



ANNO SEXTO ET SEPTIMO

VICTORIÆ REGINÆ.

1843.

PRIVATE BILL.

By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice-Admiral of the same by and with the advice and consent of the Legislative Council.

AN ORDINANCE to simplify Proceedings at Law or in Equity by and against the South Australian Banking Company.

WHEREAS an Act or Ordinance was passed in the Fourth Year of the Reign of Her present Majesty by His Excellency the Governor of South Australia with the advice and consent of the Legislative Council thereof intituled "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" and whereas a separation and division of the operations and the capital of the said Company has since taken place and a distinct Company has been established for transacting Banking business only called the "South Australian Banking Company" and whereas it would be convenient and just to obviate any difficulties which may arise in recovering debts due to the said "South Australian Banking Company" and in maintaining actions or proceedings for damages done to their property and also in prosecuting persons who may be guilty of theft embezzlement or forgery to the detriment of the said Company and that

that persons having demands against the said Company should be entitled to sue some one party in place of the whole of the proprietors of such Company :

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

BE IT THEREFORE ENACTED BY HIS EXCELLENCY the Governor of South Australia with the advice and consent of the Legislative Council 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 South Australian Banking Company 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 such Banking 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 South Australian Banking Company or for or in respect of any other matter relating to the concerns of the said Banking Company shall and lawfully may from and after the passing of this Ordinance be commenced or instituted made given and prosecuted in the name of the Manager or of some other Officer of the said South Australian Banking 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 Banking Company 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 Banking Company or otherwise against such Company shall and lawfully may be commenced instituted and prosecuted against any such Manager or Officer for the time being registered and resident as aforesaid as the nominal defendant or respondent for and on behalf of the said South Australian Banking 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 South Australian Banking Company or for any fraud forgery crime or offence committed against or with intent to injure or defraud the said South Australian Banking Company shall and lawfully may be had preferred and carried on in the name of such Manager or 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 preferred or taken by or on behalf of the said South Australian

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Australian Banking 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 Manager or 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 Manager or Officer for the time being registered as aforesaid and resident in the said Province as aforesaid and any offender or 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 South Australian Banking Company it shall and may be lawful and sufficient to state the name of such Manager or 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 Manager or Officer for the time being registered as aforesaid and resident in the said Province as aforesaid after the commencement of such action suit indictment prosecution information or other proceedings shall not abate or prejudice any such action suit indictment prosecution information or other proceedings.

II. And be it enacted that a Memorial of the names of the Directors and Trustees of the said South Australian Banking Company resident in England and of the Directors of such Company resident in the said Province and of the Manager or other Officer of the said Company resident in the said Province 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 hereto signed by the Directors resident in the said Province and such Manager 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 twenty-one days after the passing hereof and when any new Directors or Trustees of the said South Australian Banking Company

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

Company or any new Manager 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 as to any new Directors or Trustees resident in England be in like manner registered as foresaid within thirty days after such appointment shall be made known to the said Manager or other Officer of the said South Australian Banking Company resident in the said Province and as to any new Directors Trustees Manager or other Officer as aforesaid resident in the said Province within twenty-one days after their or his appointment.

Registered Officer a competent witness in such proceedings.

III. Provided always and be it enacted that notwithstanding the Manager or other Officer of the said South Australian Banking 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 Manager or other Officer as aforesaid to be examined and give evidence in any 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.

Recovery under proceedings against the Company.

IV. 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 Manager or Officer registered as aforesaid in any action suit or proceedings wherein he shall be either plaintiff complainant petitioner defendant or respondent for or on account of the said South Australian Banking Company the Manager for the time being of the said Company shall upon being served personally with an order of the 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 Banking-house 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 incidental expenses

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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 Ordinance contained shall extend or be construed to extend so as to subject such Manager 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.

V. 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 Banking Company shall 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 Manager 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 Manager or other Officer for the time being resident and registered as aforesaid or by or against any Member or Members of the said Company.

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

VI. And be it enacted that the provisions in this Ordinance contained shall extend and be construed deemed and taken to extend to the said South Australian Banking Company at all times during the continuance of such Company whether the said Company be now or hereafter shall be composed of some all or any of the

Act to extend during the continuance of the Company.

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 original nor are now members of the same.

Ordinance not imperative on Company.

VII. 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 Banking Company or any of the Directors or Trustees thereof to sue in the name of such Manager or other officer for the time being registered and resident as aforesaid.

Proof of Memorial and registry.

VIII. And be it enacted that after any Memorial required by this Ordinance 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 Manager 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 is such Manager 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 Manager 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 Manager or other officer of the said South Australian Banking Company named in such Memorial is such Manager 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.

On a vacancy of Managing Director Banking Company to re-elect within three months.

