

An Act for the establishment and regulation by Trustees of a General Cemetery near the City of Melbourne. [Assented to, 19th September, 1850.]

**W**HEREAS the Cemeteries or Burial Grounds within the City of Melbourne and the suburbs thereof are of limited extent, and insufficient for the increased and increasing population thereof, and it is intended by Her Majesty the Queen to grant certain land in the neighbourhood of the City of Melbourne for the purpose of the same being used as a General Cemetery for burying the dead of all denominations of religious faith, to be called the Melbourne General Cemetery: And whereas it is expedient that the same should be vested in Trustees with perpetual succession, who shall have power to regulate the use thereof, and to do and cause to be done all such acts, matters, and things as may be requisite or proper for the preservation of such Cemetery, and all buildings and erections thereon, and of ornamenting the grounds thereof in a suitable manner: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That after the passing of this Act, Trustees not fewer than three in number, to be appointed by the Governor for the time being of the said Colony, and their successors to be appointed as hereinafter is provided, shall have power to hold for ever any such lands as by Her Most Gracious Majesty the Queen may be conveyed to the said Trustees by Deed of Grant from the Crown, for such General Cemetery as aforesaid, upon such Trusts as in the said Deed of Grant shall be declared; and that thereupon the land so granted, together with all erections thereon, and the rights, easements, and appurtenances to the same belonging, shall be and become, remain, and continue vested in the said Trustees and their successors in the said Trust for ever, upon the Trusts in the said Deed of Grant to be declared, and subject to the provisions of this Act.

Preamble.

Trustees to be appointed by the Governor.

Trustees may hold land, &c.

II. Whereas by a certain Act of the Governor and Council of New South Wales, passed in the sixth year of the reign of His late Majesty King George the Fourth, intituled, "*An Act for better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages, and Burials, in New South Wales and its Dependencies, including Van Diemen's Land,*" it is amongst other things enacted, that no burial shall take place in any burial ground within the limits of any town otherwise than in any burial ground which may be set apart for such purpose, and which burial ground must be distant one mile at the least from any town or township, and it is expedient to except any land set apart for the purposes of this Act, from the operation of the said Act, as respects the distance from the City of Melbourne: Be it enacted, That nothing in the said Act contained shall be deemed to prevent the use of any land conveyed to the said Trustees for the purposes of this Act, notwithstanding that the said land, or any part thereof, may be within the distance of one mile from the boundaries of the said City.

6 George IV. No. 21.

Section 10 thereof inoperative, as to Melbourne.

III. And be it enacted, That the Governor for the time being of the said Colony shall have power, from time to time, to remove from the said Trust any Trustees of the said Cemetery, as and when he shall think proper; and also upon the death, resignation, or removal of any Trustee appointed under this Act, to appoint another in his place and stead.

Trustees may be removed.

IV. And be it enacted, That the Trustees of the said Cemetery shall have power to lay out the said land so to be granted as aforesaid, in such manner as may be most convenient for the Burial of the Dead, and to embellish the same with such walks, avenues, roads, trees, and shrubs, as may to them seem fitting and proper, and to enclose the same with

Grounds to be laid out.

...; passages, gates and entrances; and to preserve, maintain, and keep in a cleanly and orderly state and condition, and cause to be so maintained and kept, the whole of the said Cemetery, and its walls and fences, and all monuments, tomb-stones, enclosures, buildings, erections, walls, and shrubberies, therein and belonging thereto; and shall lay out and expend all moneys to be received by them under this Act, in and about the matters aforesaid, and in ornamenting the said Cemetery with trees, shrubs, and plants, and in the erection of such buildings and improvements in and to the said Cemetery from time to time, as they, the said Trustees, shall think proper.

Rules and regulations to be made by Trustees;

V. And be it enacted, That the Trustees of the said Cemetery shall have power and authority to make such rules and regulations, and to do and perform, and cause to be done and performed, all such acts, matters and things, as may be necessary and proper for any of the purposes aforesaid, and also for determining and directing the order and position of all graves and vaults to be made in the said Cemetery, and for protecting the buildings, monuments, shrubberies, plantations and enclosures, therein and thereof, from destruction or damage; and shall have power to prosecute all persons who shall or may at any time do or cause to be done any damage to any such buildings, monuments, tomb-stones, shrubberies, plantations or enclosures: Provided nevertheless, that the said Trustees shall not by any rule or regulation, or any act, matter or thing, at any time interfere, directly or indirectly, with the performance of any Religious Ceremony in the Burial of the Dead, according to the usage of the communion to which the deceased may have belonged, or with the original distribution of the said land, made or intended to be made by the grant thereof to and amongst separate and distinct religious denominations, or communions: Provided further, that no rite or ceremony shall be performed in any portion of such Cemetery set apart for any particular denomination, except according to the usage of such denomination, and by a duly recognized Minister of the same.

but such rules, &c., not to interfere with the performance of religious ceremonies in the burial of the dead.

Proviso.

Spiritual functions may be exercised.

VI. Provided always, and be it enacted, That it shall and may be lawful for the Ministers of any denomination for which any portion of such Cemetery shall be specially set apart, to have free access and admission to such portion of the said Cemetery at all times as they respectively shall think fit, and freely to exercise their spiritual functions therein, without any hindrance or disturbance of the Trustees of the said Cemetery, or any person whatsoever.

Vaults to be dug, and monuments or tomb-stones to be erected.

VII. And be it enacted, That it shall and may be lawful for the Trustees of the said Cemetery to permit any vault to be dug and made in the said Cemetery, and any monument or tomb-stone to be erected or placed in such parts of the said Cemetery as they may think proper, upon payment to them by the person or persons desiring to dig and make such vault, or to erect and place such monument or tomb-stone, of such charges as shall from time to time be established and varied by the said Trustees, with the concurrence and approval of His Excellency the Governor, and published in the *Port Phillip Government Gazette*; and that any person or persons so digging and making such vault, or erecting and placing such monument in such Cemetery, by and with such permission as aforesaid, and upon payment of the charges aforesaid, shall be entitled to have, maintain, and keep up such vault, monument, or tomb-stone, according to the terms of such permission, to and for the sole and separate use of such person or persons, and his and their heirs and near relations forever: Provided always, that a plan of every monument proposed to be erected and placed, shall be exhibited to the said Trustees before such permission as aforesaid is given; and that the said Trustees shall be at liberty to withhold such permission, and prevent the erection of any monument which shall appear to them inappropriate or unbecoming; and shall determine and fix the position of any unobjectionable monument which may be proposed to be erected, according to the description, size, and character thereof, having reference to the general plan for ornamenting the said Cemetery in an appropriate manner: Provided further, that nothing

Plans of monuments to be exhibited.

nothing herein contained shall be deemed to prevent the said Trustees from allowing the burial of any poor person in such Cemetery free of any charge whatsoever. Poor persons to be buried free of charge.

