



SUPPLEMENT TO THE NEW SOUTH WALES GOVERNMENT GAZETTE,

OF TUESDAY, JANUARY 18, 1842.

Published by Authority.

WEDNESDAY, JANUARY 19, 1842.

ANNO QUINTO
VICTORIÆ REGINÆ.

No. 19.

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 to repeal so much of an Act, intituled "An Act for preventing the mischiefs arising from the Printing and publishing Newspapers, and Papers of a like nature by persons not known, and for regulating the Printing and Publication of such Papers in other respects; and also for restraining the abuses arising from the Publication of blasphemous and seditious Libels," as relates to the sentence of Banishment on a second conviction, and farther to amend the same.

WHEREAS, by an Act of the Governor and Council of New South Wales, passed in the eighth year of the Reign of His late Majesty King George the Fourth, intituled "An Act for preventing the mischiefs arising from the Printing and Publishing Newspapers, and Papers of a like nature, by persons not known, and for regulating the Printing and Publication of such Papers in other respects; and also for restraining the abuses arising from the publication of blasphemous and seditious Libels," it was, amongst other things, enacted, that if any person should be legally convicted of having, after the passing of the said recited Act, composed, printed, or published any blasphemous or seditious Libel, tending to bring

into hatred or contempt the Government of the Colony of New South Wales, as by Law established, or to excite His Majesty's subjects to attempt the alteration of any matter in Church or State as by Law established, otherwise than by lawful means, and should, after having been so convicted, offend a second time, and should be thereof legally convicted before the Supreme Court, such person might, on such second conviction, be adjudged, at the discretion of the Court, either to suffer such punishment as might then, by Law, be inflicted in cases of high misdemeanors, or to be Banished from the said Colony, and its Dependencies, for such term of years as the said Court should order; and whereas it is expedient to repeal so much of the said recited Act as relates to the sentence of Banishment on a second conviction: Be it therefore enacted, By His Excellency the Governor of New South Wales, with the advice of the Legislative Council thereof, That so much and such parts of the said recited Act, as relate to Banishment on a second conviction, shall be, and the same are hereby, repealed.

(No Actions for Penalties to be commenced except in name of the Attorney or Solicitor General, at Sydney, or of the Crown Prosecutor, at Port Phillip.)

II. And be it enacted, That from and after the passing of this Act, it shall not be lawful for any person or persons whomsoever to commence, prosecute, enter, or file, or cause, or procure to be commenced, prosecuted, entered, or filed, in manner hereinafter provided, any Action, Bill, Complaint, or Information, in the Supreme Court, at Sydney, in the Colony aforesaid, or in any Circuit Court of the said Colony, or before any Justice or

Justices of the Peace, acting in and for any part of the said Colony, not being within the District of Port Phillip, against any person or persons whomsoever, for the recovery of any Fine, Penalty, or Forfeiture incurred, or which may be incurred by virtue of the said recited Act, unless the same shall be commenced, prosecuted, entered, or filed, in the name of Her Majesty's Attorney or Solicitor General of the said Colony, for the time being; nor in the Supreme Court at Melbourne, in the District of Port Phillip, in the Colony aforesaid, nor before any Justice or Justices of the Peace acting in and for the said District, unless the same be commenced, prosecuted, entered, or filed, in the name of the Crown Prosecutor, for the time being, in and for the said District; and if any such Action, Bill, Complaint, or Information, shall be commenced, prosecuted, entered, or filed, in the name of any other person or persons for anything already, or which may hereafter be done, or omitted to be done, under the said recited Act, the same, and every proceeding thereupon had, are hereby declared to be, and the same shall be null and void, to all intents and purposes whatsoever.

(Persons sued before the passing of this Act for Penalties incurred under the recited Act, may apply to the Court or a Judge to stay proceedings, upon certain conditions.)

III. And be it enacted, That from and after the passing of this Act, it shall be lawful for any person or persons, against whom any original Writ, Suit, Action, Bill, Complaint, or Information, shall have been sued out, commenced, or prosecuted, on or before the day of the passing of this Act, for the recovery of any pecuniary penalty or penalties incurred under the said recited Act, to apply to the Court in which such original Writ, Suit, Action, Bill, Complaint, or Information, shall have been sued out, commenced, or prosecuted, if such Court shall be sitting, or if not, then to any Judge of the said Supreme Court at Sydney, or to the Resident Judge of the said Supreme Court at Melbourne, aforesaid, as the case may be, for an Order, direct that such Writ, Suit, Action, Bill, Complaint, or Information, shall be discontinued, upon payment of the costs incurred in respect thereof, up to the time of such application being made, such costs to be taxed according to the practice of such Court; and every such Court, or Judge, is hereby authorised and required, upon such application, and upon proof that sufficient notice of such application has been given to the Plaintiff or Plaintiffs, or to his or their Attorney, to make such order as aforesaid; and upon the making such order, and payment, or tender of such costs as aforesaid, such Writ, Suit, Action, Bill, Complaint, or Information, shall be forthwith discontinued.

(Mode of proceeding for the recovery of Penalties before Justices of the Peace.)

