

(Mr. Lance.)

NEW ZEALAND BANK ACT 1861 AMENDMENT.

ANALYSIS.

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| <ul style="list-style-type: none"> Title. Preamble. 1. Short Title. 2. Interpretation. 3. Confirming and validating resolutions of 11th and 19th October, 1888. | <ul style="list-style-type: none"> 4. Payments to reinstate shares to original value not to increase shareholder's original liability. 5. Power to deal with assets vested in the Board. 6. Provisions of Section 5 to be retrospective. 7. Power to shareholders to change situation of head office of bank. |
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A BILL INTITULED

AN ACT to amend "The New Zealand Bank Act, 1861." Title.

WHEREAS a joint-stock banking company called the "Bank of New Zealand" was by "The New Zealand Bank Act, 1861," incorporated by the name of the "Bank of New Zealand:" And whereas

5 by the deed of settlement of the said bank provision was made for increasing the capital of the said bank from time to time as the shareholders might determine upon, but no provision was made for reducing the capital by writing off or cancelling any lost capital or any capital unrepresented by available assets: And whereas the capital of the said

10 bank has from time to time been increased in accordance with the provisions of the said deed of settlement, and such capital was further increased by resolution duly passed at a special general meeting of the proprietors of the said bank held on the third day of October, one thousand eight hundred and eighty-eight: And whereas by clause

15 eighty-two of the said deed of settlement it is provided that it should be lawful for a general meeting of the proprietors of the said bank by a majority of votes to make new laws, regulations, and provisions for the company, and to amend, alter, and repeal all or any of the existing laws, regulations, and provisions of the company, provided that

20 no such new, amended, or altered laws, regulations, and provisions should be in force till confirmed at a subsequent general meeting as in the said clause mentioned: And whereas by section three of the said Act it was enacted that the several laws, rules, regulations, clauses, and agreements contained in the said deed of settlement, or to be made

25 under or by virtue or in pursuance thereof, were and should be deemed and considered to be and should be the by-laws for the time being of the said corporation, save and except in so far as any of them were or should or might be altered, varied, or repealed by, or should or might be inconsistent or incompatible with or repugnant to, any of the

30 provisions of the said Act or of any of the laws or statutes in force in

the Colony of New Zealand, subject nevertheless to be, and the same might be, amended, altered, or repealed, either wholly or in part, in the manner provided in and by the said deed of settlement; but no rule, provision, or by-laws should on any account or pretence whatsoever be made by the said corporation either under or by virtue of the said deed of settlement or of the said Act in opposition to the general scope or true intent and meaning of the said deed of settlement, or of the said Act, or of any of the laws or statutes in force in the said colony: And whereas by section twenty-one of the said Act it is enacted that in the event of the assets of the said corporation being insufficient to meet its engagements then and in that case the shareholders should be responsible to the extent of twice the amount of their subscribed shares only—that is to say, for the amount subscribed and for a further and additional amount equal thereto: And whereas by clause one hundred and nineteen of the said deed of settlement it is provided that, notwithstanding anything thereinbefore contained, if at any time it should be certified by the auditors that the assets of the company were not sufficient to meet its liabilities, or that an emergency had arisen which made a call or calls expedient, it should be lawful for the Board of Directors to make a call or calls upon the proprietors, in proportion to the number of their respective shares, for a sufficient amount to make up such deficiency or to meet such emergency as the case might require, and such call or calls should be payable at such time or times as the Board of Directors should appoint, and should be recoverable against the several parties thereto, by action of debt or otherwise, in like manner as calls were recoverable for the purpose of raising the amount of the several shares in the subscribed capital of the company, and should afterwards be wholly or partially returned to the proprietors making payment thereof, if the same or part thereof were found to be no longer necessary to be retained: Provided always that no call should be made beyond an additional sum equal to the amount of the subscribed capital of the company: And whereas at a meeting of the proprietors of the said bank, held on Thursday the eleventh day of October, one thousand eight hundred and eighty-eight, the following five resolutions were duly passed—namely, (1) That three pounds per share of the present paid-up capital of the bank be and the same is hereby cancelled, such capital having been lost or being unrepresented by available assets, and that henceforth dividends shall be paid on such shares as representing seven pounds each instead of ten pounds each, the original amount thereof; but such reduction shall not interfere with or in any way alter the liability of shareholders to contribute a further sum of ten pounds, as provided by the bank's act and deed of settlement in the event of the assets of the corporation being insufficient to meet its engagements; (2) That the directors be empowered at their option to receive from shareholders willing to pay the same three pounds per share to reinstate their shares to the original amount of ten pounds per share, and on all shares so reinstated to pay dividends on the original amount of such shares, provided that such payment to reinstate shares shall not render the shareholder liable to pay any further or larger amount than he would have been liable for if the shares had remained at ten pounds each, as originally created; (3) That the several assets and accounts held for realisation, and outside the category of what may

