



WESTERN AUSTRALIA.

ANNO QUARTO & QUINTO

VICTORIÆ REGINÆ,

No. 18.

An Act to provide for the improvement of Towns in the Colony of Western Aus- tralia.

WHEREAS it is expedient to provide for the improvement of Preamble
Towns within this Colony; Be it therefore enacted by his
Excellency the Governor of Western Australia, by and with the ad-
vice of the Legislative Council thereof, that from and after the pas-
sing of this Act, the right of property in all Streets, Paths, Canals,
Towing-Paths, Ferries, Bridges and other thoroughfares within the
limits of any townsite, and not laid out as public lines of communi-
cation by the General Road Trust; together with all soil, timber and
other materials within such Town-site, and not upon land belonging
to private individuals, or reserved for special purposes by the Local
Government; and in all funds in any wise arising from or applicable
thereto, together with the management, control, superintendence and

Property and manage-
ment of streets, &c., vest-
ed in Town Trust of each
town; consisting of Resi-
dent Magistrates and
owners of allotments.

charge of the same shall be vested in the respective Town Trust of each such Town, consisting of all Justices of the Peace residing within the limits of such Town-site, and all proprietors of allotments held in fee-simple therein. And all such persons are hereby declared to be Trustees of the same for the purposes of this Act.

Proxies and Agents to vote.

II. AND be it enacted, that all Proxies appointed in writing by proprietors of Allotments, residing at a distance of not less than twenty miles from the Town, and all duly authorised Agents for persons not residing in the Colony, shall be entitled to vote for their principals.

Trustees to divide Streets, &c., into Districts.

III. AND be it enacted, that the said Trustees shall have power to divide the Streets, and other lines of Communication, into Districts, for the purposes of this Act, and to name Directors and Committees of their Members for the more immediate direction and management thereof; and to give such Directors and Committees such powers and such instructions as they shall from time to time think fit and expedient.

Trustees to make and subscribe declaration of qualification.

IV. AND be it enacted, that previous to any person acting as such Trustee as aforesaid, he shall make a declaration to the following effect, that is to say,—“ I, A B, do hereby declare that I am duly qualified to act as a Trustee under an Act passed in the fourth and fifth years of the reign of Queen Victoria, intituled, ‘ An Act to provide for the Improvement of Towns in the Colony of Western Australia,’ and that I will faithfully, impartially and honestly exercise the powers and trusts reposed in me as a Trustee by virtue of the said Act, to the best of my knowledge and ability, for the purposes in the said Act mentioned.” And a form of this declaration shall be entered in the Journal and signed by each Trustee.

Trustees to hold four General Meetings; and also Special Meetings on requisition of three or more Members.

V. AND be it enacted, that the said Trustees shall hold four General Meetings within each year,—namely, on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October; and also Special Meetings, upon the requisition of any three or more Members of their body, provided that due notice of such Special Meeting shall previously have been given either by publication in two successive Gazettes or by such other sufficient means as the circumstances of the case will admit of.

Officers to be appointed.

VI. AND be it enacted, that at the General Meeting of the said Trustees, which shall take place in January in each year, the following Officers shall be appointed by ballot,—namely, a Chairman, and a Committee of five from the body of Trustees; also Treasurers.

Collectors, Clerks, Surveyors, or other requisite officers. Provided always, that if at such General Meeting, either from the non-attendance of Members, or from any other unforeseen cause, it shall be found impossible to elect the officers as aforesaid, or if at any time any vacancy by death, resignation, or otherwise, shall occur in any of the said offices, it shall be lawful for the Chairman or Senior Member of Committee to summon a Special Meeting for the purpose of appointing such Officers or filling up such vacancies as aforesaid; and further, that no business shall be entered upon at any General or Special Meeting unless at least seven Trustees be present.

VII. AND be it enacted, that as soon as may be after the election of such Officers, or filling up such vacancies, the chairman shall report the same to the Governor: Chairman to report list of Officers to the Governor.

VIII. AND be it enacted, that the Directors of the several Districts shall, at least seven days previous to each General Meeting, deliver to the Chairman reports on the state of the several lines and modes of communication in their respective districts; also, Quarterly Accounts of Expenditure, accompanied by vouchers, under authority of any Meeting; also an account of the works required to be executed in their several districts, with distinct Plans, Specifications, and Estimates, drawn by the proper Surveyor, or otherwise made and prepared in a satisfactory manner; also, an estimate of the funds which may be expected to be realized within their respective Districts from any of the sources hereinafter mentioned and described. Directors of Districts to deliver reports to Chairman, and Quarterly Accounts as herein.

