

ANNO VICESIMO QUINTO

VICTORIAE REGINÆ.

An Act to incorporate "The Tomago Coal Mining Company." [29th October, 1861.]

TOMAGO
COAL MINING
COMPANY.

WHEREAS a joint stock company called "The Tomago Coal Mining Company" has been lately established at Sydney in the Colony of New South Wales under and subject to the rules regulations and provisions contained in a certain deed of settlement bearing date the twenty-first day of September in the year of our Lord one thousand eight hundred and sixty-one purporting to be the deed of settlement of the said company. And whereas by the said deed of settlement the several parties thereto have respectively and mutually covenanted and agreed that they whilst holding shares in the capital of the said company shall be and continue until dissolved under the provisions in that behalf therein contained a joint stock company or partnership under the name style and title of "The Tomago Coal Mining Company" for working or contracting for the working of the coal and other minerals in or upon any land of which the said company may from time to time be owners or lessees for purchasing or taking on lease coal or other mineral lands or the coals or other minerals thereupon or thereunder and for working the same for following up and acting upon any trade or purpose mentioned in any regulations for the management or conduct of coal or other mines in the said Colony of New South Wales for purchasing the necessary machinery for working the said mines for testing the mining capabilities of any land purchased or taken on lease or intended to be purchased or taken on lease or the coal or minerals whereon are or may be purchased or taken on lease or intended to be purchased or taken on lease by the said company for draining any mines or any other purposes in connection therewith for exporting selling or otherwise disposing of all coal or other minerals to be raised from any land belonging to or taken on lease by the said company or from any land whatever for disposing of the timber on any such land for raising fire-clay for making and disposing of fire-bricks for making and disposing of coke for letting or selling any such lands for constructing railways roads wharves and other matters necessary for the promotion of the objects of the said company and for such other purposes as shall from time to time be agreed on as thereafter mentioned. And it was by the same deed of settlement agreed that the capital of the said company should consist of twenty thousand pounds to be contributed in five thousand shares of four pounds each and of such further sum or sums as might thereafter be raised by the creation and sale of new shares of the like amount as therein provided. And whereas by the same deed of settlement provision has been made for the due management of the affairs of the company by certain directors already appointed and by other directors to be from time to time elected and appointed as their successors by the shareholders of the said company. And whereas the said company is desirous of being incorporated and it is expedient that the said company should be incorporated accordingly

Tomago Coal Mining Company.

ingly subject to the provisions hereinafter contained. 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—

Company incorporated.

1. Such and so many persons as have already become or at any time or times hereafter shall and may in the manner provided by and subject to the rules regulations and provisions contained in the said deed of settlement become shareholders or proprietors of shares of or in the capital for the time being of the said company shall subject nevertheless to the conditions regulations and provisions hereinafter contained be one body politic and corporate by name and in deed by the name of "The Tomago Coal Mining Company" and by that name shall and may sue and be sued by any persons whether members of the said corporation or not and shall and may implead and be impleaded in all Courts whatsoever at law or in equity and may prefer levy and prosecute any indictment information and prosecution against any person whomsoever whether a shareholder or not for any stealing embezzlement fraud forgery or other 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 to designate the said company by its corporate name whenever for the purpose of any allegation of an intent to defraud or otherwise howsoever such designation shall be necessary 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.

Deed of settlement confirmed.

2. The several laws rules regulations clauses and agreements contained in the said deed of settlement or to be made under or by virtue or in pursuance thereof 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 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 of any of the laws or statutes now or hereafter to be in force in the said Colony. 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 deed of settlement or of this Act in opposition to the general scope or true intent and meaning of this Act or of any of the laws or statutes in force for the time being in the said Colony.

Increase of capital.

3. It shall be lawful for the said corporation from time to time to extend or increase its capital for the time being by the creation and disposal of new shares in the manner specified and set forth and subject to the rules regulations and provisions contained in the said deed of settlement.

Capital and shares to be personalty.

4. The capital or joint stock for the time being and all the funds and property of the said corporation and the several shares therein and the profits and advantages to be derived therefrom shall be and be deemed to be personal estate and be transmissible accordingly subject to the regulations of the said deed of settlement.

Trusts or equitable interests affecting.

5. The corporation shall not be bound by any trusts or equitable interests or demands affecting any shares of the capital standing in the name of any person as the ostensible shareholder or proprietor thereof or be required to take any notice of such trusts or equitable interests or demands but the receipt of the person in whose name the shares shall stand in the books of the said corporation shall notwithstanding such trusts or equitable interests or demands and notice thereof to the said corporation be a good valid and conclusive discharge to

Tomago Coal Mining Company.

to the corporation for or in respect of such shares and a transfer of the said shares in accordance with the regulations in that behalf contained in the said deed of settlement by the person in whose name such shares shall so stand shall notwithstanding as aforesaid be binding and conclusive as far as may concern the said corporation against all persons claiming by virtue of such trusts or equitable interests or demands Provided always that nothing therein or herein contained shall be deemed or taken to interfere with or abridge the right and power of a Court of Equity to restrain the payment of any such dividend or other money payable thereafter by the corporation in respect of any such shares or the transfer thereafter of any such shares or to direct the payment of such dividend 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.

