

No. XXI.

An Act to limit the Liability of Mining Partnerships. [9th May, 1861.]

LIMITED MINING
PARTNERSHIPS.

WHEREAS it is expedient that encouragement should be given Preamble.
for the investment of capital in Mining Adventures and that
provision should be made for the limitation of the personal liability of
shareholders in Mining Companies Be it therefore enacted by the
Queen's Most Excellent Majesty by and with the advice and consent
of the Legislative Council and Legislative Assembly of New South
Wales in Parliament assembled and by the authority of the same as
follows:—

1. This Act shall extend and apply only to Companies formed Application and interpretation of this Act.
or to be formed for mining purposes and in the construction and
interpretation of this Act the words "mining purposes" shall mean
the purpose of obtaining any precious or other metal by any mode or
method whatsoever whereby the soil or earth or any rock or stone
may be disturbed removed carted carried washed sifted smelted refined
crushed or otherwise dealt with for the purpose of obtaining such
metal whether such metal shall be the property of such Company or
of any other person whatsoever and the word "Company" shall
include any partnership or co-adventure.

2. Any shareholder in any Mining Company registered under Liability limited.
the provisions of this Act shall only be liable for any debts liabilities
or obligations incurred on behalf of such Company to the amount of
the share or shares for which such shareholder has agreed to subscribe
or of which he shall have become the holder by any transfer registered
in the books of the Company.

3. Every such Company shall appoint a Manager by and in Company to sue and be sued by and in name of Manager.
whose name the Company may sue or be sued plead or be impleaded
in all Courts and places whatever and no action or suit at Law or in
Equity shall be brought against any member of such Company for the
recovery of any debts contracted for or by the Company unless such
member shall be the Manager thereof Provided that nothing herein
contained shall be deemed to apply to any particular contract which
shall have been authorized by the person to be charged therewith.

Limited Mining Partnerships.

Contracts made by the Manager to be binding on the Company.

4. All contracts made by the Manager for the time being or by his authority for the purposes of the said Company shall be binding upon the Company and upon the assets thereof as herein provided and such assets may be seized and sold in execution in any action against such Manager for any debt incurred by him on behalf of the said Company.

Proceedings not to abate by death of Manager.

5. The death removal or resignation of such Manager shall not abate any such action or proceeding but the same may be continued and prosecuted in the name of the next succeeding Manager for the time being of the Company And if such Company shall neglect or fail to appoint such succeeding Manager then such action or proceeding may be continued and prosecuted in the name of the Company. Provided that no second suit action or proceeding shall be at any time commenced by or against such Company or such succeeding Manager where the merits shall have been tried and decided in the first suit or action.

Companies to be registered.

6. Any Company which may hereafter be formed under the provisions of this Act shall lodge with the Registrar of the District Court nearest to the place of operations or proposed operations a memorial in the form of the Schedule to this Act signed by the Manager of such Company and the said memorial shall be published in the *Government Gazette* and at least twice in one or more of the newspapers published and circulating in the district and copies of such *Gazette* and newspapers shall be forwarded to the said Registrar who shall thereupon proceed to register such Company And a copy of the said memorial shall within thirty days after such advertisement be filed in the Supreme Court Sydney.

Companies in existence may be registered.

7. Any Company formed previous to the passing of this Act may be registered under the provisions of this Act if a majority in number and value of the shareholders in such Company shall express their consent thereto in writing and such consent together with a memorial as hereinbefore provided shall be lodged with the Registrar of District Court nearest as aforesaid and shall be published in the *Government Gazette* and at least four times in one or more of the newspapers published and circulated in the district and copies of such publication shall be forwarded to the said Registrar And such Registrar shall thereupon at a period not less than thirty days after the date of such first-named publication proceed to register such Company Provided always that notwithstanding such registration any person having any claim or demand in respect of any contract matter or thing which shall have been made or happened before such registration shall have the same remedy as if such registration had not taken place.

Proof of registration and of appointment of Manager.

8. A copy of such memorial as hereinbefore mentioned purporting to be certified by the said Registrar of District Court whose handwriting it shall not be necessary to prove and sealed with the seal of such Court shall be *prima facie* evidence of the due appointment of such Manager and that the Company has been duly registered under the provisions of this Act.

