

WESTERN AUSTRALIA

ANNO OCTAVO

GUL. IV. REGIS

No. 1

An Act to regulate the Establishment of Banking Companies in the Colony of Western Australia; and to enable the proprietors of such Companies to sue and be sued in the name of any one of their Public Officers.
[Assented to 10th July, 1837.]

WHEREAS it appears that the establishment of companies consisting of a number of individuals associated together for the purpose of carrying on the business of banking by the joint capital and enterprise of many, which the capital and exertions of a few might be insufficient to accomplish, would tend to advance the interests and facilitate the business of this Colony; and whereas, in order to avoid the difficulties which may arise in carrying on any legal proceedings either by or against any such companies, it is convenient and just that some particular member should be appointed who may sue and be sued in the place and stead of the whole; and whereas these purposes cannot be effected without the aid of the Legislature: Be it therefore enacted, by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that it shall be lawful for any number of persons united in co-partnership to carry on the trade and business of bankers in Western Australia, and to make and issue their bills or notes payable on demand, or otherwise; and to borrow, owe, or take up any sum or sums of money on their bills, or notes so made, or issued: Provided, always, that every member of such co-partnership or company shall be liable to, and responsible for, the due payment of all bills and notes which shall be issued, and for all sums of money which shall be borrowed, owed, and taken up by the co-partnership of which such person shall be a member, such person being a member at the period of the date of the bills or notes (or becoming or being a member before or at the time of the bills or notes) being payable, or being such member at the time of the

Preamble

It shall be lawful for any number of persons united in co-partnership to carry on the business of bankers

Every member liable for due payment of all bills and notes issued, and all sums of money borrowed

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borrowing, owing or taking up of any sum or sums of money upon any bills or notes by the company, or while any sum of money on any bill or notes is owing or unpaid, or at the time the same became due from the company; any agreement, covenant, or contract to the contrary notwithstanding.

Account or return to be made out annually containing particulars herein mentioned

2. And be it further enacted, that an account or return shall be made out annually, according to the form contained in the Schedule marked A, to this Act annexed, wherein shall be set forth the true title or designation of such intended or existing company, and also the names and places of abode of all the members of such company, as the same shall respectively appear on the books of such company, and the name of every bank to be established by such company, and also the names and places of abode of two or more persons, being members of such company, and resident in the colony aforesaid, who shall have been appointed public officers of such company, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such company shall sue and be sued as hereinafter provided; and also the name of every town and place where any of the bills or notes of such company shall be issued by such company or by their agent: And every such account or return shall be delivered to the Colonial Secretary, at his office, who shall cause the same to be filed and kept in the said office and an entry thereof to be made in a book kept for that purpose, and which book any person or persons shall from time to time have liberty to search and inspect, on payment of one shilling for every search.

Such account to be delivered to Colonial Secretary

Account to be filed, and may be inspected

Fee for inspection

Account to be verified by public officer

3. And be it further enacted, that such account or return shall be made out by one of the public officers appointed as aforesaid, 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; and that such account or return shall in the present year, within one month after the passing of this Act, and in every subsequent year, on or before the last day of June, be in like manner delivered by such public officer as aforesaid to the Colonial Secretary, to be filed and kept in the manner and for the purposes as hereinbefore mentioned.

Of what matters certified copies of such returns to be evidence

4. And be it further enacted, that a copy of every such account or return so kept at the said office, as by this Act is directed, and which copy shall be certified to be a true copy under the hand of the Colonial Secretary for the time being, or the Chief Clerk or other officer of the said Colonial Secretary, upon proof made that such certificate has been signed with the handwriting of the person making the same, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members of such company were members thereof at the date of such account or return.

Colonial Secretary to give certified copies of such returns

5. And be it further enacted, that the said Colonial Secretary for the time being shall and is hereby required, upon application made to him by any person or persons requiring a copy, certified according to this Act, of any such account or return as aforesaid, in order that the same may be produced in evidence or for any other purpose, to deliver

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to the person or persons so applying for the same, such certified copy,— he, she, or they paying for the same the sum of ten shillings and no more. Provided also, and be it further enacted, that the secretary or other public officer of every such company shall, at the time of making out the quarterly returns hereinafter mentioned, also make out on oath, in manner hereinbefore directed, and cause to be delivered to the Colonial Secretary as aforesaid, a further account or return, according to the form in the Schedule marked B, to this Act annexed, of the name or names of any person or persons who shall have been nominated or appointed a new or additional public officer or public officers of such company, and also of the name or names of any person or persons who shall have ceased to be member or members of such company, and also of the name or names of any person or persons who shall have become a member or members of such company, either in addition to or in the stead of any former member thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall be filed and kept, and entered and registered, in like manner as is hereinbefore required with respect to the original or annual account or return hereinbefore directed to be made.