IV. And be it enacted, That it shall be lawful for any Justice of the Peace, before whom any offence against the provisions of the said recited Act, the penalty for which shall not exceed twenty pounds, shall be tried, and such Justice is hereby required, upon any information exhibited, or complaint made by any person duly authorised in that behalf, to summon the party accused, and

also the witnesses on either side, to be and appear before the said Justice, or before any other Justice of the Peace, at a time and place to be in such summons appointed for that purpose, and whether the party accused shall appear or not, it shall be lawful for the said Justice, or any other Justice present at the time and place appointed for such appearance, to proceed to examine into the fact; and upon due proof made thereof, to the satisfaction of any such Justice, either by confession of the party accused, or by the oath of one or more credible witness or witnesses, to convict such offender, and to give judgment for the penalty and costs, to be assessed by any such Justice, and to issue his warrant for levying such penalty and costs on the goods and chattels of the offender, and to cause sale to be made thereof, in case the same shall not be redeemed within the five days then next ensuing, rendering to the offender the overplus, (if any), after deducting the reasonable costs and charges attending such distress and sale; and where no sufficient distress can be found to answer such penalty and costs, such Justice, or any other Justice of the District or place in which such conviction shall take place, shall commit such offender to the common Gaol or House of Correction, there to remain for any time not exceeding three calendar months, nor less than one calendar month, unless such penalty, costs, and charges, shall be sooner paid and satisfied; and if any person shall find himself aggrieved by the judgment of any such Justice, it shall be lawful for such person to appeal against the same, to the General or Quarter Sessions of the Peace, for the district or place where the offence shall have been committed, which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal, notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such Sessions; and it shall be lawful for the Justices at such Sessions to examine witnesses on oath, and finally to hear and determine such appeal; and in case the judgment appealed against shall be confirmed, it shall be lawful for the Justices at such Sessions to award and order the person convicted to pay, in addition to the original judgment, such costs, occasioned by such appeal, as to them shall seem meet: Provided always, that no person convicted before any such Justice shall be entitled or permitted to appeal against such conviction, in manner aforesaid, unless he shall, within three days after such conviction made, enter into a recognizance, with two sufficient sureties, before such Justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also such further costs as shall be awarded in case such conviction shall be confirmed on such appeal: Provided also, that no such proceedings so to be taken as aforesaid, shall be quashed or vacated for want of form, or shall be removed by *certiorari*, or by any other writ or process whatsoever, into any superior or other Court or jurisdiction, in any part of the said Colony, any law, statute, or usage to the contrary, notwithstanding: Provided further, that it shall be lawful for any Justice of the Peace, before whom any person shall be convicted of any offence against the said recited Act, to mitigate as he

shall see fit, any pecuniary penalty by the said Act imposed, in cases where such Justice shall see cause so to do, provided that all reasonable costs and charges incurred, as well in discovering as in prosecuting for such offence, shall be always allowed over and above the sum to which such penalty shall be mitigated, and that such mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges, anything herein contained to the contrary, notwithstanding.

(Form of Conviction.)

V. And be it enacted, That the Justice before whom any person shall be convicted of any offence under the said recited Act, shall cause the conviction to be made out in the manner and form following, or in any other form of words to the like effect, *mutatis mutandis*, that is to say:—

County of	}	Be it remembered
to wit.		that on the day of
of Our Lord One thousand eight hundred and forty at		in the Year

A. B., of , was duly convicted before me, C. D., Esq., one of Her Majesty's Justices of the Peace for the Colony of New South Wales, in pursuance of an Act passed in the fifth year of the Reign of Her present Majesty Queen Victoria, intituled, (*insert Title of Act.*)

for that the said A. B., (*here state offence.*) contrary to the Form of the Act in that case made and provided, for which offence I do adjudge that the said A. B. hath forfeited the sum of and (if the Justice mitigate the penalty,) which sum of I do hereby mitigate to the sum of over and above the sum of which I do allow to E. F., for his reasonable costs and expences in prosecuting this conviction.

Given under my Hand and Seal, &c.

(*Name of Proprietor or Editor not necessary to appear in the Imprint of Newspapers, nor Editor's name in Affidavit.*)

VI. And be it enacted, That from and after the passing of this Act, it shall not be necessary that the name of any Proprietor or Editor should appear in the Imprint of any Newspaper, or that the name of such Editor should be inserted in any affidavit or affirmation required to be made under the said recited Act; and that no penalty shall be incurred by any such Proprietor or Editor, or by any other person in respect of the omission of such Proprietor's or Editor's name in the Imprint of any Newspaper, or of such Editor's name in any affidavit or affirmation required to be made under the said recited Act, anything therein contained to the contrary, notwithstanding.

GEORGE GIPPS,

Governor.

Passed the Legislative Council,
this third day of January,
One thousand eight hundred
and forty-two.

WM. MACPHERSON,

Clerk of Councils.

ANNO QUINTO

VICTORIÆ REGINÆ,

No. 20.

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 to facilitate Proceedings by and against the Proprietors of a certain Joint Stock Company, lately carrying on business at Melbourne, in the District of Port Phillip, in the Colony of New South Wales, under the Name, Style, or Firm, of the "MELBOURNE AUCTION COMPANY;" and for other purposes therein mentioned.

