

An Act to incorporate "The Melbourne Sydney and Adelaide Chartered Bank" and for other purposes therein mentioned. [3rd December, 1853.]

Preamble.

WHEREAS certain persons have united and formed themselves into a copartnership or joint stock company called "The Melbourne Sydney and Adelaide Chartered Bank" with a view to carry on the business of a bank of issue discount and deposit in the city of Sydney in the Colony of New South Wales and in other parts of Her Majesty's dominions subject to the provisions of a certain preliminary indenture or deed of settlement made and entered into in England and of a further preliminary deed of settlement intended to be executed in the said Colony. And whereas it is intended that the capital of the said company shall be two hundred thousand pounds (subject to the provisions for increasing the same hereinafter contained) And whereas one moiety thereof that is to say the sum of one hundred thousand pounds has already been subscribed for. And whereas the said company are desirous of being incorporated and it is expedient that they should be incorporated accordingly subject to the provisions hereinafter contained. 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—

Bank incorporated.

1. The persons who have already become or shall hereafter become proprietors of shares in the capital of the said company shall be one body politic and corporate by the name of "The Melbourne Sydney and Adelaide Chartered Bank" and by that name shall have perpetual succession and a common seal and by that name shall and may sue and be sued implead and be impleaded in all Courts of law and equity and may prosecute or inform against any person for any crime or offence and may in any indictment information or prosecution state the money goods effects bills notes securities or other property of the said company to be the property of the said corporation and may designate the said company by its corporate name whenever such designation shall be necessary and the said common seal may be altered varied and changed at the pleasure of the said corporation.

2. The persons who have already become or hereafter shall become proprietors of shares within the said Colony in the capital of the corporation shall within twelve months to be computed from the commencement of this Act to the satisfaction of the Governor signified by

Melbourne Sydney and Adelaide Chartered Bank.

by a certificate under the hand of the Colonial Secretary execute a deed of settlement so as each person so executing shall hold at least five shares in the said capital and provision shall be made by such deed for carrying on the business of the corporation within the said Colony by directors to be appointed or elected in the manner to be fixed by such deed and until such appointment or election by directors named in such deed and provision shall be therein made respecting the qualification appointment or election retirement and re-appointment or re-election of the colonial directors so that one-fourth of them at least shall retire yearly and shall not be re-elected for at least twelve months thereafter and in such deed provision shall also be made for the payment by the proprietors in the said Colony of all moneys due or to become hereafter due in respect of their shares and (besides such further provisions as shall by the said Governor signified as aforesaid be declared to be necessary and usual in like cases) there shall also be inserted in such deed provisions for appointing managers agents and other officers for the due conduct and management of the business and affairs of the corporation within the said Colony.

3. The capital of the said corporation shall subject to the provisions hereinafter contained be two hundred thousand pounds and the whole of such capital shall be subscribed for and one moiety thereof paid up within the space of eighteen months to be computed from the commencement of this Act and the other moiety of the said capital shall be paid up within the space of two years to be computed as aforesaid and it shall not be lawful for the said company to commence or carry on any business of banking as a corporation by virtue of this Act until a duplicate copy of the deed of settlement and the names of the proprietors of the said bank and of their respective place or places of abode duly verified upon oath shall be lodged in the registry of the Supreme Court of New South Wales the same particulars being annually registered there under the like verification nor until the whole of the said capital of two hundred thousand pounds shall have been subscribed for and a moiety at the least of such sum shall have been paid up as aforesaid.

4. When and so soon as the whole of the said capital of two hundred thousand pounds shall have been subscribed for under the hand and seal of the several proprietors and a moiety thereof at the least paid up as aforesaid it shall be lawful for the said company to act as such corporation subject to all the provisions herein and in such deeds of settlement contained and as such corporation to carry on the business of a bank of issue discount and deposit in the Colony of New South Wales and to make loans of money on cash credit accounts promissory notes bills of exchange or letters of credit and on other securities of a like nature or on public securities or on personal security and to deal in money bullion specie gold and exchanges of and with all countries and in notes bills or other securities for money and generally to transact all such other business as shall be usual and lawful for establishments carrying on banking in all its branches and to establish branch banks agencies or connections in relation to any such business as aforesaid in the said Colony and in any other part of the British Dominions or elsewhere and to give letters of credit on branch banks agents and banking connections abroad but it shall not be lawful for the corporation to advance or lend any money upon the security of lands or houses or ships or on pledges of merchandise nor to own ships and the corporation shall not own shares in its own stock nor advance or lend money to any proprietor on the security of his shares nor invest lay out employ advance or embark any part of the capital or funds of the corporation in the purchase of any lands houses or other real or leasehold property whatsoever (except

Whole capital of £200,000 to be subscribed, and moiety paid up within certain time

and bank shall not begin till this done.

