

Port Phillip Bank.

An Act for facilitating Proceedings at Law or in PORT PHILLIP BANK.
 Equity by or against the Banking Company of
 Melbourne called "The Port Phillip Bank"
 and for other purposes therein mentioned.
 [8th September, 1840.]

WHEREAS several persons have formed themselves into a Preamble.
 joint stock banking company established at Melbourne in
 the District of Port Phillip in the Colony of New South Wales
 under the name style or firm of "The Port Phillip Bank" and it
 is expedient to facilitate proceedings at law or in equity commenced
 by or against the said bank Be it therefore enacted by His Excel-
 lency the Governor of New South Wales with the advice of the Legis-
 lative Council thereof That from and after the passing of this Act all Actions at law &c.
to be in the name of
the Managing
Director.
 actions and suits and all proceedings at law or in equity to be com-
 menced instituted prosecuted or carried on by or on behalf of the said
 bank or wherein the said bank is or shall be in any way concerned
 against any body or bodies politic or corporate or against any person
 or persons whether a member or members of the said bank or other-
 wise shall and may be lawfully commenced instituted and prosecuted
 or carried on in the name of the person who shall be Managing
 Director of the said bank at the time any such action suit or pro-
 ceeding shall be commenced or instituted as the nominal plaintiff
 complainant or petitioner for or on behalf of the said bank and that
 all actions suits or proceedings as aforesaid to be commenced insti-
 tuted or prosecuted against the said bank shall be commenced insti-
 tuted and prosecuted against the Managing Director for the time being
 of the said bank as the nominal defendant for and on behalf of the
 said bank and that all indictments informations and other criminal
 proceedings or prosecutions to be brought instituted or carried on
 by or on behalf of the said bank for fraud upon or against the said
 bank or for embezzlement robbery stealing or counterfeiting the bills
 notes bonds moneys goods chattels or any other property of the
 said bank or for any felony misdemeanor or other offence in
 which the said company shall sustain any loss or damage or wherein
 it shall be necessary or expedient for the said bank to prosecute any
 offender or offenders shall or may be so brought or instituted and
 carried on in the name of such Managing Director for the time being
 of the said bank and in all such indictments informations and other
 criminal proceedings or prosecutions it shall be lawful to state in any
 such proceedings or prosecutions such bills notes bonds moneys goods
 chattels effects or any other property of the said bank to be the pro-
 perty of such Managing Director for the time being of the said bank
 notwithstanding it shall be proved at the trial or hearing that the
 same belong to the said bank and any offence committed with intent
 to injure or defraud the said bank shall and lawfully may in any pro-
 secution for the same be stated or laid to have been committed with
 intent to injure or defraud such Managing Director for the time being
 of the said bank and any offender or offenders may thereupon be law-
 fully convicted of any such offence or offences and the death resignation
 or removal or other act by which the office or power of such Managing
 Director shall cease shall not abate any such action suit or prosecution
 but the same may be continued where it left off and be prosecuted
 and carried on in the name of the succeeding Managing Director or
 of

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of any person who may be or become Managing Director of the said bank for the time being and that where it shall be necessary for any person to serve any summons subpoena notice writ or other proceeding at law or in equity upon the said bank service thereof respectively shall be made on such Managing Director for the time being or at the usual place where the business of the said bank shall be carried on at Melbourne aforesaid Provided nevertheless that the body or goods lands or tenements of such Managing Director shall not by reason of his being defendant in any such action suit or proceeding be liable to be arrested seized or taken in execution And provided further that all costs and expenses to be incurred by such Managing Director in prosecuting or defending any action or suit for or on behalf of the said bank shall be defrayed out of the funds of the said bank.

Memorial of the name of the Managing Director to be recorded in the Supreme Court of New South Wales and renewed when any new Managing Director shall be elected.