WHEREAS a certain Joint Stock Company, which lately carried on business as Preamble. Auctioneers, at Melbourne, in the District of Port Phillip, in the Colony of New South Wales, under the Name, Style, or Firm, of the "MELBOURNE AUCTION COMPANY," have met with great difficulty in the Prosecution of Actions brought for the recovery of debts justly due to the said Company; and whereas it would facilitate the settlement of the affairs of the said Company, and be of public utility and advantage, that all claims for and against the said Company, existing before the passing of this Act, should be sued for by, and prosecuted against, the said Company, in the name of some one Member thereof, whose name and description should be recorded for the information of the Public; but as these purposes cannot be obtained without the aid and authority of the Legislature: Be it 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, Suits, or Proceedings, whether at Law or in Equity, in Bankruptcy or Sequestration, or otherwise howsoever to be commenced, instituted, or prosecuted by or on behalf of the said Company, or any person or persons, as Trustee or Trustees of the said Company, against any Body or Bodies, Politic or Corporate, or against any person or persons, whether a Member or Members of the said Company, or otherwise, in respect of any debt, claim, right, cause of action, interest, or liability whatsoever, now subsisting, or to arise hereafter out of, or in respect of, or relating to any such debt or claim, right, cause of action, interest, or liability, mediately, or immediately, shall and may be commenced, instituted, or prosecuted in the name of the Chairman of the Court of Directors for the time being of the said Company, as the nominal Plaintiff, Complainant, or Petitioner for and on behalf of the said Company; and that all actions, suits, or proceedings, at Law or in Equity, or otherwise as aforesaid, to be commenced, instituted, or prosecuted against the said Company, by or on behalf of any Body or Bodies, Politic or Corporate, or by or on behalf of any person or persons whether a Member or Members of the said Company, or otherwise, shall and may be commenced, instituted, and prosecuted

against the Chairman of the Court of Directors for the time being of the said Company, as the nominal Defendant for and on behalf of the said Company, or if there be no such Chairman of the Court of Directors for the time being of the said Company, then and in that case, against any Member or Members of the said Company: Provided nevertheless, that nothing herein contained shall prevent any Plaintiff or Plaintiffs from joining any Member or Members of such Company with the Chairman of the Court of Directors for the time being of the said Company, as a Defendant or Defendants in Equity, for the purpose of discovery, or in case of fraud: And provided further, that no claim or demand which any Member of the said Company may have against the said Company in respect of his share of the Capital or Joint Stock thereof, or of any dividends, interest, profits, or bonus, payable or apportionable in respect of such share, shall be capable of being set off either at Law or in Equity against any demand which such Copartner-ship may have against him. respect of such matter or thing may be carried on as if no claim or demand existed in respect of such Capital or Joint Stock, or of any dividends, interest, profits, or bonus, payable or apportionable in respect thereof.

(Prosecutions and other Criminal proceedings to be in the name of the Chairman of the Court of Directors.)

II. And be it enacted, That all Criminal Informations and Prosecutions to be brought, instituted, or carried on, by or on behalf of the said Company, for fraud upon or against the said Company, or for embezzlement or robbery, or for counterfeiting or stealing the bills, notes, bonds, monies, securities, goods, chattels, effects, or other property of or belonging to the said Company, or for any felony, misdemeanor, or other offence committed against or with intent to injure or defraud the said Company, shall and lawfully may be brought, instituted, or carried on in the name of the Chairman of the Court of Directors for the time being of the said Company: and in all Indictments, Informations, and other proceedings as aforesaid, it shall and may be lawful and sufficient to describe the property of the said Company as the property of the Chairman of the Court of Directors for the time being of the said Company; and that any offence, committed with intent to injure or defraud the said Company, shall and lawfully may, in any prosecution for or on account of the same, be stated to have been committed with intent to injure or defraud the Chairman of the Court of Directors for the time being of the said Company; and any Offender or Offenders may thereupon be lawfully convicted of any such offence; and in any other allegations or indictments, informations, or other proceedings, for or on behalf of the said Company, it shall and may be lawful and sufficient, from and after the passing of this Act, from time to time, to state the name of the Chairman of the Court of Directors for the time being of the said Company,

as the nominal Plaintiff, Complainant, or Petitioner; and the death, resignation, or removal, or other act of such Chairman, or change in the Members of the said Company by transfer of shares, or otherwise, shall not abate any such action, suit, or prosecution, or other proceeding, but the same may be continued, prosecuted, and carried on, in the name of any person who may be or become Chairman of the Court of Directors for the time being of the said Company.

(Memorial of the name of the Chairman of the Court of Directors to be recorded in the Supreme Court of Port Phillip.)

III. And be it enacted, That a Memorial of the name of the Chairman of the Court of Directors for the time being of the said Company, in the form or to the effect of the form set forth in the Schedule to this Act annexed, signed by the said Chairman and by a majority of the said Court of Directors, shall be recorded upon oath in the Supreme Court in the said District, within thirty days after the passing of this Act; and when and so often as any Chairman of the Court of Directors of the said Company shall be newly elected, or a Chairman shall be substituted for the Chairman of the Court of Directors for the time being of the said Company, a Memorial of the name of such newly elected or substituted Chairman of the said Court of Directors, in the same form or to the same effect as the hereinbefore mentioned Memorial, signed by such newly elected or substituted Chairman and by a majority of the said Court of Directors, shall in like manner be recorded upon oath in the said Supreme Court, within thirty days after such election or substitution.

(No Action to be brought in the name of the Chairman of the Court of Directors until Memorial recorded.)

IV. Provided always and be it enacted, That until such Memorial, as hereinbefore first mentioned, be recorded in manner hereinbefore directed, no action, suit, or other proceeding shall be brought by the said Company in the name of the Chairman of the Court of Directors thereof as aforesaid, under the authority of this Act.

(Evidence of Chairman, Members, and Officers, to be admissible.)

