

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1867. Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1867.

30 Victoria – Chapter 50

An Act to incorporate the Merchants Bank of New Brunswick. Passed 17th June 1867.

Section.

1. Company incorporated.
2. Capital stock.
3. Real estate.
4. First meeting; bye laws; election of President and Directors.
5. Annual meeting.
6. Appointment of officers; salaries.
7. Constitution of Board for business.
8. No Director to receive salary; compensation of President.
9. Qualification of Directors.
10. Cashier and Clerk to give bonds.
11. Votes of stockholders.
12. Proxies.
13. Subscription for stock, limited.
14. Directors to fill vacancy in Board.
15. Notice of time and place of payment of instalments; when business to be commenced.
16. Specie in vaults to be counted.
17. Shares assignable.
18. Transaction of Bank limited.
19. Liability for debts.
20. Form of bills, &c.
21. Amount of debts limited; liability for excess.
22. Dividends to be half yearly.

Section.

23. Books, &c. subject to inspection.
24. Notes, how signed and payable.
25. Liability for altered notes.
26. Where Bank shall be kept.
27. Statement of affairs for annual meeting and Legislature.
28. No loan on pledge of stock.
29. Committee to examine books, &c.
30. Special general meeting.
31. Closing of affairs on dissolution; liability of stockholders.
32. Indebtedness of Directors limited.
33. Semi-annual returns.
34. Delinquent sheet; delinquent Director not to act.
35. Disqualification of Director by continued delinquency; vacancy, how filled.
36. No action on note before presentment.
37. Shares deemed personal estate.
38. Share liable to seizure.
39. Increase of capital; limit.
40. Sale of additional shares.
41. Notice of sale.
42. Distribution of premium.
43. Additional shares liable as original stock.
44. Limitation.

Be it enacted by the Governor, Legislative Council, and Assembly, as follows:—

1. That John W. Cudlip, George Thomas, Stephen S. Hall, George S. DeForest, Jacob V. Troop, Henry C. Fairweather, Charles G. Turnbull, William A. Robertson, James L. Dunn, William Davidson, William Thomson, Zebedee Ring, Lewis J. Almon, John W. Nicholson, Simeon Jones, Lawrence M'Mann, John D. Purdy, Charles N. Skinner, Francis Clementson, their associates, successors, and assigns, be and they are hereby declared to be a body corporate, by the name of "The President, Directors and Company of the Merchants Bank of New Brunswick," and they shall be persons able and capable in law

to have, get, receive, take, possess and enjoy houses, lands, tenements, hereditaments and rents, in fee simple or otherwise, and also goods and chattels and all other things real, personal or mixed, and also to give, grant, let or assign the same or any part thereof, and to do and execute all other things in and about the same as they shall think necessary for the benefit and advantage of the said Corporation; and also that they be persons able and in law capable to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any Court or Courts of law and equity, or any other places whatsoever, in all and all manner of actions, suits, complaints, demands, pleas, causes and matters whatsoever, in as full and ample a manner as any other person or persons are in law capable of suing and being sued, pleading and of being impleaded, answering and of being answered unto; and also that they shall have one common seal to serve for the ensembling of all and singular their grants, deeds, conveyances, contracts, bonds, articles of agreement, assignments, powers and warrants of attorney, and all and singular their affairs and things touching and concerning the said Corporation; and also that they, the said President, Directors and Company, or the major part of them, shall from time to time, and at all times, have full power, authority and licence to constitute, ordain, make and establish such laws and ordinances as may be thought necessary for the good rule and government of the said Corporation, provided that such laws and ordinances be not contradictory or repugnant to the laws or statutes of that part of the United Kingdom of Great Britain and Ireland called England, or repugnant or contrary to the provisions of this Act, or other laws or statutes of this Province.