VIII. And be it enacted, That it shall be lawful for the said Trustees to take down and remove any monuments, cenotaphs, tablets, or other erections, which shall have been erected or built contrary to the terms and conditions upon which permission to erect or construct the same was granted; or in case such terms and conditions, as well as the regulations of the said Cemetery, shall not have been complied with. Monuments, &c., may be removed.

IX. And be it enacted, That if any person or persons shall wantonly or wilfully do, or cause to be done, any damage to any monument, vault, tomb-stone, building, erection, railing, shrubbery, tree, or plant in the said Cemetery, he shall be guilty of a misdemeanor, and being convicted thereof before any two or more Justices of the Peace of the City of Melbourne, (who are hereby authorized to hear and determine in a summary way any complaint thereof made by the said Trustees, or by any officer or servant employed by them in the said Cemetery, or by any person or persons to whom the burial place may belong,) shall be liable for every such offence to a penalty not exceeding twenty pounds, or to be committed by such Justices, at their discretion, to any goal or house of correction in the said City, there to remain for a reasonable time not exceeding three months; and any person or persons who shall do or cause to be done, any injury to any such monument, vault, tomb-stone, building, erection, railing, shrubbery, tree, or plant, whether the same shall have been done wilfully or wantonly, or otherwise howsoever, shall be liable to pay a reasonable sum of money by way of damages and compensation therefor, which said sum of money shall be recoverable in the Supreme Court of the Colony, or in the Court of Requests in the City of Melbourne, according to the amount of damage sustained, either at the suit of the said Trustees, or by the person or persons entitled to any vault or monument, or other such erection so injured, under the provisions of this Act. Injuring monuments, &c., a misdemeanor.

X. And be it enacted, That the said Trustees shall and may allow any body of Christians, at their own expense, to erect and build within such part of the said Cemetery as shall be specially set apart for that denomination, a suitable Mortuary Church or Chapel, for the performance of the rites and ceremonies in the burial of the dead, according to the usages of such denomination: Provided that the plans, specifications, elevations, and models thereof, with such lodges, and other buildings, and conveniences thereto, shall be first submitted for the approval of the said Trustees, and shall be approved by them. Mortuary Church or Chapel may be erected. Plans, &c., to be submitted.

XI. And be it enacted, That before any corpse shall be permitted to be interred in any vault, brick grave, or in any place of burial, the exclusive right of burial or interment wherein shall have been sold or granted by the said Trustees as a family or private burial place, it shall be lawful for the said Trustees, or any officer employed by them, to require, and they or he shall be entitled to have produced to them or him satisfactory evidence that the person for the time being entitled as owner to the exclusive right of burial or interment in such vault, brick grave, or other burial place, has consented, or would not object, to such interment taking place therein. Private vaults protected.

XII. And be it enacted, That in all cases in which Justices of the Peace have jurisdiction under the foregoing or other provisions of this law, it shall be lawful for any Justice of the Peace before whom complaint on oath shall be made, to summon before any two Justices the party complained against, and on proof of the service of such summons it shall be lawful, and they are hereby empowered to hear and determine, in a summary way, the matter of such complaint, and on proof of such offence to convict the offender, and to adjudge him to pay a penalty or commit him to prison, although no information in writing shall have been exhibited before such Justices; and all such proceedings by summons without information in writing, shall be as good, valid, and effectual, to all intents and purposes, as if an information in writing had been exhibited; provided Jurisdiction of offences.

Punishment of offenders.

shall be succinctly stated.  
XIII. And be it enacted, That it shall be lawful for any Trustee, or any officer or servant of said Trustees, and all such persons as he shall call to his assistance, to seize and detain any person who shall commit, or be in the act of committing an offence against this Act, and whose name and place of abode shall be unknown to such Trustee, officer, or servant, and to convey him or her before some Justice of the Peace, without any other warrant or authority than this Act; and in case such offender refuses to satisfy the said Justice as to his name and residence, such Justice is hereby empowered and required either to proceed immediately to the hearing and determining the complaint, in the same manner as if heard by summons, before two or more Justices, or to order such offender to be detained in custody until brought before two or more Justices to be dealt with in the ordinary course.

No Certiorari.

XIV. And be it enacted, That no proceeding in pursuance of this Act shall be quashed for want of form, or be removed by *certiorari*, or by any other writ or process whatsoever into the Supreme Court, or other superior Court.

Appropriation of penalties.

XV. And be it enacted, That the money arising from all penalties or forfeitures imposed by this Act, when recovered, shall be paid one moiety thereof to Her Majesty, Her Heirs, and Successors, for the Public uses of the said Colony, and in support of the Government thereof, and shall be applied thereto in such manner as may be appointed by any Act of the said Governor and Council, and the other moiety to the use of the informer or party prosecuting, who shall be entitled to his or her costs and charges over and above such forfeitures or penalties, to be ascertained and assessed by the Justices before whom the case is heard: Provided that in all proceedings under this Act, the person exhibiting the information or complaint shall be deemed and taken to be a competent witness on the hearing or trial thereof: Provided further, that it shall be lawful for the Governor of the said Colony for the time being, to pardon any offender, and to remit the whole or any part of such penalty or forfeiture, as the justice of each particular case may require.

Informer a competent witness.

Governor may pardon offender, and remit the whole or part of penalty.

Meetings to be convened by the rules to be established.

XVI. And be it enacted, That it shall not be lawful for the said Trustees to act, unless at a meeting to be convened according to a rule to be adopted by them for such purpose; and every such meeting shall be presided over by the senior Trustee present, such seniority being determined by the order in which the respective names of such Trustees shall stand in their Commission or Commissions of appointment; and all questions, matters, and things which shall be discussed or considered at any such meeting, shall be decided and determined by the majority in number of the Trustees then present: Provided that the said Trustees shall not be competent to proceed to business, unless there be, at least, three of them present; and that a book be opened and kept in which shall be entered a minute of the proceedings of the Trustees at every such meeting, which minute shall be read and confirmed at the next subsequent meeting, and shall be signed by the Chairman who shall have presided at the time such proceedings were held.

Regulations as to proceedings at such meetings.

Accounts to be kept,

XVII. And be it enacted, That a book shall be opened and kept by the said Trustees, in which shall be entered a full and particular account, in writing, of all sums of money which shall be received and expended by the said Trustees; and an abstract of such account, made up from the first day of January to the thirty-first day of December, both inclusive, in the year next preceding, shall be transmitted to the Colonial Secretary for the said Colony for the time being, in the month of January in each and every year, and shall be by him forthwith inserted and published in the "*Port Phillip Government Gazette*;" and every such account shall be verified by a declaration to be made and subscribed by such Trustees, in the form or to the effect required by a certain Act of the said Governor and Council, passed in the ninth year of the reign of Her Majesty Queen Victoria, intituled, "*An Act for the more effectual abolition of oaths*"

and verified by declaration.