V. And be it enacted, That in all actions, suits, petitions, or other proceedings, whether civil or criminal, in which the said Chairman of the Court of Directors for the time being of the said Company, or any Member of the said Company shall be, on behalf of such Company, and under and by virtue of this Act, Plaintiff, Complainant, Petitioner, or Defendant, it shall and may be lawful for such Chairman, or Member, or for any Officer engaged in the executive duties of the said Company, to give evidence in such action, suit, petition, or other proceeding, notwithstanding the name of such Chairman or Member shall be used as Plaintiff, Complainant, Petitioner, or Defendant, and notwithstanding that such Chairman, Member, or Officer as aforesaid shall or may be interested in the result of such action, suit, petition, or other proceeding, as a Shareholder or Co-partner in the said Company.

(Company may make Contracts and Conveyances in the name of the Chairman.)

VI. And be it enacted, That all contracts, agreements, conveyances, leases, releases, assignments, surrenders, covenants, receipts, and other documents, made or to be made, given, or granted, by, or to, or on behalf of the said Company, relating to any such now subsisting debt, claim, right, cause of action, interest, or liability as aforesaid, shall and may be made and executed, and enforced by, or to, or against the Chairman of the Court of Directors for the time being of the said Company; and the same shall be binding upon the said Company, and the Capital Stock thereof, and pass all the Estate and Interest of the said Company.

(Execution may issue against any Member of the Company.)

VII. And be it enacted, That execution upon any decree or judgment in any action, suit, petition, or other proceeding, obtained against the Chairman of the Court of Directors for the time being, or other Member of the said Company as aforesaid, whether as Plaintiff or Defendant, may be issued against and levied and satisfied upon and out of the goods, chattels, lands, and tenements, of any Member or Members whomsoever of the said Company for the time being, as if such decree or judgment had been obtained against such Member or Members personally.

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

VIII. And be it enacted, That for the purpose of giving better effect to the provision last hereinbefore contained, the Chairman of the Court of Directors for the time being of the said Company shall, within thirty days from the passing of this Act, and thereafter in the month of January in each year so long as this Act shall remain in force, cause a true list of the names of all the then existing Members of the said Company, with their respective places of abode and descriptions, to be recorded on oath in the Office of the Deputy Registrar of the said Supreme Court; and 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 Chairman 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 in the Government Gazette of his retirement.)

IX. And be it enacted, That every person whose name shall be so recorded, shall be considered a Member of the said Company, 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 *Government Gazette*, of his retirement from the said Company: Provided always, that every Chairman of the Court of Directors for the time being of the said Company, in whose name any action, suit, petition, or other proceeding shall be commenced, prose-

cutted, carried on, or defended, and every Member or Members of the said Company 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 Company, all such damages, costs, and expences, as, by the event of any such proceedings, such Chairman, 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 Company for the time being, as if this Act had not been passed: Provided, nevertheless, that the body of such Chairman 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.

(Bankruptcy of individual Members not to affect the Company.)

X. And be it enacted, That the bankruptcy, insolvency, or stopping payment of any Officer, Director, Chairman, or other Member of the said Company, in his individual capacity, shall not be construed to be the bankruptcy, insolvency, or stopping payment of the said Company; and that the property and effects of the said Company, and the persons, property, and effects of the individual Members thereof, shall, notwithstanding such bankruptcy, insolvency, or stopping payment, be liable to execution in the same manner as if such bankruptcy, insolvency, or stopping payment had not taken place.

(Act to continue in force notwithstanding change of Members.)

XI. And be it enacted, That the provisions of this Act shall extend to the said Company at all times during the continuance of the same, notwithstanding any change in the Members thereof, by transfer of shares or otherwise howsoever.

(Company not incorporated by this Act.)

XII. Provided always, and be it enacted, That nothing herein contained shall extend, or be deemed, taken, or construed to incorporate the Members of the said Company, 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 Company and others, or between the individual Members of the said Company, 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.

(Securities and Contracts to be put in suit by the Chairman of the Court of Directors for the time being.)

XIII. And be it enacted That all bonds, mortgages, warrants of attorney, and other securities, not being assignable in law, and all contracts and agreements, whether parol or under seal, which have been, or shall, or may at any time hereafter be taken in the name of the Chairman of the Court of Directors for the time being of the said Company, for or on account of the said Company, in any way relating to or arising out of such now subsisting debt, claim, right, cause of action, interest, or liability as aforesaid, shall and may be put in suit, and

enforced, sued, and prosecuted upon at Law or in Equity, in the name of the Chairman of the Court of Directors for the time being of the said Company, in whose name the same may have been taken or entered into, or in the name of any person who shall or may succeed to that office, and be the Chairman of the Court of Directors for the time being of the said Company at the time such proceeding or proceedings shall be instituted, carried on, or continued, notwithstanding the name of any such succeeding Chairman be not inserted in any such bond, mortgage, warrant of attorney, or other such security, or in any such contract or agreement, as an obligee, 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 Chairman of the Court of Directors for the time being of the said Company, in whose name any such bond, mortgage, warrant of attorney, or other such security as aforesaid, or any such contract or agreement shall be so put in suit, shall not abate any action, suit, or other proceeding had thereon, but the same may be continued and carried on where it left off, in the name of any person who may be or become the Chairman of the Court of Directors for the time being of the said Company; and the legal estate in all lands, tenements, and all property, real and personal, belonging or mortgaged to the said Company, for all legal rights and capacities in respect of the said Company, shall and may become vested in the succeeding Chairman of the Court of Directors for the time being, immediately upon the recording of the Memorial hereinbefore required of the name of such succeeding Chairman of the Court of Directors for the time being of the said Company, in the said Supreme Court; and so on *toties quoties* whensoever any new appointment, election, or substitution of a Chairman of the Court of Directors for the time being of the said Company shall take place, and such Memorial thereof shall be recorded as aforesaid.

