



**S U P P L E M E N T**  
TO THE  
**NEW SOUTH WALES**  
**GOVERNMENT GAZETTE,**  
OF WEDNESDAY, SEPTEMBER 23, 1840.  
Published by Authority.

SATURDAY, SEPTEMBER 26, 1840.

ANNO QUARTO.

VICTORIÆ REGINÆ.

By His Excellency Sir George Gipps, Knight, Captain-General, and Governor-in-Chief of the Territory of New South Wales, and its Dependencies, and Vice-Admiral of the same, with the advice of the Legislative Council.

*An Act for facilitating Proceedings at Law or in Equity by or against the Banking Company of Melbourne, called, "The Port Phillip Bank," and for other purposes therein mentioned.*

**W**HEREAS, several persons have formed themselves into a 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 Actions at Law, therefore enacted, by His Excellency the Governor of New South Wales, with the advice of the Legislative Council thereof, that from and after the passing of this Act, all actions and suits, and all proceedings at law, or in equity, to be commenced, 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 otherwise, 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 proceeding 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, instituted, or prosecuted against the said Bank, shall be com-

menced, instituted, 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, monies, 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, monies, goods, chattels, effects, or any other property of the said Bank, to be the property 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 prosecution 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 lawfully 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 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 proceedings 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.)*

II. 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)*

III. 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.)*

IV. 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 Co-partner 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.)*

V. 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 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.

*(List of Members to be recorded on oath, in the Office of Registrar of Supreme Court.)*

VI. And be it enacted, That, for the purpose of giving 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.

*(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.)*

VII. And be it enacted, That every person

whose names 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.

*(Act to be at all times valid, notwithstanding change of Members of the Bank.)*

VIII. 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.

*(Bank not incorporated by this Act.)*

IX. 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.

*(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.)*

X. 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, covenantor, 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.)*

XI. 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 of any bodies Politic or Corporate.)*

XII. 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.)*

XIII. 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.)*

XIV. And be it enacted, That when, and as soon 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 Co-

lony of New South Wales and its Dependencies, without being specially pleaded.

GEORGE GIPPS,

Governor.

*Passed the Legislative Council,*  
*this eighth day of Sep-*  
*tember, one thousand eight*  
*hundred and forty.*

WM. MACPHERSON,

Clerk of Councils.

#### SCHEDULE REFERRED TO.

Memorial of the Name of the Managing Director of the Banking Company of Melbourne, called the "Port Phillip Bank," to be recorded in the Supreme Court of New South Wales, pursuant to an Act of the Governor and Council passed in the fourth year of the Reign of Her Majesty Queen Victoria, intituled "*An Act for facilitating proceedings at Law or in Equity, by, or against, the*

*Banking Company of Melbourne, called 'The Port Phillip Bank,' and for other purposes therein mentioned.*"

A. B. Managing Director.

C. D.	} Directors.	N. O.
E. F.		P. Q.
G. H.		R. S.
I. K.		T. U.
L. M.		V. W.

X. Y. of Melbourne, Gentleman, of the above named Bank, maketh Oath and saith, that he was present and did see the foregoing Memorial signed by the above named Managing Director and Directors respectively, whose names appear thereto.

Sworn this                      day        }  
of                                      184        }

S. T.,

Commissioner of the Supreme Court.