

CHAP. XVII.

AN ACT to define the Limits of the Town of Hamilton, in the District of Gore, and to establish a Police and Public Market therein.

[Passed 13th February, 1833.]

Preamble.

WHEREAS from the great increase of Population of the Town of Hamilton, in the District of Gore, it is necessary to make further provision than by Law exists for the internal regulation thereof:—*Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That there shall be in the said Town a Board of Police, to be composed and constituted in the manner hereinafter described, which shall be, and is hereby declared to be, a Body Corporate and Politic in fact and in law, by the name of "the President and Board of Police of Hamilton," and by that name they and their successors may have perpetual succession, and be capable of suing and being sued, impleading and being impleaded, in all Courts, and in all actions, causes, and complaints whatsoever, and may have a common seal, and may alter the same at pleasure, and shall be in law capable of purchasing, holding and conveying, any Estate, real or personal, for the uses of the said Town.

Board of Police constituted.

Limits of Hamilton defined.

II. *And be it further enacted by the authority aforesaid*, That the said Town of Hamilton shall be comprised within the following limits or boundaries, that is to say:—Commencing at the North East corner of Broken Lot number Thirteen, in the First Concession of the Township of Barton, at the water's edge of Burlington Bay; thence along the shore of the said Bay to the North West corner of Lot number Sixteen; thence Southerly along the allowance for road between Lots number Sixteen and Seventeen, to the allowance for road in rear of the Third Concession; thence Easterly along the said allowance, to the allowance for road between Lots number Thirteen and Twelve; thence along the said allowance to Burlington Bay, to the place of beginning, including the

whole of the said allowance for roads and that part of the Harbour lying in front of the said Town.

III. *And be it further enacted by the authority aforesaid,* That for the purpose of Electing the Members of the said Corporation the said Town shall be divided into Four Wards in the following manner, that is to say:—The Street heretofore called the Mountain Street or Ancaster Road, and which shall hereafter be called Johns' Street, and the Street leading from the Eastern part of the District, in the direction towards Dundas, hereafter to be called Kings' Street, and all that part of the Town lying West of Johns' Street and South of Kings' Street shall comprise the First Ward; and all that part of the said Town lying North of Kings' Street and West of Johns' Street shall comprise the Second Ward; and all that part East of Johns' Street and North of Kings' Street shall comprise the Third Ward; and that part of said Town lying North of Kings' Street and East of Johns's Street shall comprise the Fourth Ward.

Town divided into four Wards.

IV. *And be it further enacted by the authority aforesaid,* That each of the said Wards shall Elect annually one person to be a Member of the said Corporation from among the Inhabitant Householders of the said Town, who being a Subject of His Majesty shall be a Freeholder therein to the assessed value of Sixty Pounds; and that the persons entitled to vote at the election for either of the said Wards shall be Subjects of His Majesty and the male Inhabitant Householders resident within such Ward, who shall severally be possessed for their own use and benefit of a dwelling house and lot of ground within the Ward in which they shall so vote, such dwelling house and lot of ground being by them held in Freehold, or who, being Subjects of His Majesty and male Inhabitant Householders within the said Ward at the time of such election, shall *bona fide* have paid within one year next before the election one years rent for the dwelling house, or dwelling houses, if they shall within one year have changed their place of residence within the said Ward in which they shall have resided, at the rate or Five Pounds per annum, or upwards.

Each Ward to elect a member of the Corporation.

Qualification of voters.

V. *And be it further enacted by the authority aforesaid,* That the first election of Members of the said Corporation shall be holden on the first Monday in the month of March next, at some place within each Ward respectively, to be appointed by the Sheriff of the District of Gore, who shall give public notice thereof at least six days before the said election, and who shall preside at the election for one of the said Wards, and the Deputy Sheriff, High Constable, and a Bailiff or Constable, or other person appointed for that purpose by the Sheriff of the said District, shall

First election when to be holden.