Change of persons not to alter liability.

9. Notwithstanding any change in the persons who may constitute any Company registered under the provisions of this Act the persons who shall subsequently become members of such Company shall be subject to the same liability only as if they had been members of such Company at the time it was registered.

Company to add "Limited."

10. Every Company registered under this Act shall add to the style and title under which the business of such Company is carried on the word "Limited."

Company to have a registered office.

11. Every such Company shall have a registered office to which all communications and notices may be addressed and service of any notice at such office shall be deemed to be service upon the Company and

Limited Mining Partnerships.

and any Company which shall carry on business without having such an office shall be liable to a penalty not exceeding five pounds for every day during which business shall be so carried on.

12. Notice of the removal of any such registered office or of the substitution of any other person as Manager of any Company registered under this Act shall be lodged with the Registrar of District Court wherein such Company was originally registered and such Registrar shall thereupon proceed to record such removal or substitution.

Notice of removal or substitution to be registered.

13. The Manager of every Company registered under this Act shall keep or cause to be kept a book or books containing the names in full and residence of the shareholders an account of the number of shares held by each of them the said shareholders and of the amount or amounts paid thereon and every transfer of a share or portion of a share together with the name and residence of the transferee and such book or books shall at all times be open free of charge for the inspection of creditors and shareholders and if any Manager shall neglect to keep such book or books or shall wilfully falsify any of the aforesaid particulars he shall be deemed to be guilty of a misdemeanor.

Manager to keep a register of shareholders and shares.

14. The amount of calls which for the time being may be unpaid upon any share shall be deemed to be a debt due from the holder of such share to the Company and payment thereof may be enforced by and in the name of the Manager before any two or more Justices of the Peace.

Unpaid calls to be a debt.

15. The Manager of every Company registered under this Act shall make and publish in the *Government Gazette* in the months of January and July respectively in each year a full and correct account of the assets and liabilities of such Company and any Manager who shall wilfully falsify such accounts shall be deemed to be guilty of a misdemeanor.

Accounts to be periodically published.

16. Whenever any execution issued on a judgment decree or order in favour of any creditor in any action suit or other legal proceeding instituted by such creditor against any Company registered under this Act is returned unsatisfied either in whole or in part by the person appointed to execute the same or whenever any creditor to whom such Company is indebted in a sum exceeding fifty pounds then due has served on the Company a demand under his hand requiring the Company to pay the sum so due and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor such Company shall be deemed to be unable to pay its debts and any such creditor as aforesaid may make application for winding up the Company to the Judge of District Court of the district wherein such Company is registered.

Company may be wound up if unable to pay its debts.

17. Any application for the winding up of a Company registered under this Act shall be by petition and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the same.

Application to be by petition.

18. Upon the hearing of any petition as aforesaid the said Judge of District Court may dismiss such petition with or without costs to be paid by the petitioner or he may make an order directing the Company by a day to be named in such order to pay or secure payment to the petitioning creditor of all moneys that may be proved to be due to him together with such costs as such Judge may direct or the said Judge may if he so thinks fit on the hearing of such petition make an order or decree for winding up the Company forthwith or such other order as to such Judge shall appear to be just.

Hearing of petition.

19. If at the expiration of the time named in such order as aforesaid such payment is not made or security given the said Judge

Order for winding up Company.

Limited Mining Partnerships.

of District Court may thereupon make an order or decree for winding up the Company.

Company may be wound up by consent of majority of shareholders.

20. It shall be lawful for a majority of the shareholders being not less than two-thirds in number and value in any such Company in general meeting assembled and called by fourteen days notice advertised in some newspaper published in the district to pass special resolutions requiring the Company to be wound up under the provisions of this Act and thereupon a petition signed by the shareholders concurring therein and verified as hereinbefore directed may be presented by some person who shall be appointed at such meeting to the Judge of District Court of the district wherein such Company shall be registered and the Judge may if he so thinks fit on the hearing of such petition make an order or decree for winding up the Company forthwith or such other order as to such Judge shall appear to be just.

Judge of District Court to receive proof of debts.

