



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

By His Excellency SIR CHARLES AUGUSTUS FITZ ROY, Knight Companion of the Royal Hanoverian Guelphic Order, Governor-General of all Her Majesty's Australian Possessions, and 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 and consent of the Legislative Council.

An Act to incorporate the New South Wales Marine Assurance Company. [Assented to, 1st December, 1851.]

WHEREAS a Joint Stock Company, called "The New South Wales Marine Assurance Company" has been lately established at Sydney, in the Colony of New South Wales, under and subject to the rules, regulations, and provisions contained in a certain Deed of Settlement, bearing date the first day of October, in the year of our Lord one thousand eight hundred and fifty-one, purporting to be a Deed of Settlement of the said Company: 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 firm, of "The New South Wales Marine Assurance Company" for the purpose of effecting Marine and other Assurances of and upon vessels in harbour and at sea; and of and upon the cargoes and property in and on board the same: And whereas, it was by the said Deed of Settlement agreed that the capital of the said Company for carrying on and conducting the business thereof should consist of one hundred and fifty thousand pounds sterling, and be divided into seven thousand five hundred shares, of the amount of twenty pounds each, but subject to be reduced as hereinafter and hereinafter provided: And whereas, by the said Deed of Settlement, provision has been made for the due management of the affairs of the said Company, by certain Directors already appointed, and by other Directors to be from time to time elected and appointed, as their successors by the shareholders of the said Company: And whereas the whole of the capital of one hundred and fifty thousand pounds has been subscribed for, and a deposit of ten shillings per share has been paid up: And whereas the said Company is desirous of being Incorporated, and it is considered that it will be advantageous not only to the said Company, but also to the mercantile

Company incorporated.

cantile and shipping interests of New South Wales, that it should be incorporated accordingly : 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, regulations, and provisions hereinafter contained, be one body politic and corporate, in name and in deed, by the name of "The New South Wales Marine Assurance Company," 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; 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.

Provisions of Deed of Settlement confirmed as by-laws of the Company, subject to this Act, and the general law of the Colony.

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 the by-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 by the said Indenture or Deed of Settlement; but no rule or by-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.

Nature of the general business of the Company.

III. And be it enacted, That it shall be lawful for the said Corporation, subject to all the restrictions and provisions herein contained, to carry on the business of effecting Marine and other Assurances of and upon vessels in harbour and at sea, and of and upon the cargoes and property in and on board the same; and also with the capital advanced and with the accumulating premiums to discount promissory notes and bills of exchange, and in the Corporate name of the said Company to invest in Government securities, and in such other way consistently with the provisions hereof as to the Directors may seem best for the interests of the Company; but it shall not be lawful for the said Corporation to hold shares in its own stock, except as hereinafter provided, nor to advance or lend to any Proprietor of shares in the capital of the said Company any sum of money on the security of his shares, nor on any trading or mercantile speculation or business whatsoever not fully within the ordinary and legitimate purposes and operations of a Marine Assurance Company, including the investment and employment of its capital and accumulating premiums in such manner as to produce interest thereon.

Restrictions in the powers of the Corporation.

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and to be readily convertible and available when required for the purpose of meeting losses: Provided 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 Corporation, or making default in the fulfilment of any covenants in the Deed of Settlement contained, or prevent the Corporation from holding shares forfeited under the provisions of such Deed of Settlement for the purpose of restoration to the owner or of sale as provided in such Deed. Proviso thereon.

IV. And be it enacted, That it shall be lawful for the Directors of the said Corporation to diminish the capital for the time being of the Company either by the purchase and extinguishment of shares, or by a rateable return of capital to the shareholders, if it shall appear that there is no immediate or prospective employment for the full amount thereof; and also to revive and re-issue the extinguished shares, and again call for the returned capital if the said Directors shall at any subsequent time think it advisable to do so: Provided that when such diminution of capital shall be made, public notification of the fact shall be immediately given in the New South Wales *Government Gazette*, and in one daily newspaper published in the City of Sydney, with the sanction and approbation of the Governor for the time being of the Colony, and that full publicity shall be given to the fact of such diminution having been made. Corporation, may diminish capital; with the sanction of the Governor.

V. 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. Capital and shares to be personalty.

VI. And be it enacted, That the Corporation shall not be bound in any manner by any trusts or equitable interests, 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 to do so, 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: 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 any 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. Corporation not bound to notice trusts, or equitable interests affecting shares.

VII. And be it enacted, That it shall be lawful for the said Corporation, notwithstanding any Statute or Law to the contrary, to purchase, take, hold, and enjoy, to them and their successors, for any estate, term of Power to take and hold lands, &c.

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of years, or interest, any houses, offices, buildings, lands and other hereditaments, necessary or expedient 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 purposes of reimbursement only, 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, 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.