Fee for such copies

Public officer also to make out quarterly returns of new officers or members

Or of those who have ceased to be members

Such further returns to be filed

6. And be it further enacted, that all actions and suits, and all proceedings at law or in equity or otherwise, howsoever to be commenced or instituted, for or on behalf of any such company against any person or persons, bodies politic or corporate, or others, whether members of such company or otherwise, for recovering any debts or enforcing any claims or demands due to such company, or for any other matter relating to the concerns of such company, shall and lawfully may from and after the passing of this Act be commenced and prosecuted in the name of any one of the public officers, nominated as aforesaid for the time being, of such company, as the nominal plaintiff or petitioner for and on behalf of such company; and that all actions or suits and proceedings at law or in equity to be commenced by any person or persons, bodies politic or corporate, or others, whether members of such company or otherwise, against such company, shall and lawfully may be commenced and prosecuted against any one or more of the public officers, nominated as aforesaid for the time being, of such company, as the nominal defendant for and on behalf of any such 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 such company, or for any fraud, forgery, crime, or offence, committed against or with intent to injure or defraud such company, shall and lawfully may be had, preferred, and carried on in the name of one of the public officers, nominated as aforesaid for the time being, of such company; and that in all indictments and informations to be had or preferred by or on behalf of such company against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such co-partnership, 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 any one of the public officers,

Companies to sue and be sued in the name of their public officers

How forgery, &c., laid in indictments

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nominated as aforesaid, for the time being, of such company; and that any forgery, fraud, crime, or offence committed against or with intent to injure or defraud any such company shall and lawfully may, in such indictment, notwithstanding as aforesaid, be laid, or stated to have been committed against or with intent to injure or defraud any one of the public officers, nominated as aforesaid, for the time being, of such company—and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence, and that in all other 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 such company, it shall and may be lawful and sufficient to state the name of any one of the public officers, nominated as aforesaid, for the time being, of such company: and the death, resignation, removal, or any act of such public officer shall not abate or prejudice any such action, suit, indictment, prosecution, information, or other proceedings commenced against or by or on behalf of such company, but the same may be continued, prosecuted and carried on in the name of any other of the public officers of such company for the time being.

Death, &c., of such public officer not to prejudice any suit, &c.

Public officer to give evidence, notwithstanding his interest in the result of the action or proceeding

7. Provided always, and be it further enacted, that in all actions, suits, petitions, or other proceedings, either at law or in equity, in which the said public officer for the time being shall be on behalf of the said bank, and under and by virtue of this Act, plaintiff, complainant, petitioner, or defendant, it shall and may be lawful for the said public officer for the time being to give evidence in such action, suit, petition, or other proceeding, notwithstanding the name of such public officer for the time being shall be used as plaintiff, complainant, petitioner, or defendant, and notwithstanding that such public officer shall or may be interested in the result of such action as a shareholder or co-partner in the said banking company.

No more than one action for the recovery of one demand

8. And be it further enacted, that no person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such 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 any one of the public officers aforesaid, for the time being, of such company may be pleaded in bar of any other action or suit for the same demand, by or against any other of the public officers of such company.

Decrees of a Court of Equity against public officer to take effect against company

9. And be it further enacted, that every decree, or order made or pronounced, in any suit or proceedings in a Court of Equity, against any public officer of any such company, shall have the like operation against the property of such company, and against the person and property of every member thereof, as if every such member was a party before the Court to and in any such suit or proceeding; and that it may be lawful for any Court in which such order or decree shall have been made to cause such order or decree to be enforced against every or any member of such company, in like manner as if every member of such company were a party before the Court to and in such suit or proceeding, and although every such member is not before the Court.

Judgments against such

10. And be it further enacted, that every judgment or decree, which shall at any time after the passing of this Act be had or

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recovered or entered up as aforesaid in any action, suit, or proceeding at law or in equity, against any public officer of any such company, shall have the like operation against the property of such company and against the property of every such member thereof, as aforesaid, as if such judgment had been recovered or obtained against such company; and that the bankruptcy, insolvency, or stopping payment of any such public officer for the time being of such company in his individual capacity, shall not be nor construed to be the bankruptcy, insolvency, or stopping payment of such company.

public officer to operate against the company

11. And be it further enacted, that execution upon any judgment in any action obtained against any public officer for the time being of any such company carrying on the business of banking under the provisions of this Act, whether as plaintiff or defendant, may be issued against any member or members for the time being of such company; and that in case any such execution against any member or members for the time being of any such company 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 for the time being, to issue execution against any person or persons, who was or were a member or members of such company, at the time when the contract or engagement, in which such judgment may have been obtained was entered into, or had become a member at any time before such contracts or engagements were executed, or was a member at the time of the judgment obtained. Provided always, that no such execution as last mentioned shall be issued without leave first granted on motion in open Court, 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 member of such company.