2. The capital stock of the said Corporation shall consist of current gold and silver coins of the Province of New Brunswick, to the amount of five hundred thousand dollars, and shall be divided into five thousand shares of one hundred dollars each; the sum of two hundred and fifty thousand dollars, one half part thereof, to be paid in current gold and silver coins of this Province within two years from the passing of this Act, and a further sum of two hundred and fifty thousand dollars in three years from the passing of this Act.

3. The said Corporation shall have full power and authority to take, receive, hold, possess and enjoy, in fee simple, any lands, tenements, real estates, and rents, to any amount not exceeding fifty thousand dollars; provided nevertheless, that nothing herein contained shall prevent or restrain the said Corporation from taking or holding real estate to any amount whatsoever, by mortgage taken as collateral security for the payment of any sum or sums of money advanced by, or debts due to the said Corporation; provided further, that the said Corporation shall on no account lend money upon mortgage, or upon lands or other fixed property, nor such be purchased by the said Corporation upon any pretext whatsoever, unless by way of additional security for debts contracted with the said Corporation in the course of its dealings.

4. Whenever twenty five hundred shares of the said capital stock shall have been subscribed, a general meeting of the members and stockholders of the Corporation, or

the major part of them, shall take place by notice in one or more of the public newspapers published in the City of Saint John, thirty days previous to such meeting, for the purpose of making, ordaining, and establishing such bye laws, ordinances, and regulations, for the good management of the affairs of the said Corporation, as the members, and stockholders of the said Corporation shall deem necessary, and also for the purpose of choosing nine Directors, being stockholders and members of the said Corporation, under and in pursuance of the rules and regulations hereinafter made and provided; which Directors so chosen shall at their first meeting after their election choose out of their number a President, which Directors and President shall serve until the first annual meeting for choice of Directors, and shall have full power and authority to manage the affairs of the said Corporation, and shall commence the operation of the said Bank, subject nevertheless to the rules and regulations hereinafter made and provided; at which general meeting the members and shareholders of the said Corporation, or the major part of them, shall determine the amount of payments to be made on each share, also the mode of transferring and disposing of the stock and profits thereof, which being entered on the books of the said Corporation, shall be binding on the said stockholders, their successors and assigns.

5. There shall be a general meeting of the stockholders and members of the said Corporation, to be annually holden on the first Monday in March in each year, at the City of Saint John, in the Province of New Brunswick, at which annual meeting there shall be chosen by the majority of votes of the said stockholders and members of the said Corporation, nine Directors, who shall be resident in the City or County of Saint John, and continue in office for one year, or until others are chosen in their room; in the choice of which Directors the stockholders and members of the said Corporation shall vote according to the rule hereinafter mentioned, and the Directors, when chosen, shall at their first meeting after their election choose out of their number a President; provided always, that not more than eight of the Directors in office shall be re-elected at such annual meeting for the next succeeding twelve months, of which the President shall always be one.

6. The Directors for the time being shall have power to appoint such officers, clerks, and servants, as they, or the major part of them, shall think necessary for, executing the business of the said Corporation, and shall allow them such compensation for their respective services as to them shall appear reasonable and proper; all which, together with the expenses of buildings, house rent, and all other contingencies, shall be defrayed out of the funds of the Corporation; and the said Directors shall likewise exercise such other powers and authorities for the well regulating the affairs of the said Corporation, as shall be prescribed by the bye laws and regulations of the same.

7. Not less than five Directors shall constitute a Board for the transaction of business, of which the President shall always be one, except in the case of sickness or necessary absence, in which case the Directors present may choose one of their number as Chairman in his stead; the President shall vote at the Board as a Director, and in case of

their being an equal number of votes for and against any question before them, the President shall have a casting vote; provided always, that no note or bill offered for discount at the said Bank shall be refused or excluded by a single vote.

8. No Director shall be entitled to any salary or emolument for his services, but the stockholders and members of the said Corporation may make such compensation to the President as to them shall appear reasonable and proper.

9. No person shall be eligible as Director unless such person is a stockholder, and holding not less than twenty shares of the capital stock of the said Corporation; provided always, that the stockholder so otherwise qualified be not a Director in any other Banking Company in this Province.