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

VIII. And be it enacted, That it shall and may be lawful to and for all and every person or persons, bodies politic and 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 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.

Corporation may raise money for the business of the Corporation.

IX. And be it enacted, That it shall be lawful for the Board of Directors from time to time as occasion shall arise for raising money for the purposes of the business of the Corporation to negotiate such of the bills or promissory notes for the time being held by the Company as they may consider advisable, or to assign or sell any security belonging to the said Corporation, and the endorsement of such bills or promissory notes by any two or more Directors for and on behalf of the Corporation shall be binding against every member thereof.

No dividend to be taken out of the capital, but from the profits only.

X. 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.

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

XI. 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 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 respective knowledge and belief, a just, true, and faithful report and statement of the accounts and affairs of the Company.

Penalties for neglects in respect of Audits.

XII. 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, the said Corporation shall for every such offence forfeit and pay to Her Majesty, for the public uses of the said 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 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 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.

XIII.

XIII. And be it enacted, That if 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 call or 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.

Provision as to actions, or suits for calls.

XIV. And be it enacted, That the Secretary for the time being of the Corporation shall, within fifteen days from the first day of January in every year, cause a true list of the names of all the then existing members of the Company, with their respective places of abode and designation, to be recorded upon solemn declaration (which may be taken before and administered by any Registration Officer or Justice of the Peace) in the office for the Registration of Deeds at Sydney; and the same shall be open to inspection at all reasonable times by any person requiring the same, on payment of a fee of one shilling; and if such Secretary shall fail to cause such list to be so recorded, or if the same shall be wilfully incorrect or imperfect, he shall be liable to a penalty of one hundred pounds, to be recovered by action of debt in the Supreme Court by any person or persons suing for the same: Provided always, that such action shall be commenced within two years from the time when the offence shall have been committed, and that nothing herein contained shall make such Secretary liable to such penalty for any omission or error on account of any member changing his place of abode, or of any transmission of shares by death, marriage of a female Proprietor, bankruptcy, insolvency, or lunacy, if such Secretary shall not have received notice of the same respectively.

Secretary of the Corporation to cause a list of members, with their respective places of abode and designation, to be filed in Office for the Registration of Deeds at Sydney, under a penalty.

XV. And be it enacted, That every person whose name shall be recorded, shall be considered to be and to have been a member of the said Company, during the year for which such list was recorded, and until a new list of the names of the Proprietors shall have been so recorded as aforesaid, or until he shall have retired and shall have given notice of his retirement by a memorandum to be recorded in the said office, for the Registration of Deeds at Sydney, and shall have caused the word "Retired," together with the date of such retirement, to be written by one of the Registration officers, against his name in the said list.

Persons so recorded, to be considered members of the Company.

XVI. And be it enacted, That execution upon any decree, order, or judgment in any action, suit, or other proceeding obtained against the said Corporation, may be issued against, and levied upon the goods and chattels, lands, and tenements of any person who shall appear by any such recorded list of Proprietors to be a member of the Company at the time of such execution, or to have been a member thereof at the time when the cause of such action, suit, or other proceeding arose: Provided always, that no such execution shall issue against any Proprietor, or former Proprietor, except upon an order of the Court in which the

Execution upon judgment against corporation, may be issued against any such member.

action, suit, or other proceeding shall have been brought or instituted, made upon motion in open Court, after reasonably sufficient notice in writing to the persons sought to be charged; and upon such notice, such Court may order execution to be issued accordingly, but may refuse such order as against either an existing or former Proprietor if it shall appear that proper means have not been taken for obtaining satisfaction out of the General Funds of the Corporation, and may if it shall think fit, refuse such order as against a retired Proprietor, if it shall appear to such Court that recourse is attempted to be had against such retired Proprietor, without sufficient grounds for apprehending that satisfaction could not be readily obtained from the Corporation or from the Proprietors for the time being.

Notarial copy of Deed of Settlement to be evidence.

XVII. And be it enacted, That a copy of the Deed of Copartnership and Settlement of the said Company certified and attested under the hand and seal of some Notary Public to be a true transcript of the original Deed of Copartnership and Settlement of the said Company, shall be received as legal evidence of the contents of such Deed of Copartnership and Settlement, in all Courts of Law, Equity, Admiralty, Vice-Admiralty, and in all Courts of inferior jurisdiction, in the Colony of New South Wales, without any further proof thereof.

Custody and use of corporate seal.

XVIII. 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 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.

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

XIX. 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 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.

This Act to be deemed a public Act.

XX. 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.

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

CHARLES NICHOLSON,
SPEAKER.

WM. MACPHERSON,
CLERK OF THE COUNCIL.

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

CH^s. A. FITZ ROY,
GOVERNOR-GENERAL

Govt. House, Sydney, 1st December, 1851.