

An Act to incorporate the Shareholders of a certain Banking Company called "The City Bank" and for other purposes therein mentioned. [9th February, 1864.]

CITY BANK.

WHEREAS a Joint Stock Banking Company called "The City Bank" 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 indenture or deed of settlement bearing date the first day of October in the year of Our Lord one thousand eight hundred and sixty-three 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 the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. The following words and expressions in the Act shall have the several meanings hereby assigned to them unless there be something in the subject or the context repugnant to such construction (that is to say)—

The expression "The Company" shall mean the Company incorporated by this Act The "Company."

The expression "The Directors" shall mean the Board of Directors of the Company for the time being duly appointed under the provisions of the said deed of settlement The "Directors."

The word "Shareholder" shall mean shareholder proprietor or member of the Company. "Shareholder."

2. Every person who has 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 holder of shares of or in the capital for the time being of the said Company shall for the purpose 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 City Bank" 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 Company 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 or 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 whatsoever nature of the said Company to be the money goods effects bills notes securities or other property of the said Company 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 Company 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 Company.

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Confirmation of provisions of deed of settlement as by-laws of the Company subject to this Act and the general laws.

3. The several laws rules regulations clauses covenants 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 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 in and 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 Company 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 any of the laws or statutes in force in the said Colony.

Evidence of by-laws.

4. The production of a written or printed copy of the said deed of settlement or of any by-laws to be made in pursuance thereof or in pursuance of this Act having the common seal of the Company affixed thereto shall be sufficient evidence in every Court of Civil or Criminal jurisdiction of such deed of settlement or of such by-laws.

Commencement and nature of general business.

5. When and so soon as the sum of Two hundred thousand pounds being the capital of the said Company shall have been (if the same has not already been) subscribed for and a moiety thereof paid as hereinafter required but not before it shall be lawful for the said Company to act as aforesaid subject to all the restrictions and provisions herein contained and as such Company to carry on the business of a bank of issue discount and deposit in the Colony of New South Wales and elsewhere and to make loans of money on cash credit accounts promissory notes bills of exchange or letters of credit or on pledges of merchandise or warrants orders or bonded warehouse certificates for the delivery or transfer of goods or merchandise and on other securities of like nature or on personal security and it shall also be lawful for the said Company to deal in money bullion specie gold silver 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 gold silver or in notes bills or loans and to establish agencies branch banks 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 branch banks and banking connexions abroad but that it shall not be lawful for the said Company to advance or lend any money upon the security of lands or houses or ships nor to own ships and the said Company shall not hold shares in its own stock nor advance or lend to any shareholder or proprietor of shares in the said Company 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 Company 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 any lien acquired or to be acquired by the said Bank by way of equitable mortgage upon any deposit of

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of deeds or other documents as collateral security nor any right claim or title to lands or other property by virtue of any mortgage of lands or other property taken or to be taken by the said corporation or any person or persons on their behalf as security collateral to any bill promissory note bond or other security or any right claim or title to lands or other property hence to arise under the jurisdiction or administration of any Court or Courts of Equity Bankruptcy or Insolvency under the rules of Law or Equity touching the right of creditors holding such securities the lien secured by the deed of settlement to the Company over the shares belonging to any shareholder becoming indebted or coming under engagements to the Company or making default in the fulfilment of any covenant in the said deed of settlement contained or to prevent the Company from holding 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 Company from taking security by the hypothecation of merchandise or bills of lading for the payment of any bill or bills of exchange drawn against any shipment of merchandise shipped for exportation either to or from any port or place beyond the sea or from one port to another within the Australasian Territories or from taking any mortgage or lien on any stations runs sheep or cattle their increase progeny wool and other produce under the Acts of the Colonial Legislature for that purpose made and provided or from taking holding and enjoying to them and their successors for any estate term of years or interest for the purpose of re-imbursement only and not for profit any lands houses or other hereditaments or any merchandise or ships which may be taken by the Company in satisfaction liquidation or discharge of any debt due or to become due to the Company or from selling conveying and assuring the same as occasion may require And it is hereby declared that all such liens mortgages rights claims and holding shall be valid accordingly.

