

No. XVIII.

BANK OF AUSTRALIA. An Act to enable the Bank of Australia to dispose of certain real and personal property in the Colony of New South Wales in certain shares by lot. [Reserved—23rd December, 1844.]

Preamble.

WHEREAS several persons formed themselves into a company or society established at Sydney under the name style and firm of the Bank of Australia as well for the purpose of discount and issuing of notes and bills and lending monies on securities and cash accounts for the receiving monies on deposit accounts for the safe custody of monies and securities for monies 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 has incurred certain debts and liabilities to a large amount and whereas the said bank is possessed of large real and personal estates and property and whereas owing to the monetary depression at present existing in this Colony the said bank is unable to dispose of its said property by the ordinary modes of sale unless at prices greatly inadequate to the true value thereof in consequence of which they are unable to discharge their said debts and liabilities and whereas the members or proprietors of the said bank are very numerous and the difficulties under which the said bank is laboring tend greatly to their present embarrassment and cause considerable depression in the monetary and mercantile affairs of the Colony and create a general want of confidence and whereas until the said debts are discharged and the affairs of the said bank wound up and arranged public confidence will not be restored and whereas the property of each member or proprietor of the said bank is subject or liable to be taken in execution and sold to satisfy the whole of the debts and liabilities of the said bank and should execution be levied on the said members or proprietors so vast an amount of property would be thrown into the market that it would be impossible in the present state of the Colony to realize upon the sale thereof sufficient to pay the said debts and liabilities unless by the sacrifice of the whole of the property possessed by the said members and proprietors and whereas the ruin of so many individuals would greatly tend to increase the depression already existing in the monetary and mercantile affairs of the Colony and cause the ruin of many other of the colonists and be a public calamity and whereas the said bank is now being carried on in Sydney and is under the care management and superintendence of eleven Directors one of whom is Chairman of the said bank and whereas the members or proprietors of the said bank are very numerous and some of them absent from the Colony and the joint stock or capital of the said bank is divided into four thousand shares and whereas it is necessary in order to liquidate the said debts and liabilities of the said bank that each member or proprietor of the said bank shall contribute a sum of money for every share which he or she holds in the said bank and for the better enabling such members or proprietors to provide such contributions as aforesaid it is expedient that the real and personal estates and property of the said bank should be divided amongst the said members or proprietors according to their necessary in order to liquidate debts of the bank that each pro- and

Bank is under the management of eleven Directors including the Chairman and the capital is divided into 4,000 shares

necessary in order to liquidate debts of the bank that each pro- and

Bank of Australia.

and the different descriptions of the said estates and property belonging to the said bank such division cannot be effected without the aid of the Legislature and whereas it would tend greatly to the general welfare of the Colony if the said bank was placed in a position to pay off and discharge its said debts and liabilities Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That it shall and may be lawful for the said Chairman and Directors for the time being of the said bank from time to time and as often as they shall think fit to set out allot and divide all or any part or parts of the real and personal estates and property belonging to the said bank into four thousand shares in such proportions and manner as in their discretion shall seem proper for the benefit of the members or proprietors of the said bank and for the purpose of determining to whom each share shall belong the said Chairman and Board of Directors for the time being shall cause a schedule to be prepared describing each share of the said real and personal estates and property and shall number the said shares as lots from one to four thousand both inclusive and the said share of each member or proprietor shall be determined by the said Chairman in the presence of four of the Directors for the time being of the said bank by drawing lots on some day or days to be named by the said Chairman and Board of Directors for the time being and each lot shall be drawn in respect of each share of each member or proprietor his or her executors administrators or assigns who shall have paid within the period hereinafter limited his her or their contributions to the said bank for the purpose of paying off the said debts and liabilities as aforesaid.

2. And be it enacted That it shall and may be lawful for the Chairman and four Directors may execute conveyances of said shares. said Chairman or the Chairman for the time being of the said bank or any four or more Directors of the said bank to make and execute all such deeds as shall or may be deemed necessary for the purpose of conveying assigning and assuring the said lots or shares respectively to the said members or proprietors of the said bank respectively their respective executors administrators and assigns for such estate or interest as the said bank may happen to have therein and that all and every such conveyances assignments and assurances shall be and are hereby declared valid and effectual to all intents and purposes whatsoever and shall pass to the person or persons to whom such conveyances assignments or assurances shall be made such estate right title or interest as shall therein be expressed to be conveyed assigned or assured Provided always that it shall and may be lawful for the said bank to draw for all such lots or shares as shall remain unsold or undisposed of to and for the benefit of the said bank and that all such lots or shares as shall remain unsold or undrawn after the drawing of such lots or shares as shall have been disposed of under the provisions of this Act shall remain and be the property of the said bank.

3. And be it enacted That all monies hereafter at any time to be paid in respect of such contribution from time to time to be determined upon by the said Chairman and Directors as aforesaid whether the same shall be paid by any member or members proprietor or proprietors of the said company or by any such person or persons to whom such lot or lots shall or may be sold assigned transferred or made over as aforesaid shall be paid to the three following persons namely Hannibal Hawkins Macarthur Stuart Alexander Donaldson and John Gilchrist Esquires as trustees and the receipt of such trustees or any two of them for the monies from time to time paid to them as aforesaid shall be good and sufficient discharges to the person or persons paying the same and exonerate him her and them from

Monies to be paid to trustees under this Act.

