



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

No. 10.

An Act for facilitating and simplifying proceedings by and against a certain Joint Stock Company, called the "South Australian Mining Association," and for other purposes therein mentioned.

[Assented to 17th December, 1851.]

WHEREAS a Joint Stock Company was some time since formed in Adelaide, under the style or firm of the "South Australian Mining Association, for the purpose of working Mines, and selling or disposing of the Ores and Minerals gotten therefrom, either in a raw or smelted state: And whereas the affairs of the said Company are superintended by certain persons called Directors, such persons being respectively Shareholders of and in the capital or joint stock of the said Company: And whereas for enabling the said Company the more readily to enforce payment of moneys that may become due to them from time to time, and to prosecute persons for offences against the said Company, or their property; and also for providing a more easy remedy against the said Company in the cases hereinafter mentioned, it is expedient that the said Company should be able to sue by, and be liable to be sued in, the name of a public officer of the said Company, in place and stead of the whole, and to use the name of such public officer as hereinafter mentioned:

Preamble.

Be it therefore Enacted by His Excellency the Governor of South Australia, with the advice and consent of the Legislative Council thereof

All proceedings to be in the name of the Secretary or some other registered officer.

thereof, That all actions and suits, and also all petitions, bonds, and other proceedings upon which to found any fiat of insolvency against any person or persons who are or may be indebted to the said Joint Stock Company called the "South Australian Mining Association," and all proceedings at law or in equity, or under any fiat of insolvency to be commenced, instituted, or issued by, for, or on behalf of the said Company, against any person or persons, bodies politic or corporate, or others, whether Members of such Company or otherwise, for recovering any debts now due, or to accrue, or arise, or become due and payable to, or enforcing any claims and demands to be made by the said Company, or for, or in respect of, any other matter relating to the concerns of the said Company, shall, and lawfully may, from and after the passing of this Act, be commenced or instituted, made, given, and prosecuted, in the name of the Secretary, or of some other officer of the said Company, whose name shall be registered as hereinafter mentioned, and who shall, at the time any such action or suit, petition, bond, or other proceeding shall be commenced or instituted, made, given, and prosecuted, be resident in the said Province, as the nominal plaintiff, complainant, or petitioner, for and on behalf of the said South Australian Mining Association, and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether Members of the said South Australian Mining Association or otherwise, against such Company, shall, and lawfully may be commenced, instituted, and prosecuted against any such Secretary or other officer for the time being registered and resident as aforesaid as the nominal defendant or respondent, for and on behalf of the said Company, and that all indictments, informations, and prosecutions by or on behalf of such Company, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to the said Company, or for any fraud, forgery, crime, or offence committed against, or with intent to injure or defraud the said Company, shall, and lawfully may be had, preferred, and carried on, in the name of such Secretary or other officer for the time being registered as aforesaid, and resident in the said Province as aforesaid, and that in all indictments and informations, or other proceedings to be had, referred, or taken, by or on behalf of the said Company, against any person or persons whomsoever, notwithstanding such person or persons may happen to be a Member or Members of such Company, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such Company, to be the money, goods, effects, bills, notes, securities, or other property of such Secretary, or other officer for the time being, registered as aforesaid, and resident in the said Province as aforesaid, and that any forgery, fraud, crime, or other offence committed as aforesaid, shall, and lawfully may, in such indictments, informations, or other proceedings, notwithstanding as aforesaid, be laid, or stated to have been committed against, or with intent to injure or defraud such Secretary, or other officer for the time being registered as aforesaid, and resident in the said Province as aforesaid, and any offender or offenders

offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence, and that in all allegations, indictments, informations, or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing the said Company, it shall and may be lawful and sufficient to state the name of such Secretary or other officer for the time being registered as aforesaid, and resident in the said Province as aforesaid, and the death, resignation, removal, or any act of such Secretary or other officer for the time being registered as aforesaid, and resident in the said Province as aforesaid, shall not abate or prejudice any such action, suit, indictment, prosecution, information, or other proceedings.