Bank to commence when capital subscribed and half paid up.

Nature of business.

Melbourne Sydney and Adelaide Chartered Bank.

(except as hereinafter expressly provided) nor in the purchase of any shares in the capital stock of the corporation nor in any trading or mercantile speculation or business not usually considered as falling within the ordinary and legitimate purposes and operations of banking establishments. Provided that nothing herein contained shall invalidate any lien acquired by the corporation by way of equitable mortgage upon any deposit of deeds or other documents as collateral security nor any right title or claim to lands or other property thence to arise under the administration of any Court of Equity Bankruptcy or Insolvency under the rules of law or equity touching the rights of creditors holding such securities nor any lien of the corporation upon or over the shares belonging to any proprietor becoming indebted or coming under engagements to the corporation or making default in the fulfilment of any covenant in any such deed of settlement as aforesaid or to prevent the corporation from holding the shares forfeited by such default for the purpose of sale as provided in any such deed. Provided also that nothing herein contained shall prevent the corporation from taking security by the hypothecation of merchandise or bills of lading for the payment of any bills of exchange drawn against any shipments or merchandise shipped for exportation to or from any port to another within the Australasian territories.

Capital may be increased

5. It shall be lawful for the corporation to extend or increase their capital for the time being by the creation allotment and disposal of new shares in the manner to be specified and set forth and subject to the rules regulations and provisions contained in such deeds of settlement as aforesaid.

under certain restrictions.

6. The total amount of all new shares to be so created shall not together with the original capital exceed one million pounds and no such extension or increase of capital shall take place without the previous approval in writing of the Commissioners of Her Majesty's Treasury in England signified under the hands of any two of them or of the Governor signified as aforesaid and at least half the amount of the increased capital shall be paid up before any extension of dealings 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 corporation shall be carried on in the same manner in all respects as if such extension of capital had not taken place.

Bank notes of certain value may be issued.

7. It shall be lawful for the corporation during the term of twenty-one years to be computed from the time when the whole of the said capital shall have been subscribed for and such moiety thereof paid up as aforesaid or until the Legislature shall make other provision in that behalf to make issue and circulate at and from any city town or place in which they may have duly opened or established any bank branch bank or agency any bank notes or bills for one pound 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 during the same term of years to re-issue any such notes or bills whenever the corporation shall think fit but such privilege shall cease if and when specie payments on demand shall at any time be suspended by the corporation for the space of sixty days in succession or composed of different periods in any one year or in case and when the corporation shall not well and truly perform and observe all and every the provisions of this Act or the rules and regulations contained in such deeds of settlement as aforesaid.

Rules as to bank notes.

8. All such notes shall bear date at the city town or place at and from which the same shall be made and issued and shall be 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 within the said Colony shall not at any time exceed the amount of the coin bullion

Melbourne Sydney and Adelaide Chartered Bank.

bullion and public securities for the time being held by the corporation within the said Colony.

9. No bank branch bank or agency of the corporation other than the banking establishment in Sydney shall be liable to pay any notes or bills of the corporation not originally made and issued at and from such particular bank branch bank or agency.

10. It shall be lawful for the corporation notwithstanding any statute or law to the contrary (but in every such case with the approval of the Governor signified as aforesaid) to purchase take hold and enjoy to them and their successors for any estate term of years or interest any houses offices buildings lands and other hereditaments which may be necessary or proper for the purpose of conducting and carrying on the affairs concerns and business of the corporation and also to take and hold until the same can be advantageously disposed of for the purpose of reimbursement only and not for profit any lands houses and other real estate merchandise and ships in satisfaction liquidation or discharge of any debt due to the corporation or in security for any debt or liability *bonâ fide* incurred previously to and not in anticipation or expectation of such security but not for any other purpose and to sell convey assign assure or otherwise dispose of such houses offices buildings lands hereditaments and other real estate merchandise and ships as occasion may require.

11. It shall be lawful for every person and body politic or corporate not otherwise incompetent to grant sell alien and convey assign assure or otherwise dispose of unto and to the use of the corporation and their successors for the purposes aforesaid or any of them any such houses offices lands hereditaments and other real estate whatsoever as aforesaid.

