



1848.

No. 4.

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ORDINANCE enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof.

To Establish a Ferry at Wellington on the River Murray.

[21st July, 1848.]

*Annulled L.
No 22 - 1857*

WHEREAS it is expedient that a Ferry should be established across the River Murray, at Wellington, and that such reasonable Toll as hereinafter mentioned should be paid by persons using the said Ferry, and that Provision should be made for Leasing the said Ferry and Collecting the Toll thereof: Preamble.

BE IT THEREFORE ENACTED by the GOVERNOR OF SOUTH AUSTRALIA, with the advice and consent of the LEGISLATIVE COUNCIL thereof— Establishment of
Ferry at Wellington.
THAT a Ferry shall be, and is, hereby, established across the River Murray, at a place near Wellington, on the said River, surveyed and laid off by the Surveyor-General, and delineated on the Public Maps, in the Survey Office at Adelaide.

II.—AND

Tolls to be paid by persons using the Ferry.

II.—AND BE IT ENACTED, that the several Tolls mentioned in the Schedule to this Ordinance shall be payable, and be paid by persons using the said Ferry, to the person entitled under this Ordinance to demand and receive the same.

Governor to appoint fit person as Lessor, who is to have power to sue in his own name.

III.—AND BE IT ENACTED, that it shall be lawful for the Governor, from time to time, as occasion shall require, by notice in the *South Australian Government Gazette*, to nominate and appoint some fit and proper person by whom, and in whose name, any Lease or Contract for Letting the said Ferry and the Tolls thereof shall be made, and such person so nominated and appointed as aforesaid shall, for that purpose, be deemed and taken to be the Owner of the said Ferry and the Tolls thereof, and shall and may institute and carry on in his own name any Action, Suit, or other Proceeding in Law, or in Equity, or under any Law now or hereafter to be in force within the said Province, for the Regulation of Insolvents' Estates, touching or concerning such Lease or Contract, or any Bond to be taken by such person as hereinafter mentioned: PROVIDED that no such Lease shall be for a longer period than Two Years, and that in every such Lease there be contained a Clause for the Payment of the Rent of the said Ferry quarterly to the Colonial Treasurer for the time being, who is hereby authorised to receive the said rents, and to give receipts for the payment of the same, which receipts shall be valid discharges at Law and in Equity for the same.

Proviso.

Bond to be taken from person taking Lease, and deposited with Colonial Secretary.

IV.—AND BE IT ENACTED, that such person so nominated and appointed as aforesaid shall, at the time of executing any such Lease of the said Ferry, demand and take from the person taking such Lease a Bond, with two Sureties to be approved by such person so nominated and appointed as aforesaid, in double the amount of the annual rent to be paid for the said Ferry and Tolls, conditioned for the true and faithful payment of the Rent reserved by such Lease, and fulfilment of the covenants and conditions therein contained by the person taking such Lease, and that the said Bond, and a counterpart of every such Lease, shall be deposited by the person so nominated and appointed as aforesaid, in the Office of the Colonial Secretary for the time being.

Lessee to have power to take Tolls, and to detain goods and chattels, and to sue for Toll.

V.—AND BE IT ENACTED, that after the execution and delivery of every such Lease and Bond as aforesaid, it shall be lawful for the Lessee, by himself, or his servants, to have and demand of and from all persons using the said Ferry, the several Tolls specified in the Schedule to this Ordinance, and to detain the goods and chattels of any person using the said Ferry, until payment of the Tolls for the passage of such goods and chattels: AND it shall also be lawful for every such Lessee as aforesaid to sue any person, in any proper Court of Law in this Province, for any Tolls due by such person to such Lessee

Lessee as aforesaid, and every Lessee as aforesaid shall have a right of action against any person disturbing such Lessee in the peaceable and lawful enjoyment of the said Ferry, which action shall not abate by reason of the determination of the tenancy of any Lessee thereof: and it shall be sufficient, in any such last-mentioned action, to lay the title to such Ferry to be in such Lessee thereof, at the time of the committing the disturbance, by stating that such Lessee was then entitled, by virtue of this Ordinance, to the Wellington Ferry, and such title shall be deemed and taken to be proved by production and proof of the Lease under which such Lessee held the said Ferry at the time of the act complained of, and upon such proof, and proof of the act complained of, such Lessee shall be entitled to recover his damages and costs of suit, in the same manner, to all intents and purposes, as he would be entitled to recover if he were the owner in fee simple of the said Ferry at the time of the act complained of, and of the commencement of the suit.

And to have right of action if disturbed.

VI.—AND BE IT ENACTED, that every Lessee, for the time being, of the said Ferry, shall and may be sued by any person, and prosecuted by information to be exhibited by the Advocate General, for all such and the same causes for which the owner of a Ferry in fee simple might or could be sued or be prosecuted by indictment in England, and in every such action and prosecution, the title of such Lessee to such Ferry shall and may be stated and proved as in actions to be brought by such Lessee under this Ordinance.

Lessee may be sued.

VII.—AND BE IT ENACTED, that the person so to be nominated and appointed, as in the third section of this Ordinance mentioned, shall not be liable to any action, suit, or prosecution to which the Lessee of the said Ferry is by this Ordinance made liable, nor to any other action, suit, or prosecution, to which the Owner of any Ferry in fee simple is by law liable.

Lessor not liable to be sued.

