

An Act to incorporate the “Newtown Omnibus Company (Limited)” and for other purposes therein mentioned. [10th March, 1874.]

NEWTOWN
OMNIBUS COMPANY'S
(LIMITED)
INCORPORATION.
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WHEREAS a Joint Stock Company called the “Newtown Omnibus Company” has lately been established in Newtown in the Colony of New South Wales in accordance with and subject to the rules regulations and provisions contained in a certain deed of settlement bearing date the twenty-first day of October one thousand eight hundred and seventy-one and purporting to be the deed of settlement of the said Company for the purpose of running and employing omnibuses and other vehicles in carrying passengers goods and other traffic to and from Sydney Marrickville Stanmore and Cook’s River And whereas by the said deed of settlement the several parties thereto have respectively and mutually covenanted and agreed that they should whilst holding shares in the capital of the said Company become and continue until dissolved under the provisions in that behalf therein contained a Joint Stock Company under the name style and title of the “Newtown Omnibus Company” And whereas it was by the said deed of settlement agreed that the capital of the said Company should (until increased under the provisions in the said deed of settlement contained) consist of six thousand pounds sterling to be contributed in six thousand shares of one pound each And whereas by the said deed provision has been made for the due management of the affairs of the said Company by certain directors and auditors already appointed and by other directors and auditors to be from time to time elected and appointed as their successors by the shareholders of the said Company And whereas the said Company is desirous of being incorporated as a Company with limited liability and it is expedient that the said Company should be incorporated accordingly Be it therefore enacted by the Queen’s Most Excellent Majesty by and with the advice and consent

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consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Interpretation of terms.

1. The following words and terms within inverted commas shall throughout this Act have the several meanings hereby assigned to them unless such meanings should be respectively inconsistent with the context or subject matter (that is to say)—

"Company."

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

"Directors."

The word "Directors" shall mean the Board of Directors of the Company duly appointed under the provisions of the deed of settlement of the Company.

"Shareholder."

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

"Deed of Settlement."

The term "deed of settlement" shall mean the deed of settlement of the Company and any addition to alteration or amendment thereof which may be made in pursuance of the provisions of the said deed.

Incorporation of Company.

2. The persons who have already become or who at any time or times hereafter shall (in manner provided by and subject to the rules regulations and provisions contained in the said deed of settlement) become holders of shares of or in the capital for the time being of the Company and who shall have executed the said deed of settlement shall subject to the conditions regulations and provisions in this Act and in the said deed of settlement contained become and be a body politic and corporate with limited liability as hereinafter provided under the name style and title of the "Newtown Omnibus Company (Limited)" and by that name shall and may and take grant assurances (absolute or otherwise) demises or assignments of any lands hereditaments goods chattels and effects whatsoever. And shall and may sue and implead and present or make any petition or motion and institute carry on and conclude any proceeding at law or in Equity and in any branch or jurisdiction of the Supreme Court and in any other Court whatsoever either now or hereafter to be established against any person whether a member of the Company or not and may be sued and impleaded by any person whether a member of the Company or not in all Courts whatsoever at law or in Equity and may prefer lay and prosecute any indictment information or prosecution against any person whomsoever whether a shareholder or not for any crime or offence whatsoever and in all indictments informations and prosecutions it shall be lawful to state the money goods effects bills notes securities or other property of whatsoever nature of the Company relative to which such indictment information or prosecution is preferred laid or prosecuted to be the money goods effects bills notes securities or other property of the Company and generally to designate the Company by its corporate name whenever for any purpose whatsoever such designation shall be necessary and expedient And the Company shall have perpetual succession and a common seal which may be altered varied or changed from time to time at the pleasure of the Company or of the Directors thereof.

Confirmation of deed of settlement whereof the clauses are made by-laws for the time-being of the Company.

3. The several rules regulations covenants stipulations and agreements contained in the said deed of settlement or which may be made in pursuance of the provisions in that behalf therein contained are and shall be the by-laws for the time being of the Company except in so far as any of the same are or may be altered varied or repealed by or are or shall be inconsistent with or repugnant to any of the provisions of this Act or of any of the laws or statutes now or hereafter to be in force in the said Colony Provided nevertheless that such rules regulations covenants stipulations and agreements may be amended

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amended altered or repealed either wholly or in part in the manner provided by the said deed of settlement But no rule or by-laws shall on any account or pretence whatsoever be made by the Company either under or by virtue of the said 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 Provided always that no clause in the deed of settlement or any by-law made in pursuance of the said deed or of this Act shall be taken to affect any person who has not executed the said deed or to affect the *cestui que* trust of any share in the Company.

