

COMMERCIAL  
BANKING  
COMPANY.

An Act to incorporate the Proprietors of a certain Banking Company called "The Commercial Banking Company of Sydney" and for other purposes therein mentioned. [17th June, 1848.]

Preamble.

WHEREAS a joint stock banking company called "The Commercial Banking Company of Sydney" has been lately established under and subject to the rules regulations and provisions contained in a certain indenture or deed of settlement bearing date the fifteenth day of May in the year of our Lord one thousand eight hundred and forty-eight purporting to be a deed of settlement of the said company but the said company has not yet commenced business And whereas John Henry Challis of Sydney in the Colony of New South Wales merchant Stuart Alexander Donaldson of the same place merchant John Lamb of the same place merchant Henry Watson Parker of Parramatta in the said Colony Esquire and Henry Gilbert Smith of Sydney aforesaid merchant are the present directors of the said company And whereas it is expedient to incorporate the said company Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That such and so many person or persons as have already become or at any time or times hereafter shall or may in the manner provided by and subject to the rules regulations and provisions contained in the said indenture or deed of settlement become a proprietor or proprietors of any share or shares of or in the capital for the time being of the said society or company shall be one body politic and corporate in name and in deed by the name of "The Commercial Banking Company of Sydney" and by that name shall and may sue any person or persons body or bodies politic or corporate whether a member or members of the said corporation or not and may be sued implead and be impleaded in all Courts whatever of Law or in Equity and may prefer lay and prosecute any indictment information and prosecution against any person or persons whomsoever

Company incor-  
porated.

for

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for any stealing embezzlement fraud forgery crime or offence and in all indictments informations and prosecutions it shall be lawful to state the money and goods effects bills notes securities or other property of the said company to be the money goods effects bills notes securities or other property of the said corporation and the said corporation shall have perpetual succession with a common seal which may be altered varied and changed from time to time at the pleasure of the said corporation.

2. Whereas by the said indenture or deed of settlement and which said indenture is made or expressed to be made between the several parties whose names are thereunto subscribed and whose seals are thereunto affixed each of the several parties thereto did for himself and herself severally and respectively and for his and her several and respective heirs executors and administrators covenant promise and agree and declare with and to the others and each and every of the others of them and each and every of their heirs executors and administrators that the several persons parties to the said deed of settlement should continue (except as thereafter otherwise provided) a society or company under the name style and firm of "The Commercial Banking Company of Sydney" until dissolved by means of the provisions in such behalf thereafter contained that the capital of the said company was the sum of one hundred and twenty thousand pounds and was divided into four thousand eight hundred shares of twenty-five pounds each but the amount of such capital might be increased as thereafter provided that such capital should as between the shareholders and their real and personal representatives be deemed personal estate and be transmissible as such that the objects and purposes of the company were and should be the formation and establishment of a bank of issue discount and deposit in the Colony of New South Wales and the making of loans of moneys on cash credit accounts promissory notes bills of exchange or letters of credit and on other securities of the like nature also the dealing in money bullion and specie of all countries and in notes bills or other securities for money and generally the transacting of all such other business as it is or shall or may at any time thereafter be usual and lawful for establishments carrying on banking in all its branches to do or transact including therein the dealing in money bullion or specie or in notes or bills and the establishment of agencies or connections in England and Scotland and elsewhere and the giving of letters of credit thereon for any purpose whatsoever and the establishing a branch bank or branch banks for the purposes and in manner thereafter mentioned that the said John Henry Challis Stuart Alexander Donaldson John Lamb Henry Watson Parker and Henry Gilbert Smith were and should be the first directors of the said company Be it enacted That the said corporation is and shall be established for the purposes of carrying on the business of banking in any part of the Colony of New South Wales but subject nevertheless to the conditions restrictions regulations and provisions herein contained.

Deed of settlement  
recited.

Banking how carried  
on.

3. And be it enacted That the capital or joint stock for the time being of the said corporation and the several shares therein and the profits and advantages to be derived therefrom shall be and be deemed personal estate and be transmissible accordingly subject to the regulations of the said indenture or deed of settlement.

Capital to be per-  
sonal estate.

4. And be it enacted That it shall not be lawful for the said corporation to commence or carry on the said business of banking under or by virtue of this Act until the whole of the said capital of one hundred and twenty thousand pounds shall have been subscribed for and a moiety at the least of such sum of one hundred and twenty thousand pounds shall have been actually paid up.

Capital to be sub-  
scribed and moiety  
paid up.

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When whole capital  
to be paid up.

5. And be it enacted That the whole of the said capital shall be subscribed for within the space of eighteen months to commence and be computed from the period when this Act shall come into operation and the whole of the said sum of one hundred and twenty thousand pounds shall be paid up within the space of two years to be computed as aforesaid.

Issue of bank notes  
for twenty-one years.