IX. AND be it enacted, that the Chairman shall lay correct abstracts of all Reports, Accounts, and Estimates, before each General Meeting, and that immediately after these have been duly read and considered, and in whole or in part approved of by the Meeting, estimates of the probable Ways and Means for the ensuing Quarter shall be drawn up, together with statements of the Works, whether general or local, which the Meeting may think fit to undertake,—having a due regard to the total amount of Funds available for such purposes, and to such a just, wise, and equitable apportionment of those funds as the general interests of the respective Town, and the wants of each particular District may be deemed to require. Chairman to lay before the Meeting, abstracts of all reports, &c.

X. AND be it enacted, that the Chairman shall preserve order at the several meetings, and take the sense thereof, and superintend and be responsible for the proper regulation of business before the Meetings, and regulate the proceedings of the Clerk in the care, custody and preparation of Books, Papers, and Accounts. Provided always, that in the absence of the Chairman the Senior Member of Committee present shall act as Chairman. Chairman to preserve order and take the sense of the Meeting.

Clerk to enter in a Book Minutes of Proceedings and account of Receipts and Disbursements.

Book to be open to inspection.

Reports and Statements to be laid by ex-Chairman before the Governor.

Nature of available funds.

Trustess may borrow money at interest on Credit of Tolls, &c., and assign Tolls as a security for repayment.

XI. AND be it enacted, that the Clerk shall keep a Book or Books, in which shall be entered minutes of all proceedings and transactions, and an account of Receipts and Disbursements, and the Chairman at such meeting shall see the entry of the proceedings thereat duly made, and shall subscribe the same with his own hand, and the names of the Trustees present at every meeting shall be entered; and every Book containing such Entries or Accounts shall at all reasonable times be open to the inspection of the public, and it shall be lawful for any person to peruse and make extracts from the same without fee or reward.

XII. AND be it enacted, that as soon as may be after the expiration of his Office, Reports and Statements of the Proceedings and Accounts of the Trustees for the preceding year shall be laid by the Chairman of such year before the Governor.

XIII. AND be it enacted, that the Funds available for the purposes of this Act shall be such as may accrue from any of the following sources, viz :—

- 1.—Tolls payable at any Ferries, being the property of the respective Town Trust, which the Trustees are hereby empowered to let in the manner provided for by the Act 4th William IV, No. 1, intituled “An Act to regulate the Establishment and Management of Ferries, and the Collection of Tolls thereat.”
- 2.—All Leases of Tolls or Compositions to be paid in lieu thereof.
- 3.—All Tolls, Rates, Dues, or Charges, which may hereafter be made payable at or by reason of the use of any lines or modes of communication within the respective Town; which Tolls, Rates, Dues, or Charges, the Governor is hereby empowered to establish by proclamation, provided that the amount so established shall not, in any case, exceed the amount recommended by the Trustees.
- 4.—Voluntary Subscriptions of Money or Labour for local or general objects.
- 5.—The amount of any Sums which may from time to time be conceded by the Governor for special or general purposes under this Act.
- 6.—Loans raised as hereinafter provided on the credit of Tolls, Leases, or other property connected with the aforesaid lines and modes of communication.
- 7.—Assessments which may hereafter become leviable.

XIV. AND be it enacted, that it shall be lawful for the said Trustees, by and with the consent of the Governor in Council, to borrow and take up at interest on the credit of Tolls, Dues or Char-

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Charges arising or to arise from any Street, Bridge, Ferry or other work of the like nature, every such sum of money as they shall think proper from time to time respectively, and to assign the Tolls on such Street, or any part thereof, or on such Bridge, Ferry, or other work of the like nature as a security to any person or persons who shall advance such sum of money (for such a period of time as may be sufficient) for the repayment of the principal sum borrowed, together with Interest at a rate not exceeding Ten per centum per annum.

XV. AND be it enacted, that Assignments of Tolls or Charges Assignment of Tolls, &c., how to be made. shall be in the words, or to the effect, following, viz.:—"By virtue of an Act passed in the fourth and fifth years of the reign of Queen Victoria, intituled an 'An Act to provide for the improvement of Towns in the Colony of Western Australia,' we, the Chairman and Committee of the Town Trust, in consideration of the sum of _____ advanced and paid to the Treasurer of the said Trustees, do hereby grant and assign unto A B, his Executors and Assigns (*here specify the matter assigned*), to be held from this _____ day of _____, in the year of our Lord _____, until the said sum of _____, with interest at the rate of _____ per centum per annum shall be paid and discharged." And copies of such Assignments shall be entered by the Clerk in the Book of Proceedings, and such Assignments shall be transferable by Indorsation to any other person Transferable by Indorsation. whatsoever, which Indorsation shall be in the words, or to the effect, following, viz.:—"I, A B, do hereby transfer all my right to the within written Assignment of _____ to _____ and his Executors and Assigns." And all persons to whom any such Holders of such Assignments to be Creditors on Tolls in equal degree, or as arranged. Assignment or Indorsation shall be made, as aforesaid, shall, in proportion to the sum of money thereby secured, be creditors on the Tolls or Charges so assigned, in equal degree one with another in respect to payment of the interest on such sum, or in such order or manner, and at such time with respect to payment of the principal sum, as shall be agreed upon and stipulated by the said Trustees at the time of the advance of their respective sums of money.

