CHAP. v.

An Act to enable the Union Bank of Australia to sue and be sued in the name of a Public Officer; and for other purposes. [25th May 1871.]

A.D. 1871.

WHEREAS a joint stock company or copartnership was by deed of settlement dated the twenty-sixth day of October one thousand eight hundred and thirty-seven formed in London, under the style or firm of "The Union Bank of Australia," for the purpose of carrying on the business of banking in its various branches in the Australian colonies; and branches of the said bank have been established at various places in the colonies of Victoria, New South Wales, Queensland, South Australia, Tasmania, and New Zealand, and the said Company have their head office in the city of London; and a supplementary deed of settlement of the said Company was executed on the thirteenth day of January one thousand eight hundred and sixty-four:

And whereas most of the proprietors or holders of shares in the capital or joint stock of the said Company reside in the United Kingdom, but many of such shares are also held by parties resident in the said colonies:

And whereas the said Company have not been incorporated; and for enabling the said Company more readily to recover payment of moneys that are or may become due to them, and to prosecute persons for offences against the said Company or their property, and also for providing more easy remedy against the said Company and the several proprietors or holders of shares therein, it is expedient that the said Company should be authorised to sue and be sued in the name of a public officer, and to use the name of such public officer as herein-after provided, and that further provision should be made for enabling the said Company to carry on their business with greater facility; but these objects cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by

A.D. 1871.

and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as "The Union Bank of Australia Act, 1871."

Interpretation of terms.

2. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction:

The word "person" includes companies and corporations:

The expression "the Company" means the Union Bank of Australia:

The expression "public officer" means any one of the public officers for the time being of the Company:

The words "shareholder" and "shareholders" respectively mean a proprietor or proprietors or holder or holders of shares in the capital or joint stock of the Company, and include companies and corporations:

The expression "registrar of joint stock companies" means the registrar of joint stock companies in England, or the person for the time being performing the duties of such registrar in England under "The Companies Act, 1862."

Appointment of public officers of the Company.

3. The board of directors of the Company in London may within two months after the passing of this Act appoint any two persons, being shareholders and resident in England, to be public officers of the Company, under the provisions and for the purposes of the deed of settlement of the Company and this Act; and when any one of such public officers, or any other public officer appointed by the said board of directors, shall die or resign, or go to reside abroad, or be removed, or otherwise cease to be such public officer, the said board of directors may from time to time appoint any person, being a shareholder and resident in England, to be a public officer of the Company in the place and stead of the public officer so dying, resigning, going to reside abroad, being removed, or otherwise ceasing to be a public officer; and the said board of directors may from time to time remove any public officer of the Company from his office.

Memorial of public officers and trustees to be delivered to the registrar of joint stock companies.

4. Within three months after the passing of this Act, and thereafter in the month of March in the year one thousand eight hundred and seventy-two, and in every succeeding year, a memorial shall be made out according to the form contained in the Schedule (A.) to this Act annexed, or to the like effect, wherein shall be set forth the names, places of abode, and descriptions of the two persons who shall have been appointed public officers of the Company under

the provisions and for the purposes of this Act, and in the name of either of whom the Company shall sue and be sued as herein-after provided, and also the names, places of abode, and descriptions of the several persons then being the trustees in England of the Company; and such memorials shall within the respective times aforesaid be delivered to the registrar of joint stock companies, at his office in London, who shall cause the same to be filed and kept in the said office; and whenever any public officer or trustee of the Company, as the case may be, shall cease to be such public officer or trustee by death, resignation, going to reside abroad, removal, or otherwise, a memorial shall within three months after he has so ceased to be such public officer or trustee be made out, according to the form contained in the Schedule (B.) to this Act annexed, or to the like effect, wherein shall be set forth the name, place of abode, and description of the person who shall have been appointed a public officer under the provisions and for the purposes of this Act, or a trustee of the Company, as the case may be, in the place and stead of the person so ceasing to be such public officer or trustee; and such memorial shall within the time aforesaid be delivered to the registrar of joint stock companies at his office in London, who shall cause the same to be filed and kept in the said office.

List of shareholders of the Company to be delivered to the registrar.

5. Within three months after the passing of this Act, and thereafter in the month of March in the year one thousand eight hundred and seventy-two, and in every succeeding year, a list shall be made out according to the form contained in the Schedule (C.) to this Act annexed, or to the like effect, of the names of all the persons who were shareholders of the Company on the thirty-first day of December preceding, so far as the same shall then be known to the public officer making out and verifying the said list as herein-after provided; and such list shall within the respective times aforesaid be delivered to the registrar of joint stock companies at his office in London, who shall cause the same to be filed and kept in the said office; and a fee of five shillings shall be paid to the registrar of joint stock companies for filing every such memorial and list.