(Plaintiff not to be nonsuited for want of proof of record of the Memorial.)

XIV. And be it enacted, That in any action to be brought by any Chairman of the Court of Directors for the time being of the said Company, by virtue of this Act, the Plaintiff therein shall not be non-suited, nor shall a verdict be given against the Plaintiff for want of proof of the record of such Memorial or Memorials as hereinbefore mentioned, nor shall the existence of such Memorial be taken to be in issue, unless specially desired by any Defendant; but in case the Defendant in any such action shall specially deny, on the record, that any such Memorial has been duly recorded as aforesaid, and shall make it appear on such trial that no such Memorial has been so recorded, then a non-suit shall be entered in such action.

(Saving the rights of Her Majesty and Others.)

XV. 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, Politic or Corporate, or of any person or persons excepting such as are mentioned therein,

or of those claiming by or under him, her, or them.

(Commencement and duration of Act.)

XVI. And be it enacted, That this Act shall commence and take effect from and after the passing thereof, and shall continue in force for two years thereafter, and not longer, save and except as to any action, suit, prosecution, or other proceeding at Law or in Equity, actually commenced or instituted, which, notwithstanding this Act shall have expired, may be carried on in all respects whatsoever as if the same had continued in force.

(Act to be deemed a Public Act.)

XVII. And be it enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by the Resident Judge of said Supreme Court at Port Phillip and by the Judges of the Supreme Court of New South Wales, and of the several Circuit Courts throughout the Colony, and by all other Judges Justices, and others within the Colony of New South Wales and its Dependencies, without being specially pleaded.

GEORGE GIPPS,

Passed the Legislative Council, this third day of January, One thousand eight hundred and forty-two. Governor.

WM. MACPIHERSON,
Clerk of Councils.

SCHEDULE REFERRED TO.

Memorial of the name of the Chairman of the Court of Directors of the "MELBOURNE AUCTION COMPANY," to be recorded in the Supreme Court in the District of Port Phillip, in the Colony of New South Wales, pursuant to an Act of the Governor and Council, passed in the Fifth year of the Reign of Her Majesty Queen Victoria, intituled "An Act to facilitate proceedings by and against the Proprietors of a certain Joint Stock Company, lately carrying on business at Melbourne, in the District of Port Phillip, in the Colony of New South Wales, under the name, style, or firm, of the 'MELBOURNE AUCTION COMPANY; and for other purposes therein mentioned."

A. B., Chairman of the Court of Directors.

C. D. }
E. F. } Directors. { I. K.
G. H. } { L. M.
 { N. O.

P. Q., of Melbourne, Merchant, proprietor of the above-named Company, making oath and saith, that he was present and did see the foregoing Memorial signed by the above named Chairman and Directors, respectively, whose names appear thereto.

Sworn this day of 184 .

ANNO QUINTO
VICTORIÆ REGINÆ,
No. 21.

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 to amend the Act for the Registration of Deeds, and to provide for the establishment of a separate Registry for Sydney and Port Phillip, respectively.

WHEREAS, by an Act of the Governor and Preamble. Council of New South Wales, passed in the Sixth Year of the Reign of King George the Fourth, intituled, "*An Act for Registering Deeds and Conveyances in New South Wales, and for other purposes*," all No. 22.

Memorials of Deeds and other Instruments relating to real property in New South Wales, are required to be verified, and all acknowledgments of married women and other persons, to be made and taken, before one of the Judges of the Supreme Court of New South Wales, or before the Registrar thereof, or a Commissioner specially appointed for that purpose; and whereas the said provisions have, by reason of the present wide extent of the Colony of New South Wales, been found inconvenient, and the said Act requires amendment in certain other respects, and, in particular, it is expedient to provide for the establishment of a separate Registry Office for Sydney and for the District of Port Phillip, respectively: Be it 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 and publication of this Act, every Memorial which, by the said recited Act, or by this present Act, is required to be verified, and every acknowledgment by a married woman or other person which, by the said recited Act, is directed in certain cases to be made, may be verified and made, respectively, before either a Judge of the said Supreme Court, or before the Registrar of the same, or, within the District of Port Phillip, before the Deputy Registrar or other person who may be appointed to discharge the duties of Registrar there, or before any Commissioner of the said Supreme Court, appointed in any part of the Colony under this Act for those purposes, (such Commissioner not being a party to the Instrument, nor having been employed to prepare the same); and every Memorial so verified, and acknowledgment so made, such acknowledgment being certified under the Hand and Seal of the Judge or other person taking the same, in the form or to the effect of the form set forth in the Schedule to this Act annexed, marked A, shall be as valid and effectual as if the same had been verified, or made and certified, respectively, in manner required by the said recited Act.

(Original Instrument to be produced; course to be taken if any Marksman thereto.)

II. Provided always, and be it enacted, That the original Instrument, to which any such Memorial or Acknowledgment relates, shall be produced to the Judge or Registrar, or other person, before whom the same shall be verified, or made, as aforesaid; and in case such Instrument shall appear to have been executed by any party unable to write, then such Judge, Registrar, or other person, shall refuse to complete such Memorial or

Acknowledgment, by certifying the same, unless the execution by such party shall be attested by some Justice of the Peace, or Barrister, or Attorney, or Notary Public, whose attestation shall contain a certificate that the contents of such Instrument were previously explained to the party so unable to write, and that the nature and effect thereof were, at the time of such attestation, to the best of the belief of such Justice, or Barrister, or Attorney, or Notary Public, understood by such party.