6. It shall be lawful for the said corporation notwithstanding ^{Power to take and hold lands &c.} any statute or law to the contrary to purchase take hold and enjoy to them and their successors for any estate term of years or interest or under license any coal or other mineral lands whatsoever and all such houses offices buildings and other lands and hereditaments as may be necessary or proper for the purpose of managing and conducting and carrying on the affairs concerns and business of the said corporation and to sell convey assign assure lease and otherwise dispose of or act in respect of such coal or other mineral lands houses offices buildings and other lands and hereditaments as occasion may require.

7. It shall and may be lawful to and for all persons who are or shall be otherwise competent so to do to grant sell alien and convey demise assign assure and dispose of unto and to the use of the said corporation and their successors for the purposes aforesaid or any of them any such houses offices lands mines minerals hereditaments and other real estate whatsoever as aforesaid accordingly. ^{Conveyance to the corporation.}

8. No dividend or bonus shall in any case be declared or paid ^{Dividend from the profits.} out of the subscribed capital for the time being of the said company or otherwise than out of the declared surplus capital and net gains and profits thereof.

9. In any action or suit to be brought by the said corporation ^{Actions or suits for calls.} against any shareholder or proprietor of any shares in the capital of the said corporation to recover any sum of money due and payable to the said corporation for or by reason of any call made by virtue of this Act or of the said deed of settlement it shall be sufficient for the corporation to declare and allege that the defendant being a holder of such or so many shares in the capital of the said corporation is indebted to the said corporation in such sum of money (as the calls in arrear shall amount to) for such call of such sum of money upon such or so many shares belonging to the said defendant 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 who made such call or any other matters except that the defendant at the time of making such call was a holder or proprietor of one or more share or shares in the capital of the said corporation and that such call was in fact made and that such notice thereof and of the time fixed for the payment thereof was given as is directed by the said deed of settlement and the said corporation shall thereupon be entitled to recover what shall appear due.

10. The share register of the said company shall at all times ^{Share register to be evidence of ownership.} be *prima facie* evidence to show who are the shareholders or proprietors for the time being of the capital thereof and the number of shares held by each shareholder.

11. Nothing herein contained shall prejudice or be deemed to ^{Contracts &c. under the deed of settlement before Act.} prejudice any call made or any contract or other act deed matter or thing

Tomago Coal Mining Company.

thing entered into made or done by the said company prior to or under or by virtue of the said 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 made entered into or done.

Liability of shareholders.

12. In the event of the assets of the corporation being insufficient to meet its engagements the shareholders shall in addition to the amount of their subscribed shares in the capital of the said corporation be responsible to the extent only of a sum equal to the amount of their said shares.

Custody and use of corporate seal.

13. The directors for the time being shall have the custody of the common seal of the said corporation and the form thereof and all other matters relating thereto shall from time to time be determined by the board of directors in the same manner as is provided in and by the said deed of settlement for the determination of other matters by the board of directors. And the directors present at a board of directors of the said corporation shall have power to use such common seal for the affairs and concerns of the said 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 and things as may be required to be executed and done on behalf of the said company in conformity with the provisions of the said deed of settlement and of this Act. But it shall not be necessary to use the corporate seal in respect of any of the ordinary business of the company or for the appointment of an attorney or solicitor for the prosecution or defence of any action suit or proceeding.

Retirement and election of directors.

14. The directors of the said company appointed by the said deed of settlement shall go out of office in the manner provided by the deed of settlement. And vacancies in the directors shall be filled up at the times and in manner provided by the said deed of settlement and shall otherwise be subject to the several provisions therein in that behalf contained.

Power to borrow on mortgage or debentures.

15. It shall and may be lawful for the board of directors in pursuance of a resolution to that effect to be passed at special general meetings of the shareholders to be called for the purpose from time to time to borrow upon mortgage of the property of the company or upon debentures chargeable thereon issued under the hands of any two of the directors named in such resolutions any sum or sums of money not exceeding in the whole an amount equal to one-half of the paid up capital of the company. Provided always that the shareholders present at any such meeting either in person or by proxy specially given for the occasion shall hold shares representing not less than one-third of the paid up capital of the company.

Act to be deemed a public Act.

16. 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 and the same whenever cited shall be sufficiently described as "The Tomago Coal Mining Company's Incorporation Act 1861."

To be cited as "The Tomago Coal Mining Company's Incorporation Act 1861."

Interpretation clause.

17. 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 plural number shall include the singular and words importing the masculine gender shall include females and bodies corporate as well as individuals.