6. And be it enacted That it shall be lawful for the said corporation for and during the term of twenty-one years to commence from the period when this Act shall come into operation if the whole of the said capital shall then have been subscribed for and a moiety thereof paid as aforesaid but not otherwise to make issue and circulate at and from any city town and place in which they may have opened or established any bank branch or establishment under or by virtue of this Act or the said indenture or deed of settlement any bank notes or bills for one pound two pounds or five pounds sterling each or for any greater sum than five pounds sterling each but not for any fractional part of a pound and from time to time during the said term of twenty-one years to re-issue any such notes or bills when and so often as the corporation shall think fit but such privilege shall cease in case of the suspension of specie payments on demand for the space of sixty days in succession or for any number of days at intervals which shall amount altogether to sixty days within one year or in case the said corporation shall not well and truly maintain abide by perform and observe all and every the rules orders provisions and directions herein contained and set forth upon which the said corporation is empowered to open banking establishments or to issue and circulate promissory notes.

When issue to cease.

Banking to cease in  
twenty-one years.

7. And be it enacted That from and after the expiration of the said term of twenty-one years it shall not be lawful for the said corporation at any time thereafter to make issue or re-issue at or from any town or place any promissory or other notes or bills or any other instrument in the nature of a promissory note or bill or in any manner whatsoever to carry on the business of banking in the said Colony.

Notes when dated  
and how payable.

8. And be it enacted That all such notes shall bear date at the city town or place at and from which the same respectively shall be made and issued and that the same respectively shall in all cases be made payable in specie on demand at the place of date and the total amount of the promissory notes payable on demand issued and in circulation shall not at any one time exceed the amount of the capital and stock of the said corporation actually paid up.

Amount of notes.

Liabilities limited.

9. And be it enacted That the total amount of the debts engagements and liabilities of the said corporation whether upon bonds bills promissory notes or otherwise contracted over and above the amount of deposits with the said company's establishments shall not in any case exceed three times the amount of the capital stock subscribed and actually paid up.

Branch bank how  
far liable.

10. And be it enacted That no branch bank or establishment other than and except the principal banking establishment of the said corporation shall be liable to be called upon to pay any notes or bills of the said corporation other than and except such as shall have been originally made and issued at and from such particular branch bank establishment.

House of business  
may be purchased.

11. And be it enacted That it shall be lawful for the said corporation notwithstanding any statute or law to the contrary to purchase take hold and enjoy to them and their successors in the said Colony of New South Wales for any estate term of years or interest any houses offices, buildings lands and other hereditaments necessary or proper for the purposes of managing conducting and carrying on the affairs concerns and business of the said corporation but not for  
any

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any other purposes and to sell convey assign assure and dispose of the same when not wanted for the purposes of the said business.

12. And be it enacted That it shall and may be lawful to and for all and every person and persons and bodies politic or corporate who are or shall be otherwise competent to grant sell alien and convey assign assure and dispose of unto and to the use of the said corporation and their successors for the purposes aforesaid any such houses offices lands and other hereditaments whatsoever as aforesaid accordingly.

Conveyed to the use of corporation.

13. And be it enacted That when and so soon as the capital shall have been so subscribed and a moiety of the said capital of one hundred and twenty thousand pounds shall have been actually paid up subject as aforesaid but not before it shall be lawful for the said corporation subject to all the restrictions and provisions herein contained to commence and carry on the business of a bank of issue discount and deposit in the Colony of New South Wales and to make loans of moneys on cash credit accounts promissory notes bills of exchange or letters of credit and on other securities of the like nature or on personal security and it shall also be lawful for the said corporation to deal in money bullion and specie of all countries and in notes bills or other securities for money and generally to transact all such other business as it is or shall or may at any time hereafter be usual and lawful for establishments carrying on banking in all its branches to do or transact including therein the dealing in money bullion or specie or in notes or bills and the establishment of agencies or connections in England or Scotland or elsewhere and the giving of letters of credit thereon for any purposes whatsoever and the establishment of a branch bank or branch banks for the purposes and in manner directed by the said indenture or deed of settlement but that it shall not be lawful for the said corporation to advance or lend any money upon the security of lands or houses or ships or on pledges of merchandise nor own ships and the said corporation shall not hold shares in its own stock nor advance or lend to any shareholder or proprietor of shares in the said corporation any sum or sums of money on the security of his share or shares nor invest lay out employ advance or embark any part of the capital or funds of the said corporation in the purchase of any lands houses or other real or leasehold property whatsoever (save and except as herein specially provided) nor of any share or shares in the capital or stock for the time being of the said company nor in any trading or mercantile speculation or business whatsoever not usually considered as falling within the ordinary and legitimate purposes and operations of banking establishments.

Commencement and nature of business.

14. And be it enacted That the discounts or advances by the said corporation on securities bearing the name of any director or officer thereof as drawer acceptor or endorser shall not at any time exceed in amount one-third of the total advances and discounts of the said corporation.

Discounts to directors limited.

15. And be it enacted That no dividend shall in any case be declared or paid out of the subscribed capital for the time being of the said corporation or otherwise than out of the net gains and profits of the said corporation.

Dividend out of profits only.

