

No. XX.

MELBOURNE AUCTION
COMPANY.

An Act to facilitate Proceedings by and against the Proprietors of a certain Joint Stock Company lately carrying on business at Melbourne in the District of Port Phillip in the Colony of New South Wales under the name style or firm of the “Melbourne Auction Company” and for other purposes therein mentioned.
[3rd January, 1842.]

Preamble

WHEREAS a certain Joint Stock Company which lately carried on business as auctioneers at Melbourne in the District of Port Phillip in the Colony of New South Wales under the name style or firm of the “Melbourne Auction Company” have met with great difficulty in the prosecution of actions brought for the recovery of debts justly due to the said company and whereas it would facilitate the

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the settlement of the affairs of the said company and be of public utility and advantage that all claims for and against the said company existing before the passing of this Act should be sued for by and prosecuted against the said company in the name of some one member thereof whose name and description should be recorded for the information of the public but as these purposes cannot be obtained 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 thereof That from and after the passing of this Act all actions suits or proceedings whether at law or in equity in bankruptcy or sequestration or otherwise howsoever to be commenced instituted or prosecuted by or on behalf of the said company or any person or persons as trustee or trustees of the said company against any body or bodies politic or corporate or against any person or persons whether a member or members of the said company or otherwise in respect of any debt claim right cause of action interest or liability whatsoever now subsisting or to arise hereafter out of or in respect of or relating to any such debt or claim right cause of action interest or liability mediately or immediately shall and may be commenced instituted or prosecuted in the name of the Chairman of the Court of Directors for the time being of the said company as the nominal plaintiff complainant or petitioner for and on behalf of the said company and that all actions suits or proceedings at law or in equity or otherwise as aforesaid to be commenced instituted or prosecuted against the said company by or on behalf of any body or bodies politic or corporate or by or on behalf of any person or persons whether a member or members of the said company or otherwise shall and may be commenced instituted and prosecuted against the Chairman of the Court of Directors for the time being of the said company as the nominal defendant for and on behalf of the said company or if there be no such Chairman of the Court of Directors for the time being of the said company then and in that case against any member or members of the said company Provided nevertheless that nothing herein contained shall prevent any plaintiff or plaintiffs from joining any member or members of such company with the Chairman of the Court of Directors for the time being of the said company as a defendant or defendants in equity for the purpose of discovery or in case of fraud And provided further that no claim or demand which any member of the said company may have against the said company in respect of his share of the capital or joint stock thereof or of any dividends interest profits or bonus payable or apportionable in respect of such share shall be capable of being set off either at law or in equity against any demand which such company may have against such member on account of any other matter or thing whatsoever but all proceedings in respect of such matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock or of any dividends interest profits or bonus payable or apportionable in respect thereof.

2. And be it enacted That all criminal informations and prosecutions to be brought instituted or carried on by or on behalf of the said company for fraud upon or against the said company or for embezzlement or robbery or for counterfeiting or stealing the bills notes bonds monies securities goods chattels effects or other property of or belonging to the said company or for any felony misdemeanor or other offence committed against or with intent to injure or defraud the said company shall and lawfully may be brought instituted or carried on in the name of the Chairman of the Court of Directors for the time being of the said company and in all indictments informations and other proceedings as aforesaid it shall and may be lawful and sufficient

Actions and suits to be in the name of the Chairman of the Court of Directors.

Plaintiffs may join any one or more members of the company with the Chairman as defendants in equity.

A member's share in capital of co-partnership not to be set off against any demand which such co-partnership may have against him.

Prosecutions and other criminal proceedings to be in the name of the Chairman of the Court of Directors.

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to describe the property of the said company as the property of the Chairman of the Court of Directors for the time being of the said company and that any offence committed with intent to injure or defraud the said company shall and lawfully may in any prosecution for or on account of the same be stated to have been committed with intent to injure or defraud the Chairman of the Court of Directors for the time being of the said company and any offender or offenders may thereupon be lawfully convicted of any such offence and in any other allegations or indictments informations or other proceedings for or on behalf of the said company it shall and may be lawful and sufficient from and after the passing of this Act from time to time to state the name of the Chairman of the Court of Directors for the time being of the said company as the nominal plaintiff complainant or petitioner and the death resignation or removal or other act of such Chairman or change in the members of the said company by transfer of shares or otherwise shall not abate any such action suit or prosecution or other proceeding but the same may be continued prosecuted and carried on in the name of any person who may be or become Chairman of the Court of Directors for the time being of the said company.

Memorial of the name of the Chairman of the Court of Directors to be recorded in the Supreme Court of Port Phillip.