be regarded as ordinary and current business, be liquidated by the directors as speedily as may be, having regard to advantageous realisation thereof, and that in the meantime such assets be transferred to, and held and treated *in globo* in a separate liquidation account, and so as that surplus in realising any one asset may be set against deficiency in realising any other without passing such surpluses or deficiencies respectively through the ordinary profit and loss account; (4) That the words beginning "and if," in clause one hundred and two of the deed of settlement, to the end of the clause be and the same are hereby deleted; (5) That, in disposing of the new shares created and authorised to be issued by the resolution of the special general meeting of proprietors held on the third day of October last, the Board of Directors may make it one of the conditions that payment for such new shares may be made by such instalments as the Board of Directors may think fit: And whereas the said resolutions were duly confirmed at a general meeting of the proprietors held on Friday the nineteenth day of October, one thousand eight hundred and eighty-eight, pursuant to the said deed of settlement: And whereas doubts have been raised as to whether the said resolutions, or some of them, are not *ultra vires* of the said corporation or the proprietors thereof, and it is expedient that the said doubts should be set at rest: And whereas in order to give full effect to the said resolutions, it is necessary that the said Act and the deed of settlement of the said bank should be amended as hereinafter provided:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The New Zealand Bank Act 1861 Amendment Act, 1889." Short Title.

2. In this Act if not inconsistent with the context:—

Interpretation.

"The said Act" means "The New Zealand Bank Act, 1861."

"The Bank" means the corporation constituted by the said Act.

"The Board" means the Board of Directors of the Bank of New Zealand.

"The said resolution number three" means the resolution numbered three in the preamble of this Act.

"The said Assets" or "The said Assets and Accounts" means respectively the assets and assets and accounts referred to in the said resolution number three.

"The Deed of Settlement" means the Deed of Settlement of the Bank of New Zealand and includes all amendments thereof.

3. The said resolutions are hereby declared to be and to have been *intra vires* of the said corporation and of the proprietors thereof, and the said resolutions shall be deemed and taken to have been duly, lawfully, and validly made and to have been made with due power and authority; and the said resolutions shall be deemed and taken as from

Confirming and validating resolutions of 11th and 19th October, 1888.

the making thereof to be binding and to have had and hereafter to have full force and effect as though the said corporation and the said proprietors had been specially authorised by the said Act and the said deed of settlement respectively to pass the said resolutions and to carry into effect the objects of the said resolutions respectively. 5

Payments to reinstate shares to original value not to increase shareholder's original liability.

4 Notwithstanding anything contained in the twenty-first section of the said Act, or in the one hundred and nineteenth section of the said deed of settlement, it is hereby declared that, in case the Board of Directors of the said bank shall receive from shareholders willing to pay the same three pounds per share to reinstate their shares to the original amount of ten pounds per share as provided for by the hereinbefore recited resolution numbered two, such payment to reinstate such shares shall not render the shareholder liable under the twenty-first section of the said Act, or the one hundred and nineteenth clause or any other clause of the said deed of settlement, to pay any further or larger amount than he would have been liable for if the shares had remained at ten pounds each as originally created. 10 15

Powers to deal with assets vested in the Board.

