

NEW SOUTH WALES BANK ACT OF 1852.

Ordered by the Council to be printed, 3rd October, 1854.

CHAS. HOTHAM,

Message No. 14.

Lieutenant Governor.

The Lieutenant Governor transmits for the information of the Legislative Council a copy of a Despatch from His Grace the Duke of Newcastle, dated the 1st day of May, 1854 (No. 19), with its enclosure, relative to an Act passed by the Council in the sixteenth year of the reign of Her present Majesty, intituled, "An Act to amend an Act intituled "An Act to incorporate the Proprietors of a certain Banking Company called The Bank of New South Wales,' and for other purposes therein mentioned."

Government Offices,
Melbourne, 3rd October, 1854.

[COPY.]

No. 19.

Downing-street,
1st May, 1854.

SIR,

I have had under my consideration the following Act, transmitted with Lieutenant Governor La Trobe's Despatch, No. 43, of the 2nd March, 1853:—

"An Act to amend an Act intituled 'An Act to incorporate the Proprietors of a certain Banking Company called The Bank of New South Wales,' and for other purposes therein mentioned."

2. This Act (with only the necessary local modifications) appears to be identical with one passed by the Legislature of New South Wales for the same purpose. To the latter Her Majesty's Government are of opinion that it will be necessary to refuse the assent of the Crown; and as the same reasons apply to the Act now before me, I transmit to you a copy of the Despatch I have addressed to Sir Charles Fitzroy on the subject, which you will regard for the present purpose as equally addressed to yourself.

3. The period allowed to the Crown for the disallowance of this Act will similarly expire on 5th July, 1855.

I have, &c.,
(Signed) NEWCASTLE

Lieutenant Governor

Sir C. Hotham, K.C.B.,
&c., &c., &c.,
Victoria.

[COPY.]

No. 45.

Downing-street,
29th April, 1854.

SIR,

I have had under my consideration the following Acts, transmitted with your Despatch, No. 15, of the 5th of February, 1853:—

"An Act to amend an Act intituled 'An Act to Incorporate the Proprietors of a certain Banking Company called The Bank of New South Wales,' and for other purposes therein mentioned."

"An Act to amend an Act intituled 'An Act to incorporate the Proprietors of a certain Banking Company called The Commercial Banking Company of Sydney,' and for other purposes therein mentioned."

2. Both these Acts are, in the opinion of Her Majesty's Government, liable to serious exception.

B.—No. 14.

3. The first Act (that relating to the Bank of New South Wales) repeals sections 6 and 14 of the former Act of the Company, which sections provided, in conformity with the regulations common to all charters for incorporating Colonial Banks, that the total liabilities of the Bank should not at any time exceed three times the amount of the paid-up capital.

4. The second repeals in like manner sections 8 and 9 of the Commercial Company's former Act.

5. In lieu of the first of these clauses respectively, they provide that the total amount of the debts, engagements, and liabilities of each corporation, other than liabilities on account of ordinary cash deposits of customers, and on account of bills of exchange drawn by the corporation on banks in the United Kingdom, within the amount of remittances made to such banks to provide for the payment of such bills of exchange, "*may extend to, but shall not in any case exceed three times the amount of the coin, bullion, and public securities, which for the time being may be held by the said corporation within the said Colony,*" that is, the Colony to which each Act respectively applies.

6. The Acts also make new regulations in respect of the issue of promissory notes, and provide that the total amount of the promissory notes payable on demand, issued and in circulation in the respective Colonies, shall not at any one time exceed the amount of coin, bullion, and public securities held by the corporation within such Colonies.

7. They enact that, for the purposes of the Act, unassayed gold shall be deemed to be bullion.

8. They also define "*all debentures issued or which may hereafter be issued by the Government of any of the Australian Colonies,*" when the corporation shall have established branches, to be public securities within the meaning of the Acts.

9. The primary object of these Acts appears to be to provide an increased circulating medium during the period of monetary pressure which was occasioned by the sudden discovery of gold in Australia.

10. The provision relating to the issue of bank notes may have been justified as a temporary expedient under the extraordinary circumstances which then prevailed. It appears to have answered the proposed object, but it is open to the objection that it met a temporary difficulty by a permanent enactment, and that of a character which is inconsistent with notions of a sound circulation, and of well secured banking institutions.