6. It shall not be lawful for the said Company to commence or carry on the said business of banking as a corporation under or by virtue of this Act unless or until the whole of the said capital of two hundred thousand pounds shall have been subscribed for and a moiety or half part at the least of such sum of two hundred thousand pounds shall have been actually paid up and that the whole of the said capital if not already subscribed shall be subscribed for within the space of six 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 thousand pounds if not already paid shall be paid up within the space of one year 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 payments.

7. It shall be lawful for the said Company for and during the term of twenty-one years to commence from the time of the passing of this Act or until the Legislature shall make other provisions in that behalf in case the whole of the said capital shall then have been subscribed for and a moiety thereof paid as aforesaid and if not then from the time when the whole of the said capital shall have been subscribed for and such moiety thereof paid as aforesaid unless the said Company be sooner dissolved by virtue of the provisions of the said deed of settlement in that behalf 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

Power to issue and circulate bank notes during twenty-one years.

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such privilege shall cease in case of a 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 together to sixty days within any one year or in case the said Company 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 Company is empowered to open banking establishments or to issue and circulate promissory notes.

Form of bank notes.

8. 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 the same respectively shall in all cases be payable in specie on demand at the place of date and also the principal establishment of the Company at Sydney and the total amount of the promissory notes payable on demand issued and in circulation within the Colony of New South Wales may extend to but shall not at any one time exceed the amount of its actual paid-up capital and any such further amount in excess of the said capital as the Company shall hold in coin or bullion within the said Colony.

Limitation of issue.

Only the principal establishment required to pay notes dated at other places than those of presentation.

9. No branch bank nor any establishment or agency of the said Company other than and except the principal banking establishment shall be liable to be called upon to pay any notes of the said Company other than and except such as shall have been originally made and issued at or from such particular branch bank or establishment or agency.

Increase of capital.

10. It shall be lawful for the said Company from time to time to extend or increase their capital for the time being by the creation allotment of and disposal of new shares in the manner specified and set forth and subject to the rules regulations and provisions contained in the said indenture or deed of settlement.

Regulations as to increase of capital.

11. The total amount of all the new shares to be so from time to time created shall not together with the original capital exceed five hundred thousand pounds and no such extension or increase in the capital of the said Company shall be made or take place without the previous sanction and approbation in writing of the Governor for the time being of the said Colony from time to time and for that purpose first had and obtained and at least half the amount of the increased capital shall be actually paid up before any extension of the dealings of the said Company in respect to such new capital shall be commenced and until half of such new capital shall be so paid up the dealings and affairs of the said Company 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 personal.

12. The capital or joint stock for the time being and all the funds and property of the said Company 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.

13. The Company 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 Company shall notwithstanding such trusts or equitable interests or demands and notice thereof to the said Company be a good valid and conclusive discharge to the Company for or in respect of any dividend or other money payable by the said Company in respect of such shares and the Company shall not be bound to see to the application of the

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the money paid on such receipt and 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 Company 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 Company if they shall think fit so to do to withhold payments of the dividends on any such shares and to refuse to sanction the transfer of such shares in any case in which the said Company 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 Company in respect of any such shares or the transfer by the Company in respect of any such shares or to direct the payment of such dividends or other money by the Company 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.

14. It shall be lawful for the said Company 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 Company 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 Company in satisfaction liquidation or discharge of any debt due to the Company or as security collateral to any bill or promissory note or in security for any debt or liability *bonâ 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.

Limited power to take and hold lands &c.

15. It shall and may be lawful to and for all and every person and persons bodies politic or corporate not being otherwise incompetent to grant sell alien and convey assign assure and dispose of unto and to the use of the said Company 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 Company.

16. The total amount of the debts engagements and liabilities of the said Company within the Colony of New South Wales whether upon bonds bills promissory notes or otherwise contracted other than their liabilities on account of the ordinary cash deposits of customers and on account of bills of exchange drawn by or on behalf of the said Company upon any banker or banking company or agency in the United Kingdom of Great Britain and Ireland within the amount or value of the remittances made to such banker or banking company respectively to provide for payment of the said bills of exchange may extend to but shall not in any case exceed three times the amount of actual paid up capital stock of the Company.

Amount to which general liabilities to be limited.

