

New South Wales.



ANNO QUINQUAGESIMO SECUNDO

VICTORIAE REGINÆ.

An Act to facilitate the supply of motive power on the high-pressure hydraulic system for use on wharves, in warehouses, and other buildings, for electric lighting, and for the extinguishing of fires, and other purposes, in the City of Sydney and its Suburbs. [13th December, 1888.]

SYDNEY
HYDRAULIC POWER
COMPANY'S

WHEREAS the establishment of a system for applying motive power by hydraulic pressure for use on wharves, in warehouses, factories, hotels, offices, and dwellings, as also in electric lighting and fire extinction in the city of Sydney and its suburbs, would be of great local and public advantage. And whereas William Gardiner of the city of Sydney, merchant, William Henry Paling, of the same place, merchant, William Thomas Poole, of the same place, Esquire, James Angus, of the same place, contractor, and John William Cliff, of the same place, merchant, are willing to undertake the establishment of such a system, but the same cannot be carried out without the authority of Parliament. And whereas it is expedient to confer upon the said William Gardiner, William Henry Paling, William Thomas Poole, James Angus, and John William Cliff, legislative authority to establish, maintain, and use the said system. And whereas it is expedient that power should be conferred upon the said William Gardiner,

a

William

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William Henry Paling, William Thomas Poole, James Angus, and John William Cliff, to transfer and assign their rights, powers, authorities, obligations, and liabilities under this Act, to any company duly incorporated for that purpose. Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows, that is to say :—

Introduction.

Short title.

1. This Act may be cited as the "Sydney Hydraulic Power Company's Act, 1888," and shall come into operation on the passing of this Act.

Interpretation of terms.

2. The following words and expressions in this Act shall have the meanings hereby assigned to or included in them, unless there be something in the subject or context repugnant to such construction, that is to say—

The promoters.

The expression "the promoters" shall mean the said William Gardiner, William Henry Paling, William Thomas Poole, James Angus, and John William Cliff, and include their and each of their heirs, executors, administrators, and assigns.

The undertaking.

The expression "the undertaking" as applied to the promoters shall mean the supplying of hydraulic power within the limits within which the promoters are authorized by this Act to supply hydraulic power, and the constructing of all works and the doing of all other things necessary or convenient for that purpose, subject to the provisions of this Act.

Street.

The word "street" shall include not only any street commonly called, but also any highway, public road, lane, court, or passage, market-place, square, wharf, pier, or other thoroughfare, or public place within the limits of this Act.

Apparatus.

The expression "apparatus" shall mean and include all mains, pipes, fire extinguishers, hydrants, lifts, fixed or portable cranes, and all other machines, mechanical fittings, and appliances necessary or proper for or which may be used for the purpose of or in connection with the carrying on of the business or affecting any of the objects of the promoters.

Local authority.

The expression "local authority" shall mean the Municipal Council of Sydney, and the Municipal Council of any borough or municipality.

District.

The word "district" in relating to a local authority shall mean the area within the jurisdiction of such local authority.

Justice.

The word "Justice" shall mean a Justice of the Peace for the Colony of New South Wales.

Limits of Act.

3. The limits of this Act shall extend to and include the city of Sydney, and with the consent of the local authority to any borough or municipal district within the suburbs thereof.

PART I.*By-laws.*

By-laws.

4. It shall be lawful for the promoters from time to time to make such by-laws as they may deem necessary for the purpose of regulating, controlling, or protecting the apparatus of the promoters, or for the supply of hydraulic power or for fixing the charges for the same, and for the purposes of regulating the conduct of the officers and servants

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servants of the promoters, and for providing for the due management of the affairs of the promoters in all respects, and from time to time by other by-laws to alter or repeal any such by-laws.

5. All or any such by-laws being consistent with the provisions of this Act and not repugnant to any other Act or law in force within the Colony of New South Wales shall have the force of law when confirmed by the Governor, with the advice of the Executive Council, and published in the *Government Gazette*, but not sooner or otherwise. The production of the *Government Gazette* with any such by-laws so published as aforesaid shall in any suit or proceeding whatsoever be sufficient evidence that such by-laws have been confirmed and published as is herein required.