5. To enable the Board to carry out the objects intended to be effected by the said resolution, number three, and to enable the Board more effectually to deal with and realize the said assets and accounts there shall, notwithstanding anything contained in the said Act or Deed of Settlement, and more especially notwithstanding anything contained in the seventeenth section of the said Act, or the ninety-ninth clause of the deed of settlement, be vested in the Board with respect to the said assets and accounts the powers following, that is to say :— 20 25

I. To transfer to, hold and treat the said assets and accounts *in globo* in a separate liquidation account, and so that any surplus arising from the realization of any one asset may be set against any deficiency in realizing any other of the said assets without passing such surpluses or deficiencies respectively through the ordinary profit and loss account. 30

II. The Board may determine what accounts and assets, being the property of the bank on the nineteenth day of October, one thousand eight hundred and eighty-eight, are to be regarded and treated as coming within the operation of the said resolution number three, and sub-section I of this section. 35

III. In making up balance sheets from time to time for the purpose of declaring and paying dividends the Board may, if it thinks fit, discard the said liquidation account, and may make up such balance sheets without reference to the state of such liquidation account or the said assets and may pay dividends from profits on current business without regard to the estimated surplus or deficiency of the said liquidation account or the said assets at the time of making up such balance sheets or paying such dividends. 40 45

IV. In any case where any of the said assets consists of mortgages of land, whether freehold or leasehold, it shall be lawful for the Board in the name and on behalf of the bank—

(a) To buy and hold such land when the same may be sold in exercise of any power of sale contained or implied in any such mortgage. 50

(b) To become absolute owner of any such land by valuing the same when proving on the estate of any bankrupt mortgagor in accordance with the bankruptcy laws for the time being in force.

5 (c) To pay off any prior mortgage or encumbrance.

(d) To purchase the equity of redemption in any such lands from the assignee or trustee in bankruptcy of any bankrupt mortgagor or encumbrancer.

10 V. In cases of mortgages of leasehold land or in cases of any other leasehold land being part of the said assets it shall be lawful for the Board in the name and on behalf of the bank to purchase and hold the freehold of such lands if the Board shall think it advisable so to do.

15 VI. To sell, mortgage, charge, or otherwise deal with the said assets of whatever nature in such way in all respects as the the Board in its discretion may think fit.

20 VII. In selling or disposing of any of the assets it shall be lawful for the Board in the name and on behalf of the bank to accept as the consideration or part of the consideration for the sale thereof any fully paid-up shares in any company to which the same may be sold, and to hold such shares until the Board can conveniently dispose of the same.

25 VIII. It shall be lawful for the bank to take and hold merchandise, ships, shares in companies, and other real and personal properties, being part of the said assets, in its corporate name, and all conveyances, assignments or transfers heretofore or hereafter to be made of any of such properties being part of the said assets to the bank in its corporate name shall be taken and deemed to be and to have been good and
30 valid to vest such properties in the said bank and the said bank shall be deemed to have good right and authority to take and hold such properties accordingly.

35 6. The powers and provisions contained in Section 5 of this Act shall have a retrospective operation and shall be deemed to have been in force as from the eleventh day of October, 1888, so as to validate anything which may have been done by the bank or the Board between that date and the coming into operation of this Act. Provisions of section 5 to be retrospective.

40 7. Notwithstanding anything contained in the said Act or the deed of settlement it shall at any time after the passing of this Act be lawful for a general meeting of the proprietors of the bank, by resolution from time to time, to change the place at which the head office or principal banking establishment of the bank is located to any place being part of the British dominions, either within or without the the Colony of New Zealand: Provided that any such resolution shall
45 be passed and confirmed as provided for in clause number eighty-two of the deed of settlement: Provided also that it shall be lawful for a general meeting of proprietors of the bank (subject to the provision hereinafter contained) from time to time by such resolution as aforesaid Power to shareholders to change situation of the head office of bank.

to fix or appoint any place or places, being part of the British dominions, either within or without the Colony of New Zealand, as the place or places at which the several things required by the said Act and deed of settlement to be done in the City of Auckland may be done :
Provided further that if the place at which the several things mentioned 5
in the sixth and seventh sections of the said Act, and the one hundred and tenth clause of the deed of settlement may or are to be done is changed from the City of Auckland, the place to be fixed or appointed for the purposes of the said sixth and seventh sections of the said Act, and the one hundred and tenth clause of the deed of settlement, 10
instead of the City of Auckland, shall be some place within the Colony of New Zealand.

This Private Bill originated in the Legislative Council, and having this day passed as now printed, is transmitted to the House of Representatives for its concurrence.

*Legislative Council,
17th July, 1889.*

PRIVATE BILL.

Hon. Mr. Buckley.

	ANALYSIS.	
Title.		1. Short Title.
Preamble.		2. Power to expend moneys.