3. And be it enacted That a memorial of the name of the Chairman of the Court of Directors for the time being of the said company in the form or to the effect of the form set forth in the Schedule to this Act annexed signed by the said Chairman and by a majority of the said Court of Directors shall be recorded upon oath in the Supreme Court in the said district within thirty days after the passing of this Act and when and so often as any Chairman of the Court of Directors of the said company shall be newly elected or a Chairman shall be substituted for the Chairman of the Court of Directors for the time being of the said company a memorial of the name of such newly elected or substituted Chairman of the said Court of Directors in the same form or to the same effect as the hereinbefore mentioned memorial signed by such newly elected or substituted Chairman and by a majority of the said Court of Directors shall in like manner be recorded upon oath in the said Supreme Court within thirty days after such election or substitution.

No action to be brought in the name of the Chairman of the Court of Directors until memorial recorded.

4. Provided always and be it enacted That until such memorial as hereinbefore first mentioned be recorded in manner hereinbefore directed no action suit or other proceeding shall be brought by the said company in the name of the Chairman of the Court of Directors thereof as aforesaid under the authority of this Act.

Evidence of Chairman members and officers to be admissible.

5. And be it enacted That in all actions suits petitions or other proceedings whether civil or criminal in which the said Chairman of the Court of Directors for the time being of the said company or any member of the said company shall be on behalf of such company and under and by virtue of this Act plaintiff complainant petitioner or defendant it shall and may be lawful for such Chairman or member or for any officer engaged in the executive duties of the said company to give evidence in such action suit petition or other proceeding notwithstanding the name of such Chairman or member shall be used as plaintiff complainant petitioner or defendant and notwithstanding that such Chairman member or officer as aforesaid shall or may be interested in the result of such action suit petition or other proceeding as a shareholder or co-partner in the said company.

Company may make contracts and conveyances in the name of the Chairman.

6. And be it enacted That all contracts agreements conveyances leases releases assignments surrenders covenants receipts and other documents made or to be made given or granted by or to or on behalf of the said company relating to any such now subsisting debt claim right cause of action interest or liability as aforesaid shall and may be made and executed and enforced by or to or against the Chairman

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Chairman of the Court of Directors for the time being of the said company and the same shall be binding upon the said company and the capital stock thereof and pass all the estate and interest of the said company.

7. And be it enacted That execution upon any decree or judgment in any action suit petition or other proceeding obtained against the Chairman of the Court of Directors for the time being or other member of the said company as aforesaid whether as plaintiff or defendant may be issued against and levied and satisfied upon and out of the goods chattels lands and tenements of any member or members whomsoever of the said company for the time being as if such decree or judgment had been obtained against such member or members personally.

Execution may be issued against any member of the company.

8. And be it enacted That for the purpose of giving better effect to the provision last hereinbefore contained the Chairman of the Court of Directors for the time being of the said company shall within thirty days from the passing of this Act and thereafter in the month of January in each year so long as this Act shall remain in force cause a true list of the names of all the then existing members of the said company with their respective places of abode and descriptions to be recorded on oath in the office of the Deputy Registrar of the said Supreme Court and the same shall be open for inspection at all reasonable times by any person requiring the same on payment of a fee of one shilling and if such Chairman shall fail to cause such list to be recorded in manner aforesaid he shall be liable to a penalty of one hundred pounds to be recovered by action of debt in the said Supreme Court by any person or persons who shall sue for the same.

List of members to be recorded on oath in the office of Registrar of Supreme Court.

9. And be it enacted That every person whose name shall be so recorded shall be considered a member of the said company and be liable as such until a new list of the members' names shall be recorded as aforesaid or until he shall have given notice in the *Government Gazette* of his retirement from the said company. Provided always that every Chairman of the Court of Directors for the time being of the said company in whose name any action suit petition or other proceeding shall be commenced prosecuted carried on or defended and every member or members of the said company against whose goods chattels lands or tenements execution shall be so issued as aforesaid shall always be reimbursed and paid out of the funds of the said company all such damages costs and expenses as by the event of any such proceedings such Chairman or member or members shall or may be put unto in respect thereof and all such remedies shall be allowed as between the several members of the said company for the time being as if this Act had not been passed. Provided nevertheless that the body of such Chairman shall not by reason of his being defendant in any such action suit or proceeding be liable to be arrested seized or taken in execution.

Every person included in such list to be considered a member until new list recorded or until he shall have given notice in the *Government Gazette* of his retirement.

10. And be it enacted That the bankruptcy insolvency or stopping payment of any Officer Director Chairman or other member of the said company in his individual capacity shall not be construed to be the bankruptcy insolvency or stopping payment of the said company and that the property and effects of the said company and the persons property and effects of the individual members thereof shall notwithstanding such bankruptcy insolvency or stopping payment be liable to execution in the same manner as if such bankruptcy insolvency or stopping payment had not taken place.

