person who is entitled to the immediate possession of the adjoining building or ground or who is in the immediate occupation thereof the following compensation that is to say if a new party wall or party arch built on the line of junction by one owner be made use of either wholly or partially by the adjoining owner then the sum of money proportionate to the value of so much of such party structure so made use of and if chimney jambs chimney breasts and flues have been set up in any party wall in pursuance of the instructions of the owner of any vacant ground adjoining to the same then a sum equal to the value thereof and if an unsound party wall or other party structure be pulled down and rebuilt then a sum of money equal to a proper proportion of the value of the new party structure deduction being made for a due proportion of the old materials and also a proportionate part of all expenses which shall be necessary for pulling down the old party structure in lieu of which such new party structure shall be built and if a party wall be built in lieu of a timber partition or other party structure and be made use of by the adjoining owner then a sum of money proportionate to the value of so much of such new party wall as shall be made use of and also a proportionate part of

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of all expenses which shall be necessary for pulling down the old timber partition or other party structure and if a party wall or party arch already built or hereafter rebuilt be used by adjoining owner then a sum of money proportionable to the value of such party structure as the adjoining owner shall use deduction being made where proper for the value of old materials and in every case the whole of the reasonable expenses of the shoring up the adjoining buildings and of removing any goods furniture or other things therein and of pulling down any wainscot or partition thereof and also such surveyor's fees and any other fees payable in respect of any acts performed by the official referees and also such other costs (if any) as may have been awarded by the official referees as aforesaid in any of the cases hereby provided for and until such expenses shall be so paid every person at whose expense such party structure shall have been built is hereby entitled to and shall be possessed of the sole property thereof and of the ground whereon it stands and the same shall be vested entirely in the person at whose expense such party structure shall have been built.

41. And be it enacted with regard to the costs of all the works which shall be executed under the Act incurred either by an owner or by an occupier either on behalf of the owner of the same premises or on behalf of the owner of the adjoining premises so far as relates to the recovery thereof That within twenty-one days after the completion of the work it shall be the duty of the person by whom such expense shall have been incurred to deliver to the adjoining owner of the building or premises in respect of which such expense shall have been incurred an account in writing of the expenses of the work including all preliminary and incidental operations and also if the work shall have been executed by the authority of the official referees by virtue of the power hereby provided for supplying the want of consent of owners then a copy of such account shall also be delivered to the official referees at the Town Clerk's Office and that every such account must contain a true account first of the number of rods and parts of rods of brickwork and of all digging and of concrete stonework and other requisite materials and of the labor required in executing so much of the work as the owner of the adjoining building shall be liable to pay and of the respective prices thereof and secondly of any deduction which such adjoining owner shall be entitled to make therefrom on account of the old materials of so much of the wall or other structure pulled down which shall have belonged to him and also a true account of the expenses of all other preliminary and incidental operations and that all such works must be estimated and valued in every such account at such rates and prices as shall from time to time be fixed by the official referees and that if within ten days from the delivery of such account any party dissatisfied with the proportion of the amount thereof charged to him appeal to the official referees then upon the receipt thereof or if in case of want of due consent as aforesaid such account be delivered to the official referees as aforesaid it shall be the duty of the official referees to examine such account and to certify whether they approve or disapprove of the items thereof and whether the rates and prices are duly charged and whether the proportion of the account charged to the party appealing be duly charged and also to appoint how and by whom the expenses of such examination are to be borne and also to appoint the time or times at which the amount of such account and of such expenses payable by any party are to be paid and that if they certify their disapproval or that the charges are not duly made or the amount fairly apportioned with regard to the party appealing then before any demand be made or any proceedings be taken thereon the account must be amended and again examined by the official referees and certified as aforesaid and that if the official referees

Building owner
twenty-one days after
completion of work
to send in an account
of the work
performed to the
adjoining owner and
a copy thereof to
the Town Clerk's
office the same to be
paid by such
adjoining owner
within ten days.

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referees certify their approval then at the time or times appointed by the said official referees it shall be lawful for the person entitled to such costs and expenses to demand the amount thereof and that if within ten days after the delivery of such account to the party liable to pay the same such party do not either appeal against such account or pay the same or if within ten days after the demand thereof in conformity with the certificate of the official referees the amount thereof together with the costs of the examination of the account as the official referees shall certify be not paid then it shall be lawful for the person entitled so thereto to recover the same or so much thereof as shall be then due by the summary proceedings hereby provided.

Tenant may deduct from his rent any expense he has been put to in consequence of his landlord not paying his proportion of expense incurred by adjoining owner in the construction of party walls.

42. Provided always and be it enacted with regard to works executed under this Act so far as relates to the reimbursement to the occupier of any costs by him paid in respect thereof That unless that there be some covenant or agreement to the contrary between the parties it shall be lawful for such occupier and he is hereby entitled to deduct from the rents due or becoming due from him to his lessor or landlord the amount of any such costs charges and expenses payable by his lessor or landlord and the costs charges and expenses of any distress and sale made on him through the default of his lessor or landlord and that the receipt for such payment shall be a sufficient discharge to any occupier for so much money as he shall have so paid or which shall have been so levied on his goods and chattels in pursuance of this Act and shall be allowed by such lessor or landlord in part or full payment (as the case may be) of the rent due to him by such occupier.

Empowers lessee to recover expenses incurred by him under this Act for repairs of the premises which he holds on lease.

43. And be it enacted with regard to the costs and all other expenses of pulling down securing repairing and rebuilding party structures or other parts of buildings according to the provisions of this Act so far as relates to the recovery thereof amongst the several owners of the premises That when such costs and expenses shall have been ascertained and paid by the owner upon whom the payment thereof shall have first fallen then as to any building or tenement held under any lease or agreement for a lease or other agreement for the occupation thereof made before the coming into operation of this Act it shall be lawful for such owner and he is hereby entitled to recover the same from the persons now bound or liable by law or by any existing contract to maintain and repair such buildings in respect of which such costs and expenses shall have been incurred but if any dispute or difference arise as to the persons so bound or liable then every such dispute or difference shall be referred to the official referees and that thereupon such official referees shall ascertain and determine the persons bound or liable to pay such costs and expenses and also in what proportions such costs and expenses are to be paid by the parties liable to pay the same and their decision shall be final and that as to any building or tenement to be held under any lease or agreement for a lease or other agreement for the occupation thereof made after the coming into operation of this Act except a lease renewable for ever on a fixed fine or other customary payment all such costs and expenses shall be charged upon the lessor granting such lease or making such agreement and not upon any lessee or sub-lessee holding under any such lease or agreement subject nevertheless to any express covenant or agreement made between any such lessor or lessee in that behalf and in case of such excepted lease such costs and expenses shall be charged upon the lessee instead of the lessor subject as aforesaid to any express covenant or agreement in that behalf between any such lessee and his sub-lessee holding under such lessee upon other than a fixed fine or customary payment as aforesaid and that in default of such costs and expenses being duly paid it shall be lawful for

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for the party to whom the same shall be payable and he is hereby entitled to receive from the occupier thereof the rents and profits of such building or tenement and for that purpose to give notice to such occupier to pay over to him such rents and profits and that thereupon if such occupier fail to pay such rents and profits accordingly then it shall be lawful for the person to whom such costs and expenses shall be payable to recover the same from such occupier by the summary proceeding hereby provided in such proportions and at such times as shall be appointed by the award of the said official referees in that behalf and that after such notice shall be given and before such costs and expenses shall be paid it shall not be lawful for any person otherwise entitled to receive such rents and profits and he is hereby disabled from bringing any action and from taking any proceedings at Law or in Equity to recover such rents and profits Provided always that if on the hearing of the application for the warrant to levy such costs and expenses by distress according to the provision of this Act in that behalf the occupier not being an owner shew that he is not bound to pay in respect of such building or tenement any rent or profit or that the amount of the rent or profit payable by him is not sufficient then it shall not be lawful to issue such warrant if there be no rent due or accruing or if there be rent due or accruing then to the extent only of the amount of such rent and that if such costs and expenses or any part thereof remain unpaid and if the same or any future occupier be or become liable to pay rent in respect of such building or tenement then from time to time until the same be paid it shall be lawful to levy the same by distress according to the provisions of this Act in that behalf upon the same or any such future occupier.

44. And be it enacted with regard to such costs and expenses of works executed under this Act so far as relates to contribution thereto by persons bound or liable to make contribution That for the purpose of enabling the party upon whom the payment of such costs and expenses shall fall either in the first instance or subsequently to obtain contribution from other persons being owners according to the meaning of this Act in like degree and so bound or liable to make contribution it shall be lawful for every such first mentioned person whether he be freeholder leaseholder mortgagee in possession and whatever may be his interest or the nature or extent of such his interest and whether he hold in his own right or in the right of others and whatever may be the kinds and degrees of their respective interests and he is hereby entitled to a contribution from every other person having as owner an interest in the premises of whatever kind or degree which contribution is to be computed according to the amount of his interest in proportion to that of other persons interested so far as such persons may be known or can be reached by process of any Court of Law or Equity and that it shall be lawful for any party so interested and he is hereby entitled to require the surveyor and official referees to settle and determine the same by their award and their decision shall be final and that if the person upon whom the payment of such costs and expenses shall have fallen have paid in respect of the interest of another or others either unknown or who could not be reached by process of any Court of Law or Equity more than his own just proportion then on the production of such award duly made signed and sealed it shall be lawful for such person to have and exercise against other parties against whom such award shall be made and he is hereby entitled to the like remedies to compel payment of money as are hereby given for compelling the first payment of such costs and charges of such expenses.

45. And now for the purpose of facilitating the improvement of the drainage of houses Be it enacted with regard to the drains By-laws may be framed to compel parties building or cesspools

Contribution to costs and expenses of erection and repair of party walls executed under this Act to be made by every party interested therein in proportion to their interest and payment may be compelled.

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rebuilding to open
drains into any public
sewers which may be
hereafter formed.

cesspools and privies to buildings so far as relates to the making thereof That upon the laying down and completion of common sewers in any of the streets or lanes in the said city it shall be lawful for the Council of the said city from time to time by by-laws to declare and order that all the conditions regulations and directions contained in the Schedule G to this Act annexed shall be duly observed and performed from and after a date to be specified and fixed in such by-law by parties building or rebuilding in the streets or lanes in which such common sewers shall have been laid down and completed and that if any person offend in respect thereof he shall be liable to all the penalties and forfeitures by this Act imposed in respect of any buildings either built contrary thereto or without due notice to the surveyor appointed in pursuance of this Act to inspect such buildings.

Respecting forma-
tion of future streets
as regards obtaining
due width.

46. And now for the purpose of making provision concerning streets and other ways of the said city Be it enacted with regard to such streets and other ways hereafter formed so far as relates to securing a sufficient width thereof That from and after the first of January one thousand eight hundred and fifty all the conditions regulations and directions contained in the Schedule H to this Act annexed shall be duly observed and performed and that if any person offend in respect thereof he shall be liable to all the penalties and forfeitures by this Act imposed in respect of any buildings either built contrary thereto or without due notice to the surveyor appointed in pursuance of this Act to inspect such buildings.

Prohibits cellars
being let or occupied
as separate dwellings
and imposes penal-
ties for so doing.

47. And now for the purpose of discouraging and prohibiting the use of buildings unfit for dwellings Be it enacted with regard to every building of the first or dwelling-house class whether already or hereafter built so far as relates to the occupation thereof or to the occupation of any underground room or cellar thereof That all rules and regulations prescribed and specified in the Schedule hereunto annexed marked I with regard to back yards areas and cellars shall be herein-after strictly observed and complied with and it shall not be lawful to let separately to hire as a dwelling any such room or cellar the surface of the floor of which is more than three feet below the surface of the foot-way of the nearest street or alley nor to occupy or suffer to be occupied any such room or cellar built underground for any purpose (except for a ware room or store room) and that if any person wilfully let or suffer to be occupied in manner aforesaid any underground cellar or room contrary to the provisions of this Act then on conviction thereof before two Justices of the Peace such person shall be liable to forfeit for every day during which such cellar or room shall be so occupied a sum not exceeding twenty shillings and one-half of such penalty shall go to the person who shall sue for the same and the other half to the Treasurer of the said city in aid of the Town Fund.

Provides against
businesses dangerous
from fire or explo-
sion.

48. And for the purpose of making provisions concerning businesses dangerous in respect of fire or explosion Be it enacted with regard to the following businesses that is to say the manufacture of gunpowder or of detonating powder or of matches ignitable by friction or otherwise or other substances liable to sudden explosion inflammation or ignition or of vitriol or of turpentine or of naphtha or of varnish or of fireworks or painted covers or of oilcloth and other manufactures dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion so far as relates to the carrying on of any such business in the neighbourhood of public ways or buildings That it shall not be lawful for any person to establish or newly carry on such businesses or any of them either in any building or vault or in the open air at a less distance than forty feet from any public way or than fifty feet from any other building or any vacant ground belonging to any other person than

than his landlord and that if any such businesses or any of them be now carried on in any situation within such distances then from the expiration of the period of twenty years next after the first day of January one thousand eight hundred and fifty it shall not be lawful to continue to carry on such businesses or any of them in such situation and that if any person establish anew any such businesses or any of them or carry on any such businesses or any of them contrary to this Act then on conviction thereof before two Justices such person shall be liable to forfeit for every day during which such businesses shall be so carried on a sum not exceeding fifty pounds as the said Justices shall determine and that it shall be lawful for the Justices also to award to the prosecutor such costs as shall be deemed reasonable and that if the offender either fail or refuse to pay such penalty and costs immediately after such conviction then they may be levied by distress of the goods and chattels of the person convicted or if there be no such distress then such person shall be committed to the common gaol or house of correction for any time not exceeding six months at the discretion of such Justices and that by warrant under the hands and seals of two or more such Justices of the Peace.

49. And for the purpose of making provisions concerning Regulates businesses offensive or noxious. businesses offensive or noxious Be it enacted with regard to the following businesses that is to say—blood boiler bone boiler fell monger parchment maker slaughterer of cattle sheep horses or pigs soap boiler tallow melter tripe boiler boiler down of sheep or cattle and any other like business offensive or noxious so far as relates to the carrying on of any such businesses or any of them in the neighbourhood of any public way or of other buildings of the first or dwelling-house class That it shall not be lawful hereafter for any person to establish or newly carry on any such businesses or any of them either in any building or vault or in the open air at a less distance than forty feet from any public way or than fifty feet from any other such buildings of the first or dwelling-house class and that if any such businesses or any of them be now carried on in any situation within such distances then from the expiration of the period of twenty years next after the passing of this Act it shall cease to be lawful to continue to carry on such businesses or any of them in such situation save as hereinafter provided and that if any person establish anew any such businesses or carry on any such businesses contrary to this Act then on conviction thereof before two Justices such person is hereby made liable to forfeit for every day during which such business shall be carried on a sum not exceeding fifty pounds as the said Justices shall determine and that it shall be lawful for the Justices also to award to the prosecutor such costs as shall be deemed reasonable and that if the offender either fail or refuse to pay such penalty and costs immediately after such conviction then they may be levied by distress of the goods and chattels of the person convicted or if there be no such distress then such person shall be committed to the common gaol or house of correction for any time not exceeding six months at the discretion of such Justices and that by warrant under the hands and seals of two or more Justices of the Peace.

