

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1837. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1837.

7 William IV – Chapter 16 (Session 2)

An Act to enable the Proprietors or Shareholders of a Company, called The Bank of British North America, to sue and be sued in this Province, in the name of the Manager or of any one of the local Directors for the time being of the said Company. Passed 28d July 1837.

Whereas certain persons in England and in this Province have formed themselves into a Company or Partnership called or known by the name of The Bank of British North America, for the purpose of establishing and carrying on Banks of issue and deposit at various Cities, Towns and Places, as well within this Province as within! other British settlements and colonies in North America, and have subscribed and paid a considerable sum of money in order to carry on the business of the said Bank: And whereas it is expected that the public interests of this Province will be greatly benefited by the operations of the said Company: And whereas inconveniences may hereafter arise in recovering debts due to the said Company, and also in enforcing claims for or on account of the said Company, and generally, in suing and being sued, and also in prosecuting persons who may steal, injure or embezzle the property of, or who commit any other offence against the said; Company since by law all the proprietors or shareholders for the time being of the said Company ought in such cases to sue and be sued, and prosecute by their several distinct names; wherefore for obviating and removing the inconveniences aforesaid;

I. Be it enacted by the Lieutenant Governor Legislative Council and Assembly, That from and after the passing of this Act all actions and suits whatsoever at law or in equity which may be brought, instituted or prosecuted within this Province, against any person or persons already indebted or who may hereafter be indebted to the said Company, called The Bank of British North America, and all actions, suits and other proceedings whatsoever at law or in equity within this Province, for any injury or wrong done to any real or personal property of the said Company, in whomsoever the same may for the time being be vested, whether in the said Company or some person or persons intrust for, or for the use and benefit of the said Company, or upon any bonds, covenants, contracts or agreements which already have been or hereafter shall be given or entered into with the said Company, or to or with any person or persons whomsoever in trust for, or for the use and benefit of the said Company, or wherein the said Company is or shall be interested and generally all other proceedings whatsoever at law or in equity within this Province, wherein the said Company is or shall be concerned or interested against, any person or persons, or body or bodies politic or corporate or others, whether such person or persons or any of them, or such body or bodies politic or corporate, or any member or, members thereof respectively, is or are or shall be a proprietor, or proprietors or other, holder or holders of any share or shares in the said Company or not, shall and lawfully may be commenced, instituted and prosecuted in the name of the manager or of any one of the local directors of the said Company in this Province at the time when any such action or suit or other proceeding shall be commenced or instituted, as the nominal plaintiff, pursuer or complainer, or as acting in any other character for or on behalf of the said Company; and all actions, suits or other proceedings at law or equity within this Province

to be commenced, instituted or prosecuted against the said Company by any person or persons, or body or bodies politic or corporate whether such person or persons, or such body or bodies or any member or members thereof, is or are or shall be a proprietor or proprietors, or other holder or holders of any share or shares in the said Company or not, shall and lawfully may be commenced, instituted and prosecuted against one of the local directors or the manager of the said Company in this Province at the time when any such suit or action or other proceeding shall be commenced or instituted, as the nominal defendant, respondent or defender in such last mentioned actions, suits or proceedings, for or on behalf of the said Company; and the death, resignation or removal, or any other act of such manager or local director shall not abate or prejudice any action, suit or other proceeding in law or equity, commenced or instituted under this Act, but the same may be continued, prosecuted, carried on or defended in the name of any other local director or of the manager for the time being of the said Company.

