

UNION BANK, CALCUTTA ACT 1849

ACT No. III. of 1849

(Rep., Act 8 of 1868)

[10<sup>th</sup> February, 1849.]

*Passed by the Hon'ble the President of the Council of India in Council on the 10<sup>th</sup> February, 1849.*

*An Act to confirm an Agreement between certain Shareholders and Creditors of the Union Bank of Calcutta.*

WHEREAS by Act XXIII. 1845, certain persons, therein declared to have formed themselves into a Company or Co-partnership by the name of "The Union Bank of Calcutta," and those who should thereafter become Members and Proprietors of the said Union Bank, were enabled to sue, and to be sued, at law and in equity, in the name of the person who should be the Secretary or the Treasurer of the said Bank, for the time being, and certain provisions are therein contained for the recovery of debts and demands due by the said Co-partnership:

And whereas a Memorial has been presented to the Governor General of India in Council signed by Thomas Charles Mortion, Esquire,--Jeremiah James Homfray, Esquire,--and Boboo Prosunnocoomar Tarore, --all therein described as Members of the Executive Committee of Management of the said Union Bank, and also by certain persons, therein described as Members of the Committee of Creditors of the Union Bank,--that is to say, Charles Hogg, Esquire, therein described as constituted Attorney for Glyn, Halifax, Mills and Company, Company,--by Henry Cowie, Esquire,--and by Thomas Seddon Kelsall, Esquire,--setting forth that the said Joint Stock Banking Company, or Union Bank of Calcutta suspended payment about the close of the year 1847 and that the remaining assets of the said Bank are insufficient to satisfy the outstanding debts and liabilities; that several Creditors of the Bank have obtained judgment against the public Officer under the said Act XXIII. 1845, and the assets of the Bank being insufficient, certain of the said judgments are put in suit against individual Shareholders: and that the Memorialists fear that, unless some mutually satisfactory arrangement can be immediately made between the Creditors and the Shareholders, an enormous sacrifice of property will speedily take place, and a great number of persons be involved in utter ruin; that many of the creditors are willing to agree with the Shareholders, and to give as complete a discharge as the law will allow, to those Shareholders who will pay such reasonable sums of money as have been assessed on them respectively, on account of the said debts and liabilities, by a Committee of Creditors, appointed at a public meeting of the Creditors, provided that such discharge do not work a release or otherwise affect their claims, in respect of the said debts and liabilities, against other persons liable to make good the same, who shall refuse or neglect to pay the sums, so assessed on them respectively; and that many of the said Shareholders are willing to pay the sums so assessed on them, provided that they may be thereby secured from all proceedings at law or in equity, in respect of the said debts and liabilities, at the suit of any Creditor who shall have executed such agreement as aforesaid, and accepted any payment out of the sums so contributed; that doubts have been entertained of the legal effect of such an agreement and discharge: and praying, therefore, that the effect of it may be established and defined by authority of the Governor General of India in Council, without prejudice to the rights of any Creditor of the said Bank executing the same, against any present or past

ditor of the said Bank Executing the same, against any present or past Shareholder of the said Bank, who shall not have paid up, in the manner prescribed by the said agreement, the full amount of the sum assessed on him or her as aforesaid, or to the rights of any Creditor who shall not execute the same, It is declared and enacted as follows:

I. The agreement of which a copy is annexed to this Act, being the agreement referred to in the said Memorial, shall be of full force as between those Creditors of the said Union Bank who shall execute the same, and those persons named in the Schedule Hereinafter mentioned, and in the said agreement described as the Schedule thereunto annexed, marked A, being the Schedule of Assessment or Contribution toward the liquidation of the debts of the said Bank, who shall, in the manner mentioned in the said agreement, pay the several sums at which they are severally assessed in the said Schedule of Assessment; but shall be of no force to affect the rights or liabilities or any persons other than such as are party or privy thereunto, or the rights or liabilities of the persons named in the said Schedule, as against each other.

II. If any Creditor of the said Bank, who shall have executed the said agreement, shall thereafter sue out any Writ of *Scire Facias*, or take any other proceeding at law or in equity, on account of any debt or liability of the said Union Bank, against any person named in the said Schedule of Assessment, who shall have paid in the manner mentioned in the said agreement the full sum at which he or she is assessed in the said Schedule of Assessment, the execution of the said agreement by such Creditor, and payment of the said Assessment by the person against whom such Writ or other proceeding shall be sued out, or taken, may be pleaded in bar thereof; and all costs incurred by any such defendant in resisting such Writ or proceeding shall be paid by the Creditor at whose suit the same shall have been sued forth or instituted.