2. And be it Enacted, That a memorial of the names of the Directors and Trustees of the said Company, and of the Secretary or other officer of the said Company, who is for the time being to be the nominal plaintiff, complainant, petitioner, defendant, or respondent for the purposes of this Ordinance, in the form or to the effect set forth in the Schedule hereunto signed by the Directors for the time being of the said Company, and such Secretary or other officer as aforesaid, resident in the said Province as aforesaid, and verified by the declaration of some person or persons who shall have been present and seen the signing thereof (such declaration to be made before any Judge of the Supreme Court of the Province, and which declaration such Judge is hereby authorised to take), shall be registered in the said Supreme Court within three calendar months after the passing hereof, and when any new Directors or Trustees of the said Company, or any new Secretary or other officer who is for the time being to be the nominal plaintiff, complainant, petitioner, defendant, or respondent for the purposes of this Ordinance, shall be appointed, a memorial of such appointment shall be in like manner registered, as aforesaid, within twenty one days after their or his appointment.

Memorial to be recorded in Supreme Court of names of Directors and Trustees, and of registered officer.

3. Provided always, and be it Enacted, That notwithstanding the Secretary or other officer of the said Company, for the time being, resident and registered as aforesaid, shall be the nominal plaintiff, complainant, petitioner, defendant, or respondent in any action, suit, or other proceeding, it shall be lawful and competent for such Secretary or other officer as aforesaid, to be examined and give evidence in such action, suit, or other proceeding in the same manner as if his name had not been made use of as such nominal plaintiff, complainant, petitioner, defendant, or respondent as aforesaid.

Registered officer a competent witness in such proceedings.

4. And be it Enacted, That when and so often as any judgment, order, or decree for the payment of any sum of money either for a debt, damages, or costs, or other matter shall be given or made against any such Secretary or officer registered as aforesaid, in any action, suit, or proceedings wherein he shall be either plaintiff, complainant

Recovery under proceedings against the Company.

complainant, petitioner, defendant, or respondent for or on account of the said Company, the Secretary for the time being of the said Company shall, upon being served personally with an order of the said Court wherein such judgment, order, or decree shall be given or made directing him so to do, or upon such order being left at the counting-house or place of business of the said Company in Adelaide, forthwith pay such money out of the funds of the said Company unto the person or persons in whose favor such judgment, order, or decree shall be given or made, or his or their Attorney, Solicitor, or authorised agent as shall be directed by such order, and in default thereof (such default to be proved by affidavit to be made before a Judge or some authorised officer of the Court wherein such order shall have been made) it shall be lawful for the said Court, whether it be of law or equity, to order a writ of Execution to be issued directed to the Sheriff requiring him to levy such sum of money upon or out of the goods and chattels, or lands and tenements of the said Company, and the said Sheriff shall, by seizure and sale of such goods and chattels, or lands and tenements, levy and raise the sum of money mentioned in such writ, with the costs and all other incidental expenses attending the execution of such writ; and if such sum of money, costs, and expenses cannot be levied and raised from the said goods and chattels, or the said lands and tenements, either from there not being a sufficiency thereof, or from the want of buyers (whereof the return of the Sheriff shall be sufficient evidence), such sum of money, or so much thereof as shall not have been so levied and raised, may be levied and raised by execution against the goods and chattels, or lands and tenements of any of the Members of the said Company resident in the said Province, or may be recovered against any of such Members by action of debt or otherwise, and the Member or Members of the said Company paying or satisfying the same, shall recover the amount, together with all incidental costs, charges, and expenses either out of the joint stock funds of the said Company, or against the other Members thereof in due proportion as in ordinary cases of co-partnership: Provided always, that such registered officer, by or against whom such judgment, order, or decree shall be given or made, shall have the same right of appeal against such judgment, order, or decree on behalf of the said Company, as if it had been given in an action or suit brought by or against such Company, or any Member or Members thereof; and that nothing in this Act contained shall extend or be construed to extend so as to subject such Secretary or other officer of the said Company who shall be such nominal plaintiff, complainant, petitioner, defendant, or respondent, to any individual responsibility in person, goods, chattels, estate, or otherwise, by reason of his being such nominal plaintiff, complainant, petitioner, defendant, or respondent.