XVI. AND be it enacted, that if at any General or Special Trustees with sanction of Governor may assess inhabitants. Meeting as aforesaid it shall be determined by a majority of not less than two-thirds of the Trustees present that a certain sum be levied from the owners or occupants of any land within the respective Town, for any specific object connected with the improvement of the Town, the Chairman shall report the same to the Governor, and upon obtaining the Governor's sanction thereto, it shall be lawful to carry the same into effect in manner and form following,—that is to say, that the Chairman and a majority of the Committee having ascer-

tained and determined the number of owners or occupants so chargeable, and the amount to be levied from each, shall issue orders to their Collector to collect such rates as aforesaid, and such Collector shall be furnished with a written warrant or order empowering him in that behalf, subscribed by the Chairman and three of the Committee, and every Collector shall, if so required, exhibit such warrant upon demanding the sum assessed, and such Collector, on receiving the said sum, shall give a receipt for the same, if so required, and such receipt shall be to the party holding the same a full acquittance and discharge for the sum expressed therein to have been received.

Mode of collecting Assessments.

XVII. AND be it enacted, that every such Collector shall proceed with due diligence to collect and levy the monies assessed upon the several premises respectively, and shall serve upon the Occupier, or if unoccupied, upon the Owner of each several premises, or if such Owner or Occupier cannot be found, shall affix upon such premises, a notice, bearing date the day and year of serving the same, subscribed with the name and abode of the Collector, requiring payment of the sum assessed within fourteen days from the date of such notice; and if such money be not paid to the Collector within fourteen days after the expiration of the term specified in such notice, then the Collector may at any time afterwards procure a warrant subscribed by the Chairman of the Trust aforesaid, which warrant the said Chairman is hereby authorised and required to grant, upon a certificate, signed by the Collector, of such demand having been made, and such notice having been served, and such money remaining unpaid; and it shall be lawful for the Collector, by virtue of such warrant, to enter upon the premises chargeable, and to seize and distrain the goods and chattels of any person whomsoever, which he can find thereon; and if no sufficient distress can be found thereon, then to seize and distrain the goods and chattels of the party chargeable for and in respect of such premises, wheresoever the same can be found; and for that purpose to enter into any dwelling-house, or other house, shop, warehouse, or other tenement within the limits of such Town, belonging to such party; and if the sum be not paid within five days from such seizure, together with the costs of distress, it shall be lawful for the Collector to sell the goods so seized by public auction for such sum and costs, and the costs of such sale of distress and sale, which costs are to be set forth and specified in the warrant authorizing such distress; and the overplus, if any, shall be paid to the party distrained upon or his representatives.

Occupiers chargeable with rates.

XVIII. AND be it enacted, that the immediate tenant or occupier of any premises charged with any assessment under this Act shall be deemed chargeable with every assessment made in respect of the

same; provided, that if any premises be occupied by any tenure shorter than a yearly holding, it shall be lawful for such person (any special covenant or agreement to the contrary notwithstanding) to deduct from out of the rent payable by such person for and in respect of such holding any sum paid for such assessment, such person producing the receipt for such sum, subscribed, as before directed, by the Collector receiving the same.

XIX. AND be it enacted, that if no sufficient distress can be found on the premises chargeable, and if the sum charged upon any premises be not otherwise paid or satisfied, the premises for which such sum shall have been charged shall remain at all times chargeable with the same, into the hands of whatsoever person such premises may come; and so soon as at any time sufficient distress can be met with thereon, it shall be lawful for such Collector to enter upon such premises and to distrain any goods or chattels therein or thereon, and to levy all arrears of assessments with all costs, at any time previous accrued in respect of such premises, together with interest at the rate of ten per cent. Provided always, that it shall be lawful for any person on whose goods and chattels such arrears and costs may be levied, to recover of and from the person or persons, or his or their representatives, primarily chargeable with the same, and during whose holding of such premises the same may have accrued, the full amount thereof, together with full costs and damages for the injury sustained by such levy as aforesaid.

Premises shall remain at all times chargeable, and parties paying may recover against former parties rated.