II. And be it enacted, That from and after the passing of this Act, it shall be lawful for the said Company, by any local director or manager for the time being of the said Company, to prefer any indictment or information or other criminal proceeding in any Court or Courts in this Province against any person or persons, for any offence already committed or which shall hereafter be committed against the said Company, and in all indictments, informations and other proceedings against any person or persons whomsoever for feloniously taking, stealing or embezzling, damaging or destroying, or for any offence whatever relating to any goods, chattels, notes, bills, bonds, deeds or any securities, monies and effects, or any real or personal property whatever, of or belonging to the said Company, such goods, chattels, notes, bills, bonds, deeds, securities, monies, effects and property respectively may be laid and stated to be the goods, chattels, notes, bills, bonds, deeds, securities, monies, effects or property respectively of The Bank of British North America; and it shall not be necessary to state in any such indictment, information or other proceeding the name or names of all or any of the persons now or at any time hereafter constituting the said Company; and any offender or offenders shall or may thereupon be lawfully convicted in as effectual a manner to all intents and purposes as if the names of all the persons constituting the said Company were inserted in such indictment, information or other proceedings or in any proceeding or proceedings consequent or attendant thereon.

III. And be it enacted, That any person being or having been a proprietor or other holder of any share or shares in the said Company, and having any claim or demand upon the Company or the funds or property thereof on any account whatsoever, may for such claim or demand commence, prosecute and carry on any action, suit or other proceeding either at law or equity, within this Province, against any local director or the manager for the time being of the said Company, as the nominal defendant, respondent or defender; and any local director or the manager for the time being of the said Company, may as the nominal plaintiff, pursuer or complainer commence and carry on in his own name any action suit or other proceeding at law or in equity in this Province against any individual proprietor or other holder of any share or shares in the said Company against whom the said Company may have any claim or demand, and all such actions, suits and other proceedings shall be as valid and effectual as if all the proprietors or other holders of shares in the said Company had been made parties thereto; and every judgment, decree and order made therein shall be binding for or against the said Company and all the proprietors or other holders of

shares the said Company; and no abatement shall arise from the death, resignation or removal or any other act of the said local director or manager pending any such action, suit or or other proceeding, but that the same may be continued, defended, prosecuted or carried on in the name of any other local director or manager of the said Company for the time being.

IV. Provided always and be it further enacted, That every person being a proprietor or other holder of any share or shares in the said Company shall in all cases be liable to be sued, prosecuted or proceeded against by or for the benefit of the said Company under the powers of this Act, by such actions, suits or other proceedings in such and the same manner, as effectually and with such and the same legal consequences as if such person had not been a proprietor or other holder of any share or shares in the said Company.

V. And be it further enacted, That execution upon any judgment in any action or suit, or other proceedings under this Act, obtained against any local director or manager for the time being of the said Company, whether as plaintiff or as defendant, may be issued against any proprietor or proprietors, or other holder or holders for the time being of any share or shares in the said Company: Provided always, that in case such execution against any proprietor or proprietors, or other holder or holders of any share or shares in the said Company, shall be ineffectual for obtaining payment of and satisfaction for the sum or sums sought to be recovered thereby, it shall be lawful for the party or parties who shall have obtained a judgment against any local director or manager for the time being of the said Company, to issue execution against any other person or persons who was or were a proprietor or proprietors, or other holder or holders of any share or shares in the said Company at the time the contract or contracts was or were entered into, upon which such action, suit or other proceeding may have been brought or instituted; but no such execution as last mentioned shall be issued without leave first granted by the Court in which such action, suit or other proceeding may have been brought or instituted, which leave shall be applied for upon motion to be made in open Court, on notice to the person or persons sought, to be charged: Provided also, that nothing herein contained shall render such past proprietors liable for payment of any debt for which such action, suit, or other proceeding may have been brought to which they would not have been liable by operation of law as partners, in case any action, suit or other proceeding had been originally brought against them for the same: Provided also, that nothing in this Act contained shall be deemed or taken to enable any plaintiff or defendant in any action, suit or other proceeding under this Act to recover from any proprietor or other holder for the time being of shares in the said Company, or any other person whomsoever, any greater sum or sums of money than such proprietor or other holder or person would or might have been liable to pay, either at law or in equity, under any contract for the time being subsisting, if this Act had not been passed.

