

An Act to incorporate the Sydney Marine Assurance Company. [7th April, 1866.]

SYDNEY MARINE
ASSURANCE
COMPANY'S INCOR-
PORATION.

WHEREAS a Joint Stock Company called the "Sydney Marine Assurance 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 second day of October one thousand eight hundred and sixty-five purporting to be the deed of settlement of the said Company And whereas by the said deed of settlement the several parties thereto (other than the nominal covenantee therein named) have respectively and mutually covenanted and agreed that they whilst holding shares in the capital of the said Company would remain and continue until such Company should be dissolved under the provisions in that behalf therein contained a Joint Stock Company under the name style and title of the "Sydney Marine Assurance Company" for the purpose of effecting and carrying out the objects or business therein particularized being such and the same as are enumerated in section five of this Act And whereas it was by the said deed of settlement agreed that the capital of the said Company should consist of one hundred thousand pounds sterling to be divided into twenty thousand shares of the amount of five pounds each and of such further sum or sums as might thereafter be raised by the creation allotment and sale of new shares as therein provided And whereas by the said deed of settlement provision has been made for the due management of the affairs of the said Company by certain Directors and Auditors already appointed and by other Directors and Auditors to be from time to time elected and appointed as their successors by the shareholders of the said Company And whereas seventeen thousand of the said shares have been duly allotted and taken up and a deposit of ten shillings per share has been paid up thereon and the remaining three thousand shares have been reserved for future allotment as in the said deed of settlement provided And whereas the said Company is desirous of being incorporated and it is considered that it will be advantageous not only to the said Company but also to the mercantile shipping and other interests of New South Wales that it should be incorporated accordingly 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. The following words and expressions in the Act shall have Interpretation clause. the several meanings hereby assigned to them unless there be something in the subject or the context repugnant to such construction that is to say—

The expression "the Company" shall mean the Company The Company. incorporated by this Act

The expression "the Directors" shall mean the Board of Directors The Directors. of the Company duly appointed under the provisions of the said deed of settlement

The word "shareholder" shall mean shareholder proprietor or Shareholder. member of the Company

The expression "deed of settlement" shall mean and include Deed of settlement. the said recited deed and any alterations additions and amendments that may from time to time be made in or to the same in pursuance of the provisions in that behalf therein contained.

Sydney Marine Assurance Company's Incorporation.

Company incorporated.

2. Every person who has already become or at any time hereafter shall or may in the manner provided by and subject to the rules regulations and provisions contained in the deed of settlement become holders of shares of or in the capital for the time being of the Company shall for the purposes aforesaid but subject nevertheless to the conditions regulations and provisions hereinafter contained be one body politic and corporate in name and in deed by the name of the "Sydney Marine Assurance Company" and by that name shall and may sue and implead any person whether a member of the Company or not and may be sued and impleaded by any such person in all Courts whatsoever at law or in equity and may prefer lay and prosecute any indictment information or prosecution against any person whomsoever whether a shareholder or not 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 whatsoever nature (the subject of such proceedings) to be the money goods effects bills notes securities or other property of the Company and to designate the 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 Company shall have perpetual succession with a common seal which may be altered varied and changed from time to time at the pleasure of the Company.

Deed of settlement confirmed.

3. The several laws rules regulations clauses and agreements contained in the deed of settlement or to be made in pursuance of the provisions for that purpose therein contained are and shall be the by-laws for the time being of the Company 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 with or repugnant to any of the provisions of this Act or of 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 the manner provided by the deed of settlement but no rule or by-law shall on any account or pretence whatsoever be made by the Company either under or by virtue of the deed of settlement or of this Act in opposition to the general scope or true intent and meaning of the deed of settlement or of this Act or of any of the laws or statutes in force in the said Colony.

Evidence of by-laws.

4. The production of a written or printed copy of the deed of settlement or of any by-laws to be made in pursuance thereof or in pursuance of this Act having the common seal of the Company affixed thereto shall be sufficient evidence in every Court of civil or criminal jurisdiction of such deed of settlement or of such by-laws.

General business of the Company.

