



1853.

No. 20.

An Act to legalize Partnerships with Limited Liabilities.

[Assented to, December 9, 1853.]

*Enlarged by
No 25 - 1855 - 6
and No 5 - 1856.*

Preamble.

WHEREAS it is expedient to encourage the formation of partnerships for the promotion of useful undertakings in this Province, by enabling persons to employ their capital as partners in certain cases, without liability to the debts of the partnership beyond the amount contributed by them—Be it therefore Enacted, by His Excellency the Lieutenant-Governor of South Australia, with the advice and consent of the Legislative Council thereof, as follows:

1. After the passing of this Act, limited partnerships may be formed in the said Province for the transaction of business by any number of persons not exceeding twelve, upon the terms and subject to the conditions and liabilities hereinafter prescribed: Provided that nothing herein shall authorize any such partnership for the purpose either of banking or insurance.

Limited partnerships may be formed except for banking and insurance.

2. Every such partnership shall comprise one or more general partners, who shall be responsible as general partners are now by law, and persons to be called special partners, each of whom shall contribute to the common stock a specific sum in money as capital, beyond which he shall not be responsible for any debt of the partnership, except in the cases hereinafter provided for.

General and special partners and their liabilities.

Certificate to be made by the partners specifying names, capital, &c.

3. All the persons forming any such partnership shall, before commencing business as partners, sign a certificate, containing the style of the firm under which the partnership is to be conducted, the names and places of residence of all the partners, distinguishing the general from the special partners, the amount of capital which each special partner contributes, and also, if any, the amount contributed by the general partners to the common stock, the general nature

What is a provision of the Act? or is it in 1855? or in 1856?

nature of the business to be transacted, the principal place at which it is to be transacted, the time when such partnership is to commence, and when it is to terminate; and if, during the continuance of any such partnership, any new partner shall be admitted as a member thereof, then a like certificate shall be given.

Style of partnership.

4. Such style or firm shall contain the name of every general partner, with the addition of the words "and others," and the general partners only shall transact the business of the partnership; and if, in the carrying on of such business, or in any contract connected therewith, the name of any special partner shall be used with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, every such special partner shall be deemed to be a general partner with respect to the contract or matter in which his name has been so used, or as to which he shall have so contracted.

Certificate to be acknowledged and recorded.

If false, all concerned in such false statement shall be liable as general partners.

5. No such partnership shall be deemed formed until such certificate as aforesaid shall have been acknowledged by each partner before some Justice of the Peace, and registered in the office of the Registry of Deeds, in Adelaide, in a book to be kept for that purpose, open to public inspection; and if any false statement shall be made in any such certificate, all the persons interested in the said partnership making or consenting to such false statement shall be liable as general partners in the partnership business therein referred to: Provided that no clerical error, or matter not of substance, unless some person may have been prejudiced thereby, shall be deemed false within the meaning of this section.

Certificate to be published for four weeks.

6. A copy of such certificate shall, once at the least in each week, during the next four weeks after such registration, be published in the *Government Gazette*, and in some newspaper printed nearest to the principal place of business of the partnership; and in case such publication be not so made, the partnership shall be deemed general.

Provision for renewal of partnership.

7. Upon every renewal or continuation of a limited partnership, beyond the time originally agreed upon for its duration, a certificate thereof shall be signed, acknowledged, registered, and published, in like manner as the original certificate, and every partnership which shall be renewed or continued, otherwise than in conformity with the provisions of this section shall be deemed general.

Capital stock not to be withdrawn.

8. During the continuance of any partnership, under the provisions of this Act, no part of the capital thereof shall be withdrawn, nor shall any division of interest or profit be made, so as to reduce such capital below the aggregate amount stated in the certificate; and if any part of the capital shall be so withdrawn or any such division be made, so that at any time during the continuance or at the termination of the partnership, the assets shall not be sufficient to pay the partnership debts, the special partners shall severally be liable

liable to refund every sum by them respectively received in diminution of such capital, or by way of such interest or profit; and all such sums may be recovered as money had and received by them respectively to the use of the general partners.

9. All suits respecting the business of any partnership established under this Act shall be prosecuted by and against the general partners only, except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners, in which case every or any special partner who shall have become liable as a general partner, may be joined in the suit as a defendant at the discretion of the party suing.

Suits to be by and against general partners.

10. No dissolution of a limited partnership shall take place, except by operation of law before the time specified in the certificate, unless a notice of such dissolution shall be signed, acknowledged, registered, and published in like manner as the original certificate.

Dissolution, how effected.

11. In all cases not hereinbefore otherwise provided for, all the members of a limited partnership shall be subject to the liabilities, and entitled to the rights of general partners.

Liabilities not specially provided for.

12. The general partners shall be liable to account to each other, and to the special partners, for the management of the concern, both in law and equity, as other partners now are by law.

Accounting.

13. Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable civilly to the party injured, to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the Court by which he shall be tried.

Frauds by partners.

14. If the general partners shall not at all times cause regular books of account to be kept, or shall not have the same opened at all reasonable times to the inspection of the special partners, they shall forfeit to the use of the special partners, such profit or share of the profits as the Supreme Court, or any Judge thereof, on rule or summons to show cause, shall, under the circumstances, think fit to direct; and every partner who shall at any time use the money or credit of the partnership on his private account, or for any separate purpose of his own, without the written consent of his copartners, shall be deemed guilty of a misdemeanor, and be liable on conviction, to such pecuniary fine (with imprisonment until payment) as the Court shall award.

Not keeping accounts, or using partnership money for private purposes.