

An Act to incorporate the "Western Kerosene Oil Company Limited" and to enable the said Company better to carry on and transact the business of the same. [1st February, 1868.]

WESTERN
KEROSENE OIL
COMPANY'S
INCORPORATION.

WHEREAS a Joint Stock Company called the "Western Kerosene Oil Company Limited" 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 twelfth day of February one thousand eight hundred and sixty-six 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 should become remain and continue until dissolved under the provisions in that behalf therein contained a Joint Stock Company for the express object of carrying on the business thereof under the name style and title of the "Western Kerosene Oil Company Limited" for the purpose of working or contracting for the working of the coal or other mineral or mines in or upon certain lands in the said Deed of Settlement mentioned or upon any land of which the said Company might from time to time be owners or lessees and to purchase or lease coal shale or other mineral lands to follow up and act upon any trade or purpose mentioned in any regulations for the management or conduct of coal shale or other mines in the said Colony of New South Wales already promulgated or hereafter to be promulgated to purchase coal shale or mineral and make allowances on deposit or consignment thereof to purchase or employ machinery for working the said mines and for crushing or working or refining any coal shale mineral rocks loam earth or soil and to extract distil and refine any oils or other products therefrom or for testing the mining capabilities of any land purchased or leased or intended to be purchased or leased by the said Company to dispose of the timber on any such lands to lease or sell any such lands and to construct railways roads wharves buildings and other matters necessary for the promotion of the objects of the said Company and such coal shale minerals oil and products to produce extract and distil in such manner and in such quantities as the Board of Directors for the time being in their discretion might think fit and also to sell export or otherwise dispose of all such coal shale and minerals or the products thereof either in a natural state or manufactured condition in such markets and generally in such manner and form as the Board of Directors might think most beneficial to the interests of the said Company. And whereas it was by the said Deed of Settlement agreed that the capital of the said Company should until increased under the provisions in the said Deed of Settlement contained consist of fifty thousand pounds sterling to be contributed in fifty thousand shares of one pound each as in the said Deed of Settlement is more fully specified. And whereas by the said Deed of Settlement provision has been made for the due management of the affairs of 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 the whole of the said capital of fifty thousand pounds sterling has been

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subscribed for And whereas the said Company is desirous of being incorporated and it is expedient that the said Company 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:—

Interpretation clause.

1. The following words and expressions in this Act shall have 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 Company.”

The expression “the Company” shall mean the Company incorporated by this Act.

The Directors.”

The expression “the Directors” shall mean any Board of Directors of the Company duly appointed under the provisions of the Deed of Settlement of the Company.

“Shareholder.”

The word “Shareholder” shall mean Shareholder proprietor or member of the Company.

“Deed of Settlement.”

The expression “Deed of Settlement” shall mean the Deed of Settlement of the Company and any addition to alteration or amendment thereof which may be made in pursuance of the provisions thereof.

Company incorporated.

2. Such and so many persons as have already become or at any time or times hereafter shall or may in the manner provided by and subject to the rules regulations and provisions contained in the said Deed of Settlement become holders of shares of or in the capital for the time being of the 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 Western Kerosene Oil Company Limited” and by that name shall and may grant and receive and shall and may sue and implead any person whether a member of the Company or not and may be sued and impleaded by any person whether a member of the Company or not 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 crime or offence whatsoever and in all indictments informations and prosecutions it shall be lawful to state the money goods effects bills notes securities or other property of whatsoever nature of the Company relative to which such indictment information or prosecution is preferred laid or prosecuted to be the money goods effects bills notes securities or other property of the Company and generally to designate the Company by its corporate name whenever for any purpose whatsoever such designation shall be necessary and expedient 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 or of the Directors thereof.

Deed of Settlement confirmed and clauses &c. therein to be the by-laws for the time being of the Company.

3. The several laws rules regulations clauses and agreements contained in the said 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 now or hereafter to be 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 said 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 said Deed of Settlement or of this Act in opposition to the

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the general scope or true intent and meaning of the said Deed of Settlement or of this Act or of any of the laws or statutes in force in the said Colony.

4. The production of a written or printed copy of the said Deed of Settlement or of any rules by-laws or regulations 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 rules by-laws or regulations. Evidence of by-laws.