Manner of holding elections.

severally preside at the first election for each of the other three Wards, that is to say, each respectively shall preside at the first election for such Ward as the Sheriff shall direct, and shall declare the person in each of the said Wards who shall have the greatest number of votes to be duly elected a Member of the said Corporation, and shall give notice thereof to the person so elected in the said Ward as a Member of the said Corporation, within six days after such election.

Time and manner of holding all future elections.

VI. *And be it further enacted by the authority aforesaid,* That the members of the said Corporation so chosen shall serve until the first Monday of March in the next year, and until a new Board shall be chosen and formed as hereinafter mentioned; and that on the first Monday in March in every year an election shall be holden in each of the Wards of the said Town, for choosing a member of the said Corporation before the Bailiff of such Ward, who shall be appointed from time to time by the said Corporation, and who shall appoint the place for holding the said election and shall give notice thereof, and proceed in all respects as the Sheriff is hereby required to do at and after the first election to be holden as aforesaid.

Person holding an election to take an Oath.

VII. *And be it further enacted by the authority aforesaid,* That before any person shall proceed to hold an election under this Act he shall take the following oath, which any Justice of the Peace for the District of Gore shall have authority to administer, that is to say:—

Form of Oath.

I do solemnly swear that I will faithfully and impartially, to the best of my ability, discharge the duty of Presiding Officer at the election which I am about to hold for a Member of the Board of Police in the Town of Hamilton.—So help me God.

Candidates and voters may be required to take an oath of qualification.

VIII. *And be it further enacted by the authority aforesaid,* That the Officer presiding at any election under this Act shall have authority, and he is hereby required at the request of any person qualified to vote at such election, to examine on oath or affirmation (when the party is allowed to affirm) any Candidate for the office of Member of the said Corporation respecting his qualification to be elected to the said office; and shall also have authority, and is hereby required upon such request as aforesaid, to examine on oath or affirmation (when the party is allowed to affirm) any person tendering his vote at any election respecting his right to vote, and that the oath to be administered for either of the said purposes shall and may be in the form following:—

Form of oath.

“You shall true answer make to all such questions as the Officer presiding at this election shall put to you respecting your qualification to be

electd at this election, (or respecting your qualification to vote at this election, as the case may be)—So help you God." and the affirmation to be taken shall be according to the common form of an affirmation to the same effect.

IX. *And be it further enacted by the authority aforesaid,* That if any person being examined upon oath or affirmation under this Act in regard to his qualification to vote or to be elected, shall wilfully forswear himself, he shall be deemed guilty of wilful and corrupt Perjury, and on conviction thereof, shall suffer as in other cases of wilful and corrupt Perjury. False oath declared Perjury.

X. *And be it further enacted by the authority aforesaid,* That if the election of any member of the Board of Police aforesaid shall be complained of, either on the ground of want of qualification in the person returned, or on the ground that such person had not a majority of legal votes at such election, it shall be the duty of the Sheriff, after the first elections to take place under this Act, upon receiving within forty-eight hours after the termination of the election a written requisition, signed by any three Inhabitants of the Town having a right to vote at such election, to appoint a time and place within the Town or Ward for which the election was held, for entering upon a scrutiny into the matters complained of, and that such time shall be within six days after the election, and the Sheriff shall have power to summon Witnesses, and to take evidence on oath respecting the matters to be inquired into, and shall determine upon the validity of the election or return as shall appear to him to be right according to the evidence, and in case an election shall be declared void, but it shall not appear proper to the Sheriff for any cause to amend the return by substituting the name of any other person as entitled to have been returned at such election, then he shall, after giving eight days notice thereof, hold a new election of a Member to serve according to this Act; and that if after any election to be holden after a Board of Police under this Act shall have been completely organized a requisition signed as aforesaid shall, within forty eight hours after the termination of such election, be served upon the President or any other Member of the Corporation, it shall be lawful for the said Corporation, and they are hereby required, to appoint a time for entering upon a scrutiny of the matters complained of, at any place within the said Town, which time shall be within six days after the election, and the Corporation, or such Member or Members thereof as shall not be individually concerned in the questions to be determined, shall have power to summon Witnesses, and to take evidence on oath respecting the matters to be inquired into, and shall determine upon the validity of the Time and manner of determining any controverted election.

