

VALE OF CLWYDD
COMPANY'S
INCORPORATION:
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An Act to incorporate the “Vale of Clwydd Coal Mining and Copper Smelting Company (Limited).” [4th October, 1881.]

Preamble.

WHEREAS a Joint Stock Company called the “Vale of Clwydd and Lithgow Valley Coal Mining and Copper Smelting 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 seventh day of November one thousand eight hundred and seventy-two and by the said deed the several parties thereto have agreed to constitute themselves into a Company and have respectively covenanted and agreed that they should form and be a Joint Stock Company under the style and designation of the “Vale of Clwydd and Lithgow Valley Coal Mining and Copper Smelting Company Limited” and that the objects and business of the Company should be to mine and seek for coal which may be discovered upon or in certain ground the property of the Company situate at Lithgow Valley Bowenfells in the Colony of New South Wales and to prepare for sale and sell at any place or places in the Colony of New South Wales or elsewhere coal which may be obtained by such mining and working and generally to carry on the business of a mining Company and do all such other things as are incidental or conducive to the attainment of the beforementioned objects And whereas it was by the said deed of settlement agreed that the capital of the said Company should be divided into thirty thousand shares of one pound each and no share should be divisible into fractional parts And whereas by the said deed provision has been made for the due management of the affairs of the said Company by directors therein named and by other directors to be from time to time elected and appointed by the shareholders of the said Company And whereas John Newlands Wark and Thomas Saywell are the registered proprietors of a certain parcel of land containing by admeasurement forty acres be the same more or less situated in the county of Cook and parish of Lett in the Colony of New South Wales and being portion one hundred and four And also of a certain parcel of land containing by admeasurement forty acres be the same more or less situated in the county parish and Colony aforesaid and being portion one hundred and five And the said Thomas Saywell is the registered proprietor of two parcels of land each containing by admeasurement forty acres more or less situated in the county parish and Colony aforesaid and being portions one hundred and two and one hundred and three

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And the said Thomas Saywell and John Newlands Wark are possessed of all that parcel of land situated in the parish of Marangaroo in the county of Cook aforesaid containing two roods and twenty perches commencing at the south-west corner of Thomas Brown's thirty-seven acres thence through the said Thomas Brown's one hundred acres in a curve with a radius of eight chains to meet the Great Western Railway at a point ninety-three miles and seventy chains from Sydney excepting and exclusive of the roadway and saving and excepting thereout unto the said Thomas Brown his heirs and assigns all coal and ironstone and other stone and minerals whatsoever lying in or under the said lands and full power for the said Thomas Brown to search for work get in dress and carry away the said coal ironstone stone and other minerals and do all things necessary or convenient for working mining getting dressing and carrying away the said coal ironstone stone and minerals Provided nevertheless that the surface of the said land shall be fully and completely and properly supported and shall not be in any way injured or damaged and that the said Thomas Brown shall also make from time to time unto the said Thomas Saywell and John Newlands Wark as such trustees as hereinafter mentioned or the survivor of them their and his heirs and successors and assigns and the said Company and their his and its lessees and tenants adequate compensation for all damage done or caused to the surface of the said lands by any of the operations aforesaid And whereas the said Thomas Saywell and John Newlands Wark are the present holders of six mineral conditional purchases all situated in the district of Hartley and being conditional purchases numbers 70/4414 section 19 77/70 section 19 77/71 section 19 77/76 section 19 77/77 section 19 77/78 section 19 and containing respectively one hundred and twenty-three acres forty acres eighty acres forty acres forty acres and forty acres And whereas the said Thomas Saywell and John Newlands Wark respectively hold the said lands as trustees only and for and on behalf of the said "Vale of Clwydd and Lithgow Valley Coal Mining and Copper Smelting Company Limited" and doubts have arisen whether the said John Newlands Wark and Thomas Saywell can sell and dispose of the same at the request and for the benefit of the said Company And whereas it is desirable that the said Company should be incorporated and that the said land shall be vested in such incorporated Company and that such Company shall have and exercise the powers hereinafter conferred 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 as follows :—