11. The permission for the banks to issue notes equal to the amount of deposits of unassayed gold, is an expedient which could only be warranted by the abundant yield of the material of which money is composed, without the ready means of reducing each parcel to an uniform value, and the opportunity of converting it into money. But as a permanent system it cannot be considered a sound and safe course that banks should be allowed to issue notes upon gold or any other treasures of unascertained value. Although the gold obtained in Australia has hitherto been of a high standard of quality, there can be no security that inferior veins may not be discovered, or that the metal obtained may not be fraudulently deteriorated if subjected to no test. There is no limitation in regard to the price at which the unassayed gold shall be valued, and although there is a limitation in this respect by the Victoria Act of the New South Wales Bank (respecting which I have addressed Sir C. Hotham in similar terms to my present Despatch), and the price fixed by it, namely, £3 per ounce, is so low as to prevent any risk of inconvenience if the maintenance of the gold could be assured, yet the provision is fallacious in attempting to fix a permanent value for gold dust, and it can afford no security against deterioration.

12. It is obvious, moreover, that the deposit of unassayed bullion affords no security for the immediate convertibility of the notes; and so far from the abundance of gold in the Colony constituting any reason for affording peculiar facility as a permanent arrangement for obtaining notes in exchange for it in its crude state, the circumstance that it is a staple commodity of the Colony, the great bulk of which must be exported to other countries, in order to afford the community any commercial advantage from it, should afford ground for caution instead of relaxation of the regulations regarding the circulation, inasmuch as depreciation would inevitably ensue from an over-issue of notes, the immediate convertibility of which is not sufficiently provided for, although the issuers may possess property which would eventually provide for their payment.

13. A similar principle applies to Government securities, which do not form a sound basis for the circulation of a country, except under well ascertained limitations, and the attempt to apply them to such an object must always expose the Governments who are responsible for such securities to the risk of being involved in the difficulties of a bank. It is to be observed that so far from adopting any peculiar precautions in this respect, the securities, on the faith of which the bank notes are authorised by these Acts to be issued, are not preserved for application to the payment of the notes, by deposit with the Government or otherwise, but are left generally subject, as is the bullion also, to all the liabilities of the banks.

14. Measures like these can only be justified by a temporary emergency. But that emergency can now no longer exist. The abundance of coin which has been imported into Australia since the passing of the Acts must have provided amply for the wants of the community for a circulating medium, and the measures in progress for the establishment of a Branch Mint at Sydney will afford, in a constitutional and regular manner, for the future conversion of the gold of the country into coin when needed.

15. The provisions of these Acts by which the limitation regarding the extent of liabilities to be incurred by the banks is relaxed, appear even more objectionable than the legislation regarding the circulation: they overlook the principle of the regulation by which the liability of

the shareholders is restricted to twice the amount of the paid-up shares. In framing that regulation it was considered that the paid-up capital of the company, together with the assets acquired in the operations of the bank, would admit of an extension of business without risk, if prudently conducted, to an extent not exceeding three times the amount of the paid-up capital, and that in the event of any serious difficulties the public would be sufficiently secured against ultimate loss by the liability of the shareholders to the payment of the amount of the capital a second time. Under this view it was considered reasonable to concede to the shareholders the privilege of limited liability to that extent. The measure now proposed of allowing the banks to carry on business to the extent of three times the amount of the coin, bullion, and public securities, can afford no sufficient security for the solvency of these institutions; and as it would admit of an extension of the business of the company to an indefinite extent, without reference to the amount of capital invested, or the remaining liabilities of the shareholders, the security of the public against the consequences of mismanagement would be proportionally weakened.

16. But however serious these deviations may appear, from recognised principles of banking regulations, and from the instructions already communicated to you on former occasions, as to the framing of Bank Acts especially, by Mr. Gladstone, in his Despatch of 31st May, 1846, they would not themselves have constituted a sufficient reason for deviating from the established practice of leaving matters of strictly domestic legislation to the control of the Colonial Legislature. I should have considered my duty sufficiently performed by pointing out the objections to which the enactments appear liable, and leaving their amendment to the discretion and judgment of the local authorities.