50. Provided always and be it enacted with regard to any such offensive or noxious business whether such business be now carried on at a less distance than forty feet from any other building or be hereafter carried on at a greater distance yet so as to cause danger or annoyance so far as relates to the mitigation of any penalty or punishment for unlawfully carrying on the same That every such penalty hereinbefore imposed shall be enforceable only at a Special Sessions of the Peace summoned for that purpose or on an appeal as herein-after provided and that notwithstanding the said term of twenty years

Appeals may be made against penalties arising from violation of previous clauses and mitigation of penalties may be made if precautionary measures have been used to diminish pernicious consequences.

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years shall have expired if any party charged with carrying on such business shew that in carrying on such business all the means then known to be available for mitigating the effect of such business in any such respect have been adopted then it shall be lawful for such Justices to receive evidence thereof and according to such evidence to mitigate the penalty as to them shall seem fit Provided further with regard to such offensive or noxious business so far as relates to the adoption of means to mitigate the injurious effects thereof that notwithstanding the said period of twenty years shall have expired if it shall appear to the Justices whether at Petty Sessions as aforesaid or on appeal or on trial by jury as hereinafter provided that the party carrying on any such business shall have made due endeavours to carry on the same with a view to mitigate as far as possible the effects of such business then although he hath not adopted all or the best means available for the purpose yet it shall be lawful for such Justices assembled and they are hereby empowered to suspend the execution of their order or determination upon condition that within a reasonable time to be named the party convicted do adopt such other or better means as to the said Justices shall seem fit or before passing final sentence and without consulting the prosecutor to make such order touching the carrying on of such business as shall be by the said Court thought expedient for preventing the nuisance in future Provided always that if the matter in respect of which such penalty shall be incurred come before any Supreme Court it shall be lawful for such Court to exercise such power of mitigating such penalty or of suspending the execution of any judgment order or determination in the matter or to make such order touching the carrying on of such business as to the Court shall seem fit in the case.

Appeal.

51. And be it enacted with regard to any business offensive noxious or dangerous and with regard to any building erected or continued within any such distance as aforesaid from any such business dangerous noxious or offensive so far as relates to a conviction in respect of any such business and to an appeal from such conviction That if any person be dissatisfied with the decision of such Justices and if within four days after such decision notice be given to the party appealed against by or on behalf of such person of his intention to appeal and if he enter into a recognizance with two sufficient securities conditioned to try the appeal and to abide the order of the Court and pay to the party appealed against such costs (if any) as shall be awarded against him then it shall be lawful for such party so dissatisfied to appeal against such conviction to the Justices of the Peace at their General Quarter Sessions of the Peace to be holden within four months after such conviction and that if within the above-mentioned period such appellant shall have entered into such recognizance as is herein required and if within one month thereafter he give notice of the grounds of such appeal then it shall be lawful for such Justices and they are hereby empowered to proceed to hear and examine on oath into the cases and matters of such appeal (which oath they are hereby empowered to administer) and to determine the same and to award such costs to be paid by the said parties as they think proper and the order judgment and determination of the said Justices in their respective Sessions shall be binding and conclusive upon all parties.

Juries may be summoned on appeals to Quarter Sessions to decide whether businesses alleged to be offensive are so or not.

52. Provided always and be it enacted That if before conviction by two such Justices the party complained against desire to have the matter tried by a jury and enter into a recognizance to try such matter without delay and to pay all costs of trial if a verdict be found against him then such matter may be tried at the next practicable Court of Quarter Sessions or whensoever the Court shall appoint and that thereupon or on the application of such party it shall be lawful for the said

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said Court of Quarter Sessions and they are hereby authorized and required to issue their warrant or precept to the Sheriff or other proper officer as the case may be requiring him to return a competent number of persons qualified to serve on juries and it shall be lawful for the said Court of Quarter Sessions and they are hereby authorized and empowered by precept from time to time as occasion may require to call before them respectively every person who shall be thought proper or necessary to be examined as a witness before them on oath concerning the premises and that if the said Court think fit it shall be lawful for them and they are hereby empowered to authorize the said jury to view the place in question in such manner as they shall direct and to command the attendance of such jury and of all such witnesses and parties as shall be necessary or proper until such affairs for which they are summoned shall be concluded and that the said jury shall inquire and try and determine by their verdict whether the business in question be offensive or noxious and whether the party in question have done any act whereby the penalty hereby imposed in respect thereof has been incurred and that subject to the power hereinbefore conferred of mitigating such penalty or suspending their judgment order or determination thereon or making such order touching the carrying on of the business as aforesaid the said Court of Quarter Sessions shall give judgment according to such verdict and shall award the penalty (if any) incurred by the defendant and shall and may if they see fit award to either of the parties such costs as they may deem reasonable which verdict and the judgment award order or determination thereupon shall be binding and conclusive.

53. Provided always and be it declared and enacted with regard to any business which is contrary to any existing Act of Council or otherwise contrary to law so far as relates to the operation of this Act in that behalf that notwithstanding anything in this Act contained this Act shall not be deemed to authorize any person to carry on any such business either within such limits or otherwise or any business which it is unlawful to carry on within any limits or in any manner contrary to any Act of Council or otherwise contrary to law nor to affect abridge or restrain the right the duty or the power of any person whether private person or public officer to prosecute either civilly or criminally any person who shall carry on within the city any offensive noxious or dangerous business.

Act does not legalize any unlawful occupation nor prevent prosecutions by private persons or by the Crown against parties carrying on businesses reputed noxious or dangerous.

54. And further for the regulation or removal of any offensive noxious or dangerous business now carried on Be it enacted with regard to any such business so far as relates to the purchase thereof or of the premises wherein it shall be carried on That if two-thirds in number of the inhabitant householders of any block or section of land within the said city in which such business shall be carried on present a memorial to the Council of the said city stating the existence of such offensive noxious or dangerous business in such block or section and praying the removal of such business therefrom and thereby engaging to provide compensation to the persons carrying on the same either at the expense of the memorialists or by means of a rate to be levied on the said block or section it shall be lawful for the said Council to consider the character of such business whether it be offensive noxious or dangerous and if it appear to be so and that there are no means of rendering it otherwise by the adoption of methods available without unreasonable sacrifice on the part of the person by whom it is carried on then it shall be lawful for the said Council to direct by by-law that the removal of such business may be purchased by means of a rate and that it shall be the duty of the official referees to determine what compensation shall be paid to the party carrying

By-Law may be made to render compensation to owner of noxious or dangerous business if inhabitants of any locality memorialize for its removal and engage to repay any loss incurred by such removal by means of a rate.

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on such business for the removal thereof and to the owner and occupier of the premises for the restriction of the use of his building for such purpose subject however to an appeal to the Court of Quarter Sessions whose decision thereupon shall be binding and conclusive and that if within three months from the determination of the amount of compensation as aforesaid payment thereof be made or tendered then within three months from the payment or tender of such compensation it shall cease to be lawful for the party carrying on such business to continue the same and for any owner or occupier thereof either to carry on or to permit to be carried on such business in the same or any part of the same premises.

Imposes a penalty on occupants of houses the chimneys of which take fire on account of not being regularly swept or cleaned.

55. And be it enacted That in every case in which it shall be made to appear to the satisfaction of any Justice of the Peace for the said city that the chimney of any house or building within the limits thereof has taken fire from the occupier of any such house or building having omitted to cause such chimney to be regularly swept and cleaned or from any other neglect of such occupier or of his or her servant or servants such occupier shall on conviction before any such Justice of the Peace forfeit and pay for every such offence any sum not exceeding five pounds to be recovered by distress and sale of the offender's goods and chattels one moiety thereof to be paid to the person informing and the remainder to the Treasurer of the said city in aid of the Town Fund and in every case the proof that any such chimney did not take fire through the neglect of such occupier in not having the same regularly and sufficiently swept or cleaned shall be upon such occupier.

Penalty for making fires in the open air at a less distance from any public way building enclosure party fence or party wall than 50 feet.

56. And for the prevention of accidents from fires made by blacksmiths wheelwrights and others in the open air Be it enacted That it shall not be lawful for any person or persons to make or cause to be made any fire in the open air within the said city at a less distance from any building or enclosure or party wall or party fence or public way than fifty feet under a penalty of twenty pounds for every such offence.

Penalty for stacking hay &c. in the open air at a less distance than fifty feet from any building enclosure party fence or party wall.

57. And be it enacted That it shall not be lawful for any person or persons to stack or pile any hay or straw in the open air within the said city at a less distance than fifty feet from any building or enclosure or party wall or party fence or public way under a penalty of twenty pounds for every such offence.

No action to lie against the party on whose property a fire may accidentally begin for damage done thereby.

58. And be it enacted That no action suit or process whatever shall be had maintained or prosecuted against any person in whose house chamber stable barn or other building or on whose estate any fire shall (after the said first day of January one thousand eight hundred and fifty) accidentally begin nor shall any recompense be made by such person for any damage suffered thereby any law usage or custom to the contrary notwithstanding and in such case if any action be brought the defendant may plead the general issue and give this Act and the special matter in evidence at any trial thereupon to be had and in case the plaintiff become nonsuited or discontinue his action or suit or if a verdict pass against him the defendant shall recover treble costs Provided that no contract or agreement made between landlord or tenant shall be hereby defeated or made void.

Provides for the appointment by the City Council of a competent surveyor or surveyors of buildings under this Act.

59. And for the purpose of appointing a competent surveyor or surveyors for carrying into effect the provisions of this Act within the said city and for regulating the duties of such surveyor or surveyors Be it enacted That at any time after the passing of this Act and before the same shall come into operation it shall be lawful for the Council of the said city and they are hereby required to nominate and appoint as surveyor or surveyors one or more discreet persons of the full age of twenty-five years properly educated and skilled

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skilled in the art and practice of building and in the event of more than one surveyor being appointed for the said city the said Council is hereby authorized and empowered to define the districts within which such surveyors shall act and the same from time to time to alter unite or enlarge for the more convenient distribution of the business.

60. And be it enacted That every such surveyor so appointed by the said Council as aforesaid shall hold his office during the pleasure of the said Council only and be subject in the same manner as other corporate officers to their regulations and government.

61. And be it enacted with regard to such surveyors so far as relates to their functions generally That it shall be the duty of every such surveyor and he is hereby required to see that all the rules and directions of this Act are well and truly observed in and throughout his district and for that purpose to proceed from time to time in due course upon the receipt of any notice or if from ignorance or neglect or from any other circumstance notice of any work intended to be done has not been given then upon such work being observed by or being made known to him to inspect the works intended to be done or which shall have been commenced and to cause all the rules and directions of this Act in respect thereof to be strictly observed and also to attend and perform everything required of him by this Act whether with or without notice and also to inspect ruinous buildings and projections in danger at all times when needful and to take all necessary measures thereupon and also to survey on requisition of the official referees all buildings built rebuilt enlarged or altered by or under the professional superintendence of any other surveyor appointed under this Act or in which such other surveyor may be personally interested to cause a book for registering all notices informations and complaints to be at all times kept at his office and to enter into such book every notice information or complaint which shall be delivered or made to him and any proceeding thereon by him taken.

62. And be it enacted with regard to such surveyors so far as relates to their disqualifications That during the time any such person shall act as a Justice of the Peace for the said city it shall not be lawful for him and he is hereby disqualified from holding the office of a surveyor or of a deputy or an assistant surveyor under this Act.

63. And be it enacted with regard to every surveyor hereafter appointed so far as relates to making a declaration of official fidelity That before any such surveyor shall act in pursuance of this Act it shall be his duty and he is hereby required to make a declaration of official fidelity which must be administered by the Mayor for the time being or in his absence or incapacity then before any Justice of the Peace and must be in form or to the effect following that is to say—

“ I A. B. being a surveyor appointed in pursuance of an Act
 “ made and passed in the thirteenth year of the reign of
 “ Her Majesty Queen Victoria intituled ‘*An Act for*
 “ *regulating Buildings and Party Walls and for pre-*
 “ *venting mischiefs by fire in the City of Melbourne*’ and
 “ commonly called the Melbourne Building Act do
 “ solemnly declare that I will diligently faithfully and
 “ impartially perform the duties of my office and to the
 “ utmost of my power skill and ability endeavour to cause
 “ the several provisions of the said Act to be strictly
 “ observed and that without favour or affection prejudice
 “ or malice to any person whomsoever.”

And that if before making such declaration any such surveyor act in pursuance of this Act then on conviction thereof he shall be liable to pay for every day during which he shall so act before making such declaration the sum of five pounds.

Surveyors to hold office during the pleasure of the City Council and to be subject to their regulations &c.

Defines the duties of surveyors generally.

Justices of the Peace for the city disqualified from being appointed surveyors under this Act.

Surveyor to make declaration of official fidelity before acting under penalty.

Surveyor to have an office which is to be kept open daily from ten in the morning to four in the afternoon of all lawful days.

Mayor to appoint deputy surveyor in case of surveyors incapacity from illness or otherwise.

Provides for filling up vacancies in office of surveyor one month after their occurrence.

Buildings erected under professional superintendence of such surveyors not to be inspected or surveyed by them for the purposes of this Act.

Provides for the payment of the surveyors' fees specified in Schedule J.

64. And be it enacted with regard to the surveyors so far as relates to the regulation of their official duties That it shall be the duty of every surveyor for the said city and he is hereby required to have an office at such place as the Council of the said city may appoint at which it shall be his duty and he is hereby required by himself or some other person in his behalf to attend daily (Sunday Christmas Day and Good Friday excepted) from ten of the clock in the morning to four of the clock in the afternoon.

65. And be it enacted with regard to such surveyor so far as relates to the appointment of a deputy or a substitute in certain cases That if any surveyor shall be prevented by illness or any other unavoidable circumstance from attending to the duties of his office then forthwith it shall be the duty of the Mayor and he is hereby required to appoint some other surveyor duly qualified as aforesaid as such surveyor's deputy to perform all such his duties for so long a time as he shall be so prevented from executing them and that thereupon during such time as aforesaid it shall be the duty of such deputy surveyor and he is hereby required to perform all the duties of such surveyor and that in all respects as if he were the surveyor appointed under this Act.

