

Laws of Her Majesty's Province of Newfoundland, passed in the year 1858.

21 Victoria – Chapter 2

An Act to Incorporate the Commercial Bank of Newfoundland. (Passed 10th April 1858.)

Whereas Thomas Holdsworth Brooking, Francis Christian Kroger Hepburn, Stephen Rendell, Gustave Elders, John Bewring, William H. Mare, Charles Fox Bennett, Augustus Wallet DesBarres, John Kent, John Fox, II, W. Hoyles, Charles Loughnan, William Whelan, Edward St. John, Edward Rawlins, Thomas Avery, Peter Cummins, Terence Hallerhan, and several other Persons, have associated themselves together, and have established a Joint Stock Banking Company in St. John's, and are desirous of being Incorporated in that behalf.

Be it therefore enacted by the Governor, Legislative Council and Assembly:

- I. That the parties above-named, and such others as have or shall become Stockholders in the said Company, and their Successors, Executors, Administrators and Assigns, shall be, and are hereby declared to be, a Body Corporate and Politic, by the name of "The Commercial Bank of Newfoundland," with power to carry on the business of Banking in all its branches, and shall have perpetual succession and a common Seal; and shall and may take and hold, grant, assign, and lease, Lands, Tenements, Hereditaments, Goods and Chattels; shall be capable of suing and being sued; shall have power to make Bye-laws and Ordinances for their Government; Provided that the same, shall not be contrary to the laws of this Colony: and shall and may do, perform, and execute, all such other matters and things as shall pertain to them as such Corporation to perform and do.
- II. The Capital Stock of the said Corporation shall consist of Fifty Thousand Pounds currency, which Sum shall be divided into One Thousand paid-up Shares, of Fifty Pounds each; Provided that it shall be lawful and competent to the said Corporation—if the business thereof shall so require—to extend such Capital Stock to an amount not exceeding One Hundred Thousand Pounds currency, in Shares of Fifty Pounds each, in such proportions as may from time to time be decided on at any General or Special Meeting; Provided also, that such proportions shall not be less than Ten Thousand Pounds each, and shall be paid up within One Year from the date of the Meetings at which they may be declared respectively.
- III. The Bank shall be managed by a Board consisting of a Manager and Five Directors, each of which Directors shall be the holder in his own right of Ten Shares, or be a partner in a firm holding in their own right such number of Shares, and shall be elected by the Stockholders as hereinafter provided. Such Directors shall have power to appoint a Manager and such other Officers, and at such Salaries, as may be necessary, to make Bye-laws for their own regulation, and generally to transact the business of the Bank; provided that the Manager shall not be subject to removal by the Directors, except for sufficient cause to be afterwards approved by the Stockholders at a General or Special Meeting; provided further, that two members of the same firm shall not be eligible to be Directors at the same time. And the Manager and any Three Directors shall constitute a Quorum of the Board for the transaction of business.

IV. The Directors shall be elected by Ballot at the Annual Meeting to take place on the Second Saturday in July in every year; but nothing herein contained shall invalidate the election of the present Directors; and Directors retiring from office shall be eligible for re-election.

V. The said Corporation shall not deal in anything except Bills of Exchange and Promissory Notes, Bonds, Debentures, Gold and Silver Coin, and Bullion Provided that nothing herein-contained shall prevent the said Bank from taking Collateral Security for the re-payment of Money advanced by them.

VI. In the event of the Assets of the said Corporation being insufficient to discharge its liabilities, the Shareholders shall be liable in their private and individual capacity for an amount beyond the Stock respectively held by them equal to the amount of such Stock, and no more.

VII. It shall not be lawful for the said Corporation to declare a Dividend from any Funds other than the Profits of the said Corporation.

VIII. All Notes issued by the Corporation shall be payable in Specie on demand.

IX. The Annual Meeting of the Stockholders shall be held on the Second Saturday in July, in each year, at a time and place in St. John's, to be appointed from time to time by the Directors, for the election of Directors, the examination of Accounts, and the transaction of other business.