10. Every Cashier and Clerk of the said Corporation, before he enters upon the duties of his office, shall give bonds, with two or more sureties to be approved of by the Directors, that is to say, every Cashier in a sum not less than thirty thousand dollars, with a condition for his good and faithful behaviour; and every Clerk with the like condition and sureties, in such sum as the Directors shall deem adequate to the trust reposed in them.

11. The number of votes which each stockholder shall be entitled to on every occasion when, in conformity to the provisions of this Act the votes of the stockholders are to be given, shall be in the following proportion, that is to say, —for one share and not more than four, one vote; for every four shares above four and not exceeding twenty, one vote, making five votes for twenty shares; for every eight shares above twenty and not exceeding sixty, one vote, making ten votes for sixty shares; which said number of ten votes shall be the greatest that any stockholder shall be entitled to have.

12. All stockholders resident in this Province, or elsewhere, may vote by proxy, provided that such proxy be a stockholder, and do produce sufficient authority in writing from his constituent or constituents so to act, provided that no stockholder be entitled to hold more than three proxies.

13. No member of the said Corporation during the first six months to be accounted from and after the passing of this Act, shall be entitled to hold and subscribe for more than fifty shares of the said capital stock; and if the whole of the said capital stock shall not have been subscribed within the said six months so to be accounted as aforesaid, then and in such case it shall be lawful for any stockholder or stockholders to increase his, her or their subscriptions to one hundred shares; provided always, that no stockholder shall be permitted to hold more than one hundred shares in the whole, unless the same be acquired by purchase after the said Bank shall have commenced its operations; and provided also, that no stockholder in the said Bank at any one time shall hold more than twenty per cent of the capital stock.

14. The Directors may and they are hereby authorized to fill up any vacancy that shall be occasioned in the Board by the death, resignation or absence from the Province for three months, of any of its members; but in case of the removal of a Director by the stockholders, for misconduct or mal-administration, his place shall be filled up by the said stockholders; and the person so chosen by the Directors or the stockholders shall serve until the next succeeding annual meeting of the stockholders.

15. Before any stockholder shall be required to make payment of any instalment upon the amount of his subscription, fifty days previous notice shall be given by the Directors in two of the newspapers published in this Province, of the time and place of such payment, and the Directors shall commence with the business and operations of the Bank of the said Corporation; provided always, that no bank bill or bank notes shall be issued or put in circulation, nor any bill or note be discounted at the said Bank, until the sum of two hundred and fifty thousand dollars shall be actually paid in and received on account of the subscriptions to the capital stock of the said Bank.

16. As soon as the sum of two hundred and fifty thousand dollars shall be actually paid in current gold and silver coins, and shall then be in the vaults of the said Bank, the President shall give notice thereof to the Secretary of the Province for the information of His Excellency the Lieutenant Governor or the Commander in Chief for the time being, who is hereby authorized by and with the advice of his Council, to appoint three Commissioners not being stockholders, whose duty it shall be to examine and count the money actually in the vaults, and to ascertain by the oaths of the majority of Directors, that one half the amount of its capital hath been paid in by the stockholders towards the payment of their respective shares, and not for any other purpose, and that it is intended to have it there remain as part of the capital stock of the said Bank, which investigation is hereby declared indispensable.

17. The shares or capital stock shall be assignable and transferrable according to the rules and regulations that may be established in that behalf; but no assignment or transfer shall be valid or effectual unless such assignment or transfer shall be entered and registered in a book to be kept by the Directors for that purpose, nor until each person or persons so making the same, shall previously discharge all debts actually due to the said Corporation; and in no case shall any fractional part of a share, or other than a complete share or shares, be assignable or transferrable; whenever any stockholder shall transfer in manner aforesaid all his stock or shares in the said Bank to any other person or persons whatever, such stockholder shall cease to be a member of the said Corporation.

