

ANNO SEXTO

GULIELMI IV. REGIS.

COMMERCIAL
BANKING COMPANY.

An Act to enable the Proprietors of a certain Banking Establishment or Company carried on in the Town of Sydney in the Colony of New South Wales under the name style and firm of "The Commercial Banking Company of Sydney" to sue and be sued in the name of the Managing Director of the said Bank or Company for the time being and for other purposes therein mentioned. [21st July, 1835.]

Preamble.

WHEREAS several persons having formed themselves into a joint stock banking company established in Sydney under the name style or firm of "The Commercial Banking Company of Sydney" as well for the purposes of discount and issuing of notes and bills and lending moneys on securities and cash accounts for the receiving moneys on deposit accounts for the safe custody of moneys and securities for moneys for the general public accommodation and benefit as also for transacting and negotiating all such other matters and things as are usually done and performed relating to or connected with the ordinary business of banking And whereas the said bank is now being carried on in Sydney and is under the care management and superintendence of thirteen Directors one of whom is Managing Director of the said bank And whereas difficulties may arise in recovering debts due to the said bank or company and in maintaining actions or proceedings for damages done to their property and also in prosecuting persons who may counterfeit steal or embezzle the bills notes bonds mortgages moneys goods chattels or effects of the said bank And whereas it would be convenient and just that persons having demands against the said bank should be entitled to sue some member thereof in place and stead of the whole But as these purposes cannot be effected without the aid and authority of the Legislature Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council That from and after the passing of this Act all actions and suits and all proceedings at law or in equity to be commenced instituted and prosecuted or carried on by or on behalf of the said bank or wherein the said bank is or shall be in any way concerned against any person or persons body or bodies politic or corporate or whether a member or members of the said bank or otherwise shall and may be lawfully commenced instituted and prosecuted or carried on in the name of the person who shall be Managing Director of the said bank at the time any such action suit or proceedings shall be commenced or instituted as the nominal plaintiff complainant or petitioner for or on behalf of the said bank and that all actions suits or proceedings aforesaid to be commenced instituted

Actions at law &c.
to be in the name of
the Managing
Director.

or

Commercial Banking Company.

or prosecuted against the said bank shall be commenced instituted and prosecuted against the Managing Director for the time being of the said bank as the nominal defendant for and on behalf of the said bank and that all prosecutions to be brought instituted or carried on by or on behalf of the said bank for fraud upon or against the bank or for embezzlement robbery stealing or counterfeiting the bills notes bonds moneys goods chattels effects or property of the said bank or for any other offence against the said bank shall or may be so brought or instituted and carried on in the name of such Managing Director for the time being of the said bank and in all indictments and informations it shall be lawful to state the property of the said bank to be the property of such Managing Director for the time being of the said bank and any offence committed with intent to injure or defraud the said bank shall and lawfully may in any prosecution for the same be stated or laid to have been committed with intent to injure or defraud such Managing Director for the time being of the said bank and any offender or offenders may thereupon be lawfully convicted of any such offence and in all other allegations or indictments informations or other proceedings it shall and may be lawful and sufficient from and after the passing of this Act to state the name of such Managing Director and the death resignation or removal or other act of such Managing Director shall not abate any such action suit or prosecution but the same may be continued where it left off prosecuted or carried on in the name of any person who may be or become Managing Director of the said bank for the time being.

2. And be it further enacted That a memorial of the name of the Managing Director of the said bank in the form or to the effect for that purpose set forth in the Schedule hereunto annexed signed by the said Managing Director and a majority of the Directors of the said bank shall be recorded upon oath in the Supreme Court of New South Wales within thirty days after the passing of this Act And when and as often as any person shall be newly elected Managing Director thereof a memorial of the name of such newly elected Managing Director in the same form or to the same effect as the above-mentioned memorial signed by such newly elected Managing Director and by a majority of the Directors of the said bank at the time of the election of such new Managing Director shall in like manner be recorded upon oath in the said Supreme Court within thirty days next after such Managing Director shall be elected.

Memorial of the name of the Managing Director to be recorded in the Supreme Court of New South Wales and renewed when any new Managing Director shall be elected.

3. Provided always and be it further enacted That until such memorial as hereinbefore first mentioned be recorded in the manner herein directed no action suit or other proceeding shall be brought by the said bank in the name of the Managing Director of the said bank as aforesaid under the authority of this Act.

No action to be brought until memorial be recorded.

4. Provided always and be it further enacted That in all actions suits petitions or other proceedings in which the said Managing Director for the time being shall be on behalf of the said bank and under and by virtue of this Act plaintiff complainant or petitioner or defendant it shall and may be lawful for the said Managing Director for the time being or other officer engaged in the executive duties of the said bank to give evidence in such action suit petition or other proceeding notwithstanding the name of such Managing Director for the time being shall be used as plaintiff complainant petitioner or defendant and notwithstanding that such Managing Director for the time being or other officer aforesaid shall or may be interested in the result of such action as a shareholder or copartner in the said joint stock banking company.

The Managing Director and other officers in the bank to give evidence notwithstanding interest in the same.