66. And be it enacted with regard to such surveyors so far as relates to the filling up of vacancies That if any vacancy shall happen through the death or removal of any surveyor then within one month thereafter it shall be the duty of the Council of the said city and they are hereby authorized and required to appoint a successor as herein directed and that in the meantime it shall be lawful for the Mayor to appoint some other competent person duly qualified as aforesaid for that purpose to discharge the duties of surveyor until such election or appointment of a successor shall take place.

67. And be it enacted with regard to such surveyors so far as relates to the supervision of buildings built rebuilt enlarged or altered by or under their professional superintendence That it shall not be lawful for any such surveyor to survey any such building for the purposes of this Act but that such building must be surveyed by another surveyor to be appointed by the official referees for that purpose.

68. And be it enacted with regard to the payment of the fees hereinafter fixed for such surveyors That upon the expiration of one month after the roof of any building erected and surveyed under this Act shall have been covered in and all the walls thereof shall have been built to their full heights and the principal timbers and floors shall have been fixed in their places and upon the expiration of fourteen days after the completion of any addition alteration and repair and upon the expiration of fourteen days after each special service shall have been performed and upon delivering to the owner of the building an account of the fees incurred and upon tendering a receipt signed with his Christian and surname and stating the amount of such account and the work done it shall be lawful for the surveyor and he is hereby entitled to receive from the builder or from the owner or from the occupier of the building for the time and trouble and expenses incurred in causing the rules regulations and directions of this Act to be observed the several fees specified in the Schedule of fees hereunto annexed marked J and that if on tender of such receipt any builder owner or occupier who shall become liable to pay any such fee shall refuse to pay the same then upon application to any Justice of the Peace it shall be lawful for such Justice and he is hereby required to summon the party complained of in the first instance and if he do not appear or he fail to satisfy as to the refusal of payment aforesaid it shall be lawful for such Justice and he is hereby required to issue his warrant to levy the amount of such fee by distress and sale of

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of the goods and chattels of the party so refusing and if such fee be paid by the occupier he shall be entitled to recover the amount thereof from the owner.

69. Provided however and be it enacted That it shall not be lawful for any surveyor or supervisor appointed under the provisions of this Act to charge any separate fee upon any office belonging to any building of whatever class provided such office shall be built at the same time as the building to which it may belong or be finished within six months after such building is covered in but that the same shall be deemed to be included in the fee which may be due or payable to any such surveyor for any such building Provided however that no public stable or warehouse store or workshop shall be deemed to be an office so as to exempt the owner or proprietor of the same from the payment of any fee or account thereon which may be chargeable under the provisions of this Act.

70. And be it enacted with regard to such surveyors so far as relates to a return of the business done by them and to the inspection thereof That within seven days after the first day of every month it shall be the duty of every surveyor and he is hereby required to make a return to the Town Clerk enumerating therein the number and nature of all the several works executed within the previous month under his supervision and the fees paid to him for the same the amount of which fees he is hereby required to pay over at the same time to the Treasurer of the said city to be carried by him to the credit of the Town Fund and also a copy of the list or register of notices served upon him with the results thereof and to keep in his office a copy of such return and that if any person shall apply to inspect the same then on the payment of one shilling it shall be open for inspection at all reasonable times and with regard to such return so far as relates to the authentication and effect thereof that every such return must be signed by such surveyor and if so signed it shall be deemed to be a certificate that all the works enumerated therein have been done in all respects agreeably to this Act according to the best of his knowledge and belief and that they have been duly surveyed by him but no such return shall be any protection from or hinderance to any future proceedings in respect of works not executed according to the provisions of this Act though the same may have been done before the making of such return.

71. And be it enacted with regard to every surveyor so far as relates to his duties That if any surveyor shall at any time wilfully neglect his duty or behave himself negligently or unfaithfully in the discharge thereof then and in every such case it shall be lawful for any person aggrieved to present a complaint in writing under his hand to the Mayor and any one or more Justices of the Peace and which complaint shall set forth the nature and particulars of the offence charged by the complainant against such surveyor and the said Mayor and Justices shall by order of the Court appoint a time for the hearing of the said complaint and a copy of which order and of the said complaint shall be served by or for the said complainant on the said surveyor ten days at the least before the time appointed for the hearing of such complaint and the said surveyor shall appear before the said Mayor and Justices at the time and place so appointed for hearing the said complaint to answer the same and that if upon the hearing of the said complaint and of the surveyor and the evidence respectively produced by or for them it shall appear unto the said Mayor and Justices that such complaint in whole or in part is well founded then it shall be lawful for the said Mayor and Justices and they are hereby required to fine such surveyor in such sum of money not exceeding fifty pounds as they shall think fit besides any other proceeding

No separate fee to be charged on offices if built at the same time as building to which they belong or finished within six months after but no public stable or store warehouse or workshop to be deemed an office or be exempt from surveyor's fees.

Surveyor to make monthly returns to the Town Clerk of business done by him under this Act (who is to file the same) and pay over to City Treasurer amount of fees received.

Provides for the punishment of surveyors in cases of wilful neglect or unfaithfulness in the discharge of their duties.

proceeding which the Council of the said city may take with regard to such surveyor. Provided however that in the event of its appearing to any such Justices that any such complaint is frivolous and vexatious it shall be lawful for such Justices to award to such surveyor all costs incurred by him in defending such suit together with such compensation for his loss of time as to such Justices may seem meet.

Provides for the appointment of official referees.

72. And for the purpose of providing for the appointment of competent official referees to superintend the execution of this Act generally throughout the limits to which it is applicable and also to determine sundry matters in question incident thereto as well as to exercise in certain cases a discretion in the relaxation of the fixed rules and directions of this Act where the strict observance thereof is impracticable or would defeat the objects of this Act or would needlessly affect with injury the course and operation of business. Be it enacted with regard to the official referees so far as relates to their appointment to their qualifications and to the tenure of their office. That two official referees shall be appointed one of which shall be the Clerk of Works for the District of Port Phillip or such other officer as the Governor shall think proper to appoint and the other shall be appointed by the Council of the said city. Provided that the person so appointed shall be by profession an architect surveyor or practicable builder and the said Council shall have power from time to time to remove the official referee so appointed by them and in his place to appoint another person so qualified as aforesaid and that while any such person shall so hold the office of official referee it shall not be lawful for such person and he is hereby expressly prohibited to act as such with respect to any building of which he is the owner architect builder or in any other manner or way personally interested and in event of the disqualification of any such official referee as aforesaid then it shall be the duty of the Mayor to appoint another fit and proper person to act *pro hac vice* as official referee in his room and stead.

Defines the functions of official referees generally.

73. And be it enacted with regard to such official referees so far as relates to their functions generally. That it shall be the duty of such official referees and they are hereby required to perform the several matters so respectively assigned by the provisions of this Act and to determine all questions referred to them whether expressly by this Act or at the instance of any one or more of the parties concerned. Provided always that in every case of reference under this Act to the official referees where such official referees shall differ in opinion as to the determination of any such reference the same shall be referred by them to the final arbitrament and decision of the Mayor of the said city or person acting as such for the time being.

Defines jurisdiction of official referees.

74. And be it enacted with regard to the official referees so far as relates to their jurisdiction. That if any doubt difference or dissatisfaction in respect of any matter within the limits of this Act arise between any parties concerned or between any party and any surveyor or between any two surveyors as to any act done or to be done in pursuance of this Act or as to the effect of the provisions thereof in any case or as to the mode in which the provisions and directions of this Act are or ought to be carried into effect and particularly as to whether the requirements implied in terms of qualification applied to sites to soils to materials or to workmanship or otherwise and denoting good sound fireproof fit proper or sufficient are fulfilled in certain cases or as to the expenses to be borne by the respective owners of premises parted by the same party walls or the proportions thereof or as to the proportions of the expense to be borne by the occupier or by the owner of premises in respect of any works executed or any other matter whatever then it shall be lawful for any party concerned and he is hereby

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hereby entitled to require the official referees on appeal to determine such matter but so that requisition be made in writing and that it set forth either generally or otherwise the matters in respect of which the determination of the official referees is required and that the determination of such referees or of one of such referees with the assent of the Town Clerk as to all or any of the points in difference on which such referees shall make their award and as to the costs charges and expenses of such reference shall be binding on all parties to such reference.

75. And be it enacted with regard to the official referees so far as relates to their authority in respect of any reference to them and to the effect of their award upon the rights and interests of the owners and occupiers of property That it shall be lawful for such referees and they are hereby empowered to exercise all such powers of arbitrators as they would have had in case they had been appointed under order of the Supreme Court for the District of Port Phillip and that if such award be given in writing and be sealed by the Town Clerk it shall be as effectual as if made under an order of reference by such Court and shall be enforced by the said Court in all respects as if made under an order of such Court and that it shall be binding and conclusive against every person claiming any estate right title trust use or interest in to or out of the said premises or any part thereof either in possession reversion remainder or expectancy and against every other person whomsoever.

76. And be it enacted with regard to any reference to the said official referees so far as relates to the revocation of their authority That the power and authority of the official referees shall not be revocable by any party to such reference without the consent of all the parties thereto and that although any party shall not attend upon such reference it shall be lawful for such official referees to proceed with the reference and to make their award.

77. And be it enacted with regard to such reference so far as relates to the evidence of any matter thereof That it shall be lawful for the official referees and they are hereby empowered by summons in writing signed by one at least of such official referees and sealed with the seal of office of the Town Clerk to require the attendance at a time and place to be named in such summons of any person who may be able to give evidence in the matter of any reference to them and to require by such summons the production of any documents to be mentioned therein and if the party so summoned do not attend in obedience thereto such party shall be liable to be proceeded against as for a contempt of Court and that every person whose attendance shall be required shall be entitled to the like conduct money and payment of expenses as for and upon any attendance at any civil suit in the Supreme Court and that no person shall be compelled to produce under any such summons any writing or other document that he would not be compelled to produce at a trial or to attend on more than two consecutive days to be named in such summons and that it shall be lawful for the official referees and they are hereby respectively authorized and required to administer an oath to such witnesses as may come before them or in cases where affirmation is allowed by law instead of an oath to take their affirmation and that if on such oath or affirmation any person making the same wilfully and corruptly give false evidence then every person so offending shall be deemed to be guilty of perjury.

78. And be it enacted with regard to such award so far as relates to the effect thereof as evidence of the matter thereof That if on the trial or hearing of any cause or matter in any Court of Law or Equity or elsewhere any copy of an award signed and sealed with the

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seal of the office of the Town Clerk be produced then it shall be the duty of all Judges Justices and others and they are hereby required to receive the same as *prima facie* evidence of the matters therein contained.

Provides for the payment of a fee of one guinea each to official referees for determining any reference or appeal.

79. And be it enacted That such official referees shall receive for their own use and benefit a fee of one guinea each for their time and trouble in determining any reference or appeal made to them under the provisions of this Act whether in conjunction with the surveyor or not such fee to be paid in the first instance by the party making or demanding the reference or appeal before the same is entered upon or decided.

Official referees to make declaration of official fidelity before acting.

80. And be it enacted with regard to the official referees so far as relates to the declaration of official fidelity That before any official referee shall act in pursuance of his appointment it shall be his duty and he is hereby required to make the following declaration to be administered by the Resident Judge of the Supreme Court of the district that is to say—

“ I A. B. do solemnly declare that I will diligently faithfully and impartially execute the duties of an official referee in relation to matters arising under the provisions of the Act made and passed in the thirteenth year of the reign of Her Majesty Queen Victoria intituled ‘ *An Act for regulating Buildings and Party Walls and for preventing mischiefs by fire in the City of Melbourne* ’ and commonly called the Melbourne Building Act.”

Empowers one official referee to act under certain circumstances.

81. And be it enacted with regard to such official referees so far as relates to the regulation of the business of their office That when any matter is by this Act required directed or permitted to be done by the official referees the same may be done by either of them with the assent of the Town Clerk unless express provision to the contrary be made and if done by any one of them with such assent it shall be as valid and effectual as if done by both of them and that subject to such restrictions and regulations as may be made in that behalf by the Council of the said city it shall be lawful for the official referees to appoint one of their number under their hands and the seal of the Town Clerk to make any inquiry or any survey which shall appear to them either necessary or expedient in order to enable them to determine any matters in reference.

Imposes upon the Town Clerk the duty of keeping a record of all proceedings by official referees.

82. And for the purpose of duly recording relaxations of the requisitions of this Act made in pursuance of the provisions hereof in that behalf and of providing for the revision from time to time both of such relaxations and requisitions and of providing against the partial exercise of the powers of this Act and for the more effectually providing for the due recording of the acts of the surveyor and official referees and for exercising a due control thereon Be it enacted That it shall be the duty of the Town Clerk of the said city and he is hereby required to keep all the documents and records relative to the business of the official referees and to register the same and to affix his seal of office to all documents made by the said official referees and which require to be sealed Provided always with regard to such Town Clerk so far as relates to the affixing his seal of office to any documents that if it shall appear to the said Town Clerk that any such documents are contrary to law or not complete in any of the requisite forms or beyond the competence of the said official referees either with regard to the provisions of this Act or any rules or regulations duly prescribed for their guidance then it shall be the duty of the said Town Clerk to decline to affix the seal and that thereafter if the said official referees shall so require it shall be his duty and he is hereby required to report the matter and the particular grounds and reasons for his refusal to the Council of the

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the said city and that upon receipt of such report it shall be lawful for the said Council to authorize the said Town Clerk to affix the seal or to confirm his refusal Provided that if from death absence or any lawful impediment it shall not be possible for the Town Clerk to discharge the duties imposed upon him by this Act then it shall be lawful for the Mayor to appoint some other person to act temporarily in his behalf.

83. And be it enacted That before such Town Clerk shall act under the provisions of this Act it shall be his duty and he is hereby required to make the following declaration to be administered by the Resident Judge of the district that is to say—

“ I A. B. do solemnly declare that I will diligently faithfully and impartially execute the duties devolving upon me under the provisions of an Act made and passed in the thirteenth year of the reign of Her Majesty Queen Victoria intituled ‘*An Act for regulating Buildings and Party Walls and for preventing mischief by fire in the City of Melbourne*’ and commonly called the Melbourne Building Act.”