18. The said Corporation shall not directly or indirectly deal in any thing excepting promissory notes, bills of exchange, gold or silver bullion, or in the sale of goods really and truly pledged for money lent but not redeemed in due time, or in the sale of stock pledged for money lent and not so redeemed; which said stock and goods so pledged shall be sold by the said Corporation at public sale at any time not less than thirty days

after the period for redemption; and if upon such sale of goods or stock there shall be a surplus, after deducting the money lent, together with the expenses of sale, such surplus shall be paid to the proprietors thereof respectively.

19. The holders of the stock of the said Bank shall be chargeable in their private and individual capacity, and shall be holden for the payment and redemption of all bills which may have been issued by the said Corporation, and also for the payment of all debts at any time due from the said Corporation, in proportion to the stock they respectively hold; provided however, that in no case shall any one stockholder be liable to pay a sum exceeding the amount of stock actually then held by him; provided nevertheless, that nothing previously contained shall be construed to exempt the joint stock of the said Corporation from being also liable for and chargeable with the debts and engagements of the same.

20. Every bond, bank bill, or bank note, or other instrument, by the terms or effect of which the said Corporation may be charged or held liable for the payment of money, shall specially declare in such form as the Board of Directors shall prescribe, that payment shall be made out of the joint funds of the said Corporation; provided nevertheless, that nothing herein contained shall be construed to alter, change or diminish the responsibilities and liabilities imposed on stockholders in their individual capacities by the next preceding Section of this Act.

21. The total amount of the debts (deposits excepted) which the said Corporation shall at any time owe, whether by bond, bill, or note, or other contract whatsoever, shall not exceed twice the amount of the capital stock actually paid in by the stockholders; and in case of any excess, the Directors under whose administration and management the same shall happen, shall be liable for such excess in their individual and private capacities; provided always, that the lands, tenements, goods and chattels of the said Corporation shall also be liable for such excess.

22. The Directors shall make half yearly dividends of all the profits, rents, premiums and interest of the said Corporation, payable at such time and place as the Directors shall appoint, of which they shall give thirty days previous notice in two of the newspapers published in this Province.

23. The books, papers, correspondence and funds of the said Corporation shall, at all times, be subject to the inspection of the Directors; but no stockholder not a Director shall inspect the account of any individual with the said Corporation.

24. All the bills or notes issued by the said Corporation shall be signed by the President for the time being, and countersigned and attested by the Cashier, and shall be printed and made in steel plates; and all bills or notes so signed and countersigned, shall be binding on the said Corporation, and payable in specie at said Bank.

25. The said Corporation shall be liable to pay to any *bona fide* holder, the original amount of any note of the said Bank which shall have been counterfeited or altered in course of its circulation to a larger amount, notwithstanding such alteration.
26. The head quarters or chief banking house of the said Corporation shall be kept and established at Saint John, or at such other place as the Board of Directors may think it necessary to remove the said Bank on account of any great emergency, for the security thereof.
27. The Directors shall, at the general meeting to be held on the first Monday in March in every year, lay before the stockholders for their information, an exact and particular statement of the amount of debts due to and by the said Corporation, the amount of bank notes then in circulation, the amount of gold and silver then on hand, and the amount of such debts as are in their opinion bad or doubtful; also the surplus or profit (if any) remaining after deduction of losses and provision for dividends; which statement shall be signed by the Directors and attested by the Cashier; and a duplicate statement so signed and attested, shall be transmitted to the Secretary of the Province, for the information of His Excellency the Lieutenant Governor or Commander in Chief for the time being, and the Legislature; provided always, that the rendering of such statements shall not extend to give any right to the stockholders not being Directors, to inspect the account of any individual or individuals with the said Corporation.
28. No loan shall be made by the said Bank on the pledge of its own stock.
29. Any Joint Committee hereafter to be appointed by the Honorable the Legislative Council and the House of Assembly, for the purpose of examining into the proceedings of the said Corporation, shall, either during the Session or prorogation of the General Assembly, have free access to all the books and vaults of the same.
30. Any number of stockholders not less than twelve, who together shall be proprietors of four hundred shares, shall have a power at any time by themselves or their proxies to call a general meeting of the stockholders, and for purposes relating to the business of the said Corporation, giving at least thirty days previous notice in two of the newspapers published in the Province, and specifying in such notice the time and place of such meeting, with the objects thereof; and the Directors, or any five of them, shall have like power at any time, upon observing the like formalities, to call a general meeting as aforesaid.
31. On any dissolution of the said Corporation, immediate and effectual measures shall be taken by the Directors then in office for closing all the concerns of the said Corporation, and for dividing the capital and profits which may remain among the stockholders in proportion to their respective interests; and in case any bills issued by the said Corporation shall remain unpaid, the holders of stock in said Corporation, as well as those who were stockholders at the time of the notice of said dissolution, (which