Bankruptcy of individual members not to affect the company.

11. And be it enacted That the provisions of this Act shall extend to the said company at all times during the continuance of the same notwithstanding any change in the members thereof by transfer of shares or otherwise howsoever.

Act to continue in force notwithstanding change of members.

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Company not incorporated by this Act.

12. Provided always and be it enacted That nothing herein contained shall extend or be deemed taken or construed to incorporate the members of the said company 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 company and others or between the individual members of the said company 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.

Securities and contracts to be put in suit by the Chairman of the Court of Directors for the time being.

13. And be it enacted That all bonds mortgages warrants of attorney and other securities not being assignable in law and all contracts and agreements whether parol or under seal which have been or shall or may at any time hereafter be taken in the name of the Chairman of the Court of Directors for the time being of the said company for or on account of the said company in any way relating to or arising out of such now subsisting debt claim right cause of action interest or liability as aforesaid shall and may be put in suit and enforced sued and prosecuted upon at law or in equity in the name of the Chairman of the Court of Directors for the time being of the said company in whose name the same may have been taken or entered into or in the name of any person who shall or may succeed to that office and be the Chairman of the Court of Directors for the time being of the said company at the time such proceeding or proceedings shall be instituted carried on or continued notwithstanding the name of any such succeeding Chairman be not inserted in any such bond mortgage warrant of attorney or other such security or in any such contract or agreement as an obligee mortgagee assignee or payee of the sum or sums of money therein respectively mentioned or secured and the death resignation removal or other act of any Chairman of the Court of Directors for the time being of the said company in whose name any such bond mortgage warrant of attorney or other such security as aforesaid or any such contract or agreement shall be so put in suit shall not abate any action suit or other proceeding had thereon but the same may be continued and carried on where it left off in the name of any person who may be or become the Chairman of the Court of Directors for the time being of the said company and the legal estate in all lands tenements and all property real and personal belonging or mortgaged to the said company for all legal rights and capacities in respect of the said company shall and may become vested in the succeeding Chairman of the Court of Directors for the time being immediately upon the recording of the memorial hereinbefore required of the name of such succeeding Chairman of the Court of Directors for the time being of the said company in the said Supreme Court and so on *toties quoties* whensoever any new appointment election or substitution of a Chairman of the Court of Directors for the time being of the said company shall take place and such memorial thereof shall be recorded as aforesaid.

Plaintiff not to be non-suited for want of proof of record of the memorial.

14. And be it enacted That in any action to be brought by any Chairman of the Court of Directors for the time being of the said company by virtue of this Act the plaintiff therein shall not be non-suited nor shall a verdict be given against the plaintiff for want of proof of the record of such memorial or memorials as hereinbefore mentioned nor shall the existence of such memorial be taken to be in issue unless specially desired by any defendant but in case the defendant in any such action shall specially deny on the record that any such memorial has been duly recorded as aforesaid and shall make it appear on such trial that no such memorial has been so recorded then a non-suit shall be entered in such action.

Deeds Registration.

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

Saving the rights of
Her Majesty and
others.

16. And be it enacted That this Act shall commence and take effect from and after the passing thereof and shall continue in force for two years thereafter and not longer save and except as to any action suit prosecution or other proceeding at law or in equity actually commenced or instituted which notwithstanding this Act shall have expired may be carried on in all respects whatsoever as if the same had continued in force.

Commencement and
duration of Act.

17. And be it enacted That this Act shall be deemed and taken to be a Public Act and shall be judicially taken notice of as such by the Resident Judge of the said Supreme Court at Port Phillip and by the Judges of the Supreme Court of New South Wales and of the several Circuit Courts throughout the Colony and by all other Judges Justices and others within the Colony of New South Wales and its Dependencies without being specially pleaded.

Act to be deemed a
Public Act.

SCHEDULE REFERRED TO.

MEMORIAL of the name of the Chairman of the Court of Directors of the "Melbourne Auction Company" to be recorded in the Supreme Court in the District of Port Phillip in the Colony of New South Wales pursuant to an Act of the Governor and Council passed in the fifth year of the reign of Her Majesty Queen Victoria intituled "*An Act to facilitate proceedings by and against the proprietors of a certain Joint Stock Company lately carrying on business at Melbourne in the District of Port Phillip in the Colony of New South Wales under the name style or firm of the Melbourne Auction Company and for other purposes therein mentioned.*"

A. B. Chairman of the Court of Directors.

C. D.	} Directors	I. K.
E. F.		L. M.
G. H.		N. O.

P. Q. of Melbourne merchant proprietor of the above named company maketh oath and saith that he was present and did see the foregoing memorial signed by the above named Chairman and Directors respectively whose names appear thereto.

Sworn this

day of

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