Execution upon judgment may be issued against any member of company,

or against any person who was a member, &c.,

upon motion in Court on notice to the person sought to be charged
Limitation of time

12. Provided always, and be it further enacted, that every such public officer in whose name any such suit or action may have been commenced, prosecuted, or defended, and every person against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds of such company, or, in failure thereof, by contribution from the other members of such company, as in the ordinary cases of co-partnership.

Officers, &c., in such cases indemnified

13. And be it further enacted, that all companies, and other persons, carrying on banking business, and making, and issuing promissory notes payable to bearer on demand, shall respectively keep weekly accounts, from the passing of this Act, of the average amount of notes in circulation, and of deposits in the said bank; and from such weekly accounts, shall also make up an account at the end of each quarter, ending on the first day of April, the first day of July, the first day of October, and the first day of January, in each and every year, of the average amount of notes in circulation, and also of the amount of deposits in the preceding quarter; and shall return and deliver such account to the Colonial Secretary for the time being, at his office in the Colony aforesaid; and such accounts and returns shall be verified upon the oath of the secretary or accountant, or some officer of the

Quarterly returns to Colonial Secretary of notes in circulation and amount of deposits

Such returns to be verified on oath

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company, or person or persons so carrying on banking business, and making such return ; which oath shall be taken before any Justice of the Peace, and which oath any Justice of the Peace is hereby authorised to administer ; and if any company or persons so carrying on banking business shall neglect to keep such accounts, or to make out such returns, or deliver all or any of such accounts as are required by any of the sections of this Act, or if any person verifying such account shall return or deliver any false account, the company or person or persons to whom such accounts belong shall forfeit, for every such offence, the sum of one hundred pounds ; and any person who shall knowingly and wilfully take any false oath as to any such account shall be subject to such punishment and penalties as are by any law in force at the time of taking such oath enacted as to persons convicted of wilful and corrupt perjury.

Penalty for default

False swearing punished as perjury

Penalties ; how recovered

14. And be it further enacted, that all pecuniary penalties and forfeitures imposed by this Act shall and may be sued for and recovered in the Civil Court of Western Australia, and shall be reserved to the use of His Majesty, his heirs and successors.

JAMES STIRLING,
GOVERNOR AND COMMANDER-IN-CHIEF.

SCHEDULES REFERRED TO BY THIS ACT

SCHEDULE A

Return or account to be entered at the office of the Colonial Secretary of the said Colony, in pursuance of an Act passed in the eighth year of the reign of King William IV., intituled 'An Act to regulate the Establishment of Banking Companies in the Colony of Western Australia, and to enable the Proprietors of such Companies to sue and be sued in the name of any one of their public officers,' viz.:

- Firm or name of the banking company, viz.—(set forth the firm or name).
- Names and places of abode of all the partners concerned or engaged in such company, viz.—(set forth the names and places of abode).
- Names and places of the bank or banks established by such companies, viz.—(set forth all the names and places).
- Names and descriptions of the public officers of the said banking company, viz.—(set forth all the names and descriptions).
- Names of the several towns and places where the bills or notes of the said banking company are to be issued by the said company, or their agent or agents, viz.—(set forth the names of the towns and places).

A. B., of _____, secretary (or other officer, describing the office) of the above company, maketh oath and saith, that the above doth contain the name, style, and firm of the above company, and the names and places of the abode of the several members thereof, and of the banks established by the said company, and the names, titles, and descriptions of the public officer of the said company, and the names of the towns and places where the notes of the said company are to be issued, as the same respectively appear in the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me this _____ day of _____,
at _____, in the said Colony.
C.D., Justice of the Peace.

SCHEDULE B

Return or account to be entered at the office of the Colonial Secretary of the said Colony on behalf of (name the company), in pursuance of an Act passed in the

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eightth year of the reign of King William IV., intituled (insert the title of this Act), viz.:-

Names of any and every new or additional public officer of the said company, viz.—

A.B. in the room of C.D., deceased or removed (as the case may be—set forth the names).

Names of any and every person who may have ceased to be a member of such company, viz.—(set forth every name).

Names of any and every person who may have become a new member of such company—(set forth every name).

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A.B., of _____, secretary (or other officer of the above-named company), maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above company, and also the name and place of abode of any and every person who hath ceased to be a member of the said company, and of any and every person who hath become a member of the said company since the registry of the said company, on the _____ day of _____ last, as the same respectively appear on the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me the _____ day of _____, at _____, in the said Colony, C.D., Justice of the Peace.