said notice shall be given by publication in the Royal Gazette twelve months previous to the said Corporation being allowed to carry the same into effect,) shall be chargeable in their private and individual capacity for the payment and redemption thereof, in proportion to the stock they respectively held or hold, subject however to the proviso mentioned in the nineteenth Section of this Act; provided however, that this liability shall continue for two years only from and after the notice of such dissolution.

32. The aggregate of all the debts due from the Directors of the said Bank, as principals, endorsers, or sureties, shall not at any time exceed thirty three and one-third per centum of the capital stock.

33. The President of the said Bank shall semi-annually, that is to say, on the last Wednesday in February and the last Wednesday in August in each and every year, make a return in triplicate of the state of the said Bank as it existed at three o'clock in the afternoon of the said days respectively, and shall forthwith transmit the same to the Office of the Secretary of the Province; which return shall specify the amount due from the Bank, designating in distinct columns the several particulars included therein; and the said return shall be made in the following form:—

Form of Return.

State of the Merchants Bank of New Brunswick on the day of _____
 18_____, 3 o'clock, P. M.

Bills in circulation,	...	...	...	...	\$
Net profits on hand,	...	...	...	...
Balance due to other Banks,	...	...	...	...
Cash deposited, including all sums whatever due from the Bank not bearing interest, its Bills in circulation, Profits, and balances due to other Banks, excepted,	...	...	...	_____
Cash deposited bearing interest,	...	...	...	_____	\$

Resources of Bank.

Gold, Silver, and other coined metals, in its Banking House,	...	...	...	...	\$
Real Estate,	...	...	...	...
Bills of other Banks incorporated in this Province,	...	...	...	...
Balance due from other Banks,	...	...	...	...

Amount of all Debts due, including Notes,
Bills of Exchange, and all Stock and Funded
Debts of every description, except the
Balances due from other Banks,

Total amount of the resources of the Bank, \$

Date and amount of the last Dividend, and
when declared,

Amount of reserved profits at the time of
declaring the last Dividend,

Amount of Debts due and not paid and
considered doubtful,

Which return shall be signed by the President of said Bank, who shall make oath or affirmation before some Magistrate qualified to administer oaths, to the truth of said returns, according to the best of his knowledge and belief; and the President of the said Bank shall also make return under oath, whenever required by the Legislature, of the names of the stockholders, and the amount of stock owned by each; and a majority of the Directors of said Bank shall certify and make oath or affirmation before the same Magistrate as the said President, that the books of the said Bank indicate the state of facts so returned by their President, and that they have full confidence in the truth of the return so made by him; and it shall be the duty of the Secretary of the Province annually to lay before the Legislature of this Province, as soon after the opening of any Session thereof as practicable, one of such respective returns as he may have received since the then last previous Session.

34. The Cashier or acting Cashier for the time being, shall on each and every discount day furnish a true list to the President or Chairman of the said Bank, of all delinquent promisors, endorsers, and sureties, made up to three o'clock on the day preceding the discount day, which list shall be called a delinquent sheet; and it shall be the duty of the President or Chairman on each and every discount day as aforesaid, to read the name or names contained in such delinquent sheet to the Board of Directors; and in case the name of any Director shall appear on such delinquent sheet either as promisor, endorser, or surety, it is hereby declared, illegal for such Director to sit at the Board, or take any part in the management of the affairs of the said Bank during the continuance of such delinquency.