election or return as shall appear to be right according to the evidence, and in case an election shall be declared void, but it shall not appear proper for any cause to amend the return by substituting the name of any other person as entitled to have been returned at such election, then the Corporation shall issue their Precept for a new election as in other cases under this Act.

Oath to be taken by the officer trying any contested election.

XI. And be it further enacted by the authority aforesaid, That before the Sheriff, or any Member of the said Corporation, shall enter upon any such trial or scrutiny as aforesaid, he shall take an oath in the following form, before some one of the Justices of the Peace for the District of Gore, that is to say:—

I do solemnly swear that I will truly and impartially, to the best of my judgment, try and determine the merits of the complaint against the election of A. B.—So help me God.

Penalty for witnesses refusing to attend.

XII. And be it further enacted by the authority aforesaid, That any Witness who being duly summoned to attend upon such trial or scrutiny, shall wilfully neglect or refuse to attend shall, on conviction before any one of His Majesty's Justices of the Peace for the District of Gore, having been duly summoned to answer such complaint, be liable to be imprisoned on the commitment of such Justice in the Common Gaol of the District, for a time not exceeding one month; and if any Witness shall upon any trial or scrutiny wilfully and corruptly swear falsely, he shall be deemed guilty of wilful and corrupt perjury.

Time and place to be declared for the first meeting of the Police.

Any three members of the Board may choose a fifth

In case of disagreement, the fifth member to be elected by the qualified inhabitants.

XIII. And be it further enacted by the authority aforesaid, That the person presiding at any such election shall give public notice, immediately upon declaring the result of the election, of the time and place at which the Members of the Corporation so chosen are first to meet, which meeting shall be at such time and place within the said Town as the Sheriff of the said District shall appoint, being within ten days after the election; and that at such meeting a Fifth Member of the said Corporation shall be appointed by the concurrent voice of any three of the Members chosen, which person shall possess the same qualifications as this Act provides with respect to the other Members to be chosen; and in case they cannot agree in the election or appointment of such fifth Member they shall issue a Precept to the Sheriff of the District after the first election, and to any one of the Bailiffs so to be appointed as aforesaid after every subsequent election, requiring him to appoint some proper time and place within the said Town, giving forthwith eight days notice thereof, and then and there proceed to the election of such fifth Member of the Corporation by the

Electors of the Town generally, at which election the said Sheriff shall preside after the first election of Members, and the said Bailiff so to be appointed as aforesaid (to whom the said Precept shall be directed after every subsequent election,) and the Sheriff or Bailiff (as the case may be) shall declare that person elected who shall have the greatest number of votes of the persons present qualified to vote, and shall give notice thereof to the person so elected within six days after such election.

XIV. *And be it further enacted by the authority aforesaid,* That the said five Members elected as aforesaid shall, within ten days after the appointment or election of the fifth Member of the said Corporation as aforesaid, appoint one of their number President, and the said President and Members shall form the said Corporation, and shall hold their office until the first Monday in March in the ensuing year, and until the election and formation of the new Board.

President to be elected by the Board.

XV. *And be it further enacted by the authority aforesaid,* That if either of the Members elected or appointed as aforesaid, after notice thereof, shall neglect or refuse for ten days to take the oath of office hereinafter contained, which any one of the said Members so to be elected or appointed is hereby authorised to administer to the others, he shall for such neglect or refusal, forfeit the sum of Ten Pounds, to be recovered with costs, by information before any Justice of the Peace who is authorised to proceed in the same manner as hereinafter is provided for the recovery of any penalty, for the transgression of any order or regulation of the said Corporation: *Provided*, that no person having been elected a Member of the said Corporation during his absence from the said Town, or who at the time of the election shall openly give notice to the Officer presiding that he will not accept the office, shall be subject to the penalty hereinbefore stated for his refusal to act as a Member of the said Corporation.