No more than one action or suit to be brought for the same demand.

5. And be it Enacted, That no person or persons, or body, or bodies politic or corporate, having, or claiming to have any demand upon or against the said South Australian Mining Association shall bring

bring more than one action or suit in case the merits shall have been tried in such action or suit in respect of such demand, and the proceedings in any action or suit by or against such Secretary or other officer, for the time being, resident and registered as aforesaid, may be pleaded in bar of any other action or actions, suit or suits, for the same demand by or against any other Secretary or other officer for the time being, resident and registered as aforesaid, or by or against any Member or Members of the said Company.

6. And be it Enacted, That the provisions in this Act contained shall extend and be construed, deemed, and taken to extend to the said Company at all times during the continuance of such Company, whether the said Company be now or hereafter composed of some, all, or any of the persons who were the original, or are the present Members thereof, or of all or some of those persons together with some other person or persons, or shall be composed altogether of persons who were not originally, nor are now Members of the same.

Act to extend during the continuance of the Company.

7. Provided always, and be it Enacted, That nothing herein contained shall operate, or be construed, deemed, or taken to operate in any manner or form as obligatory upon the said South Australian Mining Association, or any of the Directors or Trustees thereof, to sue in the name of such Secretary or other officer for the time being resident and registered as aforesaid.

Act not imperative on Company.

8. And be it Enacted, That after any memorial required by this Act to be registered, shall have been duly registered as aforesaid, it shall not be necessary, in any action, suit, or other proceeding, to prove such registry ; or that the person whose name is mentioned in such memorial as the Secretary or other officer who is for the time being to be the nominal plaintiff, complainant, petitioner, defendant, or respondent, for the purposes of this Act, is such Secretary or other officer, and as such entitled to maintain such action, suit, or other proceeding ; but that such facts shall be deemed to be admitted, unless any other party to such action, suit, or other proceeding shall desire the production of such memorial, and shall give a two days' previous notice in writing of such his desire to the said Secretary or other officer, in which case such memorial or any official copy thereof, certified by the Clerk of the Supreme Court, shall in all such cases be received in evidence as proof of the due registry of such memorial, and that the Secretary or other officer of the said South Australian Mining Association named in such memorial, is such Secretary or other officer, and fully and absolutely entitled to maintain or defend such action, suit, or other proceeding as nominal plaintiff, complainant, petitioner, defendant, or respondent, without any further proof whatsoever.

Proof of memorial and registry.

9. And be it Enacted, That on the death, resignation, or removal

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On a vacancy of Secretary, to re-elect within three months.

removal of any such Secretary or officer registered as aforesaid, the said South Australian Mining Association, or the Directors thereof shall, within three months after such death, resignation, or removal, appoint another Secretary or other officer of the said Company, resident in the said Province, who shall for the purposes of this Act be the nominal plaintiff, complainant, petitioner, defendant, or respondent; and shall, immediately after such appointment, cause a memorial of the name of such Secretary or other officer to be recorded in the Supreme Court within such time and in such manner and form as is hereby directed; and if the said Company, or the Directors thereof, shall fail to appoint such Secretary or other officer within such time as is before mentioned, the said Company shall wholly forfeit all benefit and advantage under or by virtue of this Act.

Any Member may be sued.

10. And be it Enacted, That any thing in this Act notwithstanding, it shall be lawful for any person having any cause of action against the said Company, to sue any person or persons being a Member or Members of the said Association, at the time of the cause of the action arising or being named on the list last recorded on oath at the Supreme Court, under the provisions of this Act, before the raising of such action, and such and the like proceedings and consequences shall and may ensue therefrom, as in the case of an action brought against a Secretary or other officer under this Act.