5. It shall be lawful for the said Company subject to the restrictions and provisions herein and in the said Deed of Settlement contained to work or contract for the working of the present mines of the said Company whether coal shale or bituminous mineral and all other the lodes veins and strata of metallic or other ores and minerals upon or under the surface of the lands and hereditaments in the said Deed of Settlement mentioned and such other lands and hereditaments as may hereafter be purchased or taken on lease or license by the said Company under the provisions hereinafter and in the said Deed of Settlement contained and also to extract the oils naptha benzole paraffine and all other products obtainable from the said coal shale or other minerals and to refine such oil and to erect all such machinery as may be necessary for that purpose and also if deemed advisable to carry on the business of sulphuric acid manufacturers and to manufacture all such other products as may be necessary or required in their business and calling of manufacturers of oil and other products obtainable from the said coal and other minerals and to construct railways roads and wharves and to do all other matters necessary for the promotion of the objects of the said Company and to purchase any metallic ores or minerals and to make advances on deposit or consignment thereof and to wash stamp or otherwise render merchantable the ores and minerals so gotten purchased or obtained and to smelt and refine such ores and minerals and also to sell export or otherwise dispose of all or any such coal shale ores and other minerals and the oils other products thereof in such condition in such market and generally in such manner and form as the Board of Directors shall think most beneficial to the interests of the Company and also if deemed expedient to carry on the business of smelting or otherwise preparing for market any ores or minerals belonging to other persons or bodies upon such terms as shall be deemed advisable and also to purchase lease or rent any patent right for any manufacture art process or invention in force in the said Colony or elsewhere for aiding or promoting the distillation or manufacture of any oil or other product of any coal shale or other mineral employed or operated on by the said Company in its said business or calling and also to dispose of lease or relet any such patent right as aforesaid to any person or persons on such terms and in such manner as to the said Directors shall seem fit.

6. It shall be lawful for the Company notwithstanding any statute or law to the contrary to keep and use any retorts stills or other apparatus used and employed in the process of distillation for the purpose of retorting distilling manufacturing or refining mineral and other oils from coal shale or other bituminous mineral. Power to use certain apparatus.

7. 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 in fee simple or for any estate term of years or interest or under license any mineral or other lands mines houses offices buildings and hereditaments as may be necessary or proper for the purpose of managing conducting and carrying on the affairs concerns and business of the Company And to sell convey assign assure release Power to purchase and hold lands &c.

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release encoff demise or otherwise dispose of or act in respect of such lands mines houses offices buildings and hereditaments as occasion may require.

Power to sell to Company.

8. It shall be lawful for any person who is competent so to do to grant sell alien release and 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 mineral or other lands mines houses offices buildings and hereditaments or to grant to the Company a license for working any such mineral or other lands mines and hereditaments.

Increase of capital.

9. It shall be lawful for the Company 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 in the said Deed of Settlement.

Power to make and indorse bills and to borrow money for purposes of Company

10. It shall be lawful for the Directors from time to time as they shall see fit in the manner specified in the said Deed of Settlement to make accept and indorse promissory notes or bills of exchange on behalf of the Company for any purpose connected with the affairs and business of the Company and the making accepting and indorsing of any such promissory notes or bills of exchange for and on behalf of the Company shall be binding against every shareholder and it shall be also lawful for the Directors on behalf of and for purposes connected with the business of the Company to procure advances and to borrow money by way of cash credit bond mortgage or otherwise howsoever and to pay off and discharge such advances subject to the restrictions specified in the said Deed of Settlement.

Property at present in Trustees to become vested in corporation

11. All the land mines securities covenants debts moneys 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 said Trustees or other person without the necessity of any assignment or conveyance whatever.

Act not to prejudice any contract &c. already entered into.

12. Nothing in this Act contained shall prejudice or be construed to prejudice any call made or any contract or other act deed matter or thing entered into made or done by the Company or by any person on behalf of the Company 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 and may be enforced in like manner as if the Company had been incorporated before the same call contract act deed matter or thing had been made entered into or done.

Shares to be personal estate.

13. The shares in the capital of the Company and all the funds and property of the Company and all shares therein shall be personal estate and transmissible as such subject to the restrictions for that purpose contained in the said Deed of Settlement and shall not be of the nature of real estate.

Transfer of shares to be deed.

14. Subject to the restrictions for this purpose in the said Deed of Settlement contained every Shareholder may sell and transfer all or any of his shares in the capital of the Company (but not a fractional part of share) and every such transfer shall be by deed and according to a form to be approved of by the Directors and the transferee of such shares shall so soon as he has complied with the provisions relative to the transfer of shares contained in the said Deed of Settlement become a Shareholder in respect of the same shares in every respect.