4. The production of a written or printed copy of the said deed of settlement or of any rules by-laws or regulations which may 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 rules by-laws or regulations of the said Company for the time being And at the time of the affixing thereto of the said seal of the Company and the certificate of the manager for the time being of the time at which the said seal shall have been affixed to the said printed copy shall be evidence of the fact of the seal having been affixed at the date or time at which it purports to have been affixed And the provisions rules by-laws and regulations contained in such printed copy shall be taken and held in any and every Court in which the same shall be produced to be the then continuing existing and unaltered rules by-laws and regulations unless the contrary shall be proved. Evidence of by-laws.

5. It shall be lawful for the Company from time to time to extend or increase its capital for the time being by the creation and disposal of new shares in the manner and subject to the conditions specified in the said deed of settlement. Increase of capital.

6. It shall be lawful for the Company to purchase take hold and enjoy to them and their successors for any estate term of years or interest or under license any lands houses offices buildings or hereditaments as may be necessary or proper for the purpose of managing conducting and carrying on the business of the Company and to sell mortgage convey assign assure demise or otherwise dispose of or act in respect of such lands houses offices buildings and hereditaments as occasion may require And no person purchasing or taking any assurance (absolute or otherwise) demise or assignment of any property real or personal from the Company shall be bound to inquire as to the necessity or advisability of any such assurance demise or assignment and the receipt of the manager for the time being of the said Company for any money paid on or with respect to any such assurance demise or assignment shall absolutely discharge the person taking the same from seeing to the application of any such money paid by him thereon or with respect to the same and from being in any way answerable or accountable for any non-application or misapplication thereof Provided that such person was not at the time of the giving of any such receipt a party to or cognizant of any such non-application or misapplication or contemplated or intended non-application or misapplication of any such money or any part thereof. Power to purchase and hold lands &c.

7. It shall be lawful for the directors from time to time as they shall see fit in the manner specified in the deed of settlement to make accept and indorse such promissory-notes or bills of exchange on behalf of the Company for any purposes connected with the affairs and business of the Company and the making accepting and indorsing of any such promissory-notes or bills of exchange by the chairman of the Power to borrow.

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the Company and at least one other director authorized in that behalf by the directors for and on behalf of the Company shall be binding on the Company. And it shall be also lawful for the directors on behalf of the Company to procure advances and to borrow money and to pay off and discharge such advances in the manner for the purposes and subject to the restrictions specified in the said deed of settlement.

Devestment of powers in trustees and vesting of same in Corporation.

8. All the lands goods chattels securities covenants debts moneys choses in action property and things at present vested in the trustees of the Company or any other person on behalf of the Company shall immediately after the passing of this Act become vested in the Company for the same estate and interest and with the like powers and authorities as the same are now vested in the said trustees or other person without any assignment or conveyance whatever.

Power to other persons to convey to Company.

9. It shall and may be lawful to and for all and every person or persons bodies politic or corporate who are or shall be otherwise competent to grant sell alienate and convey 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 houses lands hereditaments and other real estate whatsoever as aforesaid.

Act not to prejudice contracts &c. already entered into.

10. Nothing in this Act contained shall extend to prejudice or affect any call made or any contract or other act deed matter or thing entered into made or done by the Company or by any person or persons on behalf of the Company under or by virtue of the said deed of settlement before this Act shall have come into operation but such call contract act deed matter and thing shall be as valid and effectual to all intents and purposes and may be enforced by or against the Company in like manner as if the Company had been incorporated before such call contract act deed matter or thing had been made entered into or done.

Liability of shareholders.

11. Each shareholder in the said Company for the time-being shall be liable to contribute to the assets of the Company or to meet its liabilities to an amount not exceeding the amount of the shares held by him or her and no shareholder shall at any time be liable with respect to the transactions or liabilities of the Company beyond such amount.

Shares to be personal estate.

12. The shares in the capital of the Company and all the funds and property of the Company and all shares therein and the profit and advantage to be derived therefrom shall be personal estate and transmissible as such subject to the provisions and restrictions contained in the said deed of settlement.

Transfer of shares to be by deed.