84. And be it enacted with regard to such awards and certificates and other records of the said official referees so far as relates to the custody and the inspection thereof That all such awards certificates and other documents relating to the business of their office shall be kept in the office of the Town Clerk and that if for the purpose of evidence or otherwise any party require a copy of such award or certificate or other document or to inspect the same then on payment of the expense thereof at the rate of two shillings and sixpence for the first folio of seventy-two words and sixpence for every succeeding folio and of such fees as may be appointed in that behalf it shall be lawful for such party and he is hereby entitled to demand from the Town Clerk an inspection thereof or a copy thereof or extract therefrom and that on such payment and demand it shall be the duty of such Town Clerk and he is hereby required to give under his hand and seal of office a copy of any such award or any other document to the person so demanding the same.

85. And be it enacted That it shall be the duty of such Town Clerk to keep a register of all matters referred to the official referees and otherwise of all matters which shall come under their cognizance in pursuance of this Act and also to keep and preserve all documents connected with the duties of official referees and also to receive all notices requiring any act to be done by them and to file and number in the order in which they are received.

86. And for the purpose of regulating sundry legal proceedings Be it enacted with regard to any distress for any sum of money to be recovered by virtue of this Act so far as relates to the remedying of any damages occasioned by any irregularity therein or in reference thereto That notwithstanding there be any defect of form in the proceedings relative to any such distress neither the distress itself shall be deemed unlawful nor shall the party making the same be deemed a trespasser *ab initio* but that if any irregularity be committed by any party then subject to the conditions in this Act prescribed with regard to actions brought for anything done in pursuance thereof it shall be lawful for the person aggrieved by such irregularity and he is hereby entitled to recover full satisfaction for the special damage only and that by action in the case and not by any other action whatsoever.

87. And be it enacted with regard to any action for any irregularity or other proceeding so far as relates to the tender of amends or payment of money into Court in respect thereof That if before such action be brought the party who committed or caused to be

Town Clerk to make declaration of official fidelity.

Town Clerk to give certified copies of awards and other documents relating to proceedings of official referees.

Town Clerk to receive service of and file all notices to official referees.

No distress unlawful for want of form.

Provides for tender of amends and payment of compensation into Court in actions for irregular proceedings.

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be committed any such irregularity or wrongful proceeding made or caused to be made tender of sufficient amends then the plaintiff shall not be entitled to recover in such action and that although such tender shall not have been made yet if at any time before issue joined the Court in which such action shall be pending shall grant leave then it shall be lawful for the defendant to pay into Court any sum of money by way of compensation or amends in such manner and under such regulations as to the payment of costs and form of pleading as is and are customary and in force in the said Court.

Provides for the recovery of money under awards.

88. And be it enacted with regard to every sum of money by this Act or by any award or certificate or other proceeding in pursuance of or in accordance with this Act charged upon any person in respect of any work done in pursuance of or in accordance with this Act so far as relates to the recovery of such sum of money That if any party claim any such sum of money then it shall be lawful for any one Justice of the Peace to summon the person on whom such sum is alleged to be charged before any two Justices and if such award or certificate be produced or if such other proceeding be proved by the oath of the party claiming or of any other credible witness and if it be proved by the oath of such party or other witness that such sum of money is still due then it shall be lawful for such Justices and they respectively are hereby required to issue a warrant to levy the amount thereof and also the costs of the proceeding to be levied by distress of the goods and chattels of the person in default and if such person have no goods and chattels whereon to distrain or if such goods and chattels be insufficient for such purpose then it shall be lawful for such Justices or any other Justice to commit the person in default until the amount of such sum so due and of such costs shall have been fully paid or until the party shall be discharged by or in accordance with the provisions of any Act for the relief and discharge of insolvent debtors.

Regulates proceedings in prosecution of offences under this Act.

89. And be it enacted with regard to all offences against the provisions of this Act for which no other proceeding is provided so far as relates to the prosecution thereof That it shall be lawful to proceed by complaint before any one Justice of the Peace and that it shall be lawful for such Justice to summon the party against whom such complaint shall be made and that if such party fail to appear in pursuance of such summons then it shall be lawful for such Justice to issue a warrant under his hand and seal to compel the appearance of such party and that on conviction of the offender before two Justices it shall be the duty of such Justices and they are hereby required to cause the amount of the penalty hereby imposed in respect of such offence and of the costs of any such proceeding in respect of such offence to be levied by distress of the goods and chattels of the offender and that if such offender have no goods and chattels whereon to distrain or if they be insufficient for that purpose then it shall be lawful for such Justices or for any other Justice and they are hereby empowered either on failure of such distress or in the first instance to commit the offender for any period not exceeding three months or till he shall have paid the amount of such penalty and costs.

No proceedings to be removed by writ of *certiorari*.

90. And be it enacted with regard to every order which shall be made by virtue of or under this Act and to any other proceedings to be had touching the conviction of any offender against this Act (except proceedings touching the conviction of any person offending for carrying on a trade or a business offensive noxious or dangerous contrary to this Act otherwise than those hereinbefore specified) That no conviction under this Act nor any adjudication or appeal therefrom shall be quashed for want of form or be removed by *certiorari* or otherwise

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otherwise into the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein.

91. And be it enacted with regard to any conviction for any offence in respect of which a penalty is by this Act imposed so far as relates to the appeal from any such conviction in respect thereof That if any party be dissatisfied with the decision of the Justices in any case in which such penalty may be proceeded for and if within seven days after such decision notice be given by or on behalf of such party to the party appealed against of his intention to appeal against such decision and of the grounds of such appeal and if the appellant enter into a recognizance with two sufficient sureties conditioned to prosecute such appeal and to abide the order of the Court and to pay to the party appealed against such costs (if any) as shall be awarded against him then it shall be lawful for such party so dissatisfied to appeal against such conviction to the Justices of the Peace at their General Quarter Sessions of the Peace to be holden within four months after such conviction and that if within such period of seven days such appellant have entered into such recognizances as are herein required then it shall be lawful for such Justices and they are hereby empowered to proceed to hear and examine on oath into the cause and matters of such appeal (which oath they are hereby empowered to administer) and to determine the same and to award such costs to be paid by either of the said parties as they think proper and the order determination and judgment of the said Justices shall be binding and conclusive.

92. And be it enacted with regard to every penalty or forfeiture incurred under this Act so far as relates to the limitations of proceedings for the recovery thereof That if within six calendar months next after such penalty or forfeiture shall have been incurred an action or prosecution be not brought or commenced against the person liable in respect thereof then thereafter it shall not be lawful for any person to bring such action or commence such proceeding in respect of such penalty or forfeiture.

93. And be it enacted with regard to every penalty or forfeiture so far as relates to the recovery and appropriation thereof That it shall be lawful for any party to sue or proceed for the same on information before any one or more Justice or Justices of the Peace who are hereby authorized and required to hear and determine the same in a summary manner and that the money arising by or from such penalties or forfeitures respectively when recovered shall be paid the one moiety thereof to Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof as may be appointed by any Act of the said Governor and Legislative Council and the other moiety to and for the use of the informer or party prosecuting who shall be entitled to his or her costs and charges over and above such forfeitures or penalties to be ascertained and assessed by the Justice or Justices before whom the case is heard Provided that in all proceedings under this Act the person exhibiting the information or complaint shall be deemed and taken to be a competent witness on the hearing or trial thereof.

94. And be it enacted That no proceedings shall be instituted under this Act against any person offending against the provisions thereof unless at the instance or suit of a surveyor of the said city duly appointed by the Council thereof.

95. And for regulating proceedings against persons acting in pursuance of this Act Be it enacted with regard to any action or suit against any person in respect of any act or thing done or intended to be done in pursuance of this Act so far as relates to the limitation thereof and to the notification thereof to the offending party and to the

Provides for appeals to Court of Quarter Sessions.

Limitation of actions for penalties to six months.

Recovery of penalties and their appropriation.

No proceedings for offences against this Act to be instituted except by a surveyor duly appointed.

Regulation of actions against persons acting under this Act.

the pleadings therein and to the evidence of the matters thereof and to the verdict therein and to the judgment of the Court thereon and to the costs of such action and to the recovery of such costs That after the expiration of six months next after the fact committed it shall not be lawful to bring any such action or suit against any person in respect of any such act and that if within twenty-one days at the least before the commencement of the action or suit notice in writing of an intention to bring such action or suit and of the grounds of action be not given to every person against whom such action or suit shall be brought then it shall not be lawful for any person to bring any such action or suit against any person in respect of any such act and that in every such action or suit it shall be lawful for the defendant and he is hereby entitled to plead the general issue and at the trial to be had thereof to give this Act and the special matter in evidence and to prove that the matter or thing for which such action or suit is brought was done in pursuance and by the authority of this Act and that if upon a trial of such action it appear the said matter or thing has been done by the authority or in pursuance of this Act or if it appear that such action or suit was brought before the expiration of twenty-one days after such notice given as aforesaid or if it appear that sufficient satisfaction was made or tendered before such action was brought or if upon plea of payment of money into Court it shall appear the plaintiff has not sustained damages to a greater amount than the sum paid into Court or if any such action or suit be not commenced within the time herein for that purpose limited then and in every such case it shall be the duty of the jury and they are hereby required to find for the defendant and that if a verdict be found for the defendant or if the plaintiff in any such action or suit become nonsuited or discontinue or suffer a discontinuance of any such action or suit or if judgment be given for the defendant therein or demurrer or by default or otherwise then the defendant shall be entitled to have judgment to cover full costs of suit and to such remedy for recovering the same as any defendant shall have by law.

Defendant may require plaintiff to give security for costs.

96. And further for the prevention of vexatious litigation Be it enacted with regard to every action in respect to any matter or thing done or intended to be done in pursuance of this Act so far as relates to the costs of such action That if the defendant shall apply to the Resident Judge of the Supreme Court for the District of Port Phillip within fourteen days after he shall have been served with process in any such action it shall be lawful for such Judge to require the plaintiff to give such security as the Court shall think fit for the payment of all costs charges and expenses incurred in and about the said action and which shall be or become payable by him on the taxation thereof by the proper officer.

Regulates prosecutions for neglect or evasion of the provisions of this Act.

97. And be it enacted with regard to any penalty or forfeiture incurred by any default in complying with the provisions of this Act so far as relates to proceedings for the recovery thereof That at any time within three months after such penalty or forfeiture shall have been incurred it shall be lawful for the surveyor appointed by virtue of this Act and all other persons and they are hereby entitled to commence and prosecute proceedings for the recovery thereof or for the recovery of the expenses of pulling down or altering of any building against any owner occupier builder workman or other person or for any default made in complying with the provisions of this Act Provided always that if such proceedings be taken by any person except the surveyor or except the official referees then seven days' notice of the intention to commence such proceedings must be given at the office of the surveyor and at the office of the Town Clerk.

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98. Provided always and be it enacted with regard to the owners of any building fence ground land or tenement so far as relates to their liabilities in respect of expenses incurred in respect of such premises or otherwise That in all cases whatever may be the nature of the interest in any such premises of the person entitled to the immediate possession thereof or of the occupier thereof such person entitled to immediate possession of such premises or such occupier shall in the first instance bear all costs and expenses by this Act imposed on the owner thereof and shall perform all duties by this Act imposed on such owner subject nevertheless to any right or claim which such person or such occupier may have to be repaid such costs and expenses and to be indemnified in respect of such duties according to the provisions of this Act according to the nature and extent of the covenants or agreements under which such person or occupier may hold such premises as fully and effectually as if such covenants or agreements were herein recited.

99. And be it enacted with regard to notices by this Act required so far as relates to the service thereof upon the owner or occupier of any building fence land ground or tenement That every such notice must be given as follows that is to say if such owner be a married female other than a cestuique trust in regard to such property then such notice must be given to the husband of such married female or if such owner be an infant idiot or lunatic or cestuique trust then such notice must be given to the guardian trustee or committee of such infant idiot or lunatic or cestuique trust or if such owner husband trustee guardian or committee is not known or cannot be found then such notice must be given to the occupier of such building fence land ground or tenement to which it shall relate or if such building fence land ground or tenement be unoccupied then such notice must be affixed to some conspicuous part of such building fence land ground or tenement at a height of not more than nine feet from the ground and if the person in the occupation of any building fence land ground or tenement in respect of which notice is to be given allege that he is a tenant from year to year or for any less term or a tenant at will and not the owner thereof within the intent and meaning of this Act then such notice must be given to the immediate landlord of such occupier and it shall be the duty of such occupier and he is hereby required to inform any person by whom such notice shall be required to be given or any other person applying on his behalf of the name place of residence or place of business of such owner or landlord or of his agent or other person by whom the rent of such building fence ground land or tenement shall be received and if such owner or landlord be not in receipt of the whole of the rents or profits of such building fence land ground or tenement and if any notice shall be served upon such owner or landlord then immediately upon the receipt thereof it shall be his duty and he is hereby required to transmit to his immediate landlord or his agent and also to any other person being part owner in such building fence land ground or tenement or in receipt of the rents or profits thereof under the same immediate landlord or to the agent of such person a copy of such notice and so on in term it shall be the duty of every landlord agent or other person by whom such notice shall be received to transmit it to any such landlord agent or other person being part owner of any such building fence land ground or tenement to the intent that every person affected by the work or proceeding to which such notice relates may have due notice thereof Provided always with regard to every such notice so far as relates to the service thereof upon any such owner that if it be served upon the immediate landlord of the occupier or upon his agent by or on behalf of the person by whom it is hereby required

Makes provisions as to the several liabilities of owners and occupiers for expenses &c. under this Act.

Regulates the service of notices.

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required to be served in the first instance then although it may not be served by such immediate landlord upon any other landlord or owner such service is to be deemed to be sufficient service but that nevertheless if any owner suffer damage by the failure of any other person being either the occupier or any person holding under such owner to serve such notice then such owner shall be entitled to recover the amount thereof against such person by whom such damage shall have been occasioned and that every notice served under this clause on any person must contain a copy of the provisions thereof so far as they require him to transmit the same to his immediate landlord or the agent of such landlord.

Mode of service upon occupiers.

100. And be it enacted with regard to notices by this Act required so far as relates to the mode of service thereof upon the occupier of any building or ground That if such notice be intended for the occupier of any building or ground then it must be given either personally or by leaving the same with some inmate at the premises or it must be affixed as aforesaid.

Mode of service upon owners by delivery and its effects.

101. And be it enacted further with regard to all such notices so far as relates to the mode of service thereof upon owners by delivery That every such notice (except such notice as may according to the provision in that behalf be sent by post) must be given either personally or by leaving the same with some inmate at the usual place of abode of such party or if that be not known then at his last known place of abode and that every such notice when so given to such persons respectively as aforesaid or left at the last known place of their respective abodes or when so affixed as aforesaid according to the cases hereinbefore mentioned shall have the same effect and consequences as if given to the actual owner.

Regulates service on owners by post when residing beyond the limits of this Act.