2. And be it enacted That a memorial of the name of the Managing Director of the said bank in the form or to the effect for that purpose set forth in the Schedule hereunto annexed signed by the said Managing Director and a majority of the directors of the said bank shall be recorded upon the oath (administered before any Commissioner of the Supreme Court of New South Wales) of one of the directors of the said bank for the time being in the said Supreme Court within sixty days after the passing and publication of this Act and when and so often as any person shall be newly elected Managing Director of the said bank a memorial of the name of such newly elected Managing Director in the same form or to the same effect as the hereinbefore mentioned memorial signed by such newly elected Managing Director and by a majority of the directors of the said bank at the time of the election of such newly elected Managing Director shall in like manner be recorded upon the oath (so administered as aforesaid) of one of the said directors of the said bank for the time being in the said Supreme Court within sixty days next after such Managing Director shall be so newly elected.

No action to be brought until memorial be recorded.

3. Provided always and be it enacted That until such memorial as hereinbefore is first mentioned be recorded in the manner hereinbefore directed no action suit or other proceeding shall be brought by the said bank in the name of the Managing Director of the said bank as aforesaid under the authority of this Act.

The Managing Director and other officers of the bank to give evidence notwithstanding interest in the same.

4. Provided always and be it enacted That in all actions suits petitions or other proceedings at law or in equity in which the said Managing Director for the time being shall be on behalf of the said bank and under and by virtue of this Act plaintiff complainant or petitioner or defendant it shall and may be lawful for the said Managing Director for the time being or for any director auditor treasurer secretary clerk or any other officer engaged in the executive duties of the said bank or for any proprietor or shareholder in the said bank to give evidence in such action suit petition or other proceeding notwithstanding the name of such Managing Director for the time being shall be used as plaintiff complainant petitioner or defendant and notwithstanding that such director auditor treasurer secretary clerk or other officer as aforesaid shall or may be interested in the result of such action as a shareholder or copartner in the said joint stock banking company.

Execution upon any judgment may be issued against any member of the bank who shall have his remedy against the other members.

5. Provided always and be it enacted That execution upon any decree order or judgment in any such action suit petition or other proceeding obtained against the Managing Director for the time being of the said bank whether he be plaintiff or defendant therein may be issued against and levied upon the goods and chattels lands and tenements of any member or members whomsoever of the said bank for the time being in like manner and not otherwise than as if such decree order or judgment had been obtained against such member

or

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or members personally Provided always that every such Managing Director in whose name any such action suit petition or other proceeding shall be commenced prosecuted carried on or defended and every such member or members against whose goods and chattels lands and tenements execution upon any judgment or decree shall be issued or levied as aforesaid shall always be reimbursed and paid out of the funds of the said bank all such damages dues expenses costs and charges as by the event of any such proceedings such Managing Director or member or members shall or may be put to or become chargeable with and all such remedies shall be allowed as between the several members of the said bank for the time being as if this Act had not been passed.

6. And be it enacted That for the purpose of give better effect to the provision last hereinbefore contained the Managing Director for the time being of the said bank shall within sixty days from the passing and publication of this Act and thereafter in the month of January in each year cause a true list of the names of all the then existing members of such bank with their respective places of abode and descriptions to be recorded on oath to be administered before any Commissioner of the said Supreme Court in the office of the Registrar of the said Supreme Court and that the same shall be open for inspection at all reasonable times by any person requiring the same on payment of a fee of one shilling and if such Managing Director shall fail to cause such list to be recorded in manner aforesaid he shall be liable to a penalty of one hundred pounds to be recovered by action of debt in the said Supreme Court by any person or persons who shall sue for the same.

List of members to be recorded on oath in the office of Registrar of Supreme Court.

7. And be it enacted That every person whose name shall be so recorded shall be considered a member of the said bank and be liable as such until a new list of the members' names shall be recorded as aforesaid or until he shall have given notice in the *New South Wales Government Gazette* of his retirement from the said bank Provided always that every such Managing Director in whose name any action suit petition or other proceeding shall be commenced prosecuted carried on or defended and every such member or members against whose goods chattels lands or tenements execution shall be so issued as aforesaid shall always be reimbursed and paid out of the funds of the said bank all such damages costs and expenses as by the event of any such proceedings such Managing Director or member or members shall or may be put unto in respect thereof and all such remedies shall be allowed as between the several members of the said bank for the time being as if this Act had not been passed.