6. Any by-laws made under this Act may state some minimum and maximum penalty for any neglect or breach thereof respectively. Provided that no such maximum penalty shall exceed ten pounds.

7. All by-laws made under the authority of this Act shall be painted on boards, or printed on paper and posted on boards and hung up and affixed and continued on the front or other conspicuous part of every central pumping station or office belonging to the promoters, and such board shall from time to time be renewed as often as the by-laws thereon or any part thereof shall be obliterated or destroyed, and no penalty imposed by any by-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

8. It shall be lawful for the promoters by any such by-law or by-laws to provide for compelling any officer or servant of the promoters to perform on all or any Sundays and holidays throughout the year, any work which such officer or servant may have agreed with the promoters to perform, and which in the opinion of the promoters may be necessary for the extinction of fires, or the working of lifts in hotels, coffee palaces, lodging-houses, and private residences, and no by-law framed for the said purpose shall be deemed repugnant to the laws of the Colony of New South Wales, nor shall any agreement made between the promoters and any officer or servant of the promoters, whether in writing or verbal, be deemed invalid by reason of any stipulation contained therein binding any such officer or servant to work on Sundays or holidays.

Powers and responsibilities of the Promoters as regards the execution of Works.

9. The promoters, under such superintendence as is hereinafter specified, may with the previous consent in writing of the local authority open and break up the road, path, or pavement of any streets within the limits of this Act, and may open and break up any sewers, drains, or tunnels within or under such street, and lay down and place within the same limits, mains, conduits, service-pipes, and other apparatus, and from time to time repair, alter, or remove the same, and for the purposes aforesaid, may remove and use all earth and materials in or under such street, and the promoters may do all other acts which the promoters shall, from time to time, deem necessary for supplying hydraulic power within the limits of this Act, and it shall be lawful for the promoters to lay any pipe, branch, or other apparatus from any main or branch pipes, into, through, or against any building for the purpose of providing and supplying such power and to provide and set up any apparatus necessary for securing to any building a supply of hydraulic power, and for measuring and ascertaining the extent of such supply. Provided always that nothing herein shall authorize the promoters to lay down or place any pipe or other works into, through, or against any building, or in any land not dedicated to public use, without the consent of the owners and occupiers thereof,

By-laws to be
approved by
Governor in Council
and gazetted.

By-laws to be
enforced by penalty

Publication of
by-laws.

By-laws may compel
necessary working on
Sundays and
holidays.

Power to break up
streets under super-
intendence and to
open drains.

And to lay pipes for
supplying buildings.

Not to enter on
private land
without consent.

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thereof, except that the promoters may at any time enter upon any land for the purpose of laying or placing, and may lay or place any new pipe in the place of an existing pipe in any land wherein any pipe shall have been lawfully laid down by the promoters or placed, and may repair or alter any pipe so laid down or placed.

Notice of intention to be served on persons having control, &c., before breaking up streets or opening drains.

Streets or drains not to be broken up except under the superintendence of local authority or officer.

Streets or drains broken up to be reinstated without delay.

Promoters alone responsible for damages.

Penalty for delay, &c., in reinstating streets, &c.

10. Before the promoters proceed to open or break up any street, sewer, drain, or tunnel they shall give to the local authority under whose management or control the same may be, and in the case of sewers or water mains then to the Water and Sewerage Board, or to its clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same not less than seven clear days before beginning the work, except in cases of emergency arising from accidents to or defects in the pipes or other works, and then so soon as is possible after the beginning of the work or after the necessity for the same shall have arisen.

11. No such street, sewer, drain, or tunnel shall, except in cases of emergency as aforesaid, and except as hereinafter provided, be opened or broken up except under the superintendence of the local authority having the management or control thereof or its officer, and according to such plan as shall be approved of by the local authority the promoters shall make such temporary or other works as may be necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any sewer or drain. Provided always that if no officer appointed by the local authority for the purpose shall attend at the time fixed for the opening of any such street, drain, or tunnel, after such notice of the promoter's intention as aforesaid shall have been duly given, or if the local authority or its officer shall refuse or neglect to superintend the operations, the promoters may perform the work specified in the notice without the superintendence of the local authority or its officer.