No plea of abatement.

11. And be it Enacted, That in any action brought against any one or more Members of the said Association, no plea in abatement shall be competent or allowed by the Court on account of the non-joinder of other Members thereof.

Reimbursement of Member sued.

12. Provided always, That every such Member against whom an action, suit, or other proceeding shall be brought, instituted, or prosecuted, or against whom execution shall be issued, shall always be reimbursed out of the funds of the said Company, such loss, damages, expenses, costs, and charges as by the event of any such proceeding he may sustain, or be put to, and that as between several Members of the said Company for the time being, such contributions shall be had in respect of any such loss, damages, expenses, costs, and charges as may ordinarily be had between several joint contractors, for money paid by one or more of them on the joint account.

Names, &c., of Members to be recorded annually.

13. And be it Enacted, That the Secretary or other officer aforesaid of the said Company, shall, on or before the sixteenth day of April, one thousand eight hundred and fifty-two, and within ten days from the sixteenth day of April in every succeeding year, cause a true list of the names of all the Members of such Company, with their respective places of abode and description (so far as such names and places of abode and description shall be known to such Secretary or other officer aforesaid) to be recorded on declaration in

in the office of the Supreme Court (which declaration any Judge of the said Supreme Court is hereby authorised to take), and that the same shall be open for inspection at all reasonable times, by any person requiring the same, on payment of a fee of one shilling ; and if any Secretary or other officer aforesaid of the said Company shall fail to cause such list to be recorded in manner aforesaid, he shall be liable to a penalty of Fifty Pounds, to be recovered by action of debt in the said Supreme Court by any person suing for the same.

14. And be it Enacted, That every person whose name shall be so recorded shall be considered a Member of the said Company, and be liable to be sued as such until a new list of the Members' names shall be recorded as aforesaid, or until he shall have given notice of his retirement in the *South Australian Government Gazette*.

Persons so recorded considered Members till new list notified.

15. Provided always, and be it Enacted, That nothing herein contained shall extend, or be deemed, taken, or construed to extend to incorporate the Members or Proprietors of the said Company, or to relieve or discharge them, or any of them, or the said Company, or any of the partners thereof, from any responsibility, duties, contracts, or obligations whatsoever, which by law they now are, or at any time hereafter shall be subject or liable to arise between the said Company and others, or between the individual Members of the said Company, or any of them, and others, or among themselves, or in any other manner whatsoever, excepting so far as the same is or are effected by this Act, and the true intent and meaning of the same.

Company not incorporated, &c., by this Act.

16. Provided always, and be it Enacted, That in case any Act of Parliament shall have been, or shall be passed in favor of, or any Charter of Incorporation shall have been, or shall be granted by Her Majesty to the said South Australian Mining Association, this Act and the rights, remedies, and liabilities under the same shall cease and determine when and so soon as such Act of Parliament or Charter of Incorporation shall take effect in the said Province.

Act subject to any Act of Parliament or Charter to be obtained.

17. 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 and successors, or of any body or bodies politic or corporate, or of any other person or persons, excepting such as are mentioned therein, or of those claiming by or under him or them.

Saving rights of Her Majesty and others.

18. And be it Enacted, That this Act shall be printed by authority of His Excellency the Governor and Legislative Council of the said Province, and that a copy thereof so printed shall be admitted as evidence thereof, and of all facts, matters, and things therein recited, or contained, to be judicially taken notice of by all Judges, Justices, and others, without being specially pleaded.

Act to be taken notice of judicially.

19. And

Commencement.

19. And be it Enacted, That this Act shall commence and take effect from and immediately after the passing thereof.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this Third day }
of December, One Thousand Eight }
Hundred and Fifty-one.*

F. C. SINGLETON,
Clerk of Council.

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

H. E. F. YOUNG,
Lieutenant-Governor.

Government House, Adelaide,
17th December, 1851.