Every person included in such list to be considered a member until new list recorded or until he shall have given notice of retirement in the *Government Gazette*.

8. And be it enacted That the provisions in this Act contained shall extend and be construed deemed and taken to extend to the said bank at all times during the continuance of the same whether the said bank be now or hereafter composed of some or all or any of the persons who were the original or are the present members thereof or of all or some of those persons together with some other person or persons or shall be composed altogether of persons who were not original or are not now members of the same.

Act to be at all times valid notwithstanding change of members of the bank.

9. Provided always and be it enacted That nothing herein contained shall extend or be deemed taken or construed to extend to incorporate the members or proprietors of the said bank or to relieve or discharge them or any of them from any responsibility duties contracts or obligations whatsoever which by law they now are or at any time hereafter shall be subject or liable to either between the said bank and others or between the individual members of the said bank or any of them and others or among themselves or in any other manner whatsoever except so far as the same is affected by the provisions of this Act and the true intent and meaning of the same.

Bank not incorporated by this Act.

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Bonds &c. taken in the name of the Managing Director may be put in suit in the name of the Managing Director in whose name originally taken or in the name of the Managing Director for the time being.

10. And be it enacted That all bonds covenants mortgages warrants of attorney and other securities not being assignable in law which have been or which shall or may at any time hereafter be taken in the name of any person as Managing Director of the said bank or in the name of any director or directors of the said bank for and on account of the said bank shall and may be put in suit and be sued and prosecuted upon at law or in equity in the name of the Managing Director in whose name the same may have been taken or in the name of any person who shall or may succeed to that office and be the Managing Director of the said bank at the time such proceeding or proceedings shall be instituted notwithstanding the name of any such succeeding Managing Director be not inserted in such bond covenant mortgage warrant of attorney or other such security as an obligee covenantee mortgagee assignee or payee of the sum or sums of money therein respectively mentioned or secured and the death resignation removal or other act of any such Managing Director of the said bank for the time being in whose name any such bond covenant mortgage warrant of attorney or other security as aforesaid shall be so put in suit shall not abate any action suit or other proceeding had thereon but the same may be continued where it left off and be prosecuted and carried on in the name of any person who may be the succeeding Managing Director or who may be or become the Managing Director of the said bank for the time being and the legal estate in all lands and tenements belonging or mortgaged to the said bank and all other legal rights and capacities in respect of the said bank shall become vested in such succeeding Managing Director or Managing Director for the time being as aforesaid to all intents and purposes immediately upon the recording of the memorial of the name of such succeeding Managing Director in the said Supreme Court and so on *toties quoties* whensoever any new appointment or election of a Managing Director or Managing Director for the time being of the said bank shall take place and such new memorial thereof shall be recorded as aforesaid.

Plaintiff not to be nonsuited for want of proof of record of memorial.

11. And be it enacted That in any action to be brought by any Managing Director of the said bank by virtue of this Act the plaintiff therein shall not be nonsuited nor shall a verdict be given against the plaintiff for want of proof of the record of such memorial or memorials as hereinbefore mentioned but in case the defendant in any such action shall make it appear on such trial that no such memorial or memorials has or have been recorded as aforesaid then a nonsuit shall be entered in such action.

Nothing in this Act contained to affect or apply to any right &c. of Her Majesty or any bodies politic or corporate.

12. Provided always and be it enacted That 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 or of any body or bodies politic or corporate or of any other person or persons excepting such as are mentioned herein or of those claiming by or under him her or them.

This Act not to take effect until the same shall have received the Royal approbation.

13. And be it enacted That this Act shall not commence or take effect until the same shall have received the Royal approbation and the notification of such approbation shall have been made in the *New South Wales Government Gazette* by order of His Excellency the Governor for the time being of the said Colony.

This Act to be deemed a public Act.

14. And be it enacted That when and as soon as this Act shall have received the Royal approbation and the notification of such approbation shall have been made as aforesaid the same shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its dependencies without being specially pleaded.