12. When the promoters open or break up the road, path, or pavement of any street, or any sewer, drain, or tunnel, the promoters shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground and reinstate and make good to the satisfaction of the local authority or its officer, the road, path, or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned by the work, and the promoters shall at all times whilst any such road, path, or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road, path, or pavement where the same shall be opened or broken up every night during which the same shall be continued open or broken up and shall keep the road, path, or pavement which has been so broken up, in good repair for three months after replacing and making good the same, and for the further time (if any) not being more than twelve months on the whole during which the soil so broken up shall continue to subside.

13. The promoters shall be alone answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or apparatus, and shall save harmless all local and other authorities, companies, or bodies, collectively and individually, and their officers and servants from all damages and costs in respect of such accidents, damages, or injuries.

14. If the promoters open or break up any street or sewer, drain or tunnel, without giving such notice as aforesaid, or in a manner different from that which should have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required, except in the cases in which the promoters are

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are hereby authorized to perform such works without any such superintendence or notice, or if the promoters make any delay in completing any such work or in filling in the ground, or reinstating and making good the road, path, or pavement, or the sewer, drain, or tunnel so opened or broken up, or in carrying away the rubbish occasioned by the work, or if the promoters neglect to cause the place where such road, path, or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road, path, or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid, the promoters shall incur a penalty not exceeding fifty pounds for every such offence, and the promoters shall incur an additional penalty of five pounds for each day during which any such delay as aforesaid shall continue after the promoters shall have received notice thereof.

15. If any such delay or omission as aforesaid takes place, the local authority having the management or control of the street, sewer, drain, or tunnel, in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expenses of executing the same shall be repaid to such local authority by the promoters, and such expenses shall be recoverable in the same manner as damages are recoverable under this Act.

16. The promoters shall do as little damage as may be in the execution of the powers by this Act granted, and shall make compensation for any damage which may be done in the execution of such power.

17. If at any time any local authority should think it necessary or expedient to require the promoters to raise or sink or otherwise alter the situation of any of the pipes which shall be laid down for the purposes of the promoters, or to alter the situation of any pipes which shall have been laid down contrary to any of the provisions of this Act, the promoters shall, within ten days next after being required so to do by notice in writing, raise or sink or otherwise alter the situation of such pipes according to the notice, and in default thereof it shall be lawful for the local authority to cause such pipes to be so raised or sunk or the situation thereof otherwise altered, and the expense of doing the work shall be paid by the promoters or repaid by the promoters, and such expenses shall be recoverable in the same manner as damages are recoverable under this Act: Provided that the promoters be not called upon to make such alterations in the situation of their pipes unless such alteration be necessary for the carrying out of city improvements or municipal works.

Offences against the promoters and protection of the promoters' privileges and charges.

18. Every person who shall lay or cause to be laid, any pipe to communicate with any pipe belonging to the promoters without their consent, or shall wilfully or by culpable negligence injure, or suffer to be injured any pipe, meter, or other apparatus belonging to the promoters, or shall alter the index to any meter, or prevent any meter from duly registering the quantity of hydraulic power supplied, or shall fraudulently abstract any water of the promoters, shall, without prejudice to any right or remedy for the protection of the promoters or the punishment of the offender, forfeit and pay to the promoters for every such offence, a sum not exceeding ten pounds, and in addition thereto the promoters may recover the amount of any damage sustained by the promoters by any such wrongful act; and in any case in which any person has wilfully or by culpable negligence injured, or caused to be injured, any pipe, meter, or other apparatus belonging to the promoters,

In case of delay
or omission
parties may rein-
state and recover
the expenses.

Compensation to
be made by
promoters for
damage.