X. The Directors at such Annual Meeting shall lay before the Stockholders for their information an exact and particular statement of the amount of the Debts due to and by the said Corporation at the closing of the Books on the Thirtieth day of June preceding; and of the average amount of Bank Notes in circulation, and Specie in hand, in each Month of the Year; which statement shall be signed by the Directors, and attested by the Manager; and a Duplicate Statement so signed and attested shall be transmitted to the Secretary of the Colony for the information of His Excellency the Governor, and the Legislature.

XI. It shall be competent to the Shareholders at any General or Special Meeting to appoint any Two Shareholders, (not Directors), Proprietors of not less than Five Shares each, to Audit the Accounts and Books of the Bank.

XII. Suspension, by the said Bank, of Specie payments on demand, for Sixty Days within any one Year, either consecutively or at intervals, shall occasion a forfeiture of the privileges conferred by this Act.

XIII. It shall not be lawful for the said Corporation to hold Shares in its own Stock, nor to make advances on the Security of such Shares.

XIV. The Discounts or Advances made by the Corporation on Securities bearing the name of any Director thereof as Drawer or Endorser, shall not exceed at any time One-Third of the total Advances or Discounts of the Bank; and no Manager or other Officer of the Bank shall draw, accept or endorse any Bills or Notes to be discounted by the Bank, or receive any pecuniary accommodation from the Bank, except his Salary or Allowance, or Dividends on Shares belonging to him.

XV. No Director of the said Corporation shall, during the period of his service, act as a Private Banker or as Director of any other Bank; nor shall any Director be entitled to any Salary or Emolument for his services as a Director, other than his proportion of the sum of Two Hundred Pounds to be divided annually amongst the said Directors, according to their actual attendance.

XVI. Any Vacancy that shall be occasioned in the Board of Directors by the death, resignation, or absence from the Colony for Six Months, of any Director, or by his insolvency, delinquency, as hereinafter mentioned, or being convicted of any infamous crime, shall be filled up by the Board, and the person or persons so chosen shall serve until the next succeeding Annual Meeting of Stockholders.

XVII. Every Vacancy in the Board arising from the temporary absence from the Colony of a Director, may be filled up by the Board by the appointment of a person or persons qualified in manner required for a Director; but the person or persons so to be appointed shall hold office only until the return of the Director or Directors for whom he or they shall be so substituted.

XVIII. At all Meetings of Stockholders the Votes shall be taken by Ballot, and shall be given as follows:-- viz: One Vote for every Share.

XIX. All Stockholders resident within this Colony, or elsewhere, may vote by Proxy; provided that such Proxy be a Stockholder and produce a sufficient authority in writing from his constituent or constituents so to act.

XX. The Board of Directors shall, on the requisition of any number of Stockholders not less than Twenty, who together shall be the Proprietors of Two Hundred and Fifty Shares, call a General Meeting of the Stockholders for purposes relating to the business of the said Corporation, giving at least Ten Days' previous notice of such Meeting in Three of the Newspapers published in this Colony, (one of which shall be the "Royal Gazette,") and specify in such notice the time and place of such Meeting, with the objects thereof; and the Board of Directors shall have the like power, at any time, upon observing the like formalities, to call a General Meeting as aforesaid.

XXI. Every Officer of the said Corporation, before he enters on the duties of his office, shall give Bonds, with two or more Sureties, to be approved by the Board of Directors, in such amount as the board shall deem adequate to the trusts reposed in him.

XXII. The Shares in the Capital Stock shall be assignable and transferable according to such Rules and Regulations as may be established in that behalf; but no assignment or transfer shall be valid unless such assignment or transfer shall first be approved by the Board of Directors, and be entered and registered in a Book to be kept for that purpose—nor until the person or persons so making the same shall previously discharge all debts actually due and payable by him or them to the said Corporation; in no case shall any fractional part of a Share be assignable or transferable; and whenever any Stockholder shall assign or transfer, in manner aforesaid, all his Stock or Shares in the said Bank, such Stockholder shall cease to be a Member of the said Corporation.

XXIII. 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 capacity by this Act; and, provided also, that in any such Bank Bill the words "for the Commercial Bank of Newfoundland," and in every such Note the words "Commercial Bank of Newfoundland" at the upper edge of the Note, and the signature of the Manager and Two Directors, shall be deemed a sufficient declaration that payment shall be so made out of the said Joint Funds.