"oaths and affirmations taken and made in various Departments of the Government of New South Wales, and to substitute declarations in lieu thereof, and for the suppression of voluntary and extra-judicial oaths and affidavits;" and any Justice of the Peace is hereby empowered and required to administer such declaration; and if any Trustee or Trustees shall wilfully make a false statement in any such declaration, to any material matter in such account, he or they shall be deemed guilty of a misdemeanor.

XVIII. And be it enacted, That it shall be lawful for the Superintendent, or Officer administering the Government of Port Phillip for the time being, by Proclamation in the *Government Gazette*, to order that the Burial Ground at present used by the inhabitants of the said City of Melbourne, or such part or parts thereof as it may be considered advisable or expedient to close, shall be henceforth closed, and that thereafter no burial or burials shall be allowed to be made in such Burial Ground, or such part or parts thereof as shall be mentioned in the said Proclamation: Provided always, that nothing in this Act contained shall be construed to extend to any vaults or enclosed portions of land in the said Burial Ground which at the time of the passing of this Act shall be the private property of any person or persons whomsoever.

Superintendent of Port Phillip may, by Proclamation, order the present Burial ground to be closed up.

Proviso.

Passed the Legislative Council, this twenty-seventh day of August, one thousand eight hundred and fifty.

WM. MACPHERSON, CLERK OF THE COUNCIL.

CHARLES NICHOLSON,

Speaker.

In the name and on the behalf of Her Majesty I assent to this Act.

CH<sup>s</sup>. A. FITZ ROY,

GOVERNOR.

Govt. House, Sydney, 19th September, 1850.

## No. XX.

An Act for regulating the formation, drainage, and repair of Streets, Courts, and Alleys on private property within the City of Melbourne. [Assented to, 19th September, 1850.]

WHEREAS there now are, and hereafter may be, streets, courts, and alleys within the boundaries of the City of Melbourne, as described in the Schedule hereunto annexed, formed or set out on private property within the said boundaries, which are not, or may not be sufficiently paved, flagged, macadamised, levelled, sewered, drained, or otherwise completed or repaired: And whereas it would conduce to the convenience, comfort, and health of the inhabitants of the said City, and to the public advantage, if provision were made to regulate and enforce the paving, flagging, macadamising, levelling, draining, and sewerage, or otherwise completing or repairing such streets, courts, and alleys in manner hereinafter mentioned: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That from and after the passing of this Act, all streets, courts, and alleys on private property within the said City shall be under and subject to the rules and directions hereinafter contained concerning the same: Provided always, that nothing in this Act contained shall apply to any such street, court, or alley, unless the owners or occupiers of two or more tenements adjoining or abutting thereupon, have the right to use, or do commonly use the same.

Preamble.

All streets, courts, and alleys on private property within the City of Melbourne shall be subject to the provisions of this Act.

Proviso.

II. And be it enacted, That where any such street, court, or alley is now or at any time hereafter shall be formed or set out, and shall not be

Council of said City may order the owners of such streets, &c.,

be

to repair the same in such manner, and within such time, as the said Council may deem expedient.

be or shall not have been sufficiently paved, flagged, macadamised, levelled, drained, and sewered, or otherwise completed or repaired, to the satisfaction of the Council of the said City, it shall be lawful for the said Council, at any time, and from time to time, after this Act shall have come into operation, by any writing under the hand of the Mayor or Town Clerk of the said City for the time being respectively, to order that any such street, court, or alley, or any part thereof, shall be freed from obstruction, paved, flagged, macadamised, levelled, drained, and sewered, or otherwise completed or repaired, in such manner and within such time as to the said Council may appear expedient; and thereupon the owners of the tenements adjoining or abutting upon such street, court, or alley, on each side thereof, shall in such manner, and within such time as shall be expressed in such order, at their respective costs, charges, and expenses, remove all obstructions, and well and sufficiently pave, flag, macadamise, level, drain, and sewer, or otherwise complete or repair, so much of the said street, court, or alley, to the centre thereof, as may be opposite to, and co-extensive with their respective tenements adjoining or abutting on such streets, courts, or alleys respectively.

If owners fail to effect such repairs within the time appointed by the said Council, the Council may order such repairs to be made at the expense of the owners, and may recover all such expenses, with costs, &c., by action of debt;

III. And be it enacted, That if any such owners shall neglect or omit to remove the obstructions, and pave, flag, macadamise, level, drain, and sewer, or otherwise complete or repair such street, court, or alley, in such manner and within such time as expressed in the said order, it shall be lawful for the said Council to remove all obstructions, and to pave, flag, macadamise, level, drain, sewer, and otherwise complete or repair the same, or such parts thereof as shall not have been so done, pursuant to the said order; and to ascertain, determine, and charge such respective owners with their several proportionate parts of the costs, charges, and expenses thereof, according to and co-extensive with their respective tenements adjoining or abutting on such street, court, or alley, having regard in such apportionment to the state and condition of the pavement, flagging, macadamising, levelling, drainage, and sewerage, in which such streets, courts, or alleys respectively, or any part thereof, shall or may be at the time when the said Council shall make such order as aforesaid; and all the costs, charges, and expenses which the Body Corporate of the said City shall thereby sustain, incur, or pay, and which the said Council shall so charge upon such owners respectively, may be recoverable by action of debt in any Court having competent jurisdiction.

Warrant of distress may be issued against property of owner, if costs, charges, &c., not paid.

IV. And be it enacted, That if any such owner shall not pay all such costs, charges, and expenses, it shall be lawful for any Justice of the Peace, upon the application of the Surveyor of the said Council, or any person specially appointed by the said Council to make such application, to summon such owner to appear before any Justice of the Peace, to shew cause why a warrant of distress should not issue against the property of such owner, to levy thereon such costs, charges, and expenses; and at the time and place to be mentioned in such summons, any Justice before whom the matters thereof may come on to be heard, shall proceed to inquire and determine in a summary way whether any such costs, charges, or expenses, are payable under the provisions hereof by such owner, and (if he shall find that any such are payable) the amount thereof; and in such last mentioned case it shall be lawful for the said Justice, and he is hereby required to issue a warrant of distress against the property of such owner, and to levy such amount as aforesaid, together with such reasonable costs as such Justice shall award, by sale of such property; and every such distress shall be irrepleviable; and no proceeding before any Justice shall be removable into the Supreme Court, or any other Court, by certiorari or otherwise howsoever; and every such Justice may adjudicate in respect of the matters of any such summons, whether the party to be thereby summoned shall appear thereto or not: Provided that in case such person shall not appear it shall be proved to the satisfaction of such Justice that such summons was duly served, forty-eight hours at the least before the time appointed for the hearing of the matters thereof, upon the person summoned thereby; and all moneys to be recovered under any such

such warrant of distress shall, after deducting therefrom the costs of carrying the same into execution, and rendering the overplus (if any) to the owner of the property distrained upon, be paid over to the Treasurer of the said City, for the local improvement and benefit thereof.