Penalty for neglecting to take the oath of office.

XVI. *And be it further enacted by the authority aforesaid,* That in case any vacancy shall at any time happen among the Members of the said Corporation, by neglect or refusal to take the oath of office hereinafter contained, within the time hereinbefore limited, or by death, removal from the Town, or from any other cause, the Corporation shall issue a Precept to the Bailiff of the Ward, for which the Member whose office shall have become vacant was chosen, to hold an election for the said Ward, giving notice of the time or place of holding the said election, and the member so elected shall hold his office until the next annual election, and until another is chosen in his place; and that if the vacancy shall occur in the office of the member appointed by the four

How vacancies to be filled.

Members elected as aforesaid, or elected by the Town generally, such vacancy shall be filled by the appointment of the then Members of the said Corporation, or a majority of them, and in case they cannot agree, then in the same manner as provided for the election of the fifth Member by the electors of the Town generally; and in case any such vacancy shall happen among the Members elected at the first election of Members of the said Corporation, by one of the Members neglecting or refusing to take the oath of office as aforesaid, or in case it shall happen that the Member appointed by the Member elected respectively after the first election, or the Members elected by the town generally after the first election, shall neglect or refuse to take the oath of office as aforesaid, then the Precept shall issue to the Sheriff of the District, as is hereinbefore provided.

Corporation not dissolved by non-election of Officers on day appointed.

XVII. *And be it further enacted by the authority aforesaid,* That in case it shall at any time happen that an election or appointment of Members of the said Corporation shall not be made on any day when pursuant to this Act it ought to have been made, the said Corporation shall not for that cause be deemed to be dissolved, but that it shall and may be lawful on any other day, to hold and make an election or appointment of Members, in such manner as shall have been regulated by the laws and ordinances of the said Corporation.

Corporation may make Ordinances and By-Laws.

XVIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said Corporation, from time to time, to establish such ordinances, by-laws and regulations, as they may think reasonable in the said Town, to regulate and license victualling houses and ordinaries, where fruit, victuals and liquors not distilled shall be sold to be eaten or drunk in such houses or groceries, to regulate wharves and quays, to regulate the weighing of hay and measuring of wood, to regulate carts and cartmen, to regulate slaughter-houses, to prevent the firing of any guns, muskets, pistols, squibs, and fire balls, or injuring or destroying trees planted or growing for shade or ornament in the said Town, to prevent the pulling down or defacing of sign boards, or inscribing or drawing any indecent words, or figures, or pictures on any building, wall, fence, or other public place, and generally to prevent vice and preserve good order in the said Town, to enter into and examine all dwelling-houses, warehouses, shops, yards, and out-houses, to ascertain whether any such places are in a dangerous state with respect to fires, and to direct them to be put in a safe and secure condition, to appoint fire Wardens and fire Engineers, to appoint and remove firemen, to make such rules and by-laws as may be thought expedient for the conduct of such fire companies as may be raised with the sanction of the said Corpora-

tion, to compel any person to aid in the extinguishment of any fire, to require the Inhabitants to provide and keep fire-buckets and scuttles and ladders to their houses, to stop or authorise any other person to stop any one riding or driving immoderately in any street, or riding or driving on any side-walk, or to inflict fines for any such offence, to regulate the assize of bread, to prevent and abate and remove any nuisances, to restrain and prevent any horses, cattle or swine from running at large, to prevent and remove encroachments in any streets, and to make such rules and regulations for the improvement, good order and government of the said Town, as the said Corporation may deem expedient, not repugnant to the laws of this Province, except in so far as the same may be virtually repealed by this Act, and to enforce the due observance thereof, by inflicting penalties on any person for the violation of any by-law or ordinance of the said Corporation, not exceeding One Pound Ten Shillings, and to fix upon and to appoint such days and hours for the purpose of selling butchers meat, butter, eggs, poultry, fish, and vegetables, and to make such other orders and regulations relative thereto as they shall deem expedient.

