



ANNO QUARTO

VICTORIÆ REGINÆ.

No. 8.

An ACT for enabling the SOUTH AUSTRALIAN COMPANY to sue and be sued in the name of some one of the Public Registered Officers of the said Company resident in South Australia.

WHEREAS numerous persons in England have formed themselves into a Society or Company called or known by the name of the "*South Australian Company*" and have subscribed or raised considerable sums of money in order to purchase lands erect buildings and carry on various undertakings in the Province of South Australia and such Company hath already made large purchases of land erected extensive buildings and constructed other works and established a Bank in the said Province called "*The Bank of South Australia*" and invested in and about such objects and various other businesses and employments a large capital in the said Province to the great benefit and advantage thereof:

And whereas difficulties may hereafter arise in recovering debts due to or from the said Company and in maintaining actions suits and proceedings by or against the same if it were necessary that all the Members for the time being thereof should join or be joined in every such action suit or proceeding: And whereas in order to obviate these difficulties it is deemed expedient that all such actions suits and proceedings may be commenced prosecuted and carried on by or in the name of some Public Registered Officer thereof and that all actions suits and proceedings against the said Company may in like manner be commenced prosecuted or carried on against some such Registered Officer:

BE IT THEREFORE ENACTED by His Excellency Lieutenant-Colonel George Gawler Knight of the Royal Hanoverian Guelphic Order
Governor

Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice and consent of the Legislative Council thereof as follows that is to say—

I. That from and after the passing of this Act all actions suits and proceedings at law or in equity and all proceedings in any Court whatsoever and whether relating to real or personal property to be hereafter commenced prosecuted or carried on by or on behalf of the said Company against any person or persons body or bodies politic or corporate and whether a Member or Members of the said Company or otherwise lawfully may be commenced prosecuted and carried on in the name of the person who shall be the Resident Manager in South Australia of the said Company or in the name of the person who shall be the Resident Manager of the Bank or in the name of some other officer of the said Company to be from time to time registered for the purposes of this Act and to be resident in South Australia at the time such action suit or proceeding shall be instituted as the nominal plaintiff complainant or petitioner or party acting for and on behalf of the said Company. And that all actions suits and proceedings as aforesaid to be commenced prosecuted or carried on against the said Company may be commenced prosecuted and carried on against the said Manager or other officer to be registered as aforesaid as the nominal defendant or respondent for and on behalf of the said Company.

II. And be it enacted that a memorial of the names of the Directors and Trustees resident in England of the said Company and of the Manager or other officer as aforesaid of the said Company or Bank resident in South Australia shall be enrolled upon oath declaration or affirmation in the Supreme Court of South Australia within twenty-one days after the passing of this Act and when any new Directors Trustees or Manager of the said Company or of the said Bank shall be made or appointed a memorial thereof shall in like manner be enrolled as aforesaid within thirty days after the arrival of such making or appointment being made known to the said Manager of the said Company in South Australia and in case of the default of such memorial being so enrolled the names of the said Manager and other officers of the said Company so registered as aforesaid may be erased from the said enrolment thereof in the said Supreme Court until such memorial of such new Directors Trustees or Manager as aforesaid shall be enrolled: Provided always that nothing in this Act contained shall extend or be construed to extend so as to subject any such officer registered as aforesaid to any individual responsibility either in person goods chattels or estate or otherwise by reason only of his name being used in any such action suit or proceeding.

III. And be it enacted that after the name of the Manager or other officer of the said Company shall be duly registered for the purpose aforesaid it shall not be necessary in any action or suit to prove such registry or that any person so registered is such Manager

or

or officer but that the onus of disproving such facts shall lie on the party disputing the same.

IV. And be it enacted that no action suit or proceeding shall abate by reason of the death or resignation or removal of any such registered officer as aforesaid ; And that it shall and may be lawful and competent to and for any officer of the said Company registered as aforesaid at any time to give evidence and be examined in any such Court or Courts of law or equity as aforesaid or before any arbitrator or arbitrators or otherwise howsoever touching and relating to any of the matters of the said Company or of the said Bank then in dispute notwithstanding the said person so giving evidence may be the nominal plaintiff prosecutor or defendant in such and the same manner as if he were in nowise named therein.

V. And be it enacted that the provisions contained in this Act shall extend and be construed to extend to the said Society or Partnership called the "*South Australian Company*" at all times during the continuance of the same whether the same from time to time hath been or be now or shall hereafter be or be composed of all or some of the persons who were the original members or partners thereof or of all or some of those persons together with some other persons or shall be composed altogether of persons who were not original members or partners in the same: Provided always that nothing in this Act contained shall operate or be construed deemed or taken to operate in any manner or form as obligatory upon the said Company or any of the Directors or Trustees thereof to sue in the name of the said Manager or other officer of the said Company or Bank registered as aforesaid if they the said Directors or Trustees or their Manager Agent or other legal representative shall think it inadvisable or inexpedient so to do: And also provided that nothing contained herein or in any part hereof shall operate or be construed to operate as a discharge or so as to alter or vary in any respect whatsoever any liability of the said Company or of the Members Trustees or Directors thereof or any of them except as appears by this Act.

VI. And be it enacted that when and so often as any judgment or decree for the payment of any sum of money either for a debt or damages or costs or other matter shall be given against any such registered officer of the said Company in any action or suit wherein he shall be either plaintiff or defendant for or on the account of the said Company the Manager of the said Bank shall upon being served with an order of the Court wherein such judgment or decree is given either personally or by a copy thereof being left at the said Bank forthwith pay unto the person or persons in whose favor such judgment or decree shall be given or his or their attorney solicitor or authorized agent such sum of money out of the funds of the said Company in his hands; And that in default thereof (such default to be proved by affidavit or affirmation) it shall be lawful for the said Court whether it be of law or equity to issue a writ to the Sheriff

Sheriff requiring him to levy such sum of money upon or out of the lands tenements goods and chattels of the said Company and the Sheriff shall by seizure and sale of the goods and chattels or if need be of the lands and tenements of the said Company levy and make the sum of money mentioned in such writ and if such sum of money cannot be made of the lands tenements goods or chattels of the said Company 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 sums of money may be levied of the lands tenements goods and chattels of any of the Members of the said Company or may be recovered against any such Members by actions of debt and the Members paying or satisfying such sum of money shall recover the same 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 that such registered officer by or against whom such judgment or decree may be given shall have the same right of appeal against the same on behalf of the said Company as if it had been given in an action or suit brought by or against him in his own private capacity.

VII. 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 other person or persons except as is herein expressly mentioned.

VIII. And be it enacted that this Act shall be deemed and taken to be a Public Act and shall be judically taken notice of as such by all Judges Justices and others without being especially pleaded.

GEORGE GAWLER.

Passed in Council this twenty-ninth
day of December, 1840.

GEORGE HALL,
Clerk of Council.