V. And be it enacted, That it shall be lawful for the said Council in the first instance, and whether any demand shall have been made upon such owner or not, to require the payment of all or any part of such costs, charges, and expenses from any person who shall then, or at any time thereafter, occupy any tenement adjoining or abutting upon any such street, court, or alley, and in default of payment thereof by such occupier, on demand by the said Council, the same may be levied by distress (a summons to shew cause having been previously issued), and any Justice of the Peace may, and is hereby required to issue his warrant accordingly; and the owner shall allow every such occupier to deduct all sums of money which he shall so pay, or which shall be so levied by distress as aforesaid, from and out of the rent from time to time becoming due to him, in respect of the said tenements, as if the same had been actually paid to him as part of such rent.

And may, in the option of the said Council, be recovered from the occupier of and premises, with relief to him against the owner.

VI. And be it enacted, That in case it shall happen that two or more of such tenements in the occupation of separate persons, adjoining or abutting on any such street, court, or alley as aforesaid, shall belong to the same owner, each of the persons occupying the same shall be liable to pay the whole or any part of the said costs, charges, and expenses to which such owner shall be liable in respect of all or any of such tenements, without reference to the particular tenement, or the extent of the frontage thereof, occupied by any such person, and the same may be levied by distress accordingly.

Or from several occupiers or any one or more thereof.

VII. Provided always, and be it enacted, That no occupier shall be liable to pay more money in respect of such costs, charges, and expenses as aforesaid than the amount of the rent due from him at the time of demand made upon him, and such as may from time to time thereafter become due by such occupier, as the same shall arise, until the whole amount of such costs, charges, and expenses shall be paid: Provided nevertheless, that if after notice in writing from the said Council delivered to such occupier personally, or left with some inmate at the place of his occupation as aforesaid, requiring him to pay such costs, charges, and expenses to the said Body Corporate, such occupier shall be liable to pay to the said body corporate, in respect of such costs, charges, and expenses, the amount of the rent becoming due by him after such notice, until all such costs, charges, and expenses shall be fully paid, and in default thereof the same may be recovered from him by warrant of distress as aforesaid.

Provided that no occupier shall be liable to an extent beyond the rent due or becoming due by him.

VIII. Provided also, and be it enacted, That every such order for paving, flagging, macadamising, levelling, draining, sewerage, or otherwise completing or repairing any street, court, or alley as aforesaid, shall be published twice in two successive weeks in the *Government Gazette*, and in one or more of the Melbourne newspapers; and that such order shall not begin to take effect until the end of one calendar month next after the last publication thereof in such *Gazette* or newspaper, which order and the publication thereof as aforesaid, shall be and the same are hereby declared and deemed to be a good, sufficient, and valid notice to all such owners, lessees, tenants, occupiers, and others interested in the premises, to all intents and purposes.

Provided also, that every such order for paving, flagging, &c., shall be published twice in two successive weeks in the *Government Gazette*, and in one or more of the Melbourne newspapers.

IX. And be it enacted, That if any person shall obstruct, take up, or make any alteration in the pavement, or carriage way, or footway of any such street, court, or alley, without the consent in writing of the said Council or of their Surveyor, then upon conviction thereof before any one or more Justice or Justices of the Peace, upon the oath of one or more credible witness or witnesses, (which oath the said Justice or Justices are hereby empowered and required to administer,) every such offender shall be liable to forfeit and pay for every such offence any sum not exceeding five

Penalty on persons obstructing or making alterations in any such street without leave.

five pounds, together with such costs attending the conviction as such Justice or Justices shall think fit; and that if upon or immediately after such conviction any such forfeiture be not paid, then it shall be the duty of any one or more Justice or Justices of the Peace to whom application shall be made, to commit such offender by warrant under the hand and seal, or hands and seals, of such Justice or Justices, to the common gaol for any term not exceeding three calendar months, at the discretion of such Justice or Justices.

Recovery and appropriation of penalties, &c.

X. And be it enacted, with regard to any such penalty or forfeiture, so far as relates to the recovery and appropriation thereof, That it shall be lawful for the said Council, or any Surveyor of the said City duly appointed by the Council thereof, to sue or proceed for the same, on information, before any one or more Justice or Justices of the Peace, who are hereby authorized and required to hear and determine the same in a summary manner; and that the money arising from any such penalty or forfeiture, when recovered, shall be paid, the one moiety thereof to Her Majesty, Her Heirs and Successors, for the public uses of the said Colony, and in support of the Government thereof, as may be appointed by any Act of the said Governor and Legislative Council, and the other moiety to and for the use of the party prosecuting, who shall be entitled to their or his costs and charges over and above such penalty or forfeiture, such costs and charges to be ascertained and assessed by the Justice or Justices before whom the case is heard: Provided always, that it shall be lawful for the Governor of the Colony for the time being, to pardon any offender, and to remit the whole or any part of any such penalty or forfeiture as the justice of each particular case may seem to require.

Governor may pardon offender, and remit the whole or any part of penalty.

Construction of terms.

XI. And be it declared and enacted, with regard to this Act generally, so far as relates to the construction of certain terms and expressions used therein, That the following terms and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter, that is to say, the word "street" to include every street, road, place, row, or public mews, or lane, along which carriages can pass or are intended to pass, and that whether there be or not in addition to the carriage way, a foot-way, paved or otherwise; the word "court" to signify any space wherein any carriage may, or is intended to enter, the same not being a thoroughfare; the word "alley" to include any court, alley, passage, or other place which can be used, or is intended to be used, as a foot-way only; the word "owner" to apply generally to every person in possession or receipt either of the whole or any part of the rents or profits of any tenements adjoining or abutting on any street, court, or alley as aforesaid; the word "Surveyor" to apply to the Surveyor or Surveyors appointed or to be appointed by the Council of the said City; the term "the Council" to mean the Mayor, Aldermen, and Councillors of the City of Melbourne for the time being; the expression, "Justice of the Peace," to mean a Justice of the Peace for the City of Melbourne; and the words "tenements adjoining or abutting on such street, court, or alley," to mean tenements or premises the owners or occupiers of which communicate with or have the right to use or commonly use any such street, court, or alley, or part thereof; and subject as aforesaid to the context and to the nature of the subject matter, words importing the singular number are to be understood to include the plural number, and words importing the plural number are to be understood to include the singular also; and words importing the masculine gender are to be understood to apply also to persons of the feminine gender; and the words importing an individual are to be understood to apply to a corporation, company, firm, or other body of persons.

Act to apply only to such portions of the said City as are set forth in the Schedule hereto annexed.

XII. And be it enacted, That this Act shall be deemed and construed to apply only to such portions of the said City the boundaries whereof are set forth and described in the Schedule hereunto annexed.

XIII.