XX. AND be it enacted, that any person who shall wilfully injure, damage or destroy any Street, Pathway, Ferry, Bridge, Ferry-Boat, Jetty, Quay, Well, Spring, Gate, Fence, Post, Rail or Paling, or any Article or Material, Matter or Thing, employed for the purposes of this Act, or the property of the Trustees under this Act,—or shall upon any way used, or appointed to be used as a Footway only, drive any Cart or Carriage, except directly across on necessary occasions,—or shall lead, ride or drive any Horse or other Beast on any such Footway, except directly across the same, as aforesaid,—or shall suffer to stand, or shall tie or fasten any Horse or other Beast on or across the same,—or shall do or commit any Act, or shall leave or place or set up any Material or Thing whatsoever, which shall cause or create any impediment, obstruction, nuisance, damage or annoyance in or to the free passage of any such lines of Communication as aforesaid, shall forfeit and pay a sum not exceeding Five pounds, over and above the amount of any Damages occasioned thereby; and the amount of such Damages shall be handed over to the Treasurer appointed by such Trustees. Provided, that if the property damaged be that of a private Individual, the

Penalties for damage to property of Trustees.

amount of such damage shall be paid to such Individual, notwithstanding such Individual shall have been examined as a witness.

Trustees to sue and be sued in name of Public Officer.

XXI. AND be it enacted, that the Trustees under this Act may sue and be sued in the name of their Chairman, Treasurer, or Clerk, for the time being; and that no Proceeding by or against the said Trustees shall abate by reason of the death or removal of such Public Officer; and that in any proceedings, Civil, Criminal, or otherwise, by or against any of the Trustees under this Act, he or they shall be sufficiently described as a Trustee or Trustees appointed by virtue of this Act.

Trustees not personally liable, &c.

XXII. Provided always, and be it enacted, that the said Trustees shall not be held to have rendered themselves personally liable for the repayment of any money borrowed, or interest thereof, by reason of having signed any Securities in pursuance of this Act, but such Securities shall be held and considered as granted upon the sole Credit and Security of the Tolls, nor shall any Trustee be held personally liable for the payment of any sum, or performance of any contract, for which he shall not have bound himself personally, independent of his office as Trustee under this Act.

Appointments and Proceedings under former Act to be valid.

XXIII. Provided always, and be it enacted, that all appointments of Officers, and all other proceedings whatsoever which may have been done by any Town Trust of the Colony under or by virtue of the Act of the first year of Her present Majesty number second, now repealed, or under or by virtue of the Act of the second year of Her said Majesty number fifth, or by virtue of any Act passed during the present Session, shall be deemed and taken to have the same force and validity, and shall and may be acted upon as if the same had been done under or by virtue of this Act.

Jurisdiction by one Justice.

XXIV. AND be it enacted, that where any person shall be charged, on the oath of a credible witness, before any Justice of the Peace with any offence against the provisions of this Act, the Justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case ex parte, or issue his warrant for apprehending such person, and bringing him before himself or some other Justice of the Peace, or the Justice before whom the charge shall be made, may if he shall so think fit, without any previous summons, issue such warrant, and the Justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

XXV. AND be it enacted, that in every case of a summary conviction under this Act, where the sum shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Justice, shall not be paid, either immediately after the conviction, or within such period as the Justice shall, at the time of the conviction, appoint, it shall be lawful for the convicting Justice to commit the offender to the common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice, for any term not exceeding three calendar months; the commitment to be determinable upon payment of the amount and costs. Recovery of penalties.

XXVI. AND be it enacted, that all Actions and Prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be commenced within three calendar months after the fact committed, and not otherwise. And notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action. And in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon. And no Plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into the Court after such action brought, by or on behalf of Defendant. And if a verdict shall pass for the Defendant, or the Plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the Plaintiff, the Defendant shall recover his full costs as between Attorney and Client, and have the like remedy for the same as any Defendant hath by Law in other cases; and though a verdict shall be given for the Plaintiff in any such action, such Plaintiff shall not have costs against the Defendant unless the Judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon. Limitation of proceeding against Officers, &c.

XXVII. AND be it enacted, that all Prosecutions for Offences against the provisions of this Act shall be commenced within three calendar months after the commission of the offence, and not otherwise. Limitation of Prosecutions.

XXVIII. AND be it enacted, that all Fines and Forfeitures recovered under this Act shall be divided, paid and applied as follows,—that is to say, after deducting charges of prosecution and sale from the produce thereof, one moiety shall be paid to the Chairman of the respective Town Trust, to be appropriated towards the purposes of this Act, and the other moiety to the party or parties informing. Appropriation of Fines.

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Act may be amended.

XXIX. AND be it enacted, that this Act may be altered, amended, or repealed by any Act to be passed during the present session.

JOHN HUTT,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council }
23rd Sept., 1841. }*

EDWARD C. SOUPER,
Acting Clerk of the Council.