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 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 in name and in deed by the name of the "Vale of Clwydd Coal Mining and Copper Smelting Company Limited" and by that name shall and may sue and be sued by any person whether members of the said Corporation or not and shall and may implead and be impleaded answer and be answered unto defend and be defended in all Courts whatsoever at law or in equity and may prefer lay and prosecute any indictment information and prosecution against any person whomsoever 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 demise

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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 rules regulations clauses provisions and agreements contained in the said deed of settlement or to be made under or by virtue or in pursuance thereof or of this Act shall be deemed and considered to be and shall be the by-laws for the time being of the said Corporation and shall be of the same force and effect as if the same had been herein specially enacted save and except in so far as any of them are or shall be altered varied or repealed by or are or shall be inconsistent or incompatible with or repugnant to any of the provisions of this Act or of any laws now or hereafter to be in force in the said Colony.

All property belonging to the Company to be vested in the corporation as hereby incorporated.

3. The lands referred to in the Preamble and all lands mineral conditional purchases interests in land railways mining and other plant rolling-stock and machinery now belonging to the mines mentioned in the said deed of settlement or used in connection therewith and all other property belonging to the said Company or held by the said John Newlands Wark and Thomas Saywell or either of them or by any other person or persons Company or Companies Corporation or Corporations as Trustees or Trustee for the said Company according to the estate and interest therein and the nature and quality thereof respectively shall be and are hereby transferred to and vested in the said Corporation hereby incorporated.

Company may hold lands and other property.

4. It shall be lawful for the said Corporation 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 and proper for the purpose of managing conducting and carrying on the affairs concerns and business of the said Corporation and sell convey and 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 without incurring any penalties or forfeitures.

Conveyance to the corporation.

5. 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 hereditaments and other real and personal estate.

Increase of capital.

6. The Directors may from time to time upon a resolution to that effect being passed by a majority of not less than three-fourths of such members of the Company for the time being entitled to vote as may be present in person or by proxy at any general meeting and upon such resolution being confirmed by a majority of such members for the time being entitled to vote as may be present in person or by proxy at a subsequent general meeting increase the capital of the Company by the issue of new shares such aggregate increase to be of such amount and to be divided into shares of such respective amounts as the members in such meeting shall direct and also may consolidate and divide its capital into shares of larger amount than its existing shares and also may convert its paid-up shares into stock and also reduce the capital of the said company And fourteen days notice of any extraordinary meeting shall be given in the manner prescribed for giving notices And such notice shall specify the day and the hour of meeting and the nature of the business and the resolutions intended to be proposed.

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7. Any capital raised by the creation of new shares shall be considered as part of the original capital and shall be subject to the same provisions in all respects whether with reference to the payment of calls or otherwise as if it had been part of the original capital and every article agreement and provision in the said deed of settlement contained having reference to such original capital shall extend and apply to the capital to be raised as aforesaid but all persons accepting new shares if any shall be issued in the event of any increase of capital as aforesaid shall pay the amount thereof respectively either in one sum or in such instalments and at such times as the Board of Directors may determine.

Capital from creation of new shares to be considered part of original capital.

8. Subject to any direction to the contrary that may be given by the meeting which sanctions the increase of capital all new shares shall be offered to the members in proportion to the existing shares held by them and such offer shall be made by such notice as the Directors shall direct limiting a time within which the offer if not accepted will be deemed to have been declined and after the expiration of such times or on the receipt of an intimation from the members to whom such notice is given that he declines to accept the shares offered the Directors may dispose of the same in such manner as they shall think most beneficial to the Company.

New shares to be offered to members.

9. The Corporation shall not be bound in any manner by any trusts or equitable interests or demands affecting any shares of the capital standing in the name of any person as the ostensible 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 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 the Corporation for or in respect of any dividend or other money payable by the said Corporation 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 so 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 contained shall be deemed or taken to interfere with or abridge the rights and powers of a Court of Equity with respect to dividends or moneys which shall not have been paid by the Corporation or to shares which may not have been transferred by the Corporation or restrain the payment of any such dividend or money payable by the Corporation in respect of any shares or the transfer of any shares or to direct the payment of such dividends or 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.