Bank of Australia.

from the necessity of seeing to the application thereof and all liability for any misapplication thereof.

Trustees to pay monies from bank.

4. And be it enacted That all monies from time to time to be received by the said trustees shall immediately upon receipt thereof be paid by them into some public bank in Sydney aforesaid to an account entitled "Bank of Australia Shares Account."

How monies to be drawn from bank.

5. And be it enacted That the said trustees shall hold the monies from time to time placed to account as aforesaid and that the said monies shall be drawn out from the said bank in payment of the debts of the said company in the manner hereinafter mentioned by cheques signed by the said trustees thereof for the time being or any two of them.

Application of monies.

6. And be it enacted That all monies to be received as aforesaid shall be applied in the first instance in redeeming all liens charges and incumbrances affecting any of the property so to be allotted and then in payment of the creditors of the said company other than the Bank of Australasia except in payment to that corporation of an undisputed sum of six thousand pounds and upwards and interest thereon *pari passu* with such other creditors in such manner as the said Bank of Australia shall from time to time direct and the said trustees are hereby authorized and directed to pay out of the said monies all such orders as the said Chairman of the said bank shall draw upon them by authority of the Board of Directors of the said bank for payment of the said debts of the said bank of which the said drafts or orders shall be conclusive evidence and the said trustees shall hold the surplus monies so to be raised for such persons as may by law establish claims as creditors of the said company rateably and in proportion to the amounts of the debts of such creditors respectively and in default thereof for the Bank of Australia and to be paid to that company.

Appointment of new trustees.

7. And be it enacted That in the event of the death of any one or more of the said trustees or of one or more of them wishing to retire from or becoming incapable to act in the said trusts new trustees or a new trustee as the case may be shall be appointed forthwith by the remaining trustee.

No lot to be drawn for any proprietor in the Colony unless amount of contribution be paid within two months after the passing of this Act nor for any proprietor absent from the Colony unless amount of contribution be paid within seven months after the passing of this Act.

8. And be it enacted That no lot shall be drawn for any member or proprietor who being in the Colony shall not have contributed and paid to the said trustees his or her contribution which may from time to time be determined upon by the said Chairman and Directors in respect of each of his or her share or shares for the purpose of enabling the said trustees to liquidate the said debts and liabilities as aforesaid within two calendar months after the passing of this Act or who being absent from the Colony shall not have contributed and paid to the said trustees his or her said contribution on each of his or her share or shares within seven calendar months after the passing of this Act and in case any such member or proprietor shall make any default in paying and contributing the said sum at the time and in manner aforesaid such member or proprietor shall forfeit his her or their lot or lots for the benefit of the said bank and it shall and may be lawful to and for the said Chairman in the presence of four or more of the Directors for the time being of the said bank either to draw the said lot or lots of the member or members proprietor or proprietors making such default as aforesaid for the benefit of the said bank or if the said Chairman and Directors for the time being shall think fit it shall and may be lawful for them to sell and dispose of and for any four or more of them to convey and assign the share or interest of the said member or members proprietor or proprietors making such default as aforesaid of and in the said lot or lots unto any other member or members or proprietor or proprietors of the said bank and in case the said last mentioned

Manner of drawing lots.

member

Bank of Australia.

member or members proprietor or proprietors shall not before the expiration of the said two and seven months respectively have made application to the said Chairman and Directors to purchase the same then and in such case it shall and may be lawful for the said Chairman and Directors for the time being of the said bank to sell and dispose of and for any four or more of them to convey and assign the same to any other person or persons whomsoever.

9. And whereas it may happen that a member or members proprietor or proprietors of the said bank may be unable to advance and pay his her or their said contribution and by reason of such inability he she or they may be deprived of the benefit of his her or their share of the said real and personal estate Be it therefore enacted That it shall and may be lawful to and for any member or proprietor of the said bank to sell assign transfer and make over to any person or persons whomsoever his her or their expectant or contingent right title and interest in and to any lot or lots to which he she or they would have been entitled had he she or they have paid his her or their contribution or contributions aforesaid and that the person or persons to whom such lot or lots shall or may be sold assigned transferred or made over as aforesaid shall in case he she or they shall pay and contribute the said contribution to the said Chairman and Directors on each share which he she or they so purchase as aforesaid or any part thereof which the member or members proprietor or proprietors shall have left unpaid then and in such case he she or they shall be entitled to the same benefit as would have accrued in respect of such lot or lots to the said member or members or proprietor or proprietors had he she or they not so sold assigned transferred or made over such right title and interest as aforesaid but had retained the same and had duly and punctually paid up his her or their said contribution or contributions as aforesaid Provided however and be it declared and enacted That such sale assignment or transfer of such right title and interest of any such proprietor of and in the said lot or lots shall not relieve or discharge any such member or proprietor from any existing liability in respect of his interest in the said bank nor shall the purchaser or purchasers thereof or of any of the hereinbefore mentioned lots of any proprietor or proprietors so making default as in the preceding clause of this Act is mentioned be thereby rendered or in anywise thereby become liable in respect of the liabilities of the said bank or affected thereby.

10. And be it enacted That no such drawing as aforesaid shall be had under this Act after the lapse of one year from the passing hereof anything herein contained to the contrary notwithstanding.

11. 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 all Judges Justices and others without being specially pleaded.