5. It shall be lawful for the Company subject to the restrictions and provisions herein contained to carry on the business of effecting assurances against the risks of loss or damage whether at sea in harbours or navigable rivers to ships vessels or other craft or goods on board ships vessels or other craft or in course of transit overland or of conveyance in any lighter boat or other craft or any dray or other vehicle to or from any ship vessel or other craft also to goods by fire or flood in sheds stores or elsewhere while waiting shipment or transhipment also against loss of freight or all or any of such risks or of any other maritime risks whatsoever and generally to carry on as principal or agent any business in connection with maritime assurance allowed by law in any part of the world with full power in the matters aforesaid to enter into treaty act or unite with amalgamate with buy up or absorb any other Marine Insurance Company office or body or any other Company for the time being carrying on business similar to that for the time being carried on or determined to be carried on by the Company and to carry on and conduct any other business which may

Sydney Marine Assurance Company's Incorporation.

may be determined upon in pursuance of the powers for that purpose in the deed of settlement contained.

6. The shares in the capital property and profits of the Company ^{Shares to be personal estate.} shall be personal estate and transmissible as such subject to the restrictions for that purpose contained in the deed of settlement and shall not be of the nature of real estate.

7. Subject to the restrictions for this purpose in the deed of ^{Transfer of shares to be by deed.} settlement contained every shareholder may sell or transfer all or any of his shares in the capital of the Company (but not a fractional part of a share) and every such transfer shall be by deed and according to a form to be approved of by the Directors.

8. Upon the assignee of any insolvent shareholder or the ^{The assignee or trustees of any insolvent or assigned estate to nominate some person to become proprietor.} trustees of any estate assigned for the benefit of creditors electing to accept the shares of any insolvent shareholder or of any such assigned estate such assignee or trustees shall forthwith nominate some other person or persons to become a proprietor or proprietors in respect of such shares such nominee or nominees to be subject to the approval of the Directors but in no case shall such assignee or trustees be themselves entitled to become shareholders in respect of the shares of any insolvent shareholder or of any estate assigned for the benefit of creditors.

9. The Company shall not be bound to notice or see to the ^{Company not bound to regard trusts.} execution of any trust or equitable interest or claim whether express implied or constructive to which any share may be subject and the receipt of the party in whose name any such share shall stand in the books of the Company or if it stands in the name of more parties than one the receipt of the one of the parties recognizable as a shareholder under the provisions of the deed of settlement shall from time to time be a sufficient discharge to the Company for any dividend or other sum of money payable in respect of such share notwithstanding any trust or equitable interest or claim to which such share may then be subject and whether or not the Company have had notice of such trust or equitable interest or claim and the Company shall not be bound to see to the application of the money paid upon such receipt and every share shall be subject to the engagements and liabilities to which under the provisions of the deed of settlement the same is rendered liable irrespective and to the exclusion of any such trust equitable interest or claim.

10. In any action or suit to be brought by the Company against ^{Declaration in action for calls.} any shareholder to recover the money due for any call made by virtue of this Act or of the deed of settlement it shall not be necessary to set forth the special matter but it shall be sufficient for the Company to declare that the defendant is the holder of one share or more in the capital of the Company (stating the number of shares) and is indebted to the Company in the sum to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls) whereby an action hath accrued to the Company.

11. On the trial or hearing of such action or suit it shall be ^{Matter to be proved in action for calls.} sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the capital of the Company and that such call was in fact made and such notice thereof given as is provided for that purpose in the deed of settlement and it shall not be necessary to prove the appointment of the Directors who made such call nor any other matter whatsoever and thereupon the Company shall be entitled to recover what shall be due upon such call with interest thereon.

12. No dividend shall in any case be declared or paid out of ^{Dividend not to be paid out of subscribed capital.} the subscribed capital for the time being of the Company.

Sydney Marine Assurance Company's Incorporation.

Company may hold
lands &c.