12. The capital or joint stock for the time being and all the funds and property (except lands and hereditaments) of the corporation and the several shares therein and the profits and advantages to be derived from all the funds and properties of the corporation shall be and be deemed personal estate and be transmissible accordingly subject to the regulations of any such deed of settlement as aforesaid.

13. For the purposes of this Act unassayed gold shall be deemed to be "bullion" and in the accounts of the corporation and in the statements and general abstracts of the assets and liabilities required by law to be made and published the corporation may include the same when melted into ingots under the name of bullion.

14. The total amount of the debts engagements and liabilities of the corporation within the said Colony upon bonds bills promissory notes or otherwise contracted shall not in any case exceed three times the amount of the coin bullion and public securities which shall for the time being be held by the said corporation within the said Colony. Provided that such last-mentioned limitation or restriction shall not apply to or include any liabilities on account of the ordinary cash deposits of customers nor any liabilities on account of bills of exchange drawn by or on behalf of the corporation upon any banker or banking company in the United Kingdom of Great Britain and Ireland within the amount or value of remittances made to such banker or banking company to provide for the payment of such bills of exchange.

15. All debentures already or hereafter issued by the Government of any Australasian Colony secured upon the general territorial or casual revenues of such Colony and every public debt already or hereafter contracted by the Government of any such Colony under the authority of the Legislature thereof shall be deemed to be public securities within the meaning of this Act.

16. The discounts and advances by the corporation on securities bearing the name of any one director or other officer thereof as maker drawer

Branch banks not responsible for any but their own issue.

Bank may hold realty for business purposes

or as security for debts.

Real estate may be conveyed to bank.

Joint stock and shares to be personalty.

Unassayed gold to be "bullion."

Limitation of general liabilities.

Public securities defined.

Limitation of discounts to officers of bank.

Melbourne Sydney and Adelaide Chartered Bank.

Dividend not to be paid out of capital.

By-laws.

Further by-laws or deeds to be approved as original deed.

Who to keep and use corporate seal.

General meetings.

Audits to be half-yearly.

Neglect to be visited with penalties.

drawer acceptor or indorser shall not at any time exceed in amount one-third of the total advances and discounts of the corporation.

17. No dividend shall in any case be declared or paid out of the subscribed capital of the corporation or otherwise than out of the net gains and profits of their business.

18. The laws rules regulations clauses covenants and agreements contained in such deeds of settlement as aforesaid or in the said English deed alone until the making of such further or Colonial deed shall be deemed to be and shall be the by-laws of the corporation except in so far as the corporation (which they are hereby empowered to do) shall amend alter or repeal the same or any of them but no rule or by-law shall have any force or validity if the same shall be in opposition to the general scope or true intent and meaning of this Act or of any of the laws or statutes in force in the said Colony.

19. No by-law or supplemental deed that may be made shall have any force or validity until the same shall have been approved by the said Commissioners of the Treasury or by the Governor and a notice of such approval shall have been given under the hand of any two of such Commissioners or under the hand of the Colonial Secretary as aforesaid.

20. The directors of the corporation within the said Colony shall have the custody of the common seal hereinbefore mentioned and the form thereof and all other matters relating thereto shall be determined by the directors in the same manner as shall be provided in any such deed of settlement as aforesaid for the determination of other matters by such directors and the directors present at any duly convened meeting of directors shall have power to use the common seal for the affairs and concerns of the corporation and under such seal to authorize and empower any person without such seal to execute any deeds and do all or any such other matters or things as may be required to be executed and done on behalf of the corporation and in conformity with the provisions of this Act and of such deeds or deed of settlement as aforesaid but it shall not be necessary to use the corporate seal in respect of any ordinary business of the corporation or for the appointment of an attorney or solicitor for the prosecution or defence of any action suit or proceeding.

21. General meetings of the proprietors shall be held in the months of January and July in every year and at one of such meetings in every year to be determined by the directors two proprietors shall be elected to be auditors of the accounts of the corporation for the next year and within three weeks next before every such meeting the auditors for the time being shall fully examine into the accounts and affairs of the corporation and shall make a true and faithful report thereon which shall be submitted by them to the directors one week previously to such meeting and shall by such directors be submitted to the proprietors present thereat and the said auditors shall make a declaration before a Justice of the Peace that such report is to the best of their knowledge and belief a true and faithful report and statement of the accounts and affairs of the corporation and that the same is made by them after diligent and careful examination into such accounts and affairs and a duplicate copy of such report signed by such auditors and of every other report (if any) which shall be made to the proprietors at any general meeting by such or any other auditors specially appointed shall be transmitted to the office of the Colonial Secretary at Sydney for inspection thereof within thirty days from the making of such report.