17. But it appears from recent advertisements in the newspapers (one of which I enclose), that under cover of their Act of Incorporation the New South Wales Bank has established a branch in London, under the management of directors, for the purpose of carrying on the business of remittance and negotiation of bills between Great Britain and all the Australian Colonies.

18. This corporation is therefore an institution no longer confined to the Colony in which it was already established, or that Colony with its off-shoot Victoria, but carries on, or professes to carry on, business with extensive ramifications throughout Australia, in connection with a superintending establishment in London.

19. Without entering into the question how far such carrying on of business in this country may be legal with reference to the restrictions imposed by the Act to regulate Joint Stock Banks in England, 7 and 8 Victoria, cap. 113, or otherwise, it is sufficient to say that the assumption of the power to transact it places the Act now before me relative to this bank on a footing quite different from that of mere domestic legislation. It becomes the duty of Her Majesty's Government to require that whatever safeguard is secured to the public by the original Act of Incorporation of this Company should be strictly maintained.

20. These remarks do not directly apply to the case of the Sydney Commercial Bank, which has not, so far as I am aware, claimed to transact business in this country, or anywhere out of the limits of the Colony in which the company is incorporated. But it is necessary to guard against the contingency of its endeavouring to extend its transactions like the Bank of New South Wales, and it would, moreover, be difficult, if not unjust, to apply to one such institution a different rule from that which is imposed on the other.

21. For these reasons Her Majesty's Government cannot advise Her Majesty to leave these Acts to their operation. I do not, however, think it necessary to recommend an immediate disallowance. It is sufficient for me at present to warn you that the peculiar privileges conferred on these institutions by the two Acts now before me cannot be allowed to subsist, and that unless I receive in the interval the intimation of their amendment, they will be be disallowed within the time allowed to the Crown by the Constitutional Act, which will expire, in the case of these Acts on the 5th July, 1855.

I have, &c.,
(Signed) NEWCASTLE.

Lieutenant Governor
Sir C. A. Fitzroy,
&c., &c., &c.,
New South Wales.

BANK OF NEW SOUTH WALES.

(Established 1817.)

Incorporated by Act of the Colonial Legislature, and confirmed by Her Majesty in Council.
Capital paid up £400,000, with power to increase to £1,000,000.

BOARD OF DIRECTORS.

Donald Larnach, Esq., J.P., President.
Robert Towns, J.P.
Daniel Cooper, jun., Esq.
William Rankin Scott, Esq.
William Walker, jun.
Joseph S. Willis, Esq.

Auditors.

Thomas Whistler Smith, Esq.
 Edwin Tooth, Esq.
 John Black, Cashier.
 John H. Baillie, Secretary and Inspector.
 Alexander Stuart, Assistant Secretary.
 Allen and Son, Solicitors.

MELBOURNE BRANCH.

Directors.

C. A. Ebdon, Esq.
 Andrew Russell, Esq., M.D.
 D. Benjamin, Esq.
 John Badcock, Manager.
 Duerdin and Trenchard, Solicitors.

GEE LONG BRANCH.

Directors.

C. N. Thorne, Esq.
 George Board, Esq.
 Robert Woodhouse, Manager.

MORETON BAY BRANCH.

Directors.

D. C. McConnell, Esq.
 R. J. Coley, Esq.
 William Richardson, Manager.
 Robert Little, Esq., Solicitor.

Agencies.

London : The London Joint Stock Bank.
 Glasgow : The Western Bank of Scotland.
 South Australia : The South Australian Banking Company.
 Van Diemen's Land : The Commercial Bank.
 India and Ceylon : The Oriental Bank.
 China : Messrs. Jardine, Mathieson, and Co.
 Manilla : Messrs. Russell and Sturgis.
 Singapore : Messrs. Kerr, Rawson, and Co.
 Batavia : Messrs. McLaure, Watson, and Co.
 Sourabaya : Messrs. Fraser, Eaton, and Co.
 Bahia : Messrs. S. S. Davenport and Co.

Arrangements are now in progress for the establishment of a branch of this Bank in London, to act as an agency for all its branches; and when that shall have been completed, this Bank will be able to afford to its customers such facilities as are possessed by few of its sister institutions.

(Signed)

J. H. BAILLIE,
 Secretary.

Sydney, 21st February, 1853.