21. The said Judge of District Court shall have power to receive proof of debts and to examine witnesses and shall proceed herein in the same manner or as near as may be as the Chief Commissioner of Insolvent Estates.

Official Agent to be appointed.

22. When the Judge of District Court shall make any order or decree for winding up any such Company he shall appoint a competent person to act as Official Agent therein and such Official Agent shall have power to collect all debts and to sell or dispose of all the assets owing and belonging to such Company and to enforce payment by the shareholders of the amounts if any unpaid upon the shares held by them or any of them.

Distribution of assets.

23. All moneys collected by such Official Agent shall be distributed by him amongst the creditors of the Company in proportion to their several claims and if any balance shall remain after all the creditors shall have been paid in full of their just demands then such balance shall be divided amongst the shareholders of the Company in proportion to their respective shares therein. Provided that such Official Agent shall be entitled to retain for his own use and in payment for his services a sum equal to five pounds per centum upon the amount so collected by him.

Shareholders liable to contribute if Company is wound up to the extent of their shares.

24. If any such Company shall be wound up as hereinbefore provided and the assets of such Company shall be insufficient to pay the debts of the Company and the costs charges and expenses of winding up the same every shareholder shall be liable to contribute thereto in proportion to his interest in such Company and such contribution may be enforced by and in the name of the Official Agent before any two or more Justices of the Peace. Provided that such contribution shall in no case be in excess of the amount if any unpaid on the shares held by any such shareholder.

Agent to publish schedule.

25. At least one month before making such distribution the Official Agent shall make and publish in the *Government Gazette* and in one or more newspapers published and circulating in the district wherein mining operations have been carried on by such Company a schedule shewing the assets and liabilities of the Company the amount of moneys collected by him and the mode of distribution thereof and any such Official Agent who shall knowingly and wilfully falsify such schedule shall be deemed to be guilty of a misdemeanor and shall be dealt with accordingly.

Company may issue preference shares.

26. It shall be lawful for any Company registered under this Act to issue preference shares within the limits of the Company's nominal capital for the security of and in payment of rent for any machinery or materials or both which shall be furnished by any person whether a member of such Company or otherwise for the use and benefit of such Company and such preference shares shall be a first charge upon the profits and a first claim upon any effects of the Company

Cattle Driving.

pany and all machinery and materials furnished as aforesaid shall be registered with full particulars by the Registrar of District Court as the property of the person or persons furnishing the same and the preference shares issued in that behalf shall take priority in the order of the date of issue. Provided always that no preference shares shall be issued without the consent in writing of a majority in number and value of the shareholders and all such preference shares shall be subject to all debts and liabilities of the Company at the date of the issuing of such preference shares as aforesaid.

27. Any machinery or materials furnished and registered as aforesaid shall not be levied upon for any debt or liability of the Company renting the same but any machinery or materials or both which shall be upon the claim or be used by a Company registered under this Act and not registered as aforesaid may be levied upon and sold as though it were the property of the Company.

Liability of machinery or materials furnished and registered.

28. Any Company registered under this Act shall be empowered to mortgage or give lien upon any plant or machinery the property of such Company. Provided always that every such mortgage or lien shall be subject to any and every debt and liability which shall have been incurred prior to and remain unpaid at the time of the Company contracting such mortgage or lien but shall take priority of all liens given and debts and liabilities contracted subsequently thereto and provided further that all liens given as aforesaid shall be registered with full particulars by the Registrar of District Court.

Company may mortgage their own plant or machinery.

SCHEDULE.

I the undersigned [*here insert Manager's name*] hereby make application to register [*here insert the name of the Company*] under the provisions of the "*Mining Partnerships Limited Liability Act 1861*" and I do solemnly and sincerely declare that the following statement is to the best of my belief and knowledge true in every particular namely—

1. The name and style of the Company is
2. The place of operations [*or intended operations as the case may be*] is at
3. The nominal capital of the Company is pounds in
shares of each
4. The amount already paid up is
5. The name [*in full*] of the Manager is
6. The office of the Company is at
7. The names [*in full*] and several residences of the shareholders and the number of shares held by each at this date are as follows :—

[*Here insert complete list.*]

(Signed)

A. B.

Manager.

Witness to signature—

C. D.