Notice of alteration
in situation of pipes

Penalty for injuring
promoters' apparatus
or defrauding the
promoters.

or

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or altered the index to any meter, or prevented any meter from duly registering the quantity of hydraulic power supplied, the promoters may also, until the meter complained of has been remedied but no longer, discontinue the supply of hydraulic power to the person so offending, notwithstanding any contract previously existing.

**Penalty for inter-
rupting promoters'
workmen.**

19. Every person who shall wantonly or maliciously hinder or interrupt any of the officers, workmen, or servants of the promoters in the legal performance of their duties, or shall in anywise cause or procure such hindrance or interruption to take place, and shall be convicted of so doing before any Stipendiary or Police Magistrate, shall for every such offence incur such penalty as such Magistrate may award, not exceeding ten pounds, and such Magistrate shall also order the offender to pay to the promoters the full amount of the damage which the promoters may sustain by such hindrance or interruption. Provided always that nothing herein contained shall be construed to restrain any local authority or any person duly authorized by such local authority for the purpose from preventing the promoters from infringing any regulation of such local authority for the improvement of the streets within its district, or shall expose any such local authority or any person so authorized to any penalty or payment for so doing.

**Remedies for
recovering of
charges, &c., due to
the promoters.**

20. If any person supplied with hydraulic power by the promoters neglects to pay any charges or other moneys due for the same under any contract made by and between the promoters, and such person for the space of seven days next after a demand of the amount due signed by the promoters or one of them shall have been left at or upon the building or premises so supplied the promoters may stop the supply of water from the mains or apparatus of the promoters from entering the premises of such person by cutting off the service pipes or by such means as the promoters shall think fit, and may recover the expense of so doing, together with the charges so due and unpaid by action in any Court of competent jurisdiction.

**Power to take away
pipes, &c.**

21. In all cases in which the promoters are authorized to cut off and take away the supply of hydraulic power from any building or premises under the provisions of this Act the agents or workmen of the promoters may after seven days' notice has been given to the occupier enter into any such building or premises between the hours of nine in the forenoon and four in the afternoon, and remove and carry away any pipes, meters, or other apparatus the property of the promoters. Provided that all damage to property of whatever description occasioned by such removal as aforesaid shall be made good by or at the expense of the promoters.

**When supply
discontinued.**

Offences by the Promoters and Protection of the Public.

**Daily penalty
during escape of
water after notice.**

22. The promoters shall not at any time cause or permit any overflow or leakage of water from any main or pipe laid down by or belonging to the promoters; and in case of any such occurrence, immediately after the receipt of notice thereof in writing from the local authority or any of its officers or servants, the promoters shall effectually stop and prevent such overflow or leakage, and in case the promoters shall neglect to do so within eight hours of the receipt of such notice, they shall, for every such offence, in addition to any proceedings by way of indictment or otherwise, to which they may be subject, forfeit and pay a sum not exceeding ten pounds for each and every day during which such escape or leakage shall continue after the expiration of the said period of eight hours.

**Power after notice
to examine pipes to
ascertain escape of
water.**

23. For the purpose of ascertaining whether any water be escaping from the pipes or apparatus of the promoters, the local authority of the district may cause the ground to be dug up and the pipes,

pipes, conduits, and works of the promoters to be examined. Provided that such local authority, before proceeding with such digging or examination shall give eight hours' notice in writing to the promoters of the time at which such digging and examination is intended to take place; and if it shall be found that such escape was actually taking place from the pipes and apparatus of the promoters, they shall be subject to the like obligations of reinstating the road, path, or pavement disturbed, and the same penalties for any delay or any misfeasance or nonfeasance therein, as are hereinbefore provided with respect to roads, paths, and pavements broken up by the promoters for the purpose of laying their pipes.

24. If, upon any such examination, it shall appear that the water was escaping from the pipes or apparatus belonging to the promoters, the expense of the digging and examination and of the repair of the street or place disturbed in any such examination shall be paid by the promoters.

By whom expenses
of examination, &c.,
are to be borne.

Legal proceedings and application of penalties.