XIII. And be it enacted, That this Act shall be deemed to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices, and other persons whomsoever, without specially pleading the same.

Passed the Legislative Council this twenty-fifth }  
day of July, one thousand eight hundred }  
and fifty. }

WM. MACPHERSON, CLERK OF THE COUNCIL.

CHARLES NICHOLSON,  
Speaker.

In the name and on the behalf of Her Majesty I assent to this Act.

CH<sup>s</sup> A. FITZ ROY,

GOVERNOR.

Govt. House, Sydney, 19th September, 1850.

#### SCHEDULE REFERRED TO.

The two following portions of Land, viz:—

1st. The parish of North Melbourne; bounded on the north by a line bearing east 240 chains, being distant one mile north from the centre of Batman's Hill, extending two miles east to its north-east corner; on the east by a line bearing south 110 chains; on the south by the Yarra Yarra River; and on the west by a line bearing north 94 chains to its north-west corner.

2nd. The suburb of Newtown, otherwise called "Collingwood," consisting of 320 acres, County of Bourke; bounded on the south by the parish boundary line of Melbourne, being a line bearing east 40 chains; on the east by a road of 1 chain wide, which separates it from suburban allotments Nos. 52, 68, 73, 81, and 86, being a line bearing north 80 chains; on the north by a road of 1 chain wide which separates it from Crown Land, being a line bearing west 40 chains; and on the west by a road of 1 chain wide, being a line bearing south 80 chains.

#### No. XXI.

An Act to suspend for one year so much of the Acts to Incorporate the Inhabitants of the Cities of Sydney and Melbourne and the Town of Geelong respectively, as relates to the estimating and levying a Rate for the Police of the same. [Assented to, 19th September, 1850.]

**W**HEREAS by certain Acts of the Governor and Legislative Council of New South Wales, passed in the sixth year of the Reign of Her present Majesty, intituled respectively, "*An Act to declare the Town of Sydney to be a City, and to Incorporate the Inhabitants thereof*," and "*An Act to Incorporate the Inhabitants of the Town of Melbourne*," it is amongst other things enacted, that in order to raise the amount necessary to provide for the payment of such number of constables, and such other police establishments within the said City and Town respectively, as may, from time to time, in the opinion of the Councils of the said City and Town be required, the said Councils are authorized and required, once at least in every year, to estimate, as correctly as may be, what amount will be sufficient for payment of the salaries, allowances, and rewards, to be paid to such constables and special constables, and of all other expenses attending police purposes, within the said City and Town; and in order to raise the amount so estimated, the said Councils are by the said Acts authorized and required, half-yearly, to order a City rate and Town rate respectively to be made and collected; and for this purpose the said Councils shall have all and the like powers as are by the said recited Acts vested in them, for making and levying a City rate and Town rate respectively for other purposes; and it is thereby further enacted, that the said rates respectively shall be called the "police rate," and the respective amounts

amounts when collected shall be paid to the Treasurers of the said Corporations, who shall keep separate accounts thereof, under the name of "police fund," and from time to time pay out of the said police funds, for the support of the police, or for police purposes, such sums as they may be required or directed to pay, by warrants under the hands of the Mayors of the said City and Town respectively, countersigned by the Town Clerk: And whereas the said Town of Melbourne has, since the passing of the said last recited Act, been declared to be a City: And whereas by a certain other Act of the said Governor and Council, passed in the thirteenth year of Her Majesty's Reign, intituled, "*An Act to Incorporate the Inhabitants of the Town of Geelong, and to extend and apply thereto the laws now in force for the regulation of the Corporation of Melbourne,*" the provisions of the said Act incorporating the inhabitants of the Town of Melbourne as explained and amended by certain other therein recited Acts, were extended and applied to the Town of Geelong, and to the Body Corporate established by the last recited Act: And whereas it is expedient to retain for the present the management of the said police force in the hands of the Executive Government, and to appropriate the amount necessary for the support thereof from the revenue of the said Colony, receivable from taxes, duties, rates, and imposts, raised within the same: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That so much of the said recited Acts as relates to the estimating by the Councils of the Cities of Sydney and Melbourne and the Town of Geelong respectively, of the amount necessary to provide for the payment of constables and other police establishments within the said Cities and Town respectively, and to the powers thereby vested in the Councils of the said Cities and Town respectively, for making and levying the said police rates, shall be suspended and inoperative for one whole year, from and after the first day of January, in the year of Our Lord one thousand eight hundred and fifty-one: Provided always, that nothing herein contained shall affect, or be construed to affect, any matter or thing heretofore done, or commenced to be done, in pursuance of the provisions of the said recited Acts or any of them.

13 Vic. No. 40.

Suspension for one year of s. 70 of 6 Vic. Nos. 3 and 7.

Commencement of Act.

II. And be it enacted, That this Act shall commence and take effect from and after the first day of January now next ensuing, and shall thenceforth continue in force for one whole year.

*Passed the Legislative Council, this eighteenth }  
day of July, one thousand eight hundred }  
and fifty. }*  
WM. MACPHERSON, CLERK OF THE COUNCIL.

CHARLES NICHOLSON,  
Speaker.

*In the name and on the behalf of Her Majesty I assent to this Act.*

CH<sup>S</sup>. A. FITZ ROY,  
GOVERNOR.

*Govt. House, Sydney, 19th September, 1850.*

An Act to Incorporate the Proprietors of a certain Banking Company called the "Bank of New South Wales," and for other purposes therein mentioned. [Assented to, 23rd September, 1850.]