Memorials and lists to be verified by oath of public officer.

6. The memorials and lists to be made out and delivered as herein-before provided shall respectively be made out by any public officer, and shall be verified by the oath of such public officer taken before any justice of the peace, and which oath any justice of the peace is hereby authorised and empowered to administer.

Until memorials delivered no proceedings to be taken under this Act.

7. Until the memorials to be made out and delivered as herein-before provided shall be so made out and delivered, no action, suit, or other proceeding at law or in equity shall be commenced, or if commenced, either before or after the passing of this Act, shall be

A.D. 1871.

continued, by or on behalf of the Company under the provisions of this Act.

Inspection of memorials and lists, and certified copies to be evidence.

8. Any person may inspect the memorials and lists filed by the registrar of joint stock companies under this Act on payment to such registrar of a fee of one shilling for each such inspection; and any person may require a copy or extract of any such memorial or list to be certified by the registrar of joint stock companies under his hand, on payment to such registrar of a fee of sixpence per folio for such copy or extract; and every such memorial or list, or a copy thereof purporting to be so certified as aforesaid, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received as primâ facie evidence of the due appointment and authority of the public officers or public officer or trustees or trustee named in such memorial, or, as the case may be, of the fact that all persons named in any such list as shareholders of the Company were shareholders thereof at the time therein mentioned.

Company to sue and be sued in the name of a public officer.

9. All actions and suits, and also all petitions to found any adjudication of bankruptcy against any person who is or may be at any time indebted to the Company, and all proceedings at law or in equity under any adjudication of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of the Company against any person, whether a shareholder of the Company or not, for recovering any debts or enforcing any claims or demands due to the Company, or for any other matter relating to the affairs of the Company, shall and lawfully may from and after the passing of this Act be commenced or instituted or continued and prosecuted in the name of any public officer as the nominal plaintiff or petitioner for and on behalf of the Company; and all actions or suits and proceedings at law or in equity to be commenced or instituted by any person, whether a shareholder of the Company or not, against the Company, shall and lawfully may be commenced, instituted, and prosecuted against any public officer as the nominal defendant for and on behalf of the Company; and all indictments, informations, and prosecutions by or on behalf of the Company for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to the Company, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud the Company, shall and lawfully may be had, preferred, and carried on in the name of any public officer; and in all indictments and informations to be had or preferred by or on behalf of the Company against any person, whether a shareholder of the Company or not, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of the Company to be the money, goods, effects, bills, notes, securities, or other property

of any public officer; and any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud the Company shall and lawfully may in such indictment be laid or stated to have been committed against or with intent to injure or defraud any public officer; and any offender, whether a shareholder of the Company or not, may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and generally in all other allegations, indictments, informations, or other proceedings of any kind whatsoever in which but for this Act it might or would have been necessary to state the names of the persons composing the Company, it shall be lawful and sufficient to state the name of any public officer; and the death, resignation, going to reside abroad, or removal, or any act or default of any public officer shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against or by or on behalf of the Company, but the same may be continued, prosecuted, and carried on in the name of any other public officer.

Decrees of courts of equity to take effect against the Company.

10. Every decree and order made or pronounced in any suit or proceeding in any court of equity against any public officer shall have the like effect and operation upon and against the property, funds, and effects of the Company, and upon and against the person and property of every shareholder, as if every shareholder were a party before the court to any such suit or proceeding; and it shall be lawful for any court in which such decree or order shall have been made to cause such decree or order to be enforced against every or any shareholder, in like manner as if all the shareholders of the Company were parties before such court to such suit or proceeding, and although all such shareholders are not before the court.

Judgments to operate against the Company.

11. Every judgment which shall be recovered in any action, suit, or proceeding at law against any public officer shall have the like effect and operation upon and against the property of the Company, and upon and against the property of every or any shareholder, as if such judgment had been recovered or obtained against the Company.

Execution upon judgment may be issued against any shareholder.

12. Execution upon any judgment in any action obtained against any public officer, whether as plaintiff or defendant, may be issued against any shareholder; and in case any such execution against any shareholder shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, it shall be lawful for the party so having obtained judgment against such public officer to issue execution against any person who was a shareholder of the Company at the time when the contract or engagement in which such judgment may have been obtained was entered into, or who became a shareholder at any time before such contract or engage-

A.D. 1871.

ment was executed, or who was a shareholder at the time the judgment was obtained: Provided that no such execution as last mentioned shall be issued without leave first granted on motion in open court by the court in which such judgment shall have been obtained, and which motion shall be made on notice to the person sought to be charged, nor after the expiration of three years next after any such person shall have ceased to be a shareholder of the Company.