XIX. *And be it further enacted by the authority aforesaid,* That for the purpose of raising a fund to provide for the purchasing any real estate for the use of the said Town, to procure fire-engines, aqueducts, and a supply of pure and wholesome water, for lighting, paving, flagging and repairing the streets, and for all other purposes deemed expedient and necessary by the said Corporation, for the welfare and improvement of the said Town, it shall and may be lawful for the said Corporation to lay an assessment annually upon the persons rated or liable to be rated upon any assessments for property in the said Town, not exceeding Four Pence on the pound, exclusive of the sum such persons may be rated for in and upon any other assessments of this Province, and it shall be the duty of the Clerk of the Peace of the said District, to select from a general assessment of the Township of Barton, a list or assessment of the ratable property that every person owns or possesses in the said Town, and lay the same before the Corporation annually, upon its organization after every general election.

Annual Assessment may be levied, not exceeding four pence in the pound.

XX. *And be it further enacted by the authority aforesaid,* That every Town lot in the said Town of Hamilton, shall be rated upon the assessment roll at Twenty-five Pounds, and that every lot or portion of a lot on which a house shall be built, shall be deemed and taken to be a Town lot.

What shall be considered a Town Lot, and the rate thereof.

Assessments may be levied by distress.

XXI. *And be it further enacted by the authority aforesaid,* That if any person shall refuse to pay the sum or rate for which he or she stands rated in manner aforesaid, for the space of ten days after demand duly made of the same by the Collector to be appointed by the said Corporation for that purpose, the said Collector shall and he is hereby required to levy the same by distress and sale of the goods and chattels of the person so neglecting or refusing to pay, after having obtained a Warrant for that purpose from some one of His Majesty's Justices of the Peace, who is hereby authorised to grant the same upon information made on oath before him of the neglect or refusal to pay the said assessment, and to render the overplus, if any there shall be over and above the said rate, to the owner thereof, after deducting the legal charges of the distress and sale.

Corporation may appoint and remove Officers.

XXII. *And be it further enacted by the authority aforesaid,* That the said Corporation may from time to time appoint, and at their discretion remove and re-appoint, a Surveyor of Streets for the said Town, a Clerk and Assessor or Assessors, a Bailiff or Bailiffs, a Collector or Collectors, a Treasurer, and as many and such other officers as they may require, and assign the duty or services to be performed by each, with such salaries or allowances as to them may seem meet, and may take such reasonable security for the due performance of the duties assigned to any officer or servant as they shall think proper.

May take Security for due performance of duties.

No new Streets to be less than 66 feet in width.

XXIII. *And be it further enacted by the authority aforesaid,* That from and after the passing of this Act, it shall not be lawful for any person holding lands within the boundaries of the said Town, to lay out any new streets, or protract any street or streets already laid out, which new street or protraction of a street shall be less than sixty-six feet in width.

Rules to be published.

XXIV. *And be it further enacted by the authority aforesaid,* That any rule or regulation of the said Corporation, for the infraction of which any penalty is inflicted, before it shall have any effect, shall be published in one or more of the Newspapers of the said Town, and that in like manner shall be published in each and every year before the annual election, an account of all monies received and in the Treasury, and the amount expended and for what purpose.

Penalty for breach of By-Laws.