102. And be it enacted further with regard to notices so far as relates to the mode of service thereof by transmission That if any owner upon whom the same is required to be served be not within the limits of this Act or have not within the limits of this Act any agent acting in his behalf in the matter of the premises to which the notice refers then it shall be lawful to give notice by post letter duly registered according to the practice of the time being adopted with regard to letters transmitted by post but so that nevertheless the residence of such owner be within the range of delivery of a Government Post Office and so that such letter be posted in such time as will afford to the person addressed after the receipt of such letter the full period of notice required in the case.

Mode of service of notices on surveyors and official referees.

103. And be it enacted with regard to notices so far as relates to the service thereof upon the surveyor and upon the official referees That if the notice relate to surveyor then such notice must be served at the office of the surveyor and that if the notice relate to official referees or any of them then such notice must be left at the office of the Town Clerk.

Regulates consents in cases of incapacitated persons.

104. And be it enacted with regard to consent by this Act required to be given by the owner or occupiers of any building or ground so far as relates to the making thereof on behalf of incapacitated persons That if such owner or occupier be a married female not being a cestuique trust in regard to the property to which such consent relates then first consent must be given by the husband of such married female or that if such owner or occupier be an infant idiot or lunatic or cestuique trust then such consent must be given by the guardian trustee or committee of such infant idiot or lunatic or cestuique trust or that if such owner or occupier husband trustee guardian or committee be not known or cannot be found then with a view to protect the interests of such parties as well as to facilitate the purposes of this Act it shall be lawful for the surveyor and official referees and they

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they are hereby authorized by writing duly sealed by the Town Clerk to give such consent as may be requisite upon such terms and subject to such conditions as may seem fit to them having regard alike to the nature and purpose of the subject matter in respect of which such consent is to be given and to the fair claims of the parties on whose behalf such consent is to be given.

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

SCHEDULES REFERRED TO.**A.**

The two following portions of land viz. :—

1st.—The parish of North Melbourne bounded on the north by a line bearing east two hundred and forty 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 one hundred and ten chains on the south by the Yarra Yarra River and on the west by a line bearing north ninety-four chains to its north-west corner.

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

B.**PART 1.**

Rules for determining the classes and rates to which buildings are to be deemed to belong for the purposes of this Act and the thickness of the walls of buildings of such rates.

CLASSES OF BUILDINGS.

For the purposes of this Act all buildings of whatever kind subject to the provisions thereof are to be deemed to belong to one or other of the following three classes that is to say :—

(First Class.)

If a building be built originally as a dwelling-house or be occupied or intended to be occupied as such then it is to be deemed to belong to the first or dwelling-house class.

(Second Class.)

If a building be built originally as a warehouse store-house granary brewery distillery manufactory work-shop or public stable or be occupied or intended to be occupied as such or for a similar purpose then it is to be deemed to belong to the second or warehouse class.

(Third Class.)

If a building be built originally as a church chapel or other place of public worship college hall hospital theatre public concert room public ball room public lecture room public exhibition room or occupied or intended to be occupied as such or for a similar purpose or otherwise used or intended to be used either temporarily or permanently for the assemblage of persons in large numbers whether for public worship business instruction debate diversion or resort then it is to be deemed to belong to the third or public building class.

*Melbourne Building.**(Alteration of Class.)*

And if any room whether constructed within any other building or not and whether included in the aforesaid classes or not be used at any time for the public or general congregation of persons then the building containing such room is to be deemed a building of the third or public building class.

Or if a building originally built or subsequently altered so as to bring it within any one class be subsequently converted into or used as a building of another class then it is to be deemed to belong to such other class and as to it all the conditions prescribed with regard to buildings of the same rate of such other class must be fulfilled as if it had been originally built of such class subject nevertheless to such modifications as shall be sanctioned by the surveyor and official referees on supervision thereof or if a building be used partly as a dwelling-house and partly for any purpose which would bring it within the second or warehouse class then it is to be deemed to belong to the said second or warehouse class and as to it all the conditions prescribed with regard to buildings of the same rate of such class must be fulfilled as if it had been originally built of such class subject nevertheless to such modifications as shall be sanctioned by the surveyor and official referees on supervision thereof.

RATES OF BUILDINGS.

And the buildings included in the said classes are to be deemed to belong to the rates of those classes according to the conditions of height area and number of stories set forth in the following tables which conditions are to be determined according to the following rules:—

(Rule for ascertaining Height.)

The height of every building is to be ascertained by measuring from the surface of the lowest floor of the building up to the underside of the ceiling of the topmost story at the highest part thereof whether such story be within the roof or not.

And if there be no ceiling made or intended to be made to the topmost story then by measuring from the surface of such lowest floor of the building up to the underside of any tie beam collar beam or other substitute for a tie beam to or within the roof of the building and to the highest part of such roof and the level of the underside of such tie beam or such substitute for a tie beam is in such case to be taken to mean the ceiling of the topmost story and if there be no tie beam collar beam or other substitute for a tie beam to or within the roof of any building then up to a level three feet below the level of the underside of the ridge-piece or substitute for a ridge-piece to the roof of such building.

(Rule for ascertaining Area.)

And the area of every building is to be determined by the number of squares contained in the surface of any floor which shall contain the greatest number of squares at or above the principal entrance to such building including in such surface the area of all the external walls and such portions of the party walls as belong to such building but excluding from such surface the area of any attached building or office area balcony or open portico.

(Rule for ascertaining the capacity of any building of the second class.)

And the capacity or cubical contents of any such building is to be ascertained by measuring according to the rule for ascertaining area and from the surface of the lowest floor up to the under surface of the roof covering of such building.

(Rule for ascertaining number of stories.)

And the stories of every building are to be counted from the foundation upwards.

And if the space in height between the top of the footings and the level of the lowest floor do not exceed four feet then the story nearest the foundation is to be considered the lowest or first story but if such space exceed four feet then such space is to be considered to contain the lowest or first story and in that case the top of the footing is to be considered the level of the lowest floor.

(Rule for ascertaining thickness of walls.)

And the thickness or width of every wall and of the footing thereof is to be ascertained by measuring only the thickness or width of such walls or footings which shall have been originally built.

Melbourne Building.

B.

PART 2.

CONDITIONS for determining the Rates to which Buildings of the First or Dwelling-house Class are to be deemed to belong and the thickness of the External Walls and of the Party Walls thereof.

IN REFERENCE TO HEIGHT.	IN REFERENCE TO AREA.	IN REFERENCE TO STORIES.	RATE OF BUILDING.	REQUISITE THICKNESS OF EXTERNAL WALLS OF EACH RATE OF THE FIRST CLASS.	REQUISITE THICKNESS OF PARTY WALLS OF EACH RATE OF THE FIRST CLASS.
If the building be in height more than 38 feet	If the building cover more than 10 squares	If the building contain more than 3 stories exclusive of rooms in the roof (if any)	It is to be of the first rate of this class.	And the thickness of the external walls must be at the least 17 $\frac{1}{2}$ inches from the top of the footing up to the underside of the topmost floor (exclusive of the floor of the rooms if any) in the roof and at the least 13 inches from the underside of such topmost floor to the top of the wall.	And the thickness of the party walls must be at the least 17 $\frac{1}{2}$ inches from the top of the footing up to the underside of the topmost floor (exclusive of the floor of the rooms if any) and at the least 13 inches from the underside of such topmost floor to the top of the wall.
If more than 24 feet and not more than 38 feet	Or if it cover more than 5 squares and not 10 squares	Or if it contain 3 stories exclusive of rooms in the roof (if any)	It is to be of the second rate of this class.	And the thickness of the external walls must be at the least 17 $\frac{1}{2}$ inches from the top of the footing up to the underside of the floor next below the topmost floor (exclusive of the floor of the rooms in the roof if any) and at the least 13 inches from the underside of such topmost floor to the top of the wall.	And the thickness of the party walls must be at the least 17 $\frac{1}{2}$ inches from the top of the footing up to the underside of the floor next below the topmost floor (exclusive of the floor of the rooms in the roof if any) and at the least 13 inches from the underside of such topmost floor to the top of the wall.
If more than 15 feet and not more than 24 feet	Or if it cover more than 3 $\frac{1}{2}$ squares and not 5 squares	Or if it contain 2 stories exclusive of rooms in the roof (if any)	It is to be of the third rate of this class.	And the thickness of the external walls must be at the least 13 inches from the top of the footing to the top of the underside of the topmost floor and at the least 8 $\frac{1}{2}$ inches from the underside of such topmost floor to the top of the wall.	And the thickness of the party walls must be at the least 13 inches from the top of the footing to the top of the underside of the topmost floor and at the least 8 $\frac{1}{2}$ inches from the underside of such topmost floor to the top of the wall.
If not more than 15 feet in height	Or if it do not cover more than 3 $\frac{1}{2}$ squares	Or if it do not contain more than 1 story	It is to be of the fourth rate of this class.	And the thickness of the external walls must be at the least 8 $\frac{1}{2}$ inches from the top of the footing to the top of the wall.	And the thickness of the party walls must be at the least 8 $\frac{1}{2}$ inches from the top of the footing to the top of the wall.

B.

B.
PART 3.

CONDITIONS for determining the rates to which Buildings of the Second or Warehouse Class are to be deemed to belong and the thickness of the External Walls and of the Party Walls thereof.

IN REFERENCE TO HEIGHT.	RATE OF BUILDING.	REQUISITE THICKNESS OF EXTERNAL WALLS OF EACH RATE OF THE SECOND CLASS.	REQUISITE THICKNESS OF THE PARTY WALLS OF EACH RATE OF THE SECOND CLASS.
If the building be in height more than 66 feet	It is to be of the first rate of this class	And the thickness of the external walls must be at the least 26 inches from the top of the footing up to the underside of the floor next but three below the topmost floor and at the least $21\frac{1}{2}$ inches from the underside of the floor next but three below the topmost floor up to the underside of the floor next below the topmost floor and at the least $17\frac{1}{2}$ inches from the underside of the floor next below the topmost floor up to the top of the wall.	And the thickness of the party walls must be at the least 26 inches from the top of the footing up to the underside of the floor next but one below the topmost floor and at the least $21\frac{1}{2}$ inches from the underside of the floor next but one below the topmost floor up to the underside of the topmost floor and at the least below the topmost floor and at the least $17\frac{1}{2}$ inches from the underside of the floor next below the topmost floor up to the top of the wall.
If the building be in height more than 4 $\frac{1}{2}$ feet and not more than 66 feet	It is to be of the second rate of this class	And the thickness of the external walls must be at the least $21\frac{1}{2}$ inches from the top of the footing up to the underside of the floor next but one below the topmost floor and at the least $17\frac{1}{2}$ inches from the underside of the floor next but one below the topmost floor up to the underside of the topmost floor and 13 inches at the least from the underside of the topmost floor up to the top of the wall.	And the thickness of the party walls must be at the least $21\frac{1}{2}$ inches from the top of the footing up to the underside of the floor next but one below the topmost floor and at the least $21\frac{1}{2}$ inches from the underside of the floor next but one below the topmost floor up to the underside of the topmost floor and 13 inches at the least from the underside of the topmost floor to the square of the building and 13 inches at the least from the square of the building to the top of the wall.
If the building be in height more than 3 $\frac{3}{4}$ feet and not more than 4 $\frac{1}{2}$ feet	It is to be of the third rate of this class	And the thickness of the external walls must be at the least $17\frac{1}{2}$ inches from the top of the footing up to a height equal at the least to one-third of the entire height of such wall and thence at the least of the thickness of 13 inches up to the top of such wall.	And the thickness of the party walls must be at the least $17\frac{1}{2}$ inches from the top of the footing up to a height equal at the least to one-third of the entire height of such wall and thence at the least of the thickness of 13 inches up to the square of the building and 13 inches at the least from the square of the building up to the top of the wall.
If the building be in height not more than 3 $\frac{3}{4}$ feet	It is to be of the fourth rate of this class	And the thickness of the external walls must be at the least 13 inches from the top of the footing up to a height equal at the least to two-thirds of the entire height of such wall and thence at the least $8\frac{1}{2}$ inches up to the top of such wall.	And the thickness of the party walls must be at the least 13 inches from the top of the footing to the top of such wall.

Melbourne Building.

B.

PART 4.

RULES CONCERNING BUILDINGS OF THE SECOND WAREHOUSES &c. OR WAREHOUSE CLASS.

With regard to any building of the second class hereafter built or rebuilt in reference to the capacity or contents thereof within the same enclosing walls.

If such building contain more than thirty-five squares then such building must be divided by walls to be constructed in every part similar to party walls so as that there be not in any one part of such building more than thirty-five squares without arch walls.

(*Openings in party walls.*)

And with regard to buildings of the second class in reference to openings through party walls.

Such openings must not be made wider than six feet nor higher than eight feet unless in each case and upon special evidence of necessity for convenience or otherwise the surveyor and official referees shall previously authorize larger openings and the floor and the jambs and the head of every such opening must be composed of brick or stone or iron work throughout the whole thickness of the wall and every such opening must have a strong wrought iron door on each side of the party wall fitted and hung to such opening without woodwork of any kind and such doors must not be less than one-fourth of an inch thick in the panels thereof and each of such doors must be distant from the other not less than the full thickness of the party wall.

(*Roofs.*)

And with regard to the roofs of buildings of the second class.

In order to prevent the formation of curbed roofs to such buildings the plane of the surface of the roof of every such building must not incline from the external or party walls upwards at a greater angle than forty degrees with the horizon.

B.

PART 5.

REQUISITES FOR DETERMINING THE RATE TO WHICH ANY BUILDING OF THE THIRD OR PUBLIC BUILDING CLASS IS TO BE DEEMED TO BELONG.

If any building of the third or public building class correspond in form or structure or disposition with a dwelling-house then the rate thereof is to be determined by the same rules as the rates of the first or dwelling-house class and the thickness of the external and party walls and the width of the footings thereof are to be at the least four inches more than hereby required for the external and party walls and the footings thereof of buildings of the same rate of the first or dwelling-house class unless the surveyor and official referees in each case shall otherwise appoint but if it correspond in form or structure or disposition with a warehouse or any building of the second class then the rate thereof is to be determined by the same rules as the rates of the second or warehouse class and the thickness of the external and party walls and the width of the footings thereof are to be at the least four inches more than is hereby required for the external and party walls and the footings thereof of buildings of the same rate of the second or warehouse class unless the surveyor and official referees in each case shall otherwise appoint But and if it do not correspond in form and structure or in either with buildings of the first or second classes or any of them then such building is to be subject as to its walls or other construction to the special approval of the surveyor and official referees.

B.

PART 6.