25. Subject to the express provisions of this Act, all damages, expenses, or other sums of money directed by this Act to be paid by or to the promoters or any other person and all penalties imposed by this Act for offences or by any by-law made in pursuance of this Act shall, where the amount sought to be recovered does not exceed fifty pounds, be recoverable in a summary way before a Stipendiary or Police Magistrate, and payment of any sum adjudged to be paid shall be enforceable as thereby provided, and where the amount sought to be recovered shall exceed fifty pounds, all such damages, expenses, or other sums of money, and all such penalties shall be recoverable by action in the Supreme Court or any other Court of competent jurisdiction.

How damages, &c., and penalties to be recovered.

26. Any summons or warrant issued for any of the purposes of this Act may contain in the body thereof or in a schedule thereto several names and sums; and where by this Act any damages or expenses are directed to be paid in addition to any penalty or penalties the amount of such damages and expenses shall be ascertained and adjudged by the Stipendiary or Police Magistrate before whom the offender shall be convicted.

Contents of
summons or
warrants.

27. Any Stipendiary or Police Magistrate who issues a warrant of distress in pursuance of the provisions of this Act may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the Stipendiary or Police Magistrate and shall be included in the warrant of distress for the recovery of such money.

Warrants of distress should include costs.

28. The Stipendiary or Police Magistrate before whom any person shall be convicted of any offence against this Act may cause the conviction to be drawn up according to the following form (that is to say):—

Form of conviction.

A.B. is convicted before me C.D. one of Her Majesty's Justices of the Peace for the [hereby describe the offence generally and the time and place where and when committed] contrary to the "Sydney Hydraulic Power Company's Act 1888." [Here state penalty imposed.]

Given under my hand and seal at in the Colony
of New South Wales, the day and year first above written.

G.D.

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Justices not disqualified on account of being customers, but share-holders to be disqualified.

Nothing to exempt promoters from being indicted for nuisance.

Proof of debts in bankruptcy.

Saving rights of Her Majesty.

Power of the corporation of Sydney to purchase at prescribed periods.

As to appointment of arbitrators.

When sale made, rights, &c. of promoters to vest in and may be exercised by corporation.

Moiety of excess of net profits over ten per cent. to be set apart to secure the handing over of the works in good repair, and to be applied in or towards the purchase money payable by the corporation of Sydney.

29. No Stipendiary or Police Magistrate shall be disqualified from acting in the execution of this Act by reason of his being a customer of the promoters, but no such Magistrate who shall hold shares in the Company if formed, as hereinafter provided, shall be qualified to sit on the trial of any complaint or information laid under this Act.

30. Nothing in this Act contained shall prevent the promoters from being liable to an indictment for nuisance or to any other legal proceeding to which they may be liable in consequence of supplying hydraulic power.

31. If any person against whom the promoters shall have any claim or demand shall have his estate sequestrated, or make any liquidation by arrangement or compound with his creditors, or shall otherwise come under the provisions of any Act relating to bankrupt debtors, it shall be lawful for any one of the promoters, in all proceedings under any such Act, or with respect to the estate of any such bankrupt to represent the promoters, and act in their behalf in all respects as if such claim or demand had been the claim or demand of such individual promoter.

32. Nothing in this Act contained shall be deemed to affect or apply to any right, title, or interest of Her Majesty, her heirs or successors.

33. The corporation of the city of Sydney within whose limits the undertaking, property, and apparatus of the promoters or any part thereof passes or is situate may, after the expiration of twenty years from the date of the passing of this Act or at the expiration of each succeeding ten years thereafter, by giving six months' notice in writing, require the promoters to sell, and thereupon the promoters shall sell to the corporation of the city of Sydney the undertaking, property, apparatus, and business of the promoters upon the terms of paying to the promoters the then value thereof, such value, in case of difference, to be determined by three arbitrators, or any two of them, one of whom shall be appointed by the corporation of the city of Sydney so purchasing, another by the promoters, and the third by such other two arbitrators before they proceed in the arbitration. If either the corporation of the city of Sydney so purchasing or the promoters shall neglect or refuse to appoint an arbitrator pursuant to the above provision for two calendar months after the other of them shall have appointed an arbitrator and given notice thereof to the other of them, then the arbitrator already appointed shall appoint a second arbitrator and such two arbitrators shall jointly appoint the third arbitrator. When any such sale has been made all the rights, powers, and authorities of the promoters in respect to the undertaking, property, apparatus and business shall be transferred to, vested in, and may be exercised by such corporation of the city of Sydney.