13. It shall be lawful for the Company notwithstanding 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 any houses offices buildings or lands necessary or expedient for the purpose of managing conducting and carrying on the affairs concerns and business of the Company also to build suitable offices on land purchased for that purpose and also to take and to hold until the same can be advantageously disposed of for the purpose of reimbursement only any lands or property which may be taken by the Company in satisfaction liquidation or discharge of any debt due to the Company or in security for any debt or liability and that whether the same shall be subject to any existing lien mortgage or charge in favour of the Company or not and to sell enfeoff release convey demise assign exchange or otherwise dispose of all or any such houses offices buildings lands and property as occasion may require.

Conveyance to Cor-
poration.

14. It shall and may be lawful for every person who is or shall be otherwise competent to grant sell alien release convey assign assure demise and dispose of unto and to the use of the Company and their successors for the purposes aforesaid or any of them any such houses offices lands or property.

Property at present
in Trustees to become
vested in Corpora-
tion.

15. All the lands securities bonds covenants debts money choses in action and things at present vested in the Trustees of the Company or any other person on behalf of the Company shall immediately after the passing of this Act become vested in the Company for the same estate and interest and with the like powers and authorities as the same are now vested in the said Trustees or other person without any assignment or conveyance whatsoever.

Increase of capital.

16. It shall be lawful for the Company to increase its capital by the issue of new shares in the mode prescribed by and in accordance with the provisions of the deed of settlement.

Power to borrow.

17. It shall be lawful for the Company from time to time as the Directors shall see fit to procure such advances and borrow and otherwise obtain such moneys for the benefit and purposes of the Company upon the security of the funds and capital thereof and at such rate of interest as the Directors may think advisable and for the purposes aforesaid the Company shall have full power to establish cash credits execute cash credit bonds and to discount or otherwise negotiate promissory notes bills of exchange drafts or orders and the powers hereby conferred shall in no way restrict the power conferred by the deed of settlement on the Manager and any one Director to sign draw indorse and accept bills of exchange promissory notes and other negotiable instruments and in the exercise of any of the powers aforesaid it shall not be obligatory on the person or persons treating or dealing with the Company to see to the application of the moneys advanced or paid to the Company or the object or purpose with or for which such powers were exercised.

Act not to prejudice
any contract already
entered into.

18. Nothing in this Act contained shall be construed to prejudice any call made or any contract entered into by or with the Company or any person on behalf of the Company before this Act shall have come into operation but the same call or contract shall be as valid to all intents and purposes as if this Act had not been passed and may be enforced in like manner as if the Company had been incorporated before such call was made or such contract was entered into.

Shareholders' regis-
ter book to be
evidence.

19. The production of the shareholders' register book to be kept in accordance with the provisions of the deed of settlement shall be admitted in all Courts of civil and criminal jurisdiction as *prima facie* evidence of the person named therein as a shareholder being such shareholder and of the number of his shares and every shareholder or other

Sydney Marine Assurance Company's Incorporation.

other person having a judgment at law or a decree in equity against the Company may at all convenient times peruse the shareholders' register book gratis and may require a copy thereof or of any part thereof and for every one hundred words so required to be copied the Company may demand a sum not exceeding one shilling and a printed list of the shareholders shall be prepared in the month of October in each year and kept exposed in the office of the Company in Sydney until the month of October following when the new and revised list shall be substituted therefor.

20. If any execution either at law or in equity shall have been issued against the property or effects of the Company and if there cannot be found sufficient whereon to levy such execution then such execution may be issued against any of the shareholders for the time being or any former shareholder of the Company. Provided always that no such execution shall issue against any such shareholder or former 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 person sought to be charged and upon such motion such Court may order execution to issue accordingly. Provided further that in the case of execution against any former shareholder it shall be shewn that such former shareholder was a shareholder of the Company at the time when any contract or engagement was entered into for breach of which contract or engagement such execution shall have issued or become a shareholder during the time such contract or engagement was unexecuted or unsatisfied or was a shareholder at the time the judgment or decree was obtained upon which judgment or decree such execution shall have issued. Provided also that in no case shall such execution be issued against the person property or effects of any former shareholder after the expiration of two years after the person sought to be charged shall have ceased to be a shareholder of the Company.