VIII.—AND BE IT ENACTED, that until any such Lease of the said Ferry and the Tolls thereof shall be made, and during any time when there shall be no Lessee of the said Ferry and the Tolls thereof, it shall be lawful for the Governor to appoint by notice in the *South Australian Government Gazette* some person to be the Manager of the said Ferry, who shall be styled the "Manager of Wellington Ferry;" and it shall be lawful for such Manager, by himself or his servants, to demand and have of and from all persons using the said Ferry, the Tolls mentioned in the Schedule to this Ordinance; and such Manager shall have all such and the same remedies for enforcing payment of the same Tolls, and for disturbance of the said Ferry, as are by this Ordinance given to the Lessee of the said Ferry and the Tolls thereof.

When no Lessee, Manager to be appointed.

IX.—AND

Person last nominated
as Lessor may sue, &c.

IX.—AND BE IT ENACTED, that the person who shall be last nominated and appointed as the person by whom, and in whose name, any Lease or Contract for letting the said Ferry and the Tolls thereof shall be made, after the first nomination and appointment shall have been made under this Ordinance, shall be deemed and taken to be the owner of the said Ferry, with the Tolls thereof, within the meaning of the third section of this Ordinance, notwithstanding any previous nomination and appointment of any other person; and such person so last nominated and appointed as aforesaid, shall and may commence and prosecute any action, suit, or other proceeding at law or in equity against any Lessee or Surety, for enforcing the payment of any rent, or for the performance of any covenant or condition, or for the breach of any covenant or condition by any Lessee, in the name of the person having the right of action in any such case, upon his indemnifying that person, his heirs, executors, and administrators, as the case may be, of and from the costs, charges, and expences of any such action, suit, or other proceeding as aforesaid.

Governor may raise or
lower the Tolls.

X.—AND BE IT ENACTED, that it shall be lawful for the Governor to lower the Tolls by this Ordinance specified, and from time to time, to raise the said Tolls to an amount not exceeding the amount specified in the Schedule to this Ordinance, which tolls so lowered or raised shall be published for general information in the *South Australian Government Gazette*, one calendar month at least before the same shall be payable, after which time such lower or raised tolls, and none other, shall be demanded and taken: PROVIDED that the said Tolls shall not be lowered during any Lease of the said Ferry, without the written consent of the Lessee of the said Ferry.

Proviso.

Governor may make bye-
laws.

XI.—AND BE IT ENACTED, that it shall be lawful for the Governor, from time to time, to make, constitute, and ordain, and also from time to time to repeal, alter, add to, or amend, as he shall see fit, rules, orders, and bye-laws for the regulation and management of the said Ferry; and for the prevention of hindrance or accidents; and such rules, orders, and bye-laws, not being repugnant to law, shall have force and effect from and after One Calendar Month next after the same shall have been published in the *South Australian Government Gazette*.

Name of Lessee or
Manager, and Ferryman,
together with tolls and
bye-laws, to be exhibited
on a board.

XII.—AND BE IT ENACTED, that the name of the Lessee or Manager, and of the Ferryman, and a Table of the Tolls, and also all such rules, orders, and bye-laws as shall be in force, shall be painted on boards in legible characters, and affixed in some conspicuous place on each side of the river, near the said Ferry, under a penalty of twenty shillings for each day's default of compliance herewith.

XIII.—AND

XIII.—AND BE IT ENACTED, that if any Ferryman of the said Ferry, or his Assistant, shall refuse or neglect, or for an unreasonable time delay, on the application of any person desirous to cross the said Ferry, to ferry such person over the river, or his cattle, carriages, or goods, at any time of the day between sun-rise and sun-set, such Ferryman or his Assistant so offending shall, on conviction before one or more Justices of the Peace, forfeit and pay such penalty not exceeding Forty shillings, as to the said Justice or Justices shall seem fit.

Any Ferryman refusing, neglecting, or delaying to ferry any person over the river, between sun-rise and sun-set, liable to pay a penalty not exceeding 40s.

XIV.—AND BE IT ENACTED, that all fines and penalties imposed by this Ordinance, may be levied and recovered in a summary way, before any one or more Justices of the Peace, in manner provided by the Laws of the Province in force for the time being for regulating summary proceedings before Justices of the Peace.

Fines may be recovered in a summary way.

XV.—AND BE IT ENACTED, that all Tolls and Dues not being let to farm, and all rents, fines, forfeitures, penalties, and other sums of money received, levied, or imposed by virtue of this Ordinance, shall be paid and appropriated to the Colonial Treasurer, on behalf of Her Majesty, Her Heirs, and Successors, for the public uses of the Province, and the support of the Government thereof.

Appropriation clause.

XVI.—AND BE IT ENACTED, that in the construction of this Ordinance, the words "great cattle" shall be taken to mean horned cattle, horses, camels, mules, and asses, male and female, with their offspring; and the words "small cattle" shall be taken to mean sheep, goats, and swine, male and female, with their offspring; and the word "cattle" shall be construed to mean the whole of the aforesaid animals.

Construction clause.

XVII.—AND BE IT ENACTED, that this Ordinance shall come into operation from the first day of August now next ensuing.

Commencement.

FREDK. H. ROBE.
Lieutenant-Governor.

Passed the Legislative Council this Twenty-first day of July, One thousand eight hundred and forty-eight.

W. L. O'HALLORAN,
Clerk of Council.

SCHEDULE.

SCHEDULE.

	<i>s.</i>	<i>d.</i>
Each passenger	0	3
Every head of great cattle	0	3
Every head of small cattle	0	0½
Every carriage of whatever description, exclusive of the animals drawing the same	1	0
Goods when carried over unloaded, per cwt.....	0	1½
Or, at such equivalent rates per package as may be stated in the bye-laws.		
One-half extra of the above Tolls, to be charged for crossing between the hours of sun-set and sun-rise.		
Any person using the causeway leading to the Ferry for the purpose of crossing cattle or any carriage over the river, to pay the same Toll as for the use of the Ferry-boat.		