34. When the net profits earned by the promoters shall exceed ten per centum per annum on the capital invested in the undertaking, property, apparatus, and business, one moiety of such excess shall be paid by the promoters to trustees to be appointed as hereinafter provided. And such trustees shall invest the same, and the interest to accrue due thereon on behalf of the corporation of the city of Sydney, so as to accumulate the same by way of compound interest, and when and if the corporation of the city of Sydney shall exercise the right of purchase hereby conferred, then the said trustee shall apply the amount of the aforesaid investment in or towards payment of the amount of purchase money agreed or awarded to be paid the promoters by the said corporation, and shall pay over the balance of the said investment (if any) to the promoters.

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35. The trustees aforesaid shall be appointed in manner following; one trustee shall be appointed in writing by the corporation of the city of Sydney, one trustee shall be appointed in writing by the promoters, and the third trustee shall be appointed by the said two trustees so appointed, and as often as any trustee shall die or desire to be discharged from or refuse or become unfit or incapable to act in the trust aforesaid, another trustee shall be appointed in his place by the same persons or corporation by whom such trustee occasioning the vacancy was appointed.

36. The promoters shall, and are hereby required, to *bona fide* commence their works within eighteen months from the passing of this Act, and in the event of their failing to do so, and of such failure being certified under the common seal of the Mayor and Aldermen of the city of Sydney, and published in the *Government Gazette*, all the powers and authorities conferred by this Act shall thereupon *ipso facto* cease and determine to all intents and purposes whatsoever.

37. If at any time the promoters discontinue the undertaking for a period of twelve months, such discontinuance being proved to the satisfaction of a judge of the Supreme Court who shall try the issue of fact as not having been occasioned by circumstances beyond the control of the promoters, then and in such case, all the pipes of the promoters laid in the streets shall belong to and vest in the corporation of the city of Sydney. In this section "circumstances beyond the control of the promoters" shall not include the want of sufficient capital or funds.

38. The maximum price to be charged by the promoters for water supplied to the public at seven hundred pounds pressure shall not exceed twelve shillings and sixpence per one thousand gallons.

39. It shall be lawful for the promoters, at any time after the passing hereof, to assign, transfer, convey, and release to any Company duly incorporated for that purpose all the rights, powers, authorities, privileges, liabilities, and obligations conferred and imposed upon them by this Act, together with all lands, tenements, hereditaments, estates, chattels, and effects of every kind acquired by them under or in pursuance thereof, and purchased and occupied, or used in connection with the undertaking, and the working and maintenance thereof; and upon and after the completion of such assignment, transfer, conveyance, and release, the said Company, their officers, agents, and servants, may lawfully exercise and enjoy all the rights, powers, authorities, and privileges, and shall be, and continue to be, subject to all the liabilities, obligations, penalties, and forfeitures to which the said promoters or their officers, agents, or servants, would have been entitled or subject had no such assignment, transfer, conveyance, and release been completed; provided, however, that nothing herein contained shall prejudice or affect any rights accrued, action or proceedings taken against, or liabilities, obligations, penalties, or forfeitures incurred by the said promoters before the completion of the said assignment, transfer, conveyance, and release.

40. Upon the completion of any such assignment, transfer, conveyance, or release, as in the last preceding section mentioned, this Act shall be read so that wherever the words "the promoters," or "any one of the promoters," occur they shall be omitted and the words "the Company" shall be inserted in their stead, and wherever the words "the signatures" or "their signatures" occur they shall be omitted and the words "the common seal of the Company" be inserted in their stead.