21. Every person against whom or against whose property or effects execution upon any judgment decree or order obtained as aforesaid shall have been issued as aforesaid shall be entitled to recover against the Company all losses damages costs and charges which such person may have incurred by reason of such execution and after due diligence used to obtain satisfaction thereof against the property and effects of the Company such person shall be entitled to contribution for so much of such losses damages costs and charges as shall remain unsatisfied from the several other persons against whom execution upon such judgment or decree obtained against the Company might also have been issued under the provision in that behalf aforesaid and such contribution may be recovered from such persons as aforesaid in like manner as contribution in ordinary cases of co-partnership.

22. In the cases provided by this Act for execution on any judgment decree or order in any action or suit against the Company to be issued against the person or against the property and effects of any shareholder or former shareholder of the Company or against the property and effects of the Company at the suit of any shareholder or former shareholder in satisfaction of any money damages costs and expenses paid or incurred by him as aforesaid in any action or suit against the Company such execution may be issued by leave of the Court or of a Judge of the Court in which such judgment decree or order shall have been obtained upon motion or summons for a rule to shew cause or other motion or summons consistent with the practice of the Court without any suggestion or *scire facias* in that behalf and it shall be lawful for such Court or Judge to make absolute or discharge such rule or allow or dismiss such motion (as the case may be) and to direct the costs of the application to be paid by either party or to

Sydney Marine Assurance Company's Incorporation.

to make such other orders herein as to such Court or Judge shall seem fit and in such cases such form of writs of execution shall be sued out of the Courts of Law and Equity respectively for giving effect to the provisions in that behalf aforesaid as the Judges of such Courts respectively shall from time to time think fit to order and the execution of such writs shall be enforced in like manner as writs of execution are now enforced. Provided that any order made by a Judge as aforesaid may be discharged or varied by the Court on application made thereto by either party dissatisfied with such order. Provided also that no such motion shall be made nor summons granted for the purpose of charging any shareholder or former shareholder until ten days' notice thereof shall have been given to the person sought to be charged thereby.

Manager to do certain acts.

23. In all cases in which by any Act of Parliament or by any rule or order of the Supreme Court or any other Court now or hereafter to be in force in this Colony the plaintiff or defendant in any action suit or other proceeding or any creditor of an insolvent estate or any person being a party to or interested in any process or proceeding whatsoever is or shall be authorized empowered or required to make any affidavit or to sign or present any petition or to do any other act it shall be lawful and competent for the Manager or other officer or agent of the Company (where such Company shall be such plaintiff defendant or creditor or be a party to or otherwise interested in any process or proceeding whatsoever as aforesaid) for and on behalf of the Company to make any such affidavit sign or present any such petition or do any such other act as aforesaid. And all the powers in the deed of settlement or by this Act conferred on the Manager of the Company shall be exercisable by the Acting Manager for the time being of the Company.

Custody and use of corporate seal.

24. The Directors for the time being shall have the custody of the common seal of the Company and the form thereof and all other matters relating thereto shall from time to time be determined by the Directors in the same manner as is provided by the deed of settlement for the determination of other matters by the Directors and the Directors present at a Board of Directors of the Company shall have power to use such common seal for the affairs and concerns of the Company and to authorize and depute the Manager or any one of their body to use or affix the same (provided the affixing of such seal be evidenced by the signature opposite thereto of at least one Director) and under such seal to authorize and empower any person without such seal to execute any deeds or policies and do all or any such other matters and things as may be required to be executed and done on behalf of the Company in conformity with the provisions of the deed of settlement and of this Act but it shall not be necessary to use the common seal for the appointment of an attorney or solicitor for the prosecution or defence of any action suit or proceeding for the execution of any policy of assurance or slip or receipt for the same (which latter instruments may be executed in conformity with the provisions in that behalf in the deed of settlement contained) or for or in respect of any other of the ordinary business and objects of the Company.

Short title of Act.

25. In citing this Act in other Acts of Parliament and in legal instruments or otherwise it shall be sufficient to use the expression "the Sydney Marine Assurance Company's Incorporation Act 1866."