35. In the event of any Director continuing a delinquent as aforesaid for ninety consecutive days at any one time, such delinquency shall disqualify such Director from holding his seat; and it shall be the duty of the President and other Directors forthwith to proceed in filling up the vacancy in the manner prescribed in the Section of this Act as for case of death or absence from the Province.

36. No action shall be brought or maintained upon any Bank bills or Bank note which shall be issued by the said Corporation before such bill or note shall have been presented at the Bank for payment, and default in payment shall thereupon take place.

37. All and every the shares in the capital stock of the said Bank, .and all the profits and advantages of such shares respectively, shall be deemed and considered to be of the nature of and shall be personal estate, and transmissible as such accordingly.

38. The shares in the capital stock of the said Bank shall be liable to be .seized and taken in execution, and sold in like manner with other personal property; provided always, that the Sheriff or other officer executing such Execution, shall leave a copy of such execution, certified by the Sheriff or his deputy, with the President or Cashier of the said Bank; and the shares in the capital stock of the said Bank so liable to such execution, shall be deemed to be seized in execution when such copy is so left, and the sale shall be made within thirty days after such seizure; and on production of a bill of sale from the Sheriff, the President of the said Bank shall transfer the number of shares sold under such execution to the purchaser or purchasers thereof, and such transfer shall be valid and effectual notwithstanding there may be any debt due to the said Bank from the person or persons whose shares may be seized and sold; provided also, that the said President shall, upon the exhibiting to him of such certified copy of the execution, be bound to give to such Sheriff or other officer a certificate of the number of shares in the said capital stock held by the judgment debtor named in such execution; and the shares of such judgment debtor in the said capital stock shall be bound by such execution only from time to time when such copy of the execution shall be so left with the President or Cashier.

39. And in case it should hereafter be found necessary at any time after the payment in and certificate of such first mentioned capital, and within ten years from the time of passing this Act, to increase the capital stock of the said Bank, the same may be effected by resolution of the Directors, or the major part of them, for the time being, sanctioned and approved of by a majority of the votes of the shareholders present in person or by proxy, at a general meeting convened after special notice of the same and its intended object; such additional capital stock may be raised by the issue of additional shares, severally of the value before mentioned, provided that the whole of such additional stock shall not exceed five hundred thousand dollars, thereby making the utmost amount of capital stock of the said Bank one million dollars, and in the whole ten thousand shares.

40. Such additional shares shall be sold at public auction in separate lots of one to four shares each, as follows, that is to say,—fifty thousand dollars, making five hundred shares, at such time as the Directors shall appoint, and the residue of such increased additional capital, at such times as the Directors may from time to time determine, but not less than fifty thousand dollars to be sold at any one time.

41. The said Directors shall give at least forty days notice of the time of any sale of any such increased stock in two or more Newspapers published in the City of Saint John, in which notice shall be specified the time when such additional stock, with the advance of premium thereon, will be required to be paid into the said Bank.

42. The whole of such advance or premium, if any, first deducting the charges of sale, shall be divided in equal proportions among the shares in the stock of such Bank, as well the old as the new stock; and such dividend of the said premium shall be declared and paid by the Directors immediately after the payment into the Bank of the purchase money of the said additional shares; and banking operations may take place upon each respective amount of such additional stock sold as aforesaid, when the Directors, or a majority of them, together with the President of the said Bank, shall have signed and verified by oath, and filed in the office of the Secretary of the Province, a certificate that such amount of capital stock at any time called in, has actually been paid into the said Bank in current gold and silver coins of the Province, and not before.

43. The said additional shares shall be subject to all the rules, regulations and provisions to which the original stock is subject by this Act.

44. This Act shall continue and be in force until the first day of May which will be in the year of our Lord one thousand nine hundred.