XXIV. The Total amount of the Debts which the said Corporation shall at any time owe, whether by Bond, Bill, Note, or other contract whatever, deposits excepted, shall not exceed three times the amount of 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 said Corporation, shall also be liable for such excess.

XXV. The Directors shall make Half-Yearly Dividends after the First Year in which the Bank shall be in operation, out of the Profits, Rents, Premiums, and Interests of the said Corporation, payable at such time and place, and to such amount, as a General or Special Meeting of Stockholders may determine.

XXVI. All Bills or Notes issued by the said Corporation shall be signed by the Manager for the time being, and countersigned and attested by One or more Directors, and shall be printed and made on Steel Plates; and all Bills or Notes so signed and countersigned shall be binding on the said Corporation and payable in Specie at the said Bank.

XXVII. 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 altered in the course of its circulation to a larger amount, notwithstanding such alteration.

XXVIII. No action shall be brought or maintained upon any Bank Bill or Bank Note which shall hereafter 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 have taken place.

XXIX. The said Bank shall be kept and established at St. John's, 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.

XXX. Any Committee to be jointly appointed by the Legislative Council and Assembly, or any Government Bank Inspector, for the purpose of examining into the proceedings of the said Corporation, shall, either during the Session or Prorogation of the General Assembly, have full access to the accounts, books, and vaults of the same.

XXXI. On any Dissolution of the said Corporation, immediate and effective 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 that 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 such dissolution, (which said notice shall take place by a publication of their intention so to do in Three of the Newspapers published in this Colony 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 thereof in proportion to the Stock they respectively held or hold; —provided that this liability shall continue for Two Years only, from and after the notice of such dissolution.

XXXII. The Manager for the time being shall, on every Discount Day, furnish a true List to the Board, of all Delinquent Promisers, Endorsers and Sureties, made up to Three o'clock of the day preceding the Discount Day, which List shall be called a Delinquent Sheet; and it shall be the duty of the Manager, 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 Promiser, Endorser, or Surety, it is hereby declared illegal for such Director to sit on the Board, or to take any part in the management of the affairs of the said Board during the continuance of such delinquency.

XXXIII. In the event of any Director continuing a delinquent as aforesaid for Thirty consecutive days at any time, or becoming Insolvent, or being convicted of any infamous crime, such continued delinquency, or such insolvency, or conviction, shall disqualify such Director from holding his seat, and it shall be the duty of the Board forthwith to proceed in filling up the vacancy in the manner prescribed by this Act, in case of death or absence from the Colony.

XXXIV. The Shares in the Capital Stock of the said Bank shall be liable to Attachment and Execution in like manner as other personal property; and the warrant or notice in such case respectively shall be served on the Manager of the said Bank, and such service shall bind the Shares of such Stockholder for all beyond the amount of his Liabilities to the said Bank, but not otherwise, to the extent of such Attachment or Execution. And that for the purpose of ascertaining the number of Shares held by any Shareholder against whom process of attachment or execution may have issued, the said Manager, or any Director or Officer of the said Bank, may be examined in like manner as any third person having in his, her or their possession any Monies, Goods, or Debts of any Defendant, may now be examined. And upon Sale by the Sheriff of any such Shares under any Execution or Order of Court, the Manager of the said Bank shall, on production of a Bill of Sale from the Sheriff, transfer the number of Shares by him sold under any such Execution or Order, to the purchaser or purchasers thereof; any such transfer shall be valid and effectual for the value of such Shares beyond the amount due the Bank from the person whose Shares may be so seized or sold.

XXXV. Whenever by this Act any notice or advertisement is required to be published in Newspapers, one of such Newspapers shall be the "Royal Gazette," or the Newspaper in which Government Notices are inserted for the time being.

XXXVI. All Notes heretofore issued by the said Company; and all Bonds, Bills, Notes, Deeds, Securities, Contracts and Conveyances, heretofore given or made to and with the said Company, or any person or persons on their behalf, shall be of the like force and effect as if the same had been given or made to them subsequently to their being Incorporated under the provisions of this Act; and all Lands and Property acquired by the said Company, or by any one on their behalf, shall vest in and belong to this Corporation.

XXXVII. This Act shall continue in force for the period of Twenty-one Years from the passing thereof, and no longer.