(Fees to be paid on Registration, &c.)

III. And be it enacted, That there shall be paid, in respect of the several matters mentioned in this Act, and in the Schedule hereto annexed, marked B, and also for and upon the enrolment of every Grant from the Crown, hereafter made and issued, the sums or fees respectively set forth in such last mentioned Schedule; which respective sums or fees shall be demanded and taken, by the Registrar of the said Supreme Court, or, within the District of Port Phillip, by the Deputy Registrar or other person who may be appointed to discharge the duties of Registrar there, upon the receipt by him of any such Memorial, or Grant from the Crown, for the purpose of registration or enrolment, as the case may be; and such sums or fees shall severally be accounted for and paid, as by the said Act is directed with respect to the fees thereby made payable; and from and after the publication of this Act, the fees so by the said recited Act made payable, and mentioned in the Schedule annexed thereto, marked B, shall cease and determine: Provided always, that the sums or fees hereby made payable on the enrolment of any Grant from the Crown, shall not be paid to such Registrar, Deputy Registrar, or other person as aforesaid, but to the Colonial Treasurer in Sydney, or sub-Treasurer in Melbourne, or to such other Officer as may be appointed by His Excellency the Governor to deliver such Grants, upon the delivery of the same to such Grantee, or to his representatives or assigns; and all such fees or sums so paid, shall be accounted for and applied, in the same manner as other public monies coming into the hands of the said Colonial Treasurer, are required to be accounted for and applied.

(Fees to Registrar or Commissioner.)

IV. And be it enacted, That in addition to the Fees made payable by the said Schedule marked B, it shall be lawful for every Commissioner appointed under this Act, except at Sydney and Melbourne, to demand and have for his own use, for the taking and certifying by him as aforesaid of every acknowledgment under this Act, the sum of five shillings, and for the taking of every such verification to a Memorial as aforesaid, the sum of two shillings and sixpence.

(Registration for Port Phillip.)

V. And be it enacted, That from and after the passing of this Act, all Crown Grants and all Instruments, except Leases for a period less than three years, affecting any Lands or Hereditaments, situate within the District of Port Phillip, whether already, or hereafter to be executed, shall be enrolled or registered, as the case may require, in the Office of the Deputy Registrar of the said Supreme Court, at Melbourne, in the said District; and for all purposes of and connected with such enrolment and registration, and of and connected with the registering of all Wills affecting or intend-

ing to affect Lands in the said District, the Deputy Registrar, or other person who may be appointed to discharge the duties of Registrar of such Court in the said District, shall have, and be subject to, all such and the same powers, liabilities, and duties, in every respect, as the Registrar of the Supreme Court of the said Colony, at Sydney, has or would have, and is or would be subject to, in respect of the like Grants and Instruments, enrolled or registered, or which of right ought to be enrolled or registered, in the Office of such Registrar, at Sydney.

(Limits of Port Phillip defined.)

VI. And be it enacted, That the limits of the District of Port Phillip shall, for the purposes of this Act, comprise all such parts of the Territory of New South Wales, as now are, or shall at any time hereafter be, comprised in the limits within which the Resident Judge of the said District now hath, or may hereafter have, Jurisdiction.

(Transcripts of existing Memorials to be transmitted to Port Phillip.)

VII. And be it enacted, That the Registrar of the said Supreme Court, at Sydney, shall, as soon as conveniently may be, after the passing of this Act, except in the cases hereinafter otherwise provided for, make out and transmit to the Deputy Registrar, or other person discharging the duties of Registrar of the said Supreme Court, at Melbourne, in the District of Port Phillip, a Transcript, certified under his hand, of all Memorials of Instruments affecting Land within the said District, which are now registered, or which have been deposited for registration, in the office of such Registrar of the said Supreme Court, at Sydney; and all such Transcripts shall be received by the Deputy Registrar, or other person discharging the duties of Registrar of the said Supreme Court, at Melbourne, in the District of Port Phillip, and be by him entered and preserved, and shall be of the same force and effect, to all intents and purposes, as the original Memorials at Sydney.

(Receipt of Memorial and date of such Receipt to be endorsed on the Instrument to which it relates.)

VIII. And be it enacted, That after the passing of this Act, the Receipt which by the said recited Act is directed to be given on the delivery of any Memorial into the Office of the Registrar of the said Supreme Court of New South Wales, for registration, shall in every case where such Memorial relates to any Instrument not being a Will, be endorsed on such Instrument, and the Registrar or Deputy Registrar, or other proper officer in that behalf, shall then attach his signature thereto; and every such Receipt, so endorsed and signed, shall, on proof of such signature, be taken and allowed as evidence of the registration of such Instrument, and of the time when such Registration was made.

(When two Instruments are used for perfecting the same Conveyance.)

IX. And be it enacted, That where more than one Instrument shall have been used, or shall be used, for perfecting the same Conveyance or Security relating to the same Lands or Hereditaments, one Memorial only shall be necessary; nor shall more than one Memorial be deemed to have been necessary in any such case, under the said recited Act, at any time heretofore; and in any such Memorial, it shall be sufficient if the Lands and Hereditaments be particularised once only.