IX. And be it enacted that on the death resignation or removal of any such Manager or Officer registered as aforesaid the said South Australian Banking Company or the Directors of such Company resident in the said Province shall within three months after such death resignation or removal appoint another Manager or other Officer of the said Company resident in the said Province who shall for the purposes of this Ordinance be the nominal plaintiff complainant petitioner defendant or respondent and shall immediately after such appointment cause a Memorial of the name of such Manager 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 Banking Company or the Directors

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rectors of the Company resident in the Province shall fail to appoint such Manager 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 Ordinance.

X. And be it enacted that anything in this Ordinance notwithstanding it shall be lawful for any person having any cause of action against the said Banking Company to sue any person or persons being a member or members of the said Banking Company at the time of the cause of the action arising or being named on the list last recorded on oath in the Supreme Court under the provisions of this Ordinance before the raising of such action and such and the like proceedings and consequences shall and may ensue thereupon as in the case of an action brought against a Manager or other officer under this Ordinance.

Any Member may
be sued.

XI. And be it enacted that in any action brought against any one or more members of the said Banking Company no plea in abatement shall be competent or allowed by the Court on account of the non-joinder of other members thereof.

No plea of abate-
ment.

XII. Provided always that every such member against whom any 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 Banking Company such loss damages expenses costs and charges as by the event of any such proceedings he may sustain or be put to and that as between the several members of the said Banking Company for the time being such contribution 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.

Re-imbusement of
Members sued.

XIII. And be it enacted that the Manager or other officer aforesaid of the said Banking Company shall on or before the First day of January One Thousand Eight Hundred and Forty-five and within ten days from the First day of January in every succeeding year cause a true list of the names of all the Members of such Banking Company with their respective places of abode and description (so far as such names and places of abode and description shall from the then latest returns from England be known to such Manager or other Officer aforesaid) to be recorded on oath in the Office of the Supreme Court 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 Manager or other Officer aforesaid of the said Banking Company shall fail to cause such list to be recorded.

Names &c. of Mem-
bers to be recorded
annually.

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.

Persons so recorded considered members till new list notified.

XIV. And be it enacted that every person whose name shall be so recorded shall be considered a member of the said Banking 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."

Company not incorporated &c. by this Ordinance.

XV. 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 South Australian Banking Company or to relieve or discharge them or any of them or the said South Australian 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 either between the said Companies and others or between the individual members of the said Companies or any of them and others or among themselves or in any other manner whatsoever except so far as the same is or are affected by this Ordinance and the true intent and meaning of the same.

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

XVI. 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 Banking Company this Ordinance 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.

Not to affect rights and liabilities of South Australian Company under recited Act or Ordinance

XVII. Provided always and be it enacted that nothing herein contained shall abate suspend affect prejudice or vary or be deemed taken or construed to abate suspend affect prejudice or vary the rights remedies and liabilities of the "South Australian Company" under or by virtue of the Act or Ordinance hereinbefore recited or referred to or in any other manner whatsoever except so far as such rights remedies or liabilities are expressly abated suspended affected prejudiced or varied by this Ordinance and the true intent and meaning of the same.

Saving rights of Her Majesty and others.

XVIII. Provided always and be it enacted that nothing in this Ordinance 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

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excepting such as are mentioned therein or of those claiming by or under him or them.

XIX. And be it enacted that this Ordinance 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 and be judicially taken notice of by all Judges Justices and others without being specially pleaded. Ordinance to be taken notice of judicially.

GEORGE GREY,
Governor and Commander-in-Chief.

Passed in the Legislative Council, this Fourteenth day of November, 1843.

W. L. O'HALLORAN,
Clerk of Council.

for Memorial Dec. 5
11/16

SCHEDULE REFERRED TO.

MEMORIAL to be registered in the Supreme Court of the Province of South Australia pursuant to an Ordinance of the Governor and Council of the said Province passed in the Sixth and Seventh Year of the Reign of Her Majesty Queen Victoria and intituled "An Act to simplify Proceedings at Law or in Equity by and against the South Australian Banking Company."

The names of the Directors of the said Company resident in England are :

The names of the Trustees of the said Company resident in England are :

The names of the Directors of the said Company resident in South Australia are :

The name of the Manager (or officer as the case may be) of the said Company resident in South Australia and who in pursuance of the said Ordinance is to be the nominal plaintiff complainant petitioner defendant or respondent is

Dated this _____ day of _____ one thousand eight hundred and forty _____

Signatures of the Local Directors.

Signature of the Manager (or officer }
as the case may be). }

I _____ of _____ in the Province of South Australia do solemnly and sincerely declare that I was present and did see the foregoing Memorial signed by the Directors and Manager (or officer as the case may be) respectively whose names appear thereto and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the Session of Parliament of the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth intituled "An Act to repeal an Act of the present Session of Parliament intituled an Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State and to substitute declarations in lieu thereof and for the more entire suppression of voluntary and extra-judicial oaths and affidavits and to make other provisions for the abolition of unnecessary oaths."

Declared at _____ this _____ day of _____

Before me

Passed in the Legislative Council, this Fourteenth day of November, 1843.

W. L. O'HALLORAN,
Clerk of Council.

ADELAIDE :