SUPPLIED FOR THE PUBLIC SERVICE

CHAPTER 23.

An Act to amend the Companies Acts of 1862, 1867, 1870, 1877, 1879, 1880, and 1883. [4th June 1886.]

A.D. 1886.

WHEREAS it has become expedient to amend the provisions of the Companies Act, 1862, and of the other Acts amending the same herein-after recited, in so far as the said provisions relate to the liquidation of companies in Scotland: 25 & 26 Vict. c. 89.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Companies Act, 1886. Short title.

2. This Act shall, so far as consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, 1879, 1880, and 1883, and the Joint Stock Companies Arrangement Act, 1870, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1886. Construction of Acts. 25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76. 43 Vict. c. 19. 46 & 47 Vict. c. 28. 33 & 34 Vict. c. 104.

3. In the winding up, by or subject to the supervision of the court, of any company under the Companies Acts, 1862 to 1886, whose registered office is in Scotland, where the winding up shall commence after the passing of this Act, the following provisions shall have effect: Effect of diligence within 60 days of winding up by or subject to supervision of court.

(1.) Such winding up shall, in the case of a winding up by the court as at the commencement thereof, and in the case of a winding up subject to the supervision of the court as at the date of the presentation of the petition, on which a supervision order is afterwards pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding up by the court, or to the presentation of the petition on which a

A.D. 1886.

supervision order is made, as the case may be, shall be effectual; and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or poinder, before the date of such winding up, or of such petition, as the case may be, who shall be thus deprived of the benefit of his diligence, shall have preference out of such funds or effects for the expense bonâ fide incurred by him in such diligence.

(2.) Such winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject always to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided.

(3.) The provisions of sections one hundred and twelve to one hundred and seventeen inclusive, and also of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as consistent with the tenor of the recited Acts, apply to the realization of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in said sections of the Bankruptcy (Scotland) Act, 1856, shall mean respectively "liquidation" and "liquidator"; and the expression "the Lord Ordinary or the Court" shall mean "the Court" as defined by this Act.

19 & 20 Vict. c. 79.

(4.) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but such poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term.

Ranking of claims.

4. In the winding up of any company under the Companies Acts, 1862 to 1886, whose registered office is in Scotland, and where the winding up shall commence after the passing of this Act, the general and special rules in regard to voting and ranking for payment of dividends, provided by the Bankruptcy (Scotland) Act, 1856,

sections forty-nine to sixty-six inclusive, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as consistent with the tenor of the said recited Acts, apply to creditors of such companies voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean liquidation, trustee to mean liquidator, and sheriff to mean the court.

Jurisdiction of the Lord Ordinary on the Bills in vacation.

5. Wherever the expression "the court of session" occurs in the said recited Acts, or the expression "the court" occurring therein or in this Act refers to the court of session in Scotland, it shall mean and include either division thereof, or, in the event of a remit to a permanent Lord Ordinary, as herein-after provided, such Lord Ordinary, during session, and in time of vacation the Lord Ordinary on the Bills; and in regard to orders or judgments pronounced by the said Lord Ordinary on the Bills in vacation, the following provisions shall have effect:—

(1.) No order or judgment pronounced by the said Lord Ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the said recited Acts, shall be subject to review, reduction, suspension, or stay of execution, videlicet, of the Companies Act, 1862, sections ninety-one, one hundred and seven, one hundred and fifteen, one hundred and seventeen, and one hundred and twenty-seven, and section one hundred and forty-nine so far as it authorises the Court to direct meetings of creditors or contributories to be held, and that portion of section two of the Joint Stock Companies Arrangement Act, 1870, which authorises the Court to order that a meeting of creditors or class of creditors shall be summoned; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

25 & 26 Vict. c. 89.

33 & 34 Vict. c. 104.

(2.) All other orders or judgments pronounced by the said Lord Ordinary in vacation (except as after mentioned) shall be subject to review only by reclaiming note, in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862,) within fourteen days from the date of such order or judgment: Provided always, that such orders or judgments pronounced by the said Lord Ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the Companies Act, 1862, shall, from the dates of such orders or judgments, and notwithstanding any reclaiming note against the same, be carried

A.D. 1886.

out and receive effect till such reclaiming note be disposed of by the court, videlicet, sections eighty-five, eighty-seven, eighty-nine, ninety-three (except in regard to the removal or remuneration of liquidators), ninety-five, ninety-six (except in regard to the power to sell), one hundred, one hundred and eighteen, first part of one hundred and forty-one, one hundred and forty-seven, one hundred and fifty (except in regard to the removal of liquidators and the filling up of vacancies caused by such removal), one hundred and ninety-seven, one hundred and ninety-eight, and two hundred and one; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

Provided that nothing in this section contained shall in any way affect the provisions of section one hundred and twenty-one of the Companies Act, 1862, in reference to decrees for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

Winding up may be remitted to Lord Ordinary.

6. When the court makes a winding up or a supervision order, or at any time thereafter, it shall be lawful for the court, in either division thereof, if it thinks fit, to direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and to remit the winding up to him accordingly; and thereupon such Lord Ordinary shall, for the purposes of the winding up, be deemed to be "the court," within the meaning of the recited Acts and this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the court of session: Provided always, that all orders or judgments pronounced by such Lord Ordinary shall be subject to review only by reclaiming note in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862,) within fourteen days from the date of such order or judgment. But, should a reclaiming note not be presented and moved during session, the provisions of section five of this Act shall apply to such orders or judgments: Provided also, that the said Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up. This section and the immediately preceding section shall come into force from the passing of this Act, and shall include companies then in the course of being wound up.

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