**W**HEREAS a Joint Stock Banking Company, called the "Bank of New South Wales," has been lately established at Sydney, in the Colony of New South Wales, under and subject to the same rules, regulations, and provisions contained in a certain Indenture or Deed of Settlement, bearing date the twenty-third day of August, in the year of our Lord one thousand eight hundred and fifty, purporting to be a Deed of Settlement of the said Company, but the said Company has not yet commenced business: And whereas by the said Indenture or Deed of Settlement the several parties thereto have respectively and mutually covenanted and agreed to be and continue (until dissolved under the provisions in that behalf therein contained) a Joint Stock Company or Partnership, under the name, style, and title of the "Bank of New South Wales," for the purpose of carrying on the business of a Bank of issue and deposit; and the lending moneys on cash credits, promissory notes, bills of exchange, or letters of credit, and on other securities; also the dealing in money, bullion, specie, and exchanges of and with all countries, and in notes, bills, or other securities for money; and generally the transacting all such other business as shall or may at any time hereafter be usual and lawful for establishments carrying on banking in all its branches, or dealing in money, bullion, specie, exchanges, or in notes, bills, or loans, to do or transact; and the establishment of agencies or connections relating to the said business in any part of the British dominions as may be considered desirable for the Company, and may promote the convenience of merchants and others; and the giving letters of credit on agents and banking connexions abroad; and the establishing a Branch Bank or Branch Banks and Agencies in such place or places within the Australasian Territories as may be thought expedient: And whereas it was by the said Indenture or Deed of Settlement further agreed that the capital of the Company shall consist of one hundred and twenty-five thousand pounds, to be contributed in six thousand two hundred and fifty shares of twenty pounds each, and of such further sum or sums as may hereafter be raised by the creation, allotment, and sale of new shares of the like amount as therein provided: And whereas by the said Indenture or Deed of Settlement provision has been made for the due management of the affairs of the said Company by the Directors, to be from time to time elected and appointed by the Proprietors of the shares in the capital stock of the said Company: And whereas the said Company is desirous of being incorporated, and it is expedient that it should be incorporated accordingly, but subject to the provisions hereinafter contained: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That such and so many persons as have already become, or at any time or times hereafter shall or may in the manner provided by and subject to the rules, regulations, and provisions contained in the said Indenture or Deed of Settlement become proprietors of shares of or in the capital for the time being of the said Company shall, for the purposes aforesaid, but subject nevertheless to the conditions, restrictions, regulations, and provisions hereinafter contained, be one body politic and corporate in name and in deed by the name of the "Bank of New South Wales," and by that name shall and may sue any person or persons, body or bodies politic or corporate, whether a member or members of the said Corporation or not, and may be sued, implead, and be impleaded in all Courts whatsoever, at Law or in Equity, and may prefer, lay, and prosecute any indictment, information, and prosecution, against any person or persons whomsoever, for any stealing, embezzlement, fraud, forgery, crime, or offence:

offence; and in all indictments, informations, and prosecutions, it shall be lawful to state the money and goods, effects, bills, notes, securities, or other property of the said Company to be the money, goods, effects, bills, notes, securities, or other property of the said Corporation, and to designate the said Company or Co-partnership by its Corporate name whenever for the purpose of any allegation of an intent to defraud, or otherwise howsoever such designation shall be necessary; and the said Corporation shall have perpetual succession with a common seal, which may be altered, varied, and changed from time to time at the pleasure of the said Corporation.

Confirmation of provisions of Deed of Settlement as bye-laws of the Company subject to this Act and the general Laws.

II. And be it enacted, That the several laws, rules, regulations, clauses, and agreements, contained in the said Indenture or Deed of Settlement, or to be made under or by virtue or in pursuance thereof, are and shall be deemed and considered to be and shall be the bye-laws for the time being of the said Corporation, save and except in so far as any of them are or shall or may be altered, varied, or repealed by, or are or shall or may be inconsistent or incompatible with or repugnant to any of the provisions of this Act, or of any of the Laws or Statutes in force in the said Colony; subject nevertheless to be, and the same may be amended, altered, or repealed either wholly or in part, in the manner provided in and by the said Indenture or Deed of Settlement; but no rule or bye-law shall on any account or pretence whatsoever, be made by the said Corporation, either under or by virtue of the said Indenture or Deed of Settlement or of this Act, in opposition to the general scope or true intent and meaning of the said Deed of Settlement or of this Act, or of any of the Laws or Statutes in force in the said Colony.

Commencement and nature of general business.

III. And be it enacted, That when and so soon as the said capital of one hundred and twenty-five thousand pounds shall have been subscribed for and a moiety thereof paid, as hereinafter required, but not before, it shall be lawful for the said Corporation, subject to all the restrictions and provisions herein contained, to commence and carry on the business of a Bank of issue, discount, and deposit, in the Colony of New South Wales, and to make loans of money on cash credit accounts, promissory notes, bills of exchange, or letters of credit, and on other securities of the like nature, or on personal security; and it shall also be lawful for the said Corporation to deal in money, bullion, specie, and exchanges, of and with all countries, and in notes, bills, or other securities for money; and generally to transact all such other business as it is or shall or may at any time hereafter be usual and lawful for establishments carrying on banking in all its branches to do or transact, including therein the dealing in money, bullion, or specie, or in notes or bills; and to establish agencies or connexions in relation to the said business in any part of the British dominions, or elsewhere; and to give letters of credit on agents and banking connexions abroad; and to establish a Branch Bank or Branch Banks and agencies for the purposes and in manner directed by the said Indenture or Deed of Settlement; but that it shall not be lawful for the said Corporation to advance or lend any money upon the security of lands or houses, or ships, or on pledges of merchandise, nor to own ships; and the said Corporation shall not hold shares in its own stock, nor advance or lend to any shareholder or proprietor of shares in the said Corporation any sum or sums of money on the security of his share or shares, nor invest, lay out, employ, advance, or embark any part of the capital or funds of the said Corporation in the purchase of any lands, houses, or other real or leasehold property whatsoever (save and except as herein specially provided), nor of any share or shares in the capital stock for the time being of the said Company, nor in any trading or mercantile speculation or business whatsoever not usually considered as falling within the ordinary and legitimate purposes and operations of Banking Establishments: Provided always, that nothing herein contained shall invalidate the lien secured by the Deed of Settlement to the Company over the shares belonging to any proprietor becoming indebted or coming under engagements to the Company, or making default in the fulfilment of any covenants in the said Deed of Settlement contained, or to prevent the Company from holding the

Restrictions on powers of Corporation.

the shares forfeited by such default for the purpose of sale as provided in the said Deed of Settlement: And provided further, that nothing herein contained shall be taken or construed to prevent the said Corporation from taking security by the hypothecation of bills of lading for the payment of any bill or bills of exchange, drawn against any shipment of wool, tallow, or other Colonial produce, or any other description of merchandise, shipped for exportation either to any port or place beyond the sea, or from one port to another within the Australasian Territories.

IV. And be it enacted, That it shall not be lawful for the said Corporation to commence or carry on the said business of Banking under or by virtue of this Act, until the whole of the said capital of one hundred and twenty-five thousand pounds shall have been subscribed for, and a moiety or half-part at the least of such sum of one hundred and twenty-five thousand pounds shall have been actually paid up; and that the whole of the said capital shall be subscribed for within the space of eighteen calendar months, to commence and be computed from the period when this Act shall come into operation; and the whole of the said sum of one hundred and twenty-five thousand pounds shall be paid up within the space of two years, to be computed as aforesaid.

Business not to be commenced until whole original Capital subscribed for and a moiety paid up.

Time limited for subscriptions and payment.

V. And be it enacted, That it shall be lawful for the said Corporation, for and during the term of twenty-one years, to commence from the period when the whole of the said capital shall have been subscribed for, and a moiety thereof paid as aforesaid, but not otherwise, to make, issue, and circulate, at and from any city, town, or place in which they may have opened or established any Bank, Branch Bank, or agency, under or by virtue of this Act, or of the said Indenture or Deed of Settlement, any bank notes or bills for one pound or five pounds sterling each, or for any greater sum than five pounds sterling each, but not for any fractional part of a pound; and from time to time during the said term of twenty-one years to re-issue any such notes or bills when and so often as the Corporation shall think fit; but such privilege shall cease in case of the suspension of specie payments on demand, for the space of sixty days in succession, or for any number of days at intervals, which shall amount altogether to sixty days within any one year, or in case the said Corporation shall not well and truly maintain, abide by, perform, and observe all and every the rules, orders, provisions, and directions herein contained and set forth, upon which the said Corporation is empowered to open banking establishments, or to issue and circulate promissory notes.