13. Subject to the provisions and restrictions in that behalf contained in the said deed of settlement every shareholder may sell and transfer all or any of his shares in the capital of the Company (but not a fractional part of a share) and every such transfer shall be by deed and according to a form to be approved of by the directors and the transferee of such shares shall so soon as he has complied with the requirements and provisions relative to the transfer of shares and subject to the conditions restrictions and provisions in that behalf contained in the said deed of settlement become a shareholder in respect of the same shares to all intents and purposes.

Company not bound to regard trusts.

14. The Company shall not be bound to notice or see to the execution of any trust whether express implied or constructive to which any share may be subject and the receipt of the person in whose name any such share shall stand in the books of the Company or if the same shall stand in the names of more persons than one then the receipt of one of the persons named in the shareholders register-book hereinafter mentioned shall from time to time be a sufficient discharge to the Company for any dividend or other sum of money payable in respect of such share notwithstanding the Company have had notice of

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of such trusts And the Company shall not be bound to see to the application of the money paid upon such receipt or be in any way answerable for the non-application or misapplication thereof.

15. In case the assignees of any insolvent shareholder shall elect to accept the shares of such insolvent or in case the trustees of any estate assigned for the benefit of creditors shall elect to accept the shares belonging to such assigned estate such assignees or trustees shall forthwith nominate some other person to become a proprietor in respect of such shares (such nominee to be subject to the approval of the directors) But in no case shall such assignees be themselves entitled to become shareholders in respect of the shares of any insolvent shareholder nor shall such trustees be themselves entitled to become shareholders in respect of the shares belonging to any estate assigned for the benefit of creditors.

Assignee of insolvent shareholder and trustees of assigned estates to nominate proprietor of shares in insolvent or assigned estates.

16. In any action or suit which shall be brought by the Company against any shareholder to recover the money due upon any call made by virtue of this Act or of the said deed of settlement it shall not be necessary to set forth the special matter but it shall be sufficient for the Company to declare that the defendant is the holder of one or more share or shares in the capital of the Company (stating the number of shares) and is indebted to the Company in the same to which the calls in arrear shall amount in respect of one or more call or calls upon one or more share or shares (stating the number and amount of each of such calls) whereby an action has accrued to the Company.

Pleading in action against shareholder for calls.

17. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call as aforesaid was a holder of one share or more in the capital of the Company and that such call was in fact made and such notice thereof given as is provided in that behalf by the said deed of settlement And it shall not be necessary to prove the appointment of the directors nor the making of such call by any person or persons nor any other matter whatsoever And thereupon the Company shall be entitled to recover the amount due upon such call together with interest thereon.

Proof in action for calls.

18. The Company shall keep a book to be called the "Shareholders Register-book" and in such book shall be fairly and distinctly entered from time to time the names and addresses of the several persons holding shares in the Company together with the number of shares held by such shareholders.

Shareholders register-book.

19. The production of the shareholders register-book shall be admitted in all Courts of civil and criminal jurisdiction as *prima facie* evidence of the person named therein as a shareholder being such shareholder and of the number of his shares and of the fact of the person sued for a call or calls being the person mentioned in the said register-book as such shareholder And every shareholder or other person having a judgment at law or a decree in equity against the Company may at all convenient times peruse the shareholders register-book gratis and may require a copy thereof or of any part thereof and for every one hundred words so required to be copied the Company may demand a sum not exceeding one shilling.

Shareholders register-book to be evidence.

20. In every case dividends or bonuses shall be declared and paid out of the net profits made by the Company from time to time and not out of the capital for the time being of the Company or any portion thereof.

Dividends to be paid from profits only.

21. If any execution either at law or in equity shall be or shall have been issued against the property or effects of the Company and if there cannot be found after due diligence sufficient whereon to levy such execution then such execution may subject to the provisions of the twenty-third section of this Act be issued against any of the shareholders

Execution against shareholders.

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holders for the time-being or any former shareholder until such execution shall be fully satisfied. Provided that no such execution shall be issued against any shareholder or former shareholder for any amount beyond the sum due by such shareholder in respect of the amount subscribed for and unpaid by him and a further sum equal to the amount so subscribed for. Provided always that no such execution shall issue against any such shareholder or former shareholder except upon an order of the Court in which the action suit or other proceeding shall have been brought or instituted made upon motion in open Court after sufficient notice in writing to the person sought to be charged. And upon such motion such Court may order execution to issue accordingly. Provided further that in case of execution against any former shareholder it shall be shown that such former shareholder was a shareholder of the Company at the time when the contract or engagement was entered into for breach of which contract or engagement such execution shall have issued or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied or was a shareholder at the time the judgment or decree was obtained upon which judgment or decree such execution shall have issued. Provided also that in no case shall such execution be issued against the person property or effects of any former shareholder after the expiration of one year after the person sought to be charged shall have ceased to be a shareholder of the Company.