Corporation not bound by equitable interests share-holder's receipt sufficient discharge.

10. If at the time appointed for the payment of any call any shareholder shall fail to pay the amount of such call it shall be lawful for the Corporation to sue each shareholder for the amount thereof in any Court of Law or Equity having competent jurisdiction and to recover the same with interest thereon after the rate of ten pounds per centum per annum and in any action or suit for the recovery thereof it shall be sufficient for the Company to declare that the defendant is the holder of so many shares (stating the number) and is indebted to the Company in such sum of money as the calls in arrear shall amount to in respect thereof (stating the number and amount of each of such calls) whereby an action or suit hath accrued to the Company and 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 so

Enforcement of call by auction.

Declaration in suits to recover calls.

Matter to be proved in action for calls.

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many shares in the Corporation and that such call was in fact made by persons acting as Directors of Corporation and that such notice thereof has been given as is directed by 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 whatever and thereupon the Corporation shall be entitled to recover what shall be due upon such call and interest thereon and the production of the Register of Shareholders shall be *prima facie* evidence of such defendant being a shareholder and of the number and amount of his shares.

Contracts by Directors how to be entered into.

11. The power of the Directors to make contracts on behalf of the Corporation may lawfully be exercised as follows that is to say

With respect to any contract which if made between private persons would be by law required to be in writing and under seal the Directors may make such contract on behalf of the Corporation in writing and under common seal of the Corporation and in the same manner may vary or discharge the same.

With respect to any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith the Directors may make such contract on behalf of the Corporation in writing signed by any two of the Directors and in the same manner may vary or discharge the same.

With respect to any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing the Directors may make such contract on behalf of the Corporation by parol only without writing and in the same manner may vary or discharge the same and all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Corporation and their successors and all other parties thereto their heirs executors or administrators as the case may be and on any default in the execution of any such contract either by the Corporation or any other party thereto such action or suit may be brought either by or against the Corporation as might be brought had the same contracts been made between private parties only.

Contracts &c. under the deed of settlement before Act.

12. Nothing herein contained shall prejudice or be deemed to prejudice any call made or any contract or other act deed matter or 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 and 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.

Officers to account on demand.

13. Every officer employed by the Corporation shall from time to time when required by the Directors make out and deliver to them or to any person appointed by them for that purpose a true and perfect account in writing under his hands of all moneys received by him on behalf of the Corporation and such account shall state from whom and for what consideration such moneys shall have been received and how and to whom and for what purpose such moneys shall have been disposed of and together with such account such officer shall deliver the vouchers and receipts for such payments and every such officer shall pay to the Directors or to any person appointed by them to receive the same all moneys which shall appear to be owing from him on the balance of such accounts.

Summary remedies against parties failing to account.

14. If any such officer fail to render such account or to deliver up all vouchers and receipts relating to the same in his possession or power
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or to pay the balance thereof when thereunto required or if for three days after being thereunto required he fail to deliver up to the Directors or to any person appointed by them to receive the same all papers and writings property effects matters and things in his possession or power relating or belonging to the Corporation then on complaint thereof being made to a Justice such Justice shall summon such officer to appear before two or more Justices at a time and place to be set forth in such summons to answer such charge and upon the appearance of such officer or in his absence upon proof that such summons was personally served upon him or left at his known place of abode such Justices may hear and determine the matter in a summary way and may adjust and declare the balance owing by such officer and if it appear either upon the confession of such officer or upon evidence or upon inspection of the account that any moneys of the Corporation are in the hands of such officer or owing by him to the Corporation such Justices may order such officer to pay the same and if he fails to pay the amount it shall be lawful for such Justices to grant a warrant to levy the same by distress upon the goods and chattels of such officer or in default thereof to commit the offender to gaol for a period not exceeding six months unless the said amount be sooner paid.

15. If any such officer shall refuse to make out such account in writing or to deliver upon the order of the Justices the several vouchers and receipts relating thereto or to deliver up any books papers or writings property effects matters or things in his possession or power belonging to the Corporation such Justices may lawfully commit such offender to gaol there to remain until he shall have delivered up all the vouchers and receipts (if any) in his possession or power relating to such accounts and have delivered up all books papers writings property effects matters and things (if any) in his possession or power belonging to the Corporation.