22. If such examination by auditors into or report on the accounts and affairs of the corporation shall not be so made or if a duplicate copy of any such report shall not be so transmitted as aforesaid

Melbourne Sydney and Adelaide Chartered Bank.

said the corporation shall for every such omission forfeit and pay to Her Majesty for the public uses of the Colony the sum of one hundred pounds to be recovered by action of debt in the Supreme Court and if any such auditors shall at any time knowingly make or concur in a false or deceptive report on any of the matters aforesaid such auditor shall for every such offence forfeit and pay to Her Majesty for the like uses the sum of two hundred pounds to be recovered in the said Supreme Court and if any such auditor shall knowingly and wilfully make a declaration to any such false or deceptive report he shall be guilty of perjury and shall upon conviction thereof be liable to all the pains and penalties of perjury.

23. Periodical accounts or statements and general abstracts of the assets and liabilities of the corporation shall be prepared made out and published according to and subject to the provisions of the Act of Council passed in the fourth year of the reign of Her present Majesty and numbered thirteen.

24. The corporation shall not be bound in any manner by any trust or equitable interest or demand affecting any share standing in the name of any person as the ostensible proprietor thereof or be required to take any notice of such trust or equitable interest or demand but the receipt of the person in whose name the shares shall stand in the books of the corporation shall notwithstanding such trust or equitable interest or demand and notice thereof to the corporation be a good and valid discharge to the corporation for or in respect of any dividend or other money payable by the corporation in respect of such shares and a transfer of such shares by the person in whose name the same shall so stand shall be binding and conclusive so far as may concern the corporation against all persons claiming by virtue of such trust or equitable interest or demand. Provided that if in any case in which the corporation shall have had notice of any claim under an alleged trust or equitable interest or demand the same shall appear to the directors to be well founded the said directors may if they think fit withhold payment of the dividends on any such shares and refuse to sanction the transfer thereof. Provided also that nothing herein contained shall be construed to interfere with or abridge the right and power of a Court of Equity to restrain the payment of any such dividends or other money payable thereafter by the corporation in respect of any such shares or the subsequent transfer thereof or to direct the payment of such dividends or other money by the corporation or the transfer of such shares by the person in whose name they may stand to such other person as such Court may think fit.

25. In any action or suit to be brought by the corporation against any proprietor to recover any money due to the corporation by reason of any calls duly made it shall be sufficient for the corporation to declare and allege that the defendant being a proprietor of so many shares in the capital of the corporation is indebted to the corporation in such sum of money as the calls in arrear amount to for such and so many calls of such or so many sums of money upon such or so many shares belonging to the said defendant whereby an action hath accrued to the 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 calls or any other matters except that the defendant at the time of the making of such calls was a proprietor of some shares in the capital of the corporation and that such calls were in fact made and that such notice thereof was given according to the direction contained in any such deed of settlement as aforesaid and the corporation shall thereupon be entitled to recover the amount appearing to be due.

Emmeline Emma Blake and Patrick Mehan.

Act not to prejudice previous calls &c.

26. Nothing herein contained shall prejudice any call made or any contract or other act deed matter or thing entered into made or done by the company according to law before this Act shall come into operation but the same shall be as valid to all intents and purposes and may be carried out and enforced in like manner as if this Act had not been passed.

Execution against shareholders.

27. If any execution either at law or in equity shall have been issued against the property or effects of the said corporation and if there cannot be found sufficient corporate property whereon to levy such execution then such execution may be issued against any of the shareholders for the time being of the said corporation. Provided always that no such execution shall issue against such shareholder except upon the order of the Court in which the action suit or other proceeding shall have been brought or instituted made upon motion in open Court after sufficient notice in writing to the persons sought to be charged and upon such motion such Court may order execution to issue accordingly.

Responsibility of proprietors limited to double their subscription.

28. In the event of the assets of the corporation being insufficient to meet its engagements the proprietors shall be responsible to the extent of twice the amount of their subscribed shares only that is to say for the amount subscribed and for a further additional amount equal thereto.

Commencement of Act.

29. This Act shall commence and come into operation on the day of the passing thereof.