Reimbursements of
shareholders.

22. Every shareholder against whom or against whose property or effects execution upon any judgment decree or order obtained as aforesaid shall have issued as aforesaid shall be entitled to recover from the Company all loss damages costs and charges incurred by him by reason of such execution. And after due diligence used to obtain satisfaction therefore against the property and effects of the Company and failure to obtain the same either wholly or in part such shareholder shall be entitled to contribution for so much of such loss damages costs and charges as shall remain unsatisfied from the several other shareholders against whom execution upon such judgment decree or order as aforesaid might also have issued under the provisions in that behalf hereinbefore contained. And the amount of such contribution may be recovered from such shareholders as aforesaid by action at law for money paid for and to the use of such shareholders as and by way of contribution. And no defendant in any such action shall be entitled to raise or set up the defence of partnership.

Execution against
shareholders for con-
tributions.

23. In any of the aforesaid cases of execution on any judgment decree or order as aforesaid issued against the person or property and effects of the Company at the suit of any shareholder or former shareholder in satisfaction of any money damages costs and expenses paid or incurred by him in any action or suit against the Company as aforesaid such execution may be issued by leave of the Court or a Judge of the Court in which such judgment decree or order shall have been obtained upon motion or summons for a rule to shew cause or other motion or summons according to the practice of the Court without any suggestion or *scire facias* in that behalf. And it shall be lawful for such Court or Judge to make absolute or discharge such rule or allow or dismiss such motion (as the case may be) and to direct the costs of the application to be paid by either party or to make such other order therein as to such Court or Judge shall seem fit. And in case the Court or Judge shall order or allow such writ of execution to issue such writ shall in the form and according to the practice in use for the time being of the respective Court be sued out at the instance of such shareholder upon leave or order of the Court or Judge. And every such writ shall be enforced and levy thereunder made and carried out and the property levied on sold and disposed of in like manner as writ

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of execution levies thereunder and property levied are now or from time to time and at any time shall be according to the practice for the time being of such Court of law or Equity enforced made and carried out and disposed of respectively Provided that any order made as aforesaid may be discharged or varied by the Court on application made thereto by either party dissatisfied with such order.

24. In all cases in which by any Act of Parliament Imperial or Colonial or by any rule or order or by the practice of the Supreme or any other Court now or hereafter to be in force in this Colony the plaintiff complainant or defendant in any action suit or other proceeding civil criminal or otherwise or any creditor of an insolvent estate or any person being a party to or interested in any process or proceeding whatsoever is or shall be authorized empowered or required to make any affidavit deposition or information or to sign or present any petition or to do any other act it shall be lawful for the manager or other officer or agent of the Company (where the Company shall be such plaintiff complainant or defendant or creditor or be a party to or otherwise interested in any process or proceeding as aforesaid) to make sign present or do any such affidavit deposition information petition or other act respectively.

Power to manager
and others to do
certain acts.

25. The directors shall have the custody of the common seal of the Company and the form thereof and all other matters relating thereto shall from time to time be determined by the directors in the same manner as is provided by the said deed of settlement for the determination of other matters by them And the directors present at a Board Meeting of the Company shall have power to use such common seal or to authorize the same to be used for the affairs and concerns of the Company and under such seal to authorize and empower any person without such seal to execute any deed and to do all or any such other matters and things as may be required to be executed and done on behalf of the Company 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 the drawing accepting making or endorsing any Bill of Exchange or promissory-note but the same shall and may be drawn accepted made or indorsed as provided in the said deed of settlement And it shall not be necessary to use the said corporate seal in respect of or for the purposes of transacting any of the ordinary business of the Company or for the appointments of an attorney or solicitor for the prosecution or defence of any action suit or proceeding or of any officer or servant of the Company and such seal may be affixed to any deed or document by the hand of any person whom the directors shall appoint in that behalf and the affixing thereof shall be attested by at least one director and such person so appointed.

Custody and use of
corporate seal.

26. This Act may be cited for all purposes as the "Newtown Omnibus Company's (Limited) Incorporation Act 1874" And in every instrument or document whatsoever executed or issued by the Company the word "Limited" shall be added to and form part of the designation of the Company.

Short title of Act &c.