

No. IX.

An Act to legalize Partnerships with Limited Liability. [8th July, 1853.]

LIMITED
PARTNERSHIPS.

WHEREAS it is expedient to encourage the formation of Partnerships for the promotion of Agricultural Mining Mercantile Mechanical Manufacturing and other undertakings and that object would be promoted by enabling persons to employ their capital as partners in certain cases without liability to the debts of the partnership beyond the amount contributed by them Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows :—

1. After the passing of this Act limited partnerships may be formed for the transaction of Agricultural Mining Mercantile Mechanical Manufacturing or other business by any number of persons upon the terms and subject to the conditions and liabilities hereinafter prescribed Provided that nothing herein shall authorize any such partnership for the purpose either of Banking or Insurance.

2. Every such partnership may consist of general partners who shall be jointly and severally responsible as general partners are now by law and of persons to be called special partners who shall contribute

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to the common stock specific sums in money as capital beyond which they shall not be responsible for any debt of the partnership except in the cases hereinafter provided for.

Certificate to be made by the partners specifying names capital &c.

3. All the persons forming any such partnership shall before commencing business sign a certificate containing the style of the firm under which the partnership is to be conducted the names and places of residence of all the partners distinguishing the general from the special partners the amount of capital which each special partner contributes and also if any the amount contributed by the general partners to the common stock the general nature of the business to be transacted the principal place at which it is to be transacted the time when such partnership is to commence and when it is to terminate.

Style of partnership.

4. Such style or firm shall contain the names of general partners only or the name of one such partner with (in either case) the addition of the words "and another" or "and others" and the general partners only shall transact the business of the partnership and if in the carrying on of such business or in any contract connected therewith the name of any special partner shall be used with his consent or privity or if he shall personally make any contract respecting the concerns of the partnership every such special partner shall be deemed to be a general partner with respect to the contract or matter in which his name has been so used or as to which he shall have so contracted.

Certificate to be acknowledged and recorded.

If false all shall be liable as general partners.

5. No such partnership shall be deemed formed until such certificate as aforesaid shall have been acknowledged by each partner before some Justice of the Peace and registered in the Office of the Registry of Deeds in Sydney in a book to be kept for that purpose open to public inspection and if any false statement shall be made in any such certificate all the persons interested in the partnership shall be liable for all the engagements thereof as general partners Provided that no clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person may have been prejudiced thereby in which case the special partners shall be liable to the person so prejudiced.

Certificate to be published for four weeks.

6. A copy of such certificate shall for four weeks next after such registration be published once at least in the *Government Gazette* and in some newspaper printed nearest to the intended principal place of business of the partnership and in case such publication be not so made the partnership shall be deemed general.

Duration of partnership limited.

7. No partnership under this Act shall be entered into for a longer period than seven years but such partnership may be renewed at the end of that period or at the termination of any shorter period for which a partnership may be formed provided that the partners sign a fresh certificate in the terms of this Act and acknowledge and register the same in the same manner as if the partnership were an original partnership with limited liability.

Provision for renewal of partnership.

8. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration a certificate thereof shall be signed acknowledged registered and published in like manner as the original certificate and every partnership which shall be renewed or continued otherwise than in conformity with the provisions of this section shall be deemed general.

Capital stock not to be withdrawn.

9. During the continuance of any partnership under the provisions of this Act no part of the certified capital thereof shall be withdrawn nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate and if any part of such capital shall be so withdrawn or any such division be made so that at any time during the continuance or

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at the termination of the partnership the assets shall not be sufficient to pay the partnership debts the special partners shall severally be liable to refund every sum by them respectively received in diminution of such capital or by way of such interest or profit and all such sums may be recovered as money had and received by them respectively to the use of the general partners and may in the case of any judgment having been obtained against the general partners be recovered by the plaintiff against the special partners or either of them by process of execution to be issued under such judgment by leave of the Supreme Court.

10. All suits respecting the business of any partnership established under this Act shall be prosecuted by and against the general partners only except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners in which cases every special partner who shall have become liable as a general partner may be joined in the suit as a defendant at the discretion of the party suing. Suits to be by and against general partners.

11. No dissolution of a limited partnership shall take place except by operation of law before the time specified in the certificate unless a notice of such dissolution shall be signed acknowledged registered and published in like manner as the original certificate. Dissolution how effected.

12. In all cases not hereinbefore otherwise provided for all the members of a limited partnership shall be subject to the liabilities and entitled to the rights of general partners. Liabilities not specially provided for.

13. The general partners shall be liable to account to each other and to the special partners for their management of the concern both in law and equity as other partners now are by law. Accounting.

14. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage and shall also be liable to an indictment for a misdemeanor punishable by fine or imprisonment or both in the discretion of the Court by which he shall be tried. Frauds by partners.

15. If the general partners shall not at all times cause regular books of account to be kept or shall not have the same open at all reasonable times to the inspection of the special partners such special partners shall on default herein be entitled to have the partnership dissolved and the accounts thereof taken by the Supreme Court. Books of account to be kept and to be open to inspection.

16. The special partners shall be bound to see that such books are so kept and if such books shall not be so kept or shall with the knowledge or privity of the special partners or any of them be kept incorrectly or contain any false or deceptive entries whereby the ascertainment of the matters mentioned in the first part of the eighth* section hereof shall or may be affected the certified capital of such special partners or such one or more of them having such knowledge or privity as aforesaid shall as against creditors be deemed to have been withdrawn and they or he shall be liable accordingly under the provisions of the said eighth* section hereof. As to liability of special partners if proper books be not kept or be incorrectly kept.

*[Sic—but *qu. ninth*]