(No Judgments recovered to bind Lands, unless Execution thereon lodged with the Sheriff.)

X. And be it enacted and declared, That no judgment in any Action at law already recovered, or to be recovered, shall bind or affect, or be deemed to have bound or affected any Lands or Hereditaments in the said Colony: Provided always, that every Writ of Execution on any such judgment against the Lands or Hereditaments of the person against whom such judgment shall be obtained, when delivered to the Sheriff of the said Colony, or the Sheriff of any District thereof, as the case may be, shall affect, and be deemed to have bound such Lands from the time of such delivery thereof, in like manner, as any Writ of *Fieri Facias* now binds goods and chattels.

(Deeds to take effect according to priority of Registration.)

XI. And be it enacted, That after the passing of this Act, so much of the said recited Act as enacts that no Deed, Conveyance, or other Instrument in writing, conveying or affecting any Lands, Tenements, or Hereditaments, shall be subject to lose any priority to which the same might otherwise be legally entitled, if the same be registered in conformity with that Act, within the times therein for that purpose limited, shall be, and the same is hereby repealed: and that all Deeds and other Instruments affecting any Lands or Hereditaments in New South Wales or its Dependencies, which shall be executed or made after the passing of this Act, and which shall be duly Registered under the provisions of this Act, shall have and take priority, not according to their respective dates, but according to the priority of Registration thereof only: Provided always that this section shall not extend to, or affect any Deed, which shall be executed at any place in Europe within twelve months, or at any other place elsewhere out of New South Wales, within six months after the passing of this Act.

(Representative of party, if dead, or Agent of an absent party, may sign Memorial in his name.)

XII. And be it enacted, That where the party on whose behalf any Instrument required to be Registered, shall be dead, or absent from the said Colony, at the time when the Registration thereof shall be required to be made, it shall and may be competent for the lawful Representative or Attorney of such party, upon application to one of the Judges of the said Supreme Court, at Sydney, or to the Resident Judge of the said Court, at Port Phillip, and upon proof, to the satisfaction of such Judge, of the fact of the death or absence of such party, and upon the order of such Judge, to sign the Memorial thereof, in the name, and on the behalf of the original party to such Instrument; and such signing shall be as valid and effectual, to all intents and purposes, as if such Memorial had been signed by the original party or parties thereto.

(False Oaths made Punishable.)

XIII. And be it enacted, That if any person shall, at any time, wilfully forswear himself, or state anything contrary to the truth, in any oath taken under the authority of this or the said recited Act, he shall be deemed guilty of Perjury, and shall suffer such punishments as are, or may be, provided by Law for that Crime.

(Term Instrument.)

XIV. And be it enacted, That the term Instrument, hereinbefore used, shall, for the several pur-

poses of this Act, be construed to include, not only Conveyances and other Deeds, but also all Instruments in writing whatsoever, whereby Real Estate shall be affected, or shall be intended so to be.

(Registrar to cause proper Indexes to be made.)

XV. And be it enacted, That it shall be the duty of the Registrar of the said Supreme Court, at Sydney, and of the Deputy Registrar of the said Court, at Port Phillip, with respect to all Instruments proper to be there respectively registered, from time to time, to make and prescribe the form and size of Memorials, so as to facilitate references to them, and render their preservation secure, and to make proper Indexes to all Registrations, in such a manner, that (as far as may be,) information may readily be obtained by parties interested therein, as to all Incumbrances, and Liens, or Instruments, affecting or intended to affect Real Estate in the Colony, and that reference may be had to all such Registrations, according to the Counties in which the lands are situate, to which they respectively apply.

(As to Official Seal.)

XVI. And be it enacted, That in all cases where, under the said recited Act, an acknowledgment is required to be certified under an Official Seal, the Seal actually affixed to any such acknowledgment, or to any certificate thereof, shall, for the purposes of the said Act, be taken to be the Official Seal of the Officer taking or certifying the same; and no evidence to prove the contrary shall be admissible in any case, either at Law or in Equity.

(Deposit of examined copy of any Instrument.)

XVII. And be it enacted, That in all cases where, after the passing of this Act, in addition to a Memorial of the Instrument intended to be registered, there shall also be therewith deposited in the Office of the Registrar of the said Supreme Court, at Sydney, or the Deputy Registrar of the said Court, at Port Phillip, as the case may be, an examined copy of such Instrument, at full length, certified by the oath of two credible persons, such oath having been taken before a Judge, or any Commissioner appointed under this Act, or before such Registrar or Deputy Registrar, to be a true copy of the original to which the same relates, and by the oath in like manner of the attesting witness or witnesses to such original Instrument, that it was duly executed by the several parties thereto, or by such of them as shall appear to have executed the same, every such original Instrument, and also, in all cases where secondary evidence thereof would be receivable, every such examined copy thereof, shall or lawfully may be received and given in evidence, in any suit or proceeding whatsoever, without proof of its execution by the parties, or any of them, whose execution shall have been so attested and certified, and as if such execution by the said parties had been proved in the ordinary manner.

(Proviso as to time of Deposit, &c.)