5. Provided always and be it further enacted That execution upon any decree or judgment in any such action suit petition or other proceeding

Execution upon any judgment may be issued against any proceeding

Commercial Banking Company.

member of the said bank who shall have his remedy against the other members &c.

proceeding obtained against the Managing Director for the time being of the said bank whether he be plaintiff or defendant therein may be issued against and levied upon the goods and chattels lands and tenements of any member or members whomsoever of the said bank for the time being in like manner and not otherwise than as if such decree or judgment had been obtained against such member or members personally Provided always that every such Managing Director in whose name any such action suit petition or other proceeding shall be commenced prosecuted carried on or defended and every such member or members against whose goods and chattels lands and tenements execution upon any judgment or decree shall be issued or levied as aforesaid shall always be reimbursed and paid out of the funds of the said bank all such damages dues expenses costs and charges as by the event of any such proceedings such Managing Director or member or members shall or may be put unto or become chargeable therewith and all such remedies shall be allowed as between the several members of the said bank for the time being as if this Act had not been passed.

Act to be at all times valid notwithstanding change of members of the bank.

6. And be it further enacted That the provisions in this Act contained shall extend and be construed deemed and taken to extend to the said bank at all times during the continuance of the same whether the said bank be now or hereafter composed of some all or any of the persons who were the original or are the present members thereof or of all or some of those persons together with some other person or persons or shall be composed altogether of persons who were not original nor are now members of the same.

Bank not incorporated by this Act.

7. Provided always and be it further enacted That nothing herein contained shall extend or be deemed taken or construed to extend to incorporate the members or proprietors of the said bank or to relieve or discharge them or any of them from any responsibility duties contracts or obligations whatsoever which by law they now are or at any time hereafter shall be subject or liable to either between the said bank and others or between the individual members of the said bank or any of them and others or among themselves or in any other manner whatsoever except so far as the same is affected by the provisions of this Act and the true intent and meaning of the same.

Bonds mortgages and other securities may be put in suit &c. in the name of the Managing Director for the time being though not named in such security.

8. And be it further enacted That all bonds mortgages warrants of attorney and other securities not being assignable in law which have been or which shall or may at any time hereafter be taken in the name of any person as Managing Director of the said bank for and on account of the said bank shall and may be put in suit and be sued and prosecuted upon at law or in equity in the name of the Managing Director in whose name the same may have been taken or in the name of any person who shall or may succeed to that office and be the Managing Director of the said company at the time such proceeding or proceedings shall be instituted notwithstanding the name of any such succeeding Managing Director be not inserted in such bond mortgage warrant of attorney or other such security as an obligee mortgagee assignee or payee of the sum or sums of money therein mentioned and the death resignation removal or other act of any such Managing Director of the said bank for the time being in whose name any such bond mortgage warrant of attorney or other security as aforesaid shall be so put in suit shall not abate any action suit or other proceeding had thereon but the same may be continued where it left off and be prosecuted and carried on in the name of any person who may succeed to that office or be or become the Managing Director of the said bank for the time being and the legal estate in all lands and tenements belonging or mortgaged to the said bank for and all legal rights and capacities in respect of the said bank

Commercial Banking Company.

bank shall become vested in such new Managing Director as aforesaid to all intents and purposes immediately upon the recording of the memorial of the name of such new Managing Director in the said Supreme Court and so on *toties quoties* whensoever any new appointment or election of a Managing Director for the time being of the said bank shall take place and such new memorial thereof shall be enrolled as aforesaid.

9. And be it further enacted That in any action to be brought by any Managing Director of the said bank by virtue of this Act the plaintiff therein shall not be nonsuited nor shall a verdict be given against the plaintiff for want of proof of the record of such memorial or memorials as hereinbefore mentioned but in case the defendant in any such action shall make it appear on such trial that no such memorial or memorials have been recorded then a nonsuit shall be entered in such action.

Plaintiff not to be nonsuited for want of proof of record of the memorial.

10. Provided always and be it further enacted That nothing in this Act contained shall be deemed to affect or apply to any right title or interest of His Majesty His Heirs and Successors or of any body or bodies politic or corporate or of any other person or persons excepting such as are mentioned therein or of those claiming by or under him or them.

Nothing in this Act contained to affect or apply to any right &c. of His Majesty or any bodies politic or corporate.

11. And be it further enacted That this Act shall not commence or take effect until the same shall have received the Royal approbation and the notification of such approbation shall have been made by His Excellency the Governor in the *New South Wales Government Gazette*.

This Act not to take effect until the same shall receive the Royal approbation.

12. And be it further enacted That when and as soon as this Act shall have received the Royal approbation and the notification of such approbation shall have been made as aforesaid by His Excellency the Governor in the *New South Wales Government Gazette* this Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its dependencies without being specially pleaded.

This Act to be deemed a public Act.

SCHEDULE REFERRED TO.

MEMORIAL of the name of the Managing Director of "The Commercial Banking Company of Sydney" to be recorded in the Supreme Court of New South Wales pursuant to an Act of the Governor and Council passed in the sixth year of the reign of His Majesty King William the Fourth intituled "*An Act to enable the Proprietors of a certain Banking Establishment or Company carried on in the Town of Sydney in the Colony of New South Wales under the name style and firm of 'The Commercial Banking Company of Sydney' to sue and be sued in the name of the Managing Director of the said Bank or Company for the time being and for other purposes therein mentioned.*"

A. B. Managing Director.

C. D.	} Directors.	N. O.
E. F.		P. Q.
G. H.		R. S.
I. K.		T. U.
L. M.		V. W.

X. Y. of Sydney gentleman of the above-named bank maketh oath and saith that he was present and did see the foregoing memorial signed by the above-named Managing Director and Directors respectively whose names appear thereto.

Sworn this
day of 183 . }