XXV. *And be it further enacted by the authority aforesaid,* That if any person shall transgress the orders or regulations made by the said Corporation under the authority of this Act, such person shall for every such offence forfeit the sum which in every such order, rule or regulation

shall be specified, with costs, to be recovered by information before the said Corporation, to be levied of the goods and chattels of such offender, and in default of such goods and chattels, the offender shall be liable to be committed to the Common Gaol of the District, for a time not exceeding one month, in the discretion of the said Corporation before whom such offender shall have been convicted, and that no person shall be deemed an incompetent witness upon any information under this Act, by reason of his being an Inhabitant of the said Town of Hamilton: *Provided always*, that the information and complaint for a breach of any orders or regulations of the said Corporation must be made within fifteen days of the time of the offence committed.

How levied.

XXVI. *And be it further enacted by the authority aforesaid*, That all penalties recovered under the provisions of this Act shall be paid into the Treasury of the said Corporation, and applied in the same manner as other monies coming into the said Treasury may be applied for the public uses of the said Town.

Application of penalties.

XXVII. *And be it further enacted by the authority aforesaid*, That the said Corporation shall and may in the said Town of Hamilton, perform all the functions and exercise the authority now by law given to Justices of the Peace acting within their divisions, with respect to making or amending any street or highway or road within the said Town.

Corporation to have the power of Justices of the Peace in certain cases.

XXVIII. *And be it further enacted by the authority aforesaid*, That the market for the said Town of Hamilton shall be established in such place within the said Town, as a majority of the Justices of the Peace for the District of Gore shall determine at any Court of General Quarter Sessions of the Peace to be holden after the passing of this Act: *Provided always nevertheless*, that such determination shall be made on the second day of the sitting of the Court at the Sessions in which it shall be made, and when not less than ten Magistrates shall be present: *And provided also*, that the plot or piece of ground required for a Market as aforesaid shall not be of less extent than one Acre, and shall be either such ground, if any there be, which has been hitherto reserved for the site of a Market, or such ground as any proprietor or proprietors shall voluntarily convey for that purpose to the said Corporation, either gratuitously, or for a consideration to be paid by the said Corporation.

Market where and how to be established.

XXIX. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful to and for the Corporation of the said Town to borrow the sum of One Thousand Pounds of and from any person or persons, Body Politic or Corporate, willing to lend the same, for the

Corporation may borrow £1000 for certain purposes.

purpose of building a Market House, and for purchasing one or more Fire Engine or Engines as may be deemed necessary, and to provide some fit and proper place where the same may be kept.

Loan to be redeemed
in ten years.

XXX. *And be it further enacted by the authority aforesaid,* That the said Corporation shall set apart so much of the Assessments authorized by this Act to be raised for the use of the said Town as may be sufficient to pay the yearly interest of the said sum of one Thousand Pounds, and to liquidate the principal in a term not longer than ten years from and after the making of such loan.

In case of equality
of votes, person pre-
siding at Election to
have a casting vote.

XXXI. *And be it further enacted by the authority aforesaid,* That in case an equality of votes shall happen at any election for the Members of the said Corporation in either of the said Wards, or in case of an election of a fifth Member, it shall and may be lawful for the person Presiding at the said election to give a casting vote, whether he shall be otherwise duly qualified to vote in such Ward or not, and that except in case of the votes being equal it shall not be lawful for the persons Presiding at any election under this Act to vote at such election.

Suits to be brought
within six months
for any thing done
under this Act, and
General Issue
pleaded.

XXXII. *And be it further enacted by the authority aforesaid,* That if any action or suit shall be brought against any person or persons for any matter or thing done in pursuance of this Act, such action or suit shall be brought within Six Calendar Months next after the fact committed and not afterwards, and the Defendant or Defendants in such action or suit may plead the general issue only, and give this Act and the special matter in evidence on the trial.

Public Act.

XXXIII. *And be it further enacted by the authority aforesaid,* That this Act shall be and is hereby declared to be a Public Act, and as such shall be judicially noticed by all Judges, Justices of the Peace, and other persons, without being specially pleaded.

FORM OF OATH:

I, A. B. do swear that I will faithfully discharge the duties of a Member of the "Board of Police of the Town of Hamilton," to the best of my skill and knowledge.