17. For the purposes of this Act unassayed gold shall be deemed to be "bullion" and in the accounts of the said Company and in the statements and general abstracts of the assets and liabilities which are required by law to be made out and published it shall be lawful for the said Company to include the same when melted into ingots under the name of "bullion."

Unassayed gold deemed "bullion."

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What deemed public securities.

18. All debentures issued or which may hereafter be issued by the Government of any of the Australian Colonies such debentures being secured upon the General Territorial or Casual Revenues of the Colony where the same are or shall be issued and every public debt contracted or which may hereafter be contracted by the Government of any such Colony under the authority of the Legislature thereof shall be deemed and taken to be public securities within the meaning of this Act.

Limits to discount &c. on securities bearing the name of director or officer.

19. The discounts and advances by the said Company on securities bearing the name of any one director or other officer thereof as maker drawer acceptor or indorser shall not at any time exceed in amount one-third of the total advances and discounts of the said Company and the said Company shall not discount or in any way advance money upon bills of exchange promissory notes or other negotiable instruments in or upon which the name of any director or officer of the said Company shall appear as drawer acceptor or indorser on his individual or separate account or jointly with any partner or partners of any firm of which the said director shall be a member or otherwise than as a director or officer of the said Company to an amount exceeding one-third of the amount for the time being under discount or advanced by the said Company.

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

20. No dividend shall in any case be declared or paid out of the subscribed capital for the time being of the said Company or otherwise than out of the net gains and profits of the business.

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

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21. Periodical accounts or statements and general abstracts of the assets and liabilities of the said Company 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.*"

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

22. General half-yearly meetings of the proprietors of the capital of the Company shall be held in the respective months of January and July in every year and at one of such meetings in every year two proprietors shall be elected to be auditors of the accounts of the Company for the year next ensuing and 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 Company and shall make a just true and faithful report thereon which shall be submitted by them to the directors of the Company one week previously to such meeting and which shall be by such directors submitted to the proprietors at every such meeting and 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 every other report (if any) which shall be made to the shareholders at any half-yearly or other general meeting by such auditors or by any other auditors specially appointed to inquire into the state of the accounts or affairs of the Company shall be transmitted to the office of the Colonial Secretary at Sydney for inspection thereof within thirty days from the making of such report.

Duplicate of auditors reports to be sent to the Colonial Secretary.

Penalty for neglect in respect of audits.

23. If such examination into or report on the state of the accounts or affairs of the Company as hereinbefore required to be made by auditors shall be neglected to be made or if a duplicate copy of

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of any such report shall be omitted to be transmitted to the office of the Colonial Secretary as hereinbefore required the said Company 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 report on the state of the accounts or affairs of the Company 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.

And for false or
deceptive reports.

24. In any action or suit to be brought by the said Company against any proprietor or proprietors of any share or shares in the capital of the said Company to recover any sum or sums of money due and payable to the said Company 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 not be necessary to prove the special matter but it shall be sufficient for the said Company 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 Company is or are indebted to the said Company 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 Company 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 directors or any of them who made such call or calls or any other matters except that the defendant or defendants for the time of making such calls was or were a proprietor or proprietors of some share or shares in the capital of the said Company 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 Company shall thereupon be entitled to recover what shall be due upon such call with interest thereon.

Provision as to
actions or suits
for calls.

25. The production of the Shareholders' Register Book shall be *prima facie* evidence of such defendant being a shareholder and of the number of his shares.

Proof of proprietor-
ship.

26. 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 by this Act before the same call contract act deed matter or thing had been made entered into or done.

Calls contracts &c.
made or done under
the deed of settle-
ment before this Act
in operation not to
be prejudiced by it.

27. In the event of the assets of the said Company 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 additional amount equal thereto.

Limit of liabilities.

28. The directors for the time being shall have the custody of the common seal of the said Company and the form thereof and all other matters relating thereto shall from time to time be deter-

Custody and use of
corporate seal.

mined

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mined by a Board of Directors of the said Company 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 the directors present at a Board of Directors of the said Company shall have power to use such common seal for the affairs and concerns of the said Company and under such seal to authorize 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 Company and in conformity with the provisions of the said 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 of other persons not mentioned in this Act.

29. 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.

Act to be deemed a public Act.

30. 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 and the same whenever cited shall be sufficiently described as the "City Bank Act."

To be cited as the "City Bank Act."