XVIII. Provided always, and be it enacted, That in every such case as last aforesaid, such examined copy shall have been referred to in the Memorial, as accompanying, or intended to accompany, the same, and that it shall have been deposited, as aforesaid, within two months, or, if executed out of the said Colony, within twelve

months, after the date of the Instrument to which it relates, or if executed before the passing of this Act, within six months after the passing hereof; and the day and hour of such deposit shall immediately after receipt of every such examined copy, be endorsed thereon, and also on the original Instrument of which it purports to be a copy, which endorsements, respectively, being signed by the said Registrar, or Deputy Registrar making the same, shall, on proof of such signature, be received as conclusive evidence of the fact or facts therein stated; and every such examined copy being consecutively numbered according to the order of its receipt, and also marked with the number of the Memorial to which it relates, shall thenceforth be carefully retained by such Registrar or Deputy Registrar, and preserved for future reference; and no such copy shall be received with any interlineation, or erasure therein, unless the same shall be noticed in the margin opposite thereto, by the signatures of the persons certifying on oath to such copy.

(Facilitating production of examined copy in Evidence.)

XIX. And be it enacted, That in every case where the production of any such examined copy, as aforesaid, or of any Memorial, shall be required for the purposes of evidence under this Act, the same shall or may be produced, respectively, either by the said Registrar, or Deputy Registrar, or any Clerk in the Office of such Registrar or Deputy Registrar, appointed by him for that purpose, or, by leave of a Judge, by any other person, upon security given to the satisfaction of such Judge, for the safe keeping thereof, and for the return of the same uninjured, within a reasonable time to be limited for that purpose.

(Effect of Registration in the last-mentioned cases as to Deeds of Feoffment.)

XX. And be it enacted, That with respect to every Deed of Feoffment hereafter executed, of which any such examined copy, certified as aforesaid, shall be duly deposited in the Office of the said Registrar, or Deputy Registrar, in manner aforesaid, the registration of the Memorial referring to such copy, shall operate as, and be for all purposes equivalent to, *livery of seizin* as to the Lands and Hereditaments comprised in and intended to be conveyed by such Deed of Feoffment, the same in all respects as if there had been *livery of seizin* actually made and given of the same Lands and Hereditaments, in the most valid and effectual form and manner.

(Recital of Lease Evidence of its Execution.)

XXI. And be it enacted, That every Deed or Instrument of Release, executed after the passing of this Act, shall be as effectual as if the releasing parties who shall have executed the same, had also executed a Lease for a year for giving effect to such Release, although no such Lease shall be executed, and that the recital or mention of a Lease in a Release executed before the passing of this Act, shall be conclusive evidence of the execution of such Lease.

(Proviso as to Memorials relating to Lands in Port Phillip.)

XXII. Provided always and be it enacted, That all Memorials, solely relating to Land within the District of Port Phillip, may be

transmitted by the Registrar of the Supreme Court, at any time after the passing of this Act, to the Deputy Registrar, at Port Phillip, or Officer discharging the duty of Registrar of Deeds there; and in case of such last-mentioned transmission, no transcript of any such Memorial shall be necessary, but the like proceedings shall be had with respect to all such last-mentioned Memorials, as if they had been in fact registered, or left for registration, in the Registry Office, at Port Phillip, in the first instance.

GEORGE GIPPS,
Governor.

*Passed the Legislative Council,
this third day of January, One
thousand eight hundred and
forty-two.*

WM. MACPHERSON,
Clerk of Councils.

SCHEDULES REFERRED TO.

A.

This is to certify, that A.B., the wife of the within-named W.B., came before me C.D., Esq., a Commissioner appointed by the Supreme Court of New South Wales, for taking acknowledgments, under and by virtue of an Act of the Governor and Council, passed in the fifth year of the Reign of Her Majesty Queen Victoria, intituled "*An Act to amend the Act for the Registration of Deeds, and to provide for the Establishment of a separate Registry for Sydney and Port Phillip, respectively*," and not being the person employed to prepare the within Deed, nor being a party thereto, and she being by me examined apart from her said Husband, acknowledged that the within-written Instrument was executed by her, and that she was acquainted with and understood the nature and effect thereof; and she declared that she had so executed the same freely and voluntarily, without menace, force, or coercion, either on the part of her Husband, or any other person.

Witness my hand at the
day of 184 .

C.D.,
Commissioner.

N.B.—Where the Acknowledgment is not by a Married Woman, it will extend only to the fact of execution, and that the party knew the nature and effect of the Instrument, and the above Form must be altered accordingly; and where the

acknowledgment is taken before a Judge, or before the Registrar, the above Form must be adapted to such alteration.

B.

TABLE OF FEES TO BE TAKEN UNDER THIS ACT.

	s.	d.
1. For receiving every Memorial, before whomsoever made, including verifying the same	2	6
2. For every acknowledgment, before whomsoever taken, and whether already made or to be thereafter made	10	0
3. For the Receipt on every Deed, or on the Memorial of any Will.....	2	6
4. for Registration of each Memorial, not exceeding three Folios of 90 words.....	7	6
5. For ditto, if Memorial exceeds that number of folios—per folio of 90 words.....	0	8
6. For the enrolment of every Grant of Land hereafter issued under the Seal of this Colony, where the quantity granted shall not exceed 50 acres.....	10	0
7. For ditto, where the quantity shall be over 50, but under 300 acres.....	15	0
8. For ditto, where the quantity shall exceed 300 acres.....	20	0
9. For every search for Memorial of any Deed or Will of one Property....	2	6
10. For every examined copy of a Memorial.....	5	0
11. For the Registration of every Deed, Writing, Will, or Conveyance, or attested copy thereof, at length—per folio of 90 words	0	8
12. For receiving and endorsing every examined copy of an Instrument....	7	6
13. For every Oath certifying the same, or to execution of the Original, each Witness	1	0

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