Company not bound to regard trusts.

15. The Company shall not be bound to notice or see to the execution of any trust whether express implied or constructive to which any share may be subject and the receipt of the party in whose

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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 one of the parties named in the Shareholders' Register Books hereinafter mentioned 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 to which such share may then be subject and notwithstanding the Company have had notice of such trusts and the Company shall not be bound to see to the application of the money paid upon such receipt.

16. In case the assignees of any insolvent Shareholder shall elect to accept the shares of such insolvent or in case the Trustees of any estate assigned for the benefit of creditors shall elect to accept the shares belonging to such assigned estate such assignees or trustees shall forthwith nominate some other person to become a proprietor in respect of such shares such nominee to be subject to the approval of the Directors. But in no case shall such assignees be themselves entitled to become Shareholders in respect of the shares of any insolvent Shareholder nor shall such trustees be themselves entitled to become Shareholders in respect of the shares belonging to any estate assigned for the benefit of creditors.

17. In any action or suit to be brought by the Company against any Shareholder to recover the money due for any call made by virtue of this Act or of the said 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) and such interest if any due thereon whereby an action hath accrued to the Company.

18. On the trial or hearing of such action or suit it shall be 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 said 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.

19. That subject to the provisions of the Deed of Settlement the Company shall keep two books as share registers each of which books shall constitute a separate share register and one of which shall be used as the register of the shares which in the Deed of Settlement are styled "Preferential Shares" and the other of which shall be the register for the shares allotted to the parties who in the Deed of Settlement are styled "parties hereto of the first part" and in such books respectively shall be fairly and distinctly entered from time to time the names and addresses of the several persons entitled to shares in the Company together with the number of shares to which such Shareholders shall be respectively entitled.

20. The production of the Shareholders' Register Books 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 persons having a judgment at law or a decree in equity against the Company may at all convenient times peruse the Shareholders Register Books gratis and may require a copy thereof or any part thereof and for every one hundred words so required to be copied the Company may demand a sum not exceeding one shilling.

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Dividends to be paid from profits only.

21. In every case dividends or bonuses shall be declared and paid out of the net gains and profits of the Company and not out of the capital for the time being of the Company or any portion thereof.

Execution against Shareholders.

22. If any execution either at law or in equity shall be or shall have been issued against the property or effects of the Company and if there cannot be found after due diligence 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 until such execution shall be fully satisfied. Provided that no such execution shall be issued against any Shareholder or former Shareholder for any amount beyond the sum due by such Shareholder in respect of the amount subscribed for and unpaid by him. Provided always that no such execution shall issue against any such Shareholder or former Shareholder except upon an 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 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 the 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 one year after the person sought to be charged shall have ceased to be a Shareholder of the Company.

Reimbursement of Shareholders.

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

Execution against Shareholders for contributions.

24. In the cases provided by this Act for execution or 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 *seire 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 make such other order therein as to such Court or Judge shall seem

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seem fit and in such cases such forms 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.

25. Each Shareholder in the said Company for the time being shall be liable to contribute to the assets of the Company or to meet its liabilities to an amount equal to but not exceeding the sum of twenty shillings per share on the shares held by him or her. Provided such amount has not been previously paid or contributed in respect thereof and in case any part thereof shall have been contributed by way of calls then only in respect of the difference or balance between the amounts so contributed and said sum of twenty shillings per share and no Shareholder shall at any time be liable with respect to the transactions or liabilities of the Company beyond such amount.

26. In all cases in which by any Act of Parliament or of the Colonial Legislature or by any rule or order or the practice of the Supreme Court or any other Court now or hereafter to be in force in this Colony the plaintiff complainant or defendant in any action suit or other proceeding civil criminal or otherwise 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 deposition or information 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 complainant 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 deposition or information sign present any such petition or do any such other act as aforesaid.

27. 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 said 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 or authorize the same to be used for the affairs and concerns of the Company 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 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 or of any officer or servant of the Company. And such seal may be affixed to any deed or document by the hand of any person whom the Directors shall appoint in that behalf and the affixing thereof shall be attested by at least one Director and such person so appointed.

28. In citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Western Kerosene Oil Company's Incorporation Act 1867."