RULES CONCERNING ATTACHED AND DETACHED AND INSULATED BUILDINGS AS TO THE RATES AND WALLS THEREOF.

(*Attached Buildings and Offices.*)

With regard to buildings or offices now built or hereafter to be built (except greenhouses vineeries or such like buildings) and that whether such buildings or offices be attached to or detached from the buildings to which they belong every such building is to be deemed in respect of the walls thereof and all other requisites as a building of the rate to which it would belong if it had been built separately.

(*Insulated*

*Melbourne Building.**(Insulated Buildings.)*

And with regard to buildings of the first or dwelling-house class and of the second or warehouse class which shall be insulated so far as relates to the distance thereof from any public street or way.

Every such building must be distant from any public street or alley one-third of the height thereof at the least and if the building do not exceed 24 feet in height then it must be so distant at the least 8 feet and with regard to such building so far as relates to the distance thereof from any other building or from ground not in the same possession or occupation therewith or connected therewith only by a fence or fence wall it must be distant from such other building or other ground at the least 30 feet and if such building be so distant from a public street or alley and from any other building or from ground not in the same possession or occupation therewith then such building is not to be liable in respect of the dimensions and materials thereof to the rules and directions of this Act.

(Insulated Buildings afterwards divided.)

Provided always that if any such building be hereafter divided into two or more distinct buildings and the several parts of such buildings so divided be not at the aforesaid distance from each other and from other buildings and ground then such several parts must be separated from each other by such party walls as are herein prescribed for the rates to which several parts if adjoining would belong and if such requisites be not observed then such several parts of such buildings in respect of which they are not so observed shall be deemed a public nuisance and as such to be taken down according to the provisions in this Act in that behalf.

(Toll Houses &c.)

And with regard to certain buildings which shall be built for the purposes of trade or the collection of toll:—

If such buildings be situate 15 feet at the least from any other buildings and do not cover an area of more than one and a-half squares and the height thereof do not exceed 12 feet from the ground to the highest point of the roof then every such building may be enclosed with any materials whatsoever but the roof thereof must be covered as herein directed with regard to roofs and the chimney and flue (if any) must be built as herein directed with regard to chimneys and flues.

C.

PART 1.

RULES CONCERNING WALLS OF WHATEVER KIND.

(Foundations.)

With regard to the foundations of walls:—Every external wall and every party wall and every party fence wall must be built upon a constructed footing based upon solid ground or upon other sufficient foundation.

(Footings.)

1st.—With regard to footings of walls in reference to the materials thereof to the width thereof to the height thereof above the foundation and to the depth below the surface.

(Materials.)

2nd.—In reference to the materials thereof:—Every footing must be built of bricks or of stone or of such bricks and stone together laid in and with mortar or cement in such manner as to produce solid work.

(Width.)

3rd.—In reference to the width thereof:—The bottom of the footing of every external wall and party wall of the first rate must be at the least 8 inches wider than the wall standing thereon and the bottom of every footing of every external wall and party wall of the second and third rates must be at the least 6 inches wider than the wall standing thereon and the bottom of the footing of every external wall and party wall of the fourth rate and of every party fence wall must be at the least 4 inches wider than the wall standing thereon the top of the footing of every party fence wall and of every external wall and party wall must be at the least 4 inches wider than the wall standing thereon.

(Height.)

4th.—In reference to the height above the foundation:—The footing of every external wall and party wall must not be brought up nearer to the surface of the ground area or footway adjoining thereto than three inches. The footing of every external wall and party wall of the first rate must be at the least 11 inches high above the foundation. The footing of every external wall and party wall of the second and third rates must be at the least 8 inches high above the foundation. The footing of every party fence wall and of every external wall and party wall of the fourth rate must be at the least 5 inches high above the foundation.

(Depth)

*Melbourne Building.**(Depth below lowest floor.)*

5th.—In reference to the depth thereof below the surface of the lowest floor adjoining or intended to adjoin thereto:—The top of the footing of every external wall and party wall must be at the least 6 inches below such surface and in any building of the first class the surface of the earth or of any paving on the outside (except the pavement of any public way) must not at any time be raised to within six inches of the surface of the lowest or first floor of such building.

(Thickness of enclosing walls to stories of buildings of whatever rate.)

With regard to the enclosing walls to stories of buildings of the first and second classes each of the enclosing walls of any such story throughout the whole height thereof from the top of the footing up to the top of such story and with all the sets-off in addition required for such wall to whatever rate or whichever class it may belong and throughout at the least one-third of the whole length of such wall in piers properly distributed must be of the following dimensions (unless cross or return walls coursed and bonded with the enclosing walls shall in the opinion of the surveyor upon application to him in each particular case give sufficient strength with less thickness in such enclosing walls) that is to say:—

As to first class buildings if the story be in height more than 11 feet then the thickness of its enclosing walls must be at the least 13 inches or if the story be in height more than 15 feet then the thickness of its enclosing walls must be at the least 17½ inches as to second class buildings if the story be in height more than nine feet then the thickness of its enclosing walls must be at the least 13 inches or if the story be in height more than 12 feet then the thickness of its enclosing walls must be at the least 17½ inches or if the story be in height more than twenty feet then the thickness of its enclosing walls must be at the least 21½ inches.

Nevertheless as to any external wall of any building of the first class in which there are no apertures or recesses if there be another external wall and a cross wall of not less than 8½ inches thick coursing and bonding with such external wall or if two such cross walls occur within a length of 24 feet of such wall then such external wall may be built of the thickness of 13 inches of any height not exceeding 18 feet within any story although the rate of the wall may require a greater thickness but always upon condition that the sub-structure of such wall is 4 inches thicker at the least than such superstructure and vertically under it.

And also if any such wall be abutted by cross or return walls within a length of 12 feet and if not more than one aperture or recess occur within such length of 12 feet and not more than one-half the quantity in length be taken out of such compartment of a wall by any such aperture or recess then such external wall may be built of any thickness not less than 13 inches notwithstanding the rate of such wall may require a greater thickness.

C.

PART 2.

(Construction of Materials.)

And with regard to the component materials of external walls to buildings of whatever class Every such wall must be built of bricks or stone or of such bricks and stone together laid in and with mortar or cement in such manner as to produce solid work and every such wall must be carried up of its full thickness to the underside of the plate under the roof.

Nevertheless in such walls besides all requisite openings for doors and windows recesses may be formed so that the back thereof be of the thickness of 8½ inches at the least and so that the stability and sufficiency of the wall be not injuriously affected by making such recesses.

And with regard to other substances than the component materials of external walls There may be such wood and iron as shall be necessary and every plate lintel bond corbel being of wood and every wood-brick laid into any external wall and all ends of joists of girders and of the heads and sills of partitions running into any external wall must be fixed at a distance from the external face of the wall of 4 inches at the least And the frames of doors and windows must be fixed in reveals at a distance from the external face of the wall of 4 inches at the least And shop fronts must be fixed in such manner as is herein specially directed And the tiers of door cases to warehouses must be fixed in the opening left in such walls at a distance from the external face of the wall of 2 inches at the least But no timber must be laid into any external wall in such manner or of such length as to render the part of the wall above it wholly or in great part dependent upon the wood for support or so that any such wood might not be withdrawn without endangering the safety of the superincumbent structure except in the case of brestsummers.

(Height

*Melbourne Building.**(Height and Thickness of Parapets.)*

And with regard to external walls in reference to the height and thickness of any parapet thereon.

If an external wall adjoin a gutter then such external wall must be carried up and remain one foot at the least above the highest part of such gutter. And the thickness of an external wall so carried up above the level of the underside of the gutter plate and forming a parapet must be at the least in every such wall of the first rate of the first class and in every such wall of the first rate of the second class 13 inches thick and in every other external wall of whatever rate or whichever class 8½ inches thick.

(Brestsummers.)

With regard to every brestsummer fixed to carry any front wall of a building.

If such brestsummer have a bearing at one end upon a party wall then it must be laid upon a template or corbel of stone or wood or iron which template or corbel must be tailed through such wall at least two-thirds of the thickness thereof and the end of such brestsummer must not be fixed into and must not have its bearing solely upon such party wall but must be supported by a sufficient pier built of brick or stone or by an iron column or iron or timber story posts fixed on a solid foundation. And if any such brestsummer have its bearing at each end upon a party wall then it must be supported by at least two sufficient piers built of brick or stone or by iron columns or by iron or timber story posts fixed on solid foundations and standing within and clear of the party walls. Or any such brestsummer may bear upon constructed returns in the direction of the length of the brestsummer of 4 inches at the least coursed and bonded with the substance of the party wall or party walls and such constructed returns must be increased one inch at the least for every 6 feet in length that the brestsummer may be otherwise unsupported. And if the height of the underside of any brestsummer laid from party wall to party wall to carry any external wall exceed 15 feet from the surface of the public foot-pavement in front of the building then there must be constructed returns in the direction of the length of the brestsummer from the inside of each party wall of 8½ inches at the least and at the least of the full thickness of such brestsummer and every such return must be increased one inch at the least for every foot or part of a foot the brestsummer may be in height from the surface of the public foot-pavement more than 16 feet whether the brestsummer be otherwise supported or not.

(Materials to be used in repairs.)

And with regard to old external walls or other external enclosures of any building already built in reference to materials to be used in the repair thereof.

If any such wall or enclosure be not built of the materials required by this Act for external walls or other external enclosure hereafter to be built then every part of such wall or other external enclosure (except the enclosure of roofs and the flats gutters dormers turrets lantern-lights and other erections thereon) may be at all times thereafter repaired with materials of the same sort as those of which such external wall or enclosure has been already built.

(Materials to be used in rebuilding.)

But if any such external wall or enclosure be at any time hereafter taken down or otherwise demolished for the height of one story or for a space equal to one-fourth of the whole surface of such external wall then every part thereof not built in the manner and of the several materials by this Act directed for external walls must be taken down and the same must be rebuilt in such manner and of such materials and in all respects as by this Act directed for external walls hereafter to be built according to the class and rate of the building to which such external wall or enclosure shall belong.

(External wall used as a party wall.)

And with regard to external walls to be used as party walls to any building adjoining thereto (except an attached building or office as is hereinbefore described):—If the external wall of any building have not such footings or be not of such heights and thickness or be not built in such manner and of such materials as are herein directed for party walls of buildings of the highest rate to which such wall shall adjoin then such external wall must not be used as a party wall for any such building but there must be a distinct external wall built as herein described for external walls of the rate to which it shall belong.

But if such external wall to any building already built be at the least 13 inches in thickness in every part and be of sound and proper materials and in good condition then such wall may be used as a party wall but if the house of which such wall forms a part be rebuilt within five years from the time at which the wall shall have been so first used as a party wall then such wall must become subject to the provisions of this Act in respect of party walls according to the class and rate to which the said wall did first belong.

Melbourne Building.

C.

PART 3.

(Division of Buildings.)

And with regard to walls used to divide single buildings into two or more:—

If it be intended to divide any building into two or more distinct parts then every wall for that purpose must be built as a party wall in the manner and of the materials and of the several heights and thicknesses for party walls of the highest rate of building to which such party wall shall belong or adjoin as prescribed in reference to the thickness of party walls in Schedule B.

And if any building already built or which shall be hereafter built be converted used or occupied as two or more separate buildings each having a separate entrance or staircase such conversion use or occupation not having been made or have taken place prior to this Act coming into operation then every such building shall be deemed to be two or more separate houses and such separate houses must be divided from each other by a party wall or party arch or arches built in the manner and of the materials required for party walls or for party arches for the class and rate to which the largest of the buildings so divided shall belong.

(Site of Walls.)

Walls—Regard to party walls in reference to the site thereof:—

If the buildings be of equal rate then such party walls must be built on the line of junction of such buildings one-half on the ground of the owner of one of such buildings and one-half on the ground of the owner of the other of such buildings.

If such buildings be of different rates then such wall must be built on the line of junction thereof as follows:—that is to say one-half of the thickness of the wall required for the building of the lower rate on the ground of each of the adjoining owners and the whole of the additional thickness of the wall required for the building of the higher rate on the ground of the owner of such building of the higher rate.

And if such building of the lower rate be thereafter enlarged or altered so as to become a building of a higher rate then the owner of such first mentioned building of the higher rate for the time being shall be entitled to receive from the owner of such building of the lower rate such sum of money as shall be a sufficient compensation for the ground occupied by that portion of the party wall which according to the rate of the building enlarged ought to have been built by its owner on his own ground as well as the value of so much of the wall itself as may be more than the owner of such building of the lower rate had already paid for.

(Construction and Materials.)

And with regard to party walls in reference to the component materials thereof:—

Every part of such party wall must be built of sound bricks or of stone or of such bricks and stone together laid in and with mortar or cement in such manner as to produce solid work.

And as to the woodwork which it may be desired to connect with the party walls of any building the bearing ends of wooden beams brestsummers girders trimming joists and the ends of partition heads and sills and the bearing ends of the main timbers of a roof and wood-bricks may be laid into the substance of a party wall but no such beam brestsummer girder joist partition head or sill nor any part of a roof being wood nor any wood-bricks must be laid or placed within two inches of the centre of any party wall and no other wood-work of any kind must be laid into placed upon or be run or driven into any part of the substance of any party wall.

But if the ends of timbers be carried on iron shoes or stone corbels then such iron shoes or stone corbels must be built into the wall at the least one-half of the thickness of such wall.

And the top of every such party wall must be finished with one course of sound hard bricks set on edge with good mortar or cement or by a coping of any other properly secured and sufficient waterproof and fireproof covering.

(Height of party walls above roof.)

And with regard to party walls in reference to the height thereof:—

If a party wall adjoin to any roof then such party wall must be carried up and remain one foot at the least above the part where the party wall and roof adjoin measured at a right angle with the back of the rafters of such roof.

And if any party wall in any building of the first class adjoin a gutter then such party wall must be carried up and remain two feet at the least above the highest part of any such gutter.

And if any party wall in any building of the second class adjoin a gutter then such party wall must be carried up and remain three feet at the least above the highest part of any such gutter.

If there be fixed within five feet of a party wall upon the flat or roof of a building any turret dormer lantern light or other erection of combustible materials then every such party wall must be carried up next to every such turret dormer lantern light or other erection and must extend one foot six inches higher and one foot six inches wider than any such erection on each side thereof.

*Melbourne Building.**(Openings in party walls.)*

And for the purpose of regulating the making of openings through any party wall between one dwelling-house and another whereby two or more dwelling-houses shall be united:—with regard to any dwelling-houses of any rate such dwelling-houses may be united by means of openings in the party walls.

But with regard to any such dwelling-houses which when so united will contain more than ten squares:—If such dwelling-houses shall be and continue to be in the same occupation then upon its being declared by the surveyor that in his opinion the stability and security from fire of any or either of such dwelling-houses will not be endangered by making such openings they may be made accordingly.