Power to issue and circulate Bank Notes during twenty-one years.

VI. And be it enacted, That all such notes shall bear date at the city, town, or place at and from which the same respectively shall be made and issued, and that the same respectively shall in all cases be payable in specie on demand at the place of date, and also at the principal banking establishment of the Corporation at Sydney; and the total amount of the promissory notes payable on demand, issued and in circulation, shall not at any one time exceed the amount of the capital stock of the said Corporation actually paid up.

Bank Notes where to be dated and payable, and to be payable in specie on demand.

Limit of issue and circulation.

VII. And be it enacted, That no Branch Bank or Establishment of the said Corporation, other than and except the principal Banking Establishment, shall be liable to be called upon to pay any notes or bills of the said Corporation other than and except such as shall have been originally made and issued at and from such particular Branch Bank or Establishment.

Only the principal Banking Establishment required to pay notes dated at other places than that of presentation.

VIII. And be it enacted, That it shall be lawful for the said Corporation from time to time to extend or increase their capital for the time being, by the creation, allotment, and disposal of new shares in the manner specified and set forth, and subject to the rules, regulations, and provisions contained in the hereinbefore in part recited Indenture or Deed of Settlement.

Increase of Capital.

IX. And be it enacted, That the total amount of all the new shares to be so from time to time created, shall not, together with the original capital, exceed one million pounds, and that no such extension or

Regulations as to increase of Capital.

increase

increase of the capital of the said Corporation shall be made or take place without the previous sanction and approbation in writing of the Lords Commissioners for the time being of Her Majesty's Treasury, or of the Governor for the time being of the said Colony, from time to time, and for that purpose first had and obtained; and that at least half the amount of the increased capital shall be actually paid up before any extension of the dealings of the said Corporation in respect of such new capital shall be commenced; and that until half of such new capital shall be so paid up, the dealings and affairs of the said Corporation shall be carried on in the same manner in all respects as if such extension of capital had not taken place.

Capital and Shares to be personalty.

X. And be it enacted, That the capital or Joint Stock for the time being, and all the funds and property of the said Corporation, and the several shares therein, and the profits and advantages to be derived therefrom, shall be and be deemed personal estate, and be transmissible accordingly, subject to the regulations of the said Indenture or Deed of Settlement.

Corporation not bound to notice trusts or equitable interests affecting shares.

XI. And be it further enacted, That the Corporation shall not be bound in any manner, by any trusts or equitable interest, or demands affecting any share or shares of the capital, standing in the name of any person or persons, as the ostensible proprietor thereof, or be required to take any notice of such trusts or equitable interests or demands; but the receipt of the person or persons in whose name or names the shares shall stand in the books of the Corporation shall, notwithstanding such trusts, or equitable interests or demands, and notice thereof to the said Corporation, be a good valid and conclusive discharge to the Corporation, for or in respect of any dividend or other money payable by the said Corporation, in respect of such shares; and a transfer of the said shares by the person or persons in whose name or names such shares shall so stand, shall, notwithstanding as aforesaid, be binding and conclusive, as far as may concern the said Corporation, against all persons claiming by virtue of such trusts or equitable interests or demands: Provided always, that it shall be competent to the Board of Directors of the said Corporation, if they shall think fit so to do, to withhold payment of the dividends on any such shares, and to refuse to sanction the transfer of such shares, in any case in which the said Corporation shall have had notice of any claims under an alleged trust or equitable interest or demand, and when such claim shall appear to the said Board of Directors to be well founded: And provided also, that nothing herein contained shall be deemed or taken to interfere with, or abridge the right and power of a Court of Equity to restrain the payment of any such dividend, or other money payable thereafter by the Corporation in respect of any such shares, or the transfer thereafter of any such shares, or to direct the payment of such dividends or other money by the Corporation, or the transfer of such shares by the person or persons in whose name or names they may stand, to such other person or persons as such Court may think fit.

Limited power to take and hold lands, &c.

XII. And be it enacted, That it shall be lawful for the said Corporation, notwithstanding any Statute or Law to the contrary, and notwithstanding any clause or provision herein contained, to purchase, take, hold, and enjoy, to them and their successors for any estate, term of years, or interest, any houses, offices, buildings, lands, and other hereditaments necessary or proper for the purpose of managing, conducting, and carrying on the affairs, concerns, and business of the said Corporation; and also to take and to hold, until the same can be advantageously disposed of, for the purpose of reimbursement only and not for profit, any lands, houses, and other real estate, merchandise, and ships, which may be so taken by the said Corporation in satisfaction, liquidation, or discharge, of any debt due to the Corporation, or in security for any debt or liability *bona fide* incurred or come under previously and not in anticipation or expectation of such security, but not for any other purposes; and to sell, convey, assign, assure, and dispose of such houses, offices, buildings, lands, hereditaments, and other real estate, merchandise and ships, as occasion may require.

XIII.

XIII. And be it enacted, That it shall and may be lawful to and for all and every person and persons, bodies politic or corporate, who are or shall be otherwise competent, to grant, sell, alien, and convey, assign, assure, and dispose of, unto and to the use of the said Corporation and their successors; for the purposes aforesaid, or any of them, any such houses, offices, lands, hereditaments, and other real estate whatsoever as aforesaid accordingly.

Power to other persons to convey real estate to the Corporation.

XIV. And be it enacted, That the total amount of the debts engagements, and liabilities of the said Corporation, whether upon bonds, bills, promissory notes, or otherwise contracted, other than their liabilities on account of the ordinary cash deposits of customers with the said Company's establishment, shall not in any case exceed three times the amount of capital stock subscribed and actually paid up.

Restriction on extent of liabilities.

XV. And be it enacted, That the discounts or advances by the said Corporation on securities bearing the name of any Director or officer thereof, as drawer, acceptor, or indorser, shall not at any time exceed in amount one third of the total advances and discounts of the said Corporation.

Limit to discounts, &c., on securities bearing the name of a Director or Officer.

XVI. And be it enacted, That no dividend shall in any case be declared or paid out of the subscribed capital for the time being of the said Corporation, or otherwise than out of the net gains and profits of the business.

No Dividend to be taken out of the Capital but from the profits only.

XVII. And be it enacted, That periodical accounts or statements, and general abstracts of the assets and liabilities of the said Corporation shall be prepared, made out, and published, according to the provisions of the Act of the Governor and Council passed in the fourth year of the reign of Her present Majesty, intituled, "*An Act to provide for the periodical publication of the Liabilities and Assets of Banks in New South Wales and its Dependencies, and the Registration of the names of the Proprietors thereof.*"

Periodical statements, accounts, and abstracts to be made out and published.