Officers refusing to deliver up documents &c., to be imprisoned.

16. For the purpose of regulating the conduct of the officers and servants of the Corporation and for providing for the due management of the affairs of the Corporation in all respects it shall be lawful for the Corporation subject to the provisions herein mentioned from time to time to make by-laws and regulations as they think fit Provided that such by-laws be not repugnant to the laws of the colony or to the provisions of this Act or to any resolution of any general meeting of shareholders and such by-laws shall be reduced into writing and shall have affixed thereto the common seal of the Corporation and a copy of such by-laws shall be given or sent by post to every officer and servant of the Corporation affected thereby.

Power to make and alter by-laws.

17. It shall be lawful for the Corporation by such by-laws to impose such reasonable penalties upon all persons being officers and servants of the Company offending against such by-laws as the Corporation think fit not exceeding five pounds for any one offence Provided that the same shall be so framed as to allow the Justice or Justices before whom any penalties imposed thereby may be sought to be recovered to order a part only of such penalty to be paid if such Justice think fit.

By-laws to be framed as the penalties may be mitigated.

18. The production of a printed or written copy of the by-laws of the Corporation having the common seal of the Corporation affixed thereto shall be sufficient evidence of such laws in all proceedings under the same.

Evidence of by-laws.

19. If any execution either at law or in equity shall have been issued against the property or effects of the Corporation and if there cannot be found sufficient whercon to levy such execution then such execution may be issued against any of the shareholders to an amount equal to the amount unpaid in respect of their shares respectively in the capital of the Company Provided always that no execution shall issue against any 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

Execution against shareholders.

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Shareholders not
liable beyond the
amount of their
subscribed shares.

Shareholders to be
reimbursed amount
paid beyond calls
due.

Custody and use of
corporate seal.

Power to borrow on
mortgage or debenture.

Short title.

writing to the persons sought to be charged and upon such motion such Court may order execution to issue accordingly and for the purpose of ascertaining the names of the shareholders and the amount of capital remaining to be paid upon their respective shares it shall be lawful for any person entitled to any such execution at all reasonable times to inspect the shareholders register required by the said deed of settlement to be kept in the office of the Corporation without fee. Provided further that nothing herein contained shall extend to charge or make liable any shareholder of the Corporation or his real or personal estate with or for any debt or demand whatever due or to become due from or by the Corporation or in anywise relating to the said undertaking for any of the matters or things authorized by the said deed of settlement or this Act to be made done or completed to a greater extent than the amount (if any) unpaid on the shares in respect of which he is liable as a shareholder any law to the contrary thereof in anywise notwithstanding.

20. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls he shall forthwith be reimbursed such additional sum by the directors out of the funds of the Corporation and if there shall not be sufficient of such funds he shall be entitled to be repaid such additional sum by the other shareholders in proportion to the shares held by them.

21. The directors shall have the custody of the common seal and the form thereof and all other matters relating thereto shall from time to time be determined at meetings of directors and the directors present at any meeting 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 deed and do all or any such matter and things as may be required to be executed and done on behalf of the Corporation but it shall not be necessary to use the corporate seal in respect of any of the ordinary business of the Corporation or for the appointment of any attorney or solicitor for the prosecution of any action suit or other proceedings or any officer or servant of the Corporation 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 one director and such person so appointed and in case any conveyance or other instrument under seal shall be executed wherein it appears that such conveyance or other instrument is executed in consideration of a money payment therein stated to have been made to the Corporation such execution shall have no operation in law or shall operate only as an escrow (according as may be indicated in the attestation aforesaid) until the treasurer or other officer charged with the receipts of moneys on behalf of the Corporation shall have certified under his hand at the foot thereof that such consideration money has been duly paid.

22. It shall and may be lawful for the 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 Corporation 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 the paid-up capital of the Company. Provided always that the shareholders present at 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.

23. Whenever this Act is cited it shall be sufficiently described as the "Vale of Clwydd Company's Incorporation Act of 1881."