Public officer to be indemnified.

13. Every public officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person against whom execution shall be issued as aforesaid, shall be reimbursed and fully indemnified for all such loss, damages, costs, and charges as he shall sustain by reason of such execution, out of the funds of the Company, or on failure thereof by contribution from the other shareholders of the Company, as in ordinary cases of copartnership.

Pending proceedings to be continued by or against public officer.

14. All actions at law or suits in equity which have been commenced or instituted by or against the Company, and are pending at the time of the passing of this Act, shall and may after the passing of this Act be continued by or against any public officer, and with the same legal consequences as if such actions or suits had been originally commenced or instituted by or against any public officer under the provisions of this Act.

Act not to incorporate Company, nor to affect legal position of shareholders.

15. Nothing in this Act contained shall extend to incorporate the Company or shareholders thereof, or to relieve or discharge the Company or the shareholders thereof, or any of them, from any contracts, obligations, or liabilities whatsoever to which by law they or any of them now are or at any time hereafter shall be subject, either between the Company and other persons, or between the individual shareholders of the Company, or any of them, and other persons, or among themselves, or in any other manner whatsoever, except so far as is expressly provided by this Act.

Receipt of public officer to be a good discharge.

16. Every receipt in writing of any public officer for any money which may be received by him on account of the Company, and any other receipt given under the provisions in that behalf contained in the deed of settlement of the Company, shall effectually discharge the person paying such money from being obliged to see to the application thereof, and from being in any manner responsible for the misapplication or non-application thereof.

Contracts may be entered into with public officer.

17. Any contract to be entered into by or with the Company may, if considered expedient, be entered into by or with any public officer, and shall in such case be as effectual as if such contract had been entered into by or with the Company at large.

Notarial copy of deeds of settlement to be received in evidence.

18. A copy of any deed of settlement or any supplementary deed of settlement of the Company, certified under the hand and seal of a notary public to be a true copy of the original deed, shall be received as evidence of such deed and the contents thereof in all courts of the United Kingdom.

Act to apply to all shareholders of the Company.

19. This Act and the powers and provisions herein contained shall at all times extend to the Company, and every person who shall be a shareholder thereof for the time being, at whatever time he may have become a shareholder, and whether originally a shareholder or not, and whether in respect of any share in the present capital of the Company, or in respect of any share in capital to be hereafter created.

Expenses of Act.

20. All costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the Company.

A.D. 1871.

SCHEDULES referred to in this Act.

SCHEDULE (A.)

MEMORIAL of the Names of the present Public Officers and Trustees of the Union Bank of Australia, made out in pursuance of "The Union Bank of Australia Act, 1871."

Names of public officers.	Places of abode.	Descriptions.

Names of trustees.	Places of abode.	Descriptions.

A.B.

I, the above-named *A.B.*, of , one of the public officers of the Union Bank of Australia, make oath and say, that the above memorial contains the names, places of abode, and descriptions of the present public officers and trustees of the said Company.

Sworn at this day of 18 , before me,

C.D.,

Justice of the Peace for the of

SCHEDULE (B.)

A.D. 1871.

MEMORIAL of the Name of a Public Officer [*or* Trustee] of the Union Bank of Australia, appointed in the place and stead of
who has ceased to be a Public Officer [*or* Trustee] of the said Company, made out in pursuance of "The Union Bank of Australia Act, 1871."

Name.	Place of abode.	Description.

A.B.

I, the above-named *A.B.*, of
one of the public officers of the Union Bank of Australia, make oath and say, that the above memorial contains the name, place of abode, and description of a public officer [*or* trustee] of the Union Bank of Austraia, who has been appointed a public officer [*or* trustee] of the said Company, in the place and stead of , who has ceased to be a public officer [*or* trustee] of the said Company, by

Sworn at this day of
18 , before me,
C.D.,
Justice of the Peace for the
of

A.D. 1871.

SCHEDULE (C.)

LIST of the SHAREHOLDERS of the Union Bank of Australia on the thirty-first day of December , made out in pursuance of "The Union Bank of Australia Act, 1871."

Names.	Places of abode.	Description.

A.B.

I, the above named *A.B.*, of , one of the public officers of the Union Bank of Australia, make oath and say, that to the best of my knowledge and information the above list contains the names, places of abode, and descriptions of all the persons who were shareholders of the said Company on the thirty-first day of December last.

Sworn at this day of 18 , before me,

C.D.,

Justice of the Peace for the of

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