16. And be it enacted That it shall be lawful for the said corporation from time to time to extend or increase their capital for the time being by the creation allotment and disposal of new shares in the manner specified and set forth and subject to the rules regulations and provisions contained in the hereinbefore in part recited indenture or deed of settlement.

Capital may be increased.

17. And be it enacted That the total amount of all new shares to be so from time to time created allotted or disposed of shall not

Extent of increase.

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not altogether exceed the sum of five hundred thousand pounds and that no such extension or increase of the capital of the said corporation shall be made or take place without the previous sanction and approbation in writing of the Lords Commissioners for the time being of Her Majesty's Treasury or of the Governor for the time being of the said Colony from time to time for that purpose first had and obtained and that at least half the amount of the increased capital shall be actually paid up before any extension of the dealings of the said corporation in respect of such new capital shall be commenced and until half of such new capital shall be so paid up the dealings and affairs of the said corporation shall be carried on in all respects as if such extension of capital had not taken place.

Responsibility of  
shareholders.

18. And be it enacted That in the event of the assets of the said corporation being insufficient to meet its engagements then and in that case the shareholders shall be responsible to the extent of twice the amount of their subscribed shares (that is to say) for the amount subscribed and for a further and additional amount equal thereto.

Transfer of original  
shares.

19. And be it enacted That in all cases in which shares in the capital of the said corporation shall be transferred between the period of this Act coming into operation and the actual commencing of business by the said corporation the responsibility of the original holder of the transferred share shall continue for six months at least after the date of the transfer.

By-laws.

20. And be it enacted That the several laws rules regulations clauses and agreements contained in the said indenture or deed of settlement or to be made under or by virtue or in pursuance thereof are and shall be deemed and considered to be and shall be the by-laws for the time being of the said corporation save and except in so far as any of them are or shall or may be altered varied or repealed by or are or shall or may be inconsistent or incompatible with or repugnant to any of the provisions of this Act or any of the laws or statutes in force in the said Colony subject nevertheless to be and the same may be amended altered or repealed either wholly or in part in like manner as the laws regulations and provisions contained in the said indenture or deed of settlement or to be made in pursuance thereof are hereby authorized and directed to be amended altered or repealed but no rule or by-law shall on any account or pretence whatsoever be made by the said corporation either under or by virtue of the said indenture or deed of settlement or of this Act in opposition to the general scope or true intent and meaning of the said deed of settlement or of this Act or of any of the laws or statutes in force in the said Colony.

Previous contracts  
enforced.

21. And be it enacted That nothing herein contained shall prejudice or be deemed to prejudice any call made or any contract or other act deed matter or thing entered into made or done by the said company under or by virtue of the said indenture or deed of settlement before this Act shall come into operation but the same call contract act deed matter or thing shall be as valid and effectual to all intents and purposes as if this Act had not been passed and may be enforced in like manner as if the said company had been incorporated before the same call contract act deed matter or thing had been entered into made or done.

Actions for calls.

22. And be it enacted That in any action or suit to be brought by or on behalf of the said corporation against any proprietor or proprietors or owner or owners of any share or shares in the capital of the said corporation to recover any sum or sums of money due and payable to the said corporation for or by reason of any call or calls made by virtue of this Act or of the said indenture or deed of settlement it shall be sufficient for the said corporation to declare and allege that

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that the defendant or defendants being a proprietor or proprietors of such or so many share or shares in the capital of the said corporation is or are indebted to the said corporation in such sum or sums of money as the call or calls in arrear shall amount to for such and so many call or calls of such or so many sum or sums of money upon such or so many share or shares belonging to the said defendant or defendants (as the case may be) whereby an action hath accrued to the said corporation without setting forth any special matter and on the trial of such action or suit it shall not be necessary to prove the appointment of the directors or any of them who made such call or calls or any other matters except that the defendant or defendants at the time of making such call or calls was or were a proprietor or proprietors of some share or shares in the capital of the said corporation and that such call or calls was or were in fact made and that such notice thereof was given as is directed by the said indenture or deed of settlement and the said corporation shall thereupon be entitled to recover what shall appear due.

23. And be it enacted That the directors for the time being of the said corporation shall have the custody of the common seal of the said corporation and that the form thereof and all other matters relating thereto shall from time to time be determined at a board of directors of the said corporation in the same manner as is provided by the said indenture or deed of settlement for the determination of other matters at any board of directors of the said company and the directors present at a board of directors of the said corporation shall have power to use the common seal of the said corporation for the affairs and concerns of the corporation.

24. 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 or bodies politic or corporate or of any person or persons except such bodies politic or corporate and other persons as are mentioned in this Act and those claiming by from or under them.

25. And be it enacted That this Act shall come into operation so soon as and not until the same shall have received the Royal approbation and the notification of such approbation shall have been made by order of His Excellency the Governor in the *New South Wales Government Gazette* and that such notification shall be sufficient evidence of such approbation.

26. 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 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.

27. And be it enacted That in this Act the following words shall have the following meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction that is to say words importing the singular number shall include the plural number and words importing the plural number shall include the singular number and words importing the masculine gender shall include females and bodies corporate as well as individuals.