(Recesses and Chases.)

And further with regard to any party wall as to recesses and as to chases in such wall:—In every story recesses may be formed but only with the consent and authority of the surveyor first had and obtained and so that such recesses be arched over and so that the back of any such recess be not nearer than seven inches to the centre of the party wall in the first or lowest story nor nearer than four inches to the centre of the party wall in any other story and so that the stability and sufficiency of such party wall be not injuriously affected thereby if any chases be required for the insertion of ends of walls of piers of chimney jambs of withes of flues of metal pipes or of iron story posts then every chase for any such purpose must not be left or be cut nearer than 4 inches at the least to the centre of a party wall nor within a distance of 9 inches at the least from any front or back wall and no two such chases must be made within a distance of 7 feet 6 inches at the least from each other on the same side of a wall and no such chase must be formed wider than 9 inches.

C.

PART 4.

(Party walls and party arches between intermixed property.)

And with regard to any building already built having rooms the property of different owners which lie intermixed without being separated by any party wall:—

If any such building be altogether rebuilt or to the extent of one-fourth of the cubical contents thereof then such intermixed properties must be separated from each other by a party wall constructed in conformity with this Act.

C.

PART 5.

(Buildings over public ways.)

And with regard to buildings extending over any public way as to the part thereof which extends over such way so far as relates to the separation of such part from such public way:—

If such part be rebuilt then it must be separated from such public way either by a floor or arch formed of brick or stone or of other incombustible materials subject to the consent of the surveyor or by a floor formed of iron girders and brick arches or stone landings or by an arch formed of brick or of stone which arch if the span thereof do not exceed nine feet must be of the thickness of nine inches at the least and which if the span exceed nine feet must be of the thickness of thirteen inches at the least and the soffit of the arch must not be less than fourteen feet at the least from the pavement of such public way and such floor or arch with its abutments must be built in such manner as shall be approved of by the surveyor but there must not be formed over any public way a ceiling of lath and plaster or of lath and cement.

D.

RULES CONCERNING EXTERNAL PROJECTIONS.

(Projections from the face wall &c.)

And further with regard to buildings hereafter to be built or rebuilt in reference to projections therefrom as to colonnades copings parapets cornices to overhanging roofs blocking courses piers columns pilasters entablatures facias door and window dressings or other architectural decorations forming part of an external wall all such may project beyond the general line of fronts in any street or alley but they must be built of the same materials as are by this Act directed to be used for building external walls to which such projections belong or of such other proper and sufficient materials as the surveyor may approve and permit and as to

Melbourne Building.

to all colonnades balconies verandahs porches porticoes shop fronts open enclosures of open areas and steps and water pipes and to all other projections from external walls not forming part thereof every such projection (except such part of shop fronts and the frames and sashes of windows and doors in reference to the necessary woodwork therof) may stand beyond the line of building in any street or alley but they must be built of brick tile stone artificial stone slate cement metal or hardwood provided that the bearers of all colonnades and balconies be of iron or other fire-proof material and such projections must be so built as not to overhang the ground belonging to any other owner nor to obstruct the light and air or be otherwise injurious to the owner or occupier of the buildings adjoining thereto on any side thereof and except in the case of colonnades (which may overhang the footway twelve feet if at a height of at least ten feet in streets of ninety-nine feet in width or upwards and of balconies which may overhang the footway to the extent of four feet if at a height of at least ten feet in streets of ninety-nine feet in width or upwards no projections including steps cellar doors area enclosures are to encroach upon or overhang any public footway and no colonnade verandah or balcony must approach nearer to the end of the house to which they belong than the distance of two feet unless separated from any adjoining colonnade verandah balcony or premises by party walls at least eight and a-half inches in thickness.

(Projected buildings beyond the general line of buildings and from other external walls.)

And with regard to buildings already built or hereafter to be rebuilt as to how windows or other projections of any kind such projections must neither be built with or added to any building on any face of an external wall thereof so as to extend beyond the general line of building in any street (which general line may be determined by the surveyor) except so far as is hereinbefore provided with regard to projections from face walls and shop fronts nor so as to overhang the ground belonging to any other owner nor so as to obstruct the light and air or be otherwise injurious to the owners or occupiers of the buildings adjoining thereto on any side thereof.

(Projections from insulated buildings.)

Provided always with regard to any insulated buildings that if the projections be at the least eight feet from any public way and if they be at the least thirty feet from any other building not in the same occupation then such projections are excepted from the rules and directions of this Act.

(Wooden shop fronts and shutters.)

And with regard to shop fronts and their entablatures their shutters and pilasters and stall boards made of wood:—

If the street or alley in which such front is situate be of less width than thirty-three feet then no part of such shop front must be higher in any part thereof than fifteen feet nor must any part except the cornice project from the face of the wall whether there be an area or not more than two inches nor must the cornice project therefrom more than eight inches. If the street or alley be of greater width than thirty-three feet then no part of such shop front except the cornice must project from the face of a wall whether there be an area or not more than four inches nor must the cornice project therefrom more than twelve inches. And the width of such street or alley must be ascertained by measuring the same as herein-after directed with regard to the widths of streets and alleys. And the woodwork of any shop front must not be fixed nearer than four and a-half inches to the centre line of a party wall. And with regard to such woodwork if it be put up at such distance of four and a-half inches then a pier or corbel built of stone or of brick or incombustible material and of the width of four and a-half inches at the least must be fixed in the line of the party wall so as to be as high as such woodwork and so as to project one inch at the least in front of the face thereof. And the height of every shop front must be ascertained by measuring from the level of the public footway or pavement in front of the building.

E.**RULES CONCERNING CHIMNEYS HEREAFTER BUILT OR REBUILT.**

(Construction.)

With regard to chimneys and chimney-stacks except angle chimneys in reference to the construction thereof.

The foundations and footings of every such chimney and chimney-stack must be built similar to those of the wall in or adjoining to which it shall be and every such chimney and chimney-stack must be built from the foundation to the top thereof without any corbelling over whereby any upper part of the brickwork of such chimney or chimney-stack shall overhang any lower part of the brickwork on the front thereof nevertheless with regard to buildings of the first rate the jambs breast and flue of any single chimney may be built upon stone or iron corbels above the ceiling of the third story of every such building. And with regard to buildings of the second and third rates the jambs breast and flue in any single chimney

Melbourne Building.

chimney may be built upon stone or iron corbels above the ceiling of the second story of every such building but the projection both of such jambs and breasts must not in any case exceed fourteen inches before the face of the wall or stack to which the same shall adjoin. And with regard to angle chimneys such chimneys may be built in the internal angle of any building so that the width of the breast thereof do not exceed eight feet and so that it be properly supported on iron girders with brick arches or on strong stone landings not less than four inches thick and tailed at least nine inches into each of the two walls forming such angle.

(Dimensions and Materials.)

And with regard to chimneys in reference to the dimensions of the jambs thereof.

The jambs of every chimney must not be less than eight inches and a-half wide on each side of such opening. And with regard to chimneys and flues in reference to the thickness of the brickwork thereof the breast of every chimney and the front back width or partition of every flue must be at the least four inches in thickness of bricks and the joints of the work must be filled in with good mortar or cement and all the inside thereof and also the outside or face thereof next the interior of any building must be rendered or pargettred. And with regard to flues in reference to the dimensions thereof no flue may be used for a smoke flue which is of less internal diameter in any section than eight inches and a-half.

(Timber or Woodwork.)

And with regard to chimneys in reference to timber.

No timber must be placed over any opening for supporting the breast of any chimney but there must be an arch of brick or stone over the opening of every such chimney to support the breasts thereof and an iron bar or bars must be built into the jambs at the least nine inches on each side to tie in the abutments whenever the breast projects more than four inches and a-half from the face of the wall and the jamb on either side is of less width than two-thirds of the opening. And no timber or woodwork must be placed or laid in any wall under any chimney opening within eighteen inches at the least of the surface of the hearth to the fireplace of such chimney opening. And as to any timber or woodwork in reference to the fixing thereof in or against any wall containing flues or against any chimney breast or chimney jamb if timber or woodwork be affixed to the front of any jamb or mantle or to the front or back of any chimney or flue then it must be fixed by iron nails or holdfasts or other iron fastenings which must not be or be driven nearer than four inches to the inside of any flue or to the opening of any chimney and such timber or woodwork must not be nearer than two inches to the opening of any chimney and no timber must be laid or placed within three inches of the face or breast back side or jamb of any flue or of any chimney opening where the substance of brickwork or stonework shall be less than eight inches and a-half thick nor must any flooring-board batten ground skirting or other lining or fitting of wood nor any wood staircase nor anything else of wood be fixed or placed against or near to the face or breast back side or jamb of any flue fireplace or chimney opening unless and until the brick or stone work constituting the same shall have been thoroughly and efficiently rendered or pargettred with proper mortar or stucco and such rendering must be in every case in addition to four inches at least of solid fireproof structure.

(Slabs and Hearths.)

And a slab or slabs of brick tile stone slate marble or other proper and sufficient substance at the least twelve inches longer than the opening of every chimney when finished and at the least eighteen inches in front of the arch over the same must be laid before the opening of every chimney and in every floor except the lowest floor such slab or slabs must be laid wholly upon stone or iron bearers or upon brick or hardwood trimmers but in the lowest floor they may be laid on a brick fender or bedded on the solid ground.

And the hearth of every chimney must be laid and bedded wholly on brick or stone or other incombustible substance which must be solid for a thickness of nine inches at the least beneath the surface of any such hearth.

(Backs.)

And as to the back of every chimney opening of every building (except backs of chimneys in the lowest story of buildings of the fourth rate) every such back in the lowest story must be at the least thirteen inches thick from the hearth to the height of twelve inches above the mantle and in every other story at the least eight inches and a half thick up to the same relative height. And as to the backs of chimney openings in the lowest story of buildings of the fourth rate such backs must be at the least eight inches and a half thick to the height of twelve inches at the least above the level of the mantle.

(Chimney openings back to back.)

And as to backs of all such chimney openings.

If two chimneys be built back to back then the thickness between the same must be at the least of the thickness hereinbefore described for the back of one chimney opening.

(Angles

*Melbourne Building.**(Angles of Flues.)*

And as to all flues in reference to the angles thereof.

If any flue be built with sufficient openings in it of not less size than nine inches square and proper close iron doors and frames inserted in such openings so that every part of such flue may be swept by machinery then every angle in such flue may be of any degree but if it be not so built then every such angle must be one hundred and thirty-five degrees at the least. And every salient or projecting angle within a flue must be rounded off four inches at the least and protected by a rounded stone or iron bar.

(Close Fires.)

And as to every oven furnace cokel or close fire used for the purpose of trade or manufacture.

It must be six inches at the least distant from any party wall and must not be upon nor within a distance of eighteen inches of any timber or woodwork and the floor on or above which such oven furnace cokel or close fire shall be built or fixed must be formed and paved under and for a distance of two feet all around the same with stone brick tile or slate at the least two inches thick or other proper incombustible and non-conducting materials.

(Chimney Shafts.)

And as to chimney shafts or flues.

Every chimney shaft or flue hereafter built raised or repaired must be carried up in brick or stonework all round at least four inches thick to a height of not less than three feet above the highest part of such portion of the roof flat or gutter adjoining thereto measured at the point of junction. And as to any chimney shaft (except that of a steam engine brewery distillery or manufactory) the brick or stone work of such shaft or flue must not be built higher than eight feet above the slope flat or gutter of the roof which it adjoins measured from the highest point of junction unless such chimney shaft be built of increased thickness or be built with and bonded to another chimney shaft or be otherwise rendered secure. And as to the chimney shaft for the boiler furnace of any steam engine or for any brewery distillery or manufactory such shaft may be erected of any height so that it be built in such manner and of such strength and dimensions as shall be satisfactory to the surveyor upon special application in each case or in case of appeal to the official referees.

(Chimney Pots Tubes &c.)

And as to earthen or metal chimney pots tubes funnels or cowls of any description whatsoever.

If such pot tube funnel or cowl be higher than four feet above the brick or stone work of the flue on which the same shall be placed then it must be fixed two feet at the least into the brick or stone work of the flue on which it shall be placed.

(Smoke Pipes.)

And as to any metal or other pipe or funnel for conveying smoke heated air or steam in reference to the position thereof.

Such pipe or funnel must not be fixed against or in front of any face of any building in any street or alley nor on the inside of any building nearer than fourteen inches to any timber or other combustible material.

(Cuttings into Chimneys.)

And as to every chimney shaft jamb breast or flue already built or which shall be hereafter built in reference to cutting the same.

No such erection shall be cut into for any other purpose than the repair thereof or for the formation of soot-doors or for letting in removing or altering stove pipes or smoke-jacks except as directed for building an external wall against an old sound party wall.

F.**RULES CONCERNING ROOF COVERINGS.***(Materials.)*

With regard to roof coverings in reference to the materials thereof.

If the external parts of any roof flat or gutter of any building or of any projection therefrom and of any turret dormer lantern light and other erection on the roof or flat of any building be hereafter built or rebuilt stripped ripped or uncovered then every such part (except the door frames and doors window frames and sashes of such turrets dormers lantern lights or other erections) must be covered with slates tiles or hardwood shingles metal glass artificial stone or cement and such excepted parts may be made of such wood as shall be necessary.

(Rain Water Pipes.)

And with regard to the roof flat and gutter of any building and of any projection therefrom and also balconies verandahs and shop fronts.

They must be so arranged and constructed and so supplied with gutters and pipes as to prevent the water therefrom dropping on to or running over any public way.

G.

*Melbourne Building.***G.****RULES CONCERNING DRAINS TO BUILDINGS AND DRAINS INTO SEWERS.**

With regard to the drains of buildings of any class and of every addition thereto.

Before the several walls of any such building shall have been built to the height of ten feet from their foundations the drains thereof must have been properly built and made good that is to say if there be within one hundred feet from any front of the building or from the enclosure about the building a common sewer into which it is lawful and practicable to drain then into such common sewer and if there be not in such situation and within such distance any such common sewer then to the best outlet that can be obtained so as to render in either case drains available for the drainage of the lowest floor of such building or addition thereto and also of its such areas waterclosets privies and offices (if any) and the inside of the main drains under and from every building for carrying off soil must be in transverse section at the least equal to a circular area of nine inches in diameter and every such drain must be laid to a sufficient fall or current so as that the whole of every such drain within the wall of such building shall be wholly covered over under the lowest floor independently thereof and every such drain within the walls of such building must be built and covered over with bricks stone or slate and so as to render the drain air-tight.