A BILL to enable "The Wellington and Manawatu Railway Company (Limited)" to expend such part of its capital in draining the Makererua Swamp and other Swamp lands, as may be necessary for that purpose. Title.

WHEREAS the above-named Company was incorporated on the 23rd day of August, 1881, under the provisions of "The Joint Stock Companies Act, 1860" AND WHEREAS by the Memorandum of Association of the said Company the objects for which it was established are stated to be as follows (that is to say) : Preamble.

- (a.) To construct and maintain a line of railway from the City of Wellington to such point or points, place or places, on the northern side of the Manawatu River, as the Directors shall determine, with all necessary buildings, railway works, and other appliances requisite for the same.
- (b.) To work the said railway, and especially to carry thereon passengers, animals, and goods for hire, and generally in other respects to carry on the business of a Railway Company in all its branches, with power to contract with any other Railway Company or authority with respect to running powers, interchange of traffic, or otherwise.
- (c.) To acquire by purchase, or otherwise, lands within the districts through which the railway will be constructed, and to sell and dispose of the same for profit for the benefit of the Company, such profit to be primarily used in the construction, extension, maintenance, and working of the railway works of the Company, with power to issue fully paid-up shares of the Company, either wholly or partially, in payment of the purchase-money of lands so to be acquired.
- (d.) To borrow money for any of the purposes aforesaid, not exceeding the amount for the time being unpaid of the capital of the Company, provided that the restriction aforesaid as to the amount to be borrowed shall apply only to money borrowed by way of mortgage or by debentures or bonds of the Company, and shall not apply to moneys from time to time raised or borrowed by the negotiation of bills of exchange, nor to temporary advances made by bankers.
- (e.) To enter into contracts or obligations by bills, notes, or otherwise, and either as principals or as sureties, as may be requisite or expedient towards carrying out the above objects.

Private Bill
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(f.) To do all other things incidental or conducive to the attainment of the objects aforesaid, as it shall think fit.

AND WHEREAS on the 20th day of March, 1882, the said Company entered into a contract with Her Majesty the Queen, under the provisions of "The Railways Construction and Land Act, 1881," for the construction, maintenance, and working of the line of railway mentioned in the said Memorandum of Association, and immediately after the making of the said contract proceeded to construct the said work, and duly completed the same pursuant to the said contract: AND WHEREAS, pursuant to the provisions of the said Act and contract tract respectively, certain lands were allocated and have since been granted to the said Company, comprising (amongst other lands) a tract of swamp land containing 1285 acres, or thereabouts, and known as the Makererua Swamp AND WHEREAS the said contract provides (amongst other things) that before the said Makererua Swamp shall be offered for sale by the said Company the same shall be drained by one or more main outfall drains, and that a plan of the drainage works is to be submitted for the approval of the Governor within one year of the Swamp being granted to the said Company and that the Governor is to fix the time required to execute the said works, and that on completion thereof the land is to be sold in such areas as may be approved by the Governor AND WHEREAS the said Company has acquired a large tract of swamp land adjoining the said Makererua Swamp which cannot be advantageously sold unless the same shall have previously been drained: AND WHEREAS the said Company is desirous of draining the said swamp lands with a view to the sale of the same for profit, but doubts have arisen whether the Memorandum of Association of the Company gives power to the Company, or to the Directors thereof, to use any part of its capital in such drainage works, and it is expedient to put an end to such doubts and to empower the said Company and the Directors thereof to expend such part of its capital funds in the construction of such drainage works as may be necessary for that purpose:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. That the Short Title of this Act is "The Wellington and Manawatu Railway Company's Drainage Empowering Act, 1889."

Power to expend moneys.

2. That the Wellington and Manawatu Railway Company (Limited), and the Directors for the time being of the said Company, may expend such part of the capital funds of the Company as may from time to time be necessary for constructing such main outfall drains and other drainage works as may be required for the effectual drainage of the Makererua Swamp and other swamp lands aforesaid so as to render the same available for sale for profit to the Company, and that the power hereby given shall be deemed to be and to have been incorporated into and to form part of the Memorandum of Association of the said Company as if the same had been originally contained therein. Provided always that before any works shall be undertaken for the drainage of the said swamp a plan of the said works shall be submitted for the approval of the Governor.