III. If any Creditor of the said Bank, who shall not have executed the said agreement, shall sue out any Writ of *Scire Facias*, or take any other proceeding at law or in equity on account of any debt or liability of the said Union Bank, against any person liable to make good the same or any part thereof; or if any Creditor of the said Bank, who shall have executed the said agreement, shall sue out any Writ of *Scire Facias*, or take any other proceeding at law or in equity, on account of any debt or liability of the said Union Bank, against any person liable to make good the same, or any part thereof, who shall not pay in the manner mentioned in the said agreement the full sum at which he or she is assessed in the said Schedule of Assessment, the said agreement shall not be pleadable to such Writ or proceeding, nor shall the contents thereof be received in evidence, in any court of law or equity, in any proceeding had for the recovery of such debt or liability from any such person.

IV. Provided always, that nothing, hereinbefore contained, shall be construed to prevent any Writ of *Scire Facias*, which shall have been issued, or any action or suit which shall have been actually commenced against any Shareholder, before payment of his Assessment, from being prosecuted and continued afterwards, if the party instituting such proceeding, chooses so to do.

V. Within one month after the passing of this Act, a copy of the said Schedule of Assessment, signed by the said Thomas Charles Morton, Henry Burkinyoung, Jeremiah James Homfray, Prosunnocoomar Tagore, Charles Hogg, Henry Cowie, and Thomas Seddon Kelsall, shall be filed and enrolled among the Records of Office of the Record Keeper of the Supreme Court of Judicature at Fort William in Bengal;

and the Schedule so filed shall be deemed the Schedule referred to by this Act, and by the said agreement, and shall be conclusive evidence of the amounts severally assessed against the persons named therein, according to the true intent and meaning of this Act.

#### COPY OF AGREEMENT

We, the undersigned, Creditors of the Union Bank of Calcutta, hereby undertake and promise, upon payment, by the Executive Committee of the said Union Bank, of an immediate first dividend of twenty-five (25) percent. upon our respective claims, to accept the Schedule hereunto annexed, marked A, (which has been framed by a Committee of Creditors of the Bank) as the Schedule of Assessment of Contribution towards the liquidation of the debts of the said Bank, of the several Shareholders, past and present, therein named; and we promise and agree not to sue out any Writ of *Scire Facias*, or otherwise to molest the person or property of any Shareholder or Shareholders of the said Union Bank, named in the said Schedule, who shall pay up the full sum placed opposite his or her name in the said Schedule, as and for his or her Assessment or Contribution as aforesaid. Provided, however, that nothing herein contained, shall be construed to protect any of the said parties from being proceeded against, unless and until he shall have actually paid his said Assessment in full, nor to prevent any Writ of *Scire Facias*, which shall have been issued, or any action or suit which shall have been actually commenced against any Shareholder, before payment of his Assessment from being prosecuted, and continued afterwards, if the party instituting such proceeding chooses so to do. Provided, further, that if any Shareholder in the said Schedule named, shall not have paid or given security to the Executive Committee of the said Bank, certified by them to be sufficient, for the payment of his Assessment, within three months from this date, if he be resident in India, or within five months, if resident out of India, the same shall be increased ten per cent; and that a further per-centage of the like amount shall be added after every succeeding period of three months, during which the same shall remain unpaid or unsecured. Provided also, that the said Executive Committee, of the said Bank, do engage to pay, from time to time, such further dividends upon our respective claims, until full satisfaction thereof, respectively, as the sums realized from the said contribution shall enable them to do; and whenever the realization shall amount to ten per cent. upon the remaining claims, to declare and pay a new dividend at the rate. Provided always, and it is hereby expressly declared and agreed, that we, the undersigned, reserve, to ourselves, all our rights and remedies whatsoever, against the assets of the said Bank, legal and equitable, and against all Shareholders, present and past, not paying up the full amount of their said Assessments, respectively, as aforesaid: In witness whereof we have hereunto set our respective hands, this twenty-fifth day of September, in the year of Christ, one thousand eight hundred and forty-eight.

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