4 Vic., No. 13.

XVIII. And be it enacted, That general half-yearly meetings of the proprietors of the capital of the Corporation shall be held in the respective months of April and October in every year; and that at one of such meetings in every year, two Proprietors shall be elected to be Auditors of the accounts of the Corporation for the year next ensuing; and that within three weeks next before every such half-yearly meeting, the Auditors for the time being shall fully examine into the state of the accounts and affairs of the Corporation, and shall make a just, true, and faithful report thereon, which shall be submitted by them to the Directors of the Corporation one week previously to such meeting, and which shall be by such Directors submitted to the Proprietors at every such meeting, and that the said Auditors shall, and they are hereby required to make a declaration before a Justice of the Peace that such report is, to the best of their several and respective knowledge and belief, a just, true, and faithful report and statement of the accounts and affairs of the Company, and that the same is made by them after diligent and careful examination into the state of such accounts and affairs; and a duplicate copy of such report, signed by such auditors, and of every other report (if any) which shall be made to the proprietors at any half-yearly or other general meeting by such Auditors, or by any other Auditors specially appointed to enquire into the state of the accounts or affairs of the Corporation, shall be transmitted to the office of the Colonial Secretary at Sydney, for inspection thereof, within thirty days from the making of such report.

Auditors to be appointed and to examine and report on affairs of Company.

Duplicates of Auditors reports to be sent to the Colonial Secretary.

XIX. And be it enacted, That if such examination into or report on the state of the accounts or affairs of the Corporation, as hereinbefore required to be made by Auditors shall be neglected to be made, or if a duplicate copy of any such report shall be omitted to be transmitted to the office of the Colonial Secretary, as hereinbefore required, the said Corporation shall for every such offence forfeit and pay to Her Majesty, for the public uses of the Colony, the sum of one hundred pounds, to be recovered by action of debt in the Supreme Court; and if any such Auditors shall at any time knowingly make or concur in a false or deceptive

Penalties for neglects in respect of Audits;

and for false or deceptive reports.

report

report on the state of the accounts or affairs of the Corporation, such auditor shall for every such offence forfeit and pay to Her Majesty, for the public uses of the Colony, the sum of two hundred pounds to be recovered in the said Supreme Court; and if any such Auditor shall make a declaration to any such false or deceptive report, knowing the same to be false and deceptive, he shall be deemed guilty of perjury, and shall be liable to all the pains and penalties provided by the law for such offence.

Provision as to actions or suits for calls.

XX. And be it enacted, That in any action or suit to be brought by the said Corporation, against any proprietor or proprietors of any share or shares in the capital of the said Corporation, to recover any sum or sums of money due and payable to the said Corporation for or by reason of any call or calls made by virtue of this Act, or of the said Indenture or Deed of Settlement, it shall be sufficient for the said Corporation to declare and allege that the defendant or defendants being a proprietor or proprietors of such or so many share or shares in the capital of the said Corporation, is or are indebted to the said Corporation in such sum or sums of money as the call or calls in arrear shall amount to, for such and so many call or calls of such or so many sum or sums of money, upon such or so many share or shares belonging to the said defendant or defendants, (as the case may be,) whereby an action hath accrued to the said Corporation, without setting forth any special matter; and on the trial of such action or suit it shall not be necessary to prove the appointment of the Directors, or any of them, who made such call or calls, or any other matters except that the defendant or defendants at the time of making such calls was or were a proprietor or proprietors of some share or shares in the capital of the said Corporation, and that such call or calls was or were in fact made, and that such notice thereof was given as is directed by the said Indenture or Deed of Settlement, and the said Corporation shall thereupon be entitled to recover what shall appear due.

Calls, contracts, &c., made or done under the Deed of Settlement before this Act in operation not to be prejudiced by it.

XXI. And be it enacted, That nothing herein contained shall prejudice, or be deemed to prejudice, any call made, or any contract or other act, deed, matter, or thing entered into, made, or done by the said Company, under or by virtue of the said Indenture or Deed of Settlement, before this Act shall come into operation; but the same call, contract, act, deed, matter, or thing, shall be as valid and effectual to all intents and purposes as if this Act had not been passed, and may be enforced in like manner as if the said Company had been incorporated before the same call, contract, act, deed, matter, or thing had been made, entered into, or done.

In case of Transfer before commencement of business, liability of original shareholders to continue six months.

XXII. And be it enacted, That in all cases in which shares in the capital of the said Corporation shall be transferred between the period of this Act coming into operation and the actual commencing of business by the said Corporation, the responsibility of the original holder of the transferred share shall continue for six months at least after the date of the transfer.

Limit to liabilities.

XXIII. And be it enacted, That in the event of the Assets of the said Corporation being insufficient to meet its engagements, then and in that case the shareholders shall be responsible to the extent of twice the amount of their subscribed shares only, (that is to say) for the amount subscribed, and for a further and additional amount equal thereto.

Custody and use of Corporate Seal.

XXIV. And be it enacted, That the Directors for the time being of the said Corporation shall have the custody of the Common Seal of the said Corporation, and that the form thereof, and all other matters relating thereto, shall from time to time be determined at a Board of Directors of the said Corporation, in the same manner as is provided in and by the said Indenture or Deed of Settlement, for the determination of other matters by the Board of Directors of the said Company; and the Directors present at a Board of Directors of the said Corporation shall have power to use the Common Seal of the said Corporation for the affairs and concerns of the said Corporation, and under such seal to authorise and empower any person without such seal to execute any deeds, and do all or any such other matters and things as may be required to be executed and done on behalf



behalf of the said Company, and in conformity with the provisions of the Deed of Settlement and of this Act; but it shall not be necessary to use the Corporate Seal in respect of any of the ordinary business of the Company, or for the appointment of an Attorney or Solicitor for the prosecution or defence of any action, suit, or proceeding.

XXV. 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 person or persons except such bodies politic or corporate, and other persons as are mentioned in this Act, and those claiming by, from, or under them.

Saving the rights of Her Majesty and of other persons not mentioned in this Act.

XXVI. 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 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.

This Act to be deemed a Public Act.

XXVII. And be it enacted, That in this Act, the following words shall have the following meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say) words importing the plural number shall include the singular number, and words importing the masculine gender shall include females and bodies corporate as well as individuals.

Interpretation clause

*Passed the Legislative Council, this sixth day of  
September, one thousand eight hundred  
and fifty.*

WM. MACPHERSON, CLERK OF THE COUNCIL.

CHARLES NICHOLSON,  
Speaker.

*In the name and on the behalf of Her Majesty I assent to this Act.*

CH<sup>S</sup>. A. FITZ ROY,  
GOVERNOR.

*Govt. House, Sydney, 23rd September, 1850.*