(Cesspools and Privies.)

And with regard to cesspools and privies:—If there be a common sewer within fifty feet from any front of or from the enclosure about any house or other building then a cesspool must not be made for the reception of drainage from such houses or other building unless there be or shall be built a good and sufficient drain from such cesspool to such common sewer the same to be made air-tight.

H.**RULES CONCERNING STREETS AND ALLEYS HEREAFTER FORMED.***(Width.)*

With regard to every such street or alley hereafter to be formed in reference to the width thereof:—Every street or alley must be of at the least the following width from front to front in every part thereof respectively that is to say—Every street (excepting any mews) must be of the width of thirty-three feet at the least but if the building fronting any street be more than forty feet high from the level of the street then such street must be of a width equal at the least to the height of the buildings above such level.

Every alley and every mews must be of the width of twenty feet at the least but if the building fronting any alley or to any mews be more than thirty feet high from the level of the alley or mews then such alley or mews must be of a width equal at the least to the height of the buildings above such level.

(Entrance to Alleys.)

And with regard to every such alley in reference to the entrance thereof:—Every alley must have two entrances thereto each being at the least of the full width of the alley and one of the two at the least open from the ground upwards.

(Measurement of width.)

And with regard both to such streets and alleys:—The aforesaid width is to be ascertained by measuring (at right angles to the course thereof) from front to front of the buildings on each side of such street or alley.

I.**RULES CONCERNING DWELLING-HOUSES HEREAFTER BUILT OR REBUILT WITH REGARD TO BACK YARDS AND AREAS AND ROOMS UNDER GROUND AND IN THE ROOF.***(Back Yards.)*

With regard to back yards or open spaces attached to dwelling-houses:—Every house hereafter built or rebuilt must have an enclosed back yard or open space of at the least two squares exclusive of any building thereon unless all the rooms of such house can be lighted and ventilated from the street.

(Lowermost Rooms.)

And with regard to the lowermost rooms of houses being rooms of which the surface of the floor is more than three feet below the surface of the footway of the nearest street or alley and to cellars of buildings hereafter to be built or rebuilt:—If any such room or cellar cannot be otherwise lighted the same may be lighted by means of apertures or areas extending under the footway provided such apertures or areas be enclosed by solid masonry to the satisfaction of the surveyor and be covered with a horizontal iron grating level with the surface of such footway provided that no such aperture area or grating do extend from the line of building under the footway more than one foot six inches nor be more than three feet in width.

(Privies.)

*Melbourne Building.**(Privies.)*

And every privy whether already built or hereafter to be built in the yard or area of any building or under any street or alley must have a door and be properly enclosed screened and fenced from public view.

(Attic Rooms.)

And with regard to rooms in the roof of any building hereafter built or rebuilt in reference to the number of floors of rooms in the roof and to the height of such rooms there must not be more than one floor of such rooms and such rooms must not be of a less height than seven feet except the sloping part if any of such roof which sloping part must not begin at less than three feet six inches above the floor nor extend more than three feet six inches on the ceiling of such room.

(Rooms in other parts.)

And with regard to rooms in other parts of the building in reference to the height thereof every room used or intended to be used as a separate dwelling must be of at the least the height of seven feet from the floor to the ceiling.

J.**LIST OF FEES PAYABLE TO THE SURVEYORS UNDER THIS ACT.**

FEES FOR NEW BUILDINGS.	DWELLING-HOUSE CLASS.	WAREHOUSE CLASS.	PUBLIC BUILDING CLASS.
For any buildings erected on old or new foundations as follows:—			
If the building be of the first rate	3 10 0	3 10 0	3 10 0
“ “ second rate	3 3 0	3 3 0	3 3 0
“ “ third rate	2 10 0	2 10 0	2 10 0
“ “ fourth rate	1 15 0	2 2 0	2 2 0
And for inspecting and reporting on party walls and intermixed buildings:—			
If the building be of the first rate	1 15 0	1 15 0	1 15 0
“ “ second rate	1 11 6	1 11 6	1 11 6
“ “ third rate	1 5 0	1 5 0	1 5 0
“ “ fourth rate	0 17 6	1 1 0	1 1 0
For every insulated building	1 1 0	1 1 0	1 1 0

For every detached building built for the purpose of trade or collection of tolls £0 10 6

FEES FOR ADDITIONS OR ALTERATIONS.

For every addition or alteration made to any building (after the roof shall have been covered in) which shall involve the execution of works subject to the regulations of this Act the following fees that is to say:—

	£ s. d.
If the building be of the first rate	1 15 0
“ “ second rate	1 10 0
“ “ third rate	1 5 0
“ “ fourth rate	0 15 0

FEES FOR SPECIAL DUTIES.

For the following special duties performed by the surveyor according to the provisions of this Act where such duties shall not be performed incidentally to the building or re-building of or adding to or altering any building in respect of which any other fees may be payable that is to say:—

	£ s. d.
For attending to the cutting away of chimney breasts for external walls	1 1 0
For condemning party fence walls	2 2 0
For the inspection and removal of projections and ruinous buildings	1 1 0
For surveying party walls not kept in repair and consenting to notice of repair being served	1 1 0
For inspecting arches or floors over public ways	1 1 0
For inspecting formation of openings in party walls	1 1 0

Fees for special services not expressly provided for:—For any services performed by the surveyor which is required by this Act but not comprehended under any of the foregoing heads such fee not exceeding five guineas as the Council of the said City by resolution duly arrived at may appoint and fix.

K.

K.
MELBOURNE BUILDING ACT.

SUMMARY of Proceedings to be taken or observed before and after Notices in relation to Buildings.

SECTION OF ACT.	STAGES OF PROCEEDINGS.	STEPS TO BE TAKEN.	BY WHOM TAKEN.	WITH REFERENCE TO WHOM TAKEN.	FORM OF NOTICE TO BE GIVEN.	PLACE OF NOTICE.	SUBSEQUENT PROCEEDINGS.
1 { WORKS GENERALLY.	Before commencing the operations specified in this Act.	Two days' notice to be given.	The builder.	The surveyor.	No. 1.	At the surveyor's office.	£20 penalty for neglect existing building altered &c. without notice to be abated as a nuisance.
2 {	Before resuming operations after being suspended for a period exceeding three months.	Two days' notice to be given.	The builder.	The surveyor.	No. 2.	At the surveyor's office.	£20 penalty for neglect.
3 {	On change of architect master builder or other superintendent.	Two days' notice to be given.	The builder.	The surveyor.	No. 3.	At the surveyor's office.	£20 penalty for neglect.
4 {	On the occurrence of any irregularity in building operations.	48 hours' notice to be given.	The surveyor.	The builder.	No. 4.	At the builder's office or place of building or of alteration.	Proceedings by surveyor or official referee.
5 {	As to openings hereafter made in external walls abutting on adjoining ground or buildings.	Notice to stop up within one month.	Adjoining owner.	Owner of external wall.	No. 5.	According to sections as to notifications.	To be stopped up.

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K.—Continued.

STAGES OF PROCEEDINGS.	STEPS TO BE TAKEN.	BY WHOM TAKEN.	WITH REGARD TO WHOM TAKEN.	FORM OF NOTICE TO BE GIVEN.	PLACE OF NOTICE.	SUBSEQUENT PROCEEDINGS.
PARTY WALLS &c. Before survey, repair or pulling down of a party wall, party arch or party fence wall.	Three months before operations.	The building owner.	The adjoining owner.	No. 6.	According to sections as to notifications.	Inspection by surveyor.
In the same case.	Notice for survey.	Do.	The surveyor.	No. 7.	At the surveyor's office.	Inspection by surveyor and report to official referees.
In the same case.	Appointment of survey.	The surveyor.	The owners and agents &c.	No. 8.	To building and adjoining owners and agents.	Do.
As to pulling down rooms in intermixed property and repairing or rebuilding party fence walls.	Notice of intention to build a party wall or as directed by official referees.	The building owner.	The adjoining owner and surveyor.	No. 9.	According to sections as to notifications.	Erection of wall.
In the same case.	Notice of inspection thereof.	Do.	The surveyor and official referees.	No. 10.	At the surveyor's and town clerk's offices.	Inspection by surveyor and report to official referees.
	Appointment of survey.	The surveyor.	The owners and agents &c.	No. 11.	To builder and adjoining owners and agents.	Do.
	Three months' notice of intention to build or raise a party wall.	The building owner.	The adjoining owner.	No. 12.	According to sections as to notifications.	Erecting of walls or raising a wall.
	Excavation against existing party walls for a deeper story and for the erection of an external wall.	Do.	Do.	No. 13.	Do.	Execution of operations.
	Building a party wall on a line of junction of two pieces of vacant ground.	Do.	Do.	No. 14.	Do.	Execution of operations.
	In the same case.	The adjoining owner.	The building owner.	No. 15.	Do.	Execution of wall.
	MODIFICATIONS.					
	Modifications or delay of intended work to suit adjoining owner.	Do.	Do.	No. 16.	Do.	If consent not given commencement of works must be delayed for decision of official referees.
	In the same case.	Application for decision.	Do.	The official referees.	No. 17.	At the town clerk's office.
	In the same case.	Notice of application.	Do.	The building owner.	No. 18.	According to section as to notifications.

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FORMS OF NOTICES AS TO WORKS.

(Melbourne Building Act sect. 10.)

No. 1.—Notice by the builder to the surveyor four days before commencing operations.

I do hereby give you notice that I intend to (a) and that C. D. of
 is to be the (b) of the works to be executed and that
 the said work will be begun on the day of
 Dated this day of

Signature and address.

* * Certain penalties are attached to neglect in giving this notice.

(Melbourne Building Act sect. 10.)

No. 2.—Notice by the builder to the surveyor two days before resuming operations.

I do hereby give you notice that I intend to recommence the (c) and
 that C. D. of is to be the (b) of the works to be
 resumed and that the said works will be continued on the day of
 Dated this day of

Signature and address.

* * Certain penalties are attached to neglect in giving this notice.

(Melbourne Building Act sect. 10.)

No. 3.—Notice by the builder to the surveyor as to the change of builder.

I do hereby give you notice that with reference to the works specified in my notice
 of last E. F. (c) is to be placed in charge of the said works instead of
 C. D. the (c) mentioned in the said notice.
 Dated this day of

Signature and address.

(Melbourne Building Act sect. 11.)

No. 4.—Notice by the surveyor to the builder as to anything done in the erection of any building not conformably to the Act.

I do hereby give you notice that the (d) now in progress (e) situate in (f)
 is not conformable to this Act in the portions thereof undermentioned and I
 require you within forty-eight hours from the date hereof to amend the same.

Dated this day of
 hour of by the clock.

NOTE.—Irregularities referred to.

Signature and address.

(Melbourne Building Act sect. 32.)

No. 5.—Notice by an owner or occupier to any adjoining owner or occupier to stop up an opening in an external wall abutting on his premises.

I do hereby give you notice that if within one month from the date hereof you do
 not stop up the opening made in the external wall of your premises situate in (g)
 and which abuts on my (h) I shall at your expense cause the same to be stopped
 up conformably to this Act.

Dated this day of
Signature and address.

FORMS

(a) Describing the erection or intended operation in general terms and whether it relate to any of the following matters:—

“The erection of any building” Or

“The making of any addition to or alteration to any building” Or

“The building pulling down rebuilding cutting into or altering any party wall external wall chimney-stack or flue” Or

The making of “any opening in any party wall” Or

The doing “of any other matter or thing by this Act placed under the supervision of the surveyor.”

(b) Insert “architect” or “builder” or other superintendent to have charge of the works.

(c) Describing in general terms the works referred to in notice No. 1 and which works may have been suspended three months.

(c) Insert “architect” or “builder” or other superintendent to have charge of the works.

(d) Insert “building” or “alterations” or “building operations” as the case may be.

(e) Insert “under your superintendence” or “in the building belonging to you” as the case may be.

(f) Insert the situation as the case may be.

(g) Specify the situation.

(h) Insert “ground” or “building adjoining.”

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FORMS OF NOTICES AS TO PARTY WALLS.

(Melbourne Building Act s.s. 16 20.)

No. 6.—Notice to be given (three months before commencing operations) by an owner or occupier to an adjoining owner or occupier that the party wall or party arch or party fence wall is out of repair.

I do hereby give you notice that I apprehend that the (i) or some part thereof on the line of junction between my (k) situate in and the (l) thereto adjoining situate on the side thereof is so far out of repair (l) as to render it necessary to (m) such wall or some part thereof and that I intend to have such wall surveyed pursuant to the Act and also that I have given notice to the surveyor and to the official referees to survey the premises for the purpose of certifying the condition of such wall and whether the whole or any part thereof ought to be repaired or pulled down and rebuilt and to certify accordingly.

Dated this day of

*Signature and address.**(Melbourne Building Act sect. 19.)*

No. 7.—Notice in the same case to the surveyor and official referees.

I do hereby give you notice that I apprehend that the (n) or some part thereof on the line of junction between my situate in and the thereto adjoining situate on the side thereof is so far out of repair as to render it necessary to repair or pull down and rebuild such wall or some part thereof and that I require a survey thereof to be made pursuant to the Act and that in presence of such one or more surveyors or agents appointed by me as undermentioned or by C. D. the owner of the adjoining property for the purpose of certifying the condition of such wall and whether the whole or any part thereof ought to be repaired or pulled down and rebuilt and I do hereby also intimate that I have served a notice on C. D. to the like effect.

Dated this day of

Names and addresses of one or more surveyors or agents for building owner. } *Signature and address.*

(Melbourne Building Act sect. 19.)

No. 8.—Notice in the same case by the surveyor to the building owner and adjoining owner and such one or more surveyors and agents by them appointed.

I surveyor of do hereby give you notice that in pursuance of an application made to the official referees and to me in that behalf it is my intention to proceed to view the premises (o) situate in for the purpose of certifying the condition of the (p) and whether any part thereof is so far out of repair as to require to be either wholly or in part repaired or pulled down and rebuilt and such survey I do intend to make on the day of next at by the clock in the noon in the presence of any one or more surveyors or agents on behalf of the building owner and the adjoining owner.

Dated this day of

*Signature and address.**(Melbourne*

(i) Insert "party wall" or "party arch" or "party fence wall" as the case may be.

(k) Insert "house" or "building" or "ground" as the case may be.

(l) Insert when required "or has been rendered dangerous and ruinous by cutting away footings or breasts or chimney shafts."

(m) Insert "repair" or "pull down and rebuild" as the case may be.

(n) Insert "party wall" or "party arch" or "party fence wall" as the case may be.

(o) Designated by number or other name.

(p) Insert "party wall" "party arch" or "party fence wall" as the case may be.