VI. And be it enacted, That all and every judgment or judgments which shall at any time after the passing of this Act, be obtained or recovered in any action, suit or other proceeding in law or equity against any local director or manager of the said Company, shall have the like effect and operation upon and against the funds or property of the said Company, as if such judgment or judgments had been recovered or obtained against the said Company in any action, suit or proceeding in law or equity brought or commenced against the said Company, by or in the several

and distinct names of the several proprietors or other holders of shares, and as if this Act had not been passed.

VII. And be it enacted, That this Act and the provisions herein contained shall extend to the said Company, called The Bank of British North America, at all times during the continuance thereof, whether the said Company hath been heretofore from time to time, or shall hereafter be composed of all or some of the persons who were the original proprietors thereof, or of all or some of those persons, together with some other person or persons, or whether the said Company be at the time of passing this Act composed altogether of persons who were not original proprietors of the Company, or whether the said Company shall hereafter be composed of persons who were not original proprietors thereof, or of persons all of whom shall have become proprietors of the said Company subsequently to the passing of this Act.

VIII. And be it further enacted, That nothing herein contained shall extend to incorporate the said Company, or to relieve or discharge the said Company, or any of the proprietors or other holders of shares in the said Company from any responsibility, contract, duty or obligation whatsoever to which by law they, he or she now are or is or at any time hereafter may be subject or liable either as between such Company and other parties, or as between the said Company and any of the individual proprietors or other holders of shares in the said Company and others, or as between or among themselves or in any other manner howsoever.

IX. And be it further enacted, That within one year after the passing of this Act, the names and places of residence of all the then stockholders in the said Company shall be entered and registered at the office of the Secretary of this Province, in a book to be there kept by the said Secretary for that purpose; in which shall also be entered the date or time when each of such stockholders became a proprietor of such stock, and in which book shall also be entered a memorandum in the form hereinafter mentioned of every transfer of stock that may thereafter be made by any of the stockholders, which entry shall always be made within twelve months after such transfer shall be made.

X. And be it further enacted, That whenever any sale or transfer of stock of the said Company shall be made after the passing this Act, a memorandum thereof signed by both parties, and by one or more witness or witnesses, shall within one year after such transfer be filed by the purchaser or person to whom the same may be so transferred at the office of the Secretary of this Province, which memorandum shall be in the following form, that is to say,

A. B. this day transferred to C. D. _____ shares in the capital stock of the Bank of British North America. Dated this _____ day of _____.

(Signed)

A.B. }

C.D. }

Witness.

And any transfer or sale of any stock in the said Company of which a memorandum in the form hereinbefore mentioned, shall not be so filed at the Secretary's office aforesaid in manner and form and within the time in this Act directed, shall not be deemed a good and sufficient transfer against subsequent purchasers.

XI. And be it further enacted, That it shall be the duty of the Secretary of the Province for the time being immediately or as soon after the filing at his office of every such memorandum as the same can be done, to cause the same to be entered and registered in the said book of registry so to be kept at the said Secretary's office as aforesaid; and which said book so to be kept shall be entitled and called the "Record of the stockholders of the Bank of British North America."

XII. And be it further enacted, That the said book so to be kept at the Secretary's office shall in the first instance be furnished and then filed by the said Company, with the names, residence and dates of all the then stockholders respectively fairly entered therein, and at least three fourths of the said book left blank for the entry of memorandums of transfer that may be thereafter made as in this Act directed.

XIII. And be it further enacted, That such book of record shall be open to the inspection of all persons applying at the said Secretary's office during office hours for that purpose, and that the Secretary of the Province for the time being shall for his trouble be allowed, and is hereby authorised to charge for every entry of such memorandum of transfer in the said book of Registry a fee of one shilling and sixpence currency, and for every search in the book made by any person applying at the said office for that purpose the sum of one shilling, which said fees to be paid at the time of filing such memorandum of transfer, and making such search respectively; and that when the first book so to be kept as hereinbefore directed, shall be filled up, it shall be the duty of the Secretary of the Province to furnish another, and keep at his own expense all succeeding books that may be required for such registry, so long as the same shall be required by law to be there kept.