under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I. of the Companies Act, 1862, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

(2.) If a company makes default in delivering to the registrar any document required by this Act to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

Short title and construction.

3.—(1.) This Act may be cited as the Companies (Memorandum of Association) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, shall be construed as one Act, and may be cited collectively as the Companies Acts, 1862 to 1890.

(3.) In this Act the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company and not being an Act of Parliament, a royal charter, or letters patent.

CHAPTER 63.

An Act to amend the Law relating to the Winding up of Companies in England and Wales.

[18th August 1890.]

BE it 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:

Jurisdiction to wind up companies.

1.—(1.) The courts having jurisdiction to wind up companies in England and Wales shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, the county courts, and the Stannaries court.

(2.) Where the amount of the capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to the High Court, or, in the case of a company situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3.) Where the amount of the capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situate within the jurisdiction

of a county court having jurisdiction under this Act, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to that county court.

(4.) Provided that where a company is formed for working mines within the Stannaries and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to the Stannaries court whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5.) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or to any other county court, and may revoke or vary any such order. In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

(6.) Every court having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

Conduct of winding-up business in High Court. 36 & 37 Vict. c. 66.

2. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction of the High Court under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Transfer of proceedings.

3.—(1.) The winding up of a company or any proceedings therein may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced.

(2.) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3.) If any question arises in any winding up proceeding in a county court or in the Stannaries court which all the parties to the

proceeding, or which one of them and the judge of the court, may desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Provisions as to liquidator.

4.—(1.) On an order being made by the court for winding up a company the officer herein-after mentioned shall, by virtue of his office, become the provisional liquidator of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(2.) The said officer shall be the official receiver, if any, attached to the court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

(3.) When a person other than the official receiver is appointed liquidator of a company he shall be styled liquidator and not official liquidator of the company, and the provisions of the Companies Acts relating to the official liquidator shall, in their application to him, be construed as if the word "official" were omitted therefrom. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the registrar of joint stock companies and given security in the manner prescribed to the satisfaction of the Board of Trade. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid, as may be requisite for enabling that officer to perform his duties under this Act.

(4.) If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy.

(5.) The official receiver may be appointed by the court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made.

(6.) Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company the official receiver may be so appointed.

Power to appoint special manager.

5.—(1.) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2.) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3.) The special manager shall receive such remuneration as may be fixed by the court.

Meeting of creditors.

6.—(1.) When the court has made an order for winding up a company the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

(*a*) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and

(*b*) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed.

The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the court shall decide the difference and make such order thereon as the court may think fit.

(2.) The provisions of the First Schedule to this Act shall, subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section.

(3.) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

Statement of company's affairs.

7.—(1.) Where the court has made an order for winding up a company, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2.) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official receiver, subject to the direction of the court, may require to submit, and verify the same.

(3.) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4.) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5.) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable

to a fine not exceeding ten pounds for every day during which the default continues.

(6.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Report on winding up and proceedings thereupon.

8.—(1.) Where the court has made an order for winding up a company, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

(*a*) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2.) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3.) The court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.

(4.) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(5.) The liquidator where the official receiver is not the liquidator and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel.

(6.) The court may put such questions to the person examined as to the court may seem expedient.

(7.) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. The person examined shall at his own cost, prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the

court may deem just for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as the court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

(8.) The court may, if it thinks fit, adjourn the examination from time to time.

(9.) A public examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, registrar in bankruptcy, or chief clerk, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a Palatine court, before a registrar of that court, and the powers of the court under sub-sections six, seven, and eight of this section may (except as to costs) be exercised by the person before whom the examination is held.

Committee of inspection.

9.—(1.) A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court.

(2.) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6.) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories, of which seven days' notice has been given stating the object of the meeting.

(7.) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Power of court to assess damages against delinquent directors, officers, and promoters.

10.—(1.) Where in the course of the winding up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the Company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2.) The provisions of this section shall apply in the winding up of any company under the Companies Acts whether the same is being wound up by or subject to the supervision of the court or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

Payment of money into Bank of England.

11.—(1.) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

(2.) Every liquidator of a company which is being wound up by order of the court shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

(3.) Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it

is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board of Trade shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(4.) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Board shall seem just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(5.) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

(6.) No liquidator of a company which is being wound up by order of the court shall pay any sums received by him as liquidator into his private banking account.

Powers of liquidator.

12.—(1.) The liquidator of a company which is being wound up by the court may, with the sanction either of the court or of the committee of inspection, carry on the business of the company, or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by section one hundred and fifty-nine or section one hundred and sixty of the Companies Act, 1862.

25 & 26 Vict. c. 89.

(2.) The liquidator of any such company may, without the sanction of the court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section ninety-five of the Companies Act, 1862.

(3.) The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4.) The liquidator of a company which is being wound up by order of the court may, with the sanction either of the court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Delegation to liquidator of certain powers of court.

13. General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the court by sections ninety-one, ninety-eight, ninety-nine, one hundred, one hundred and two, and one hundred and seven of the Companies Act, 1862, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court.

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Power for official receiver to apply as to voluntary winding up.

14. Where a company is being wound up voluntarily or subject to the supervision of the court, the official receiver attached to the court having jurisdiction to wind up the company may present a petition that the company be wound up by the court, and thereupon, if the court is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the court.

Information as to pending liquidations.

15.—(1.) If the winding up of a company is not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of joint stock companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(2.) If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(3.) If it appears from any such statement or otherwise that any liquidator of a company has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England. Every such liquidator shall be entitled to the prescribed certificate of receipt for the moneys so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(4.) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised and by the like authority as are exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(5.) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

(6.) This section shall apply whether the winding up of the company has commenced before or after the commencement of this Act.

Investment of surplus funds on general account.

16.—(1.) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2.) Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

Separate accounts of particular estates.

17.—(1.) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company, and when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board of Trade shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the said company.

(2.) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company of the assets of which the money so invested formed part, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments made under this section shall be paid to the credit of the company of the assets of which the money so invested formed part.

Interests on balances above two thousand pounds.

18. When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board of Trade that the excess is not required for the purposes of the liquidation, then such company shall be entitled to interest upon such excess at the rate of two per centum per annum.

Certain receipts and fees to be

19. The Treasury may from time to time issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising

from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act. **applied in aid of expenditure.**

20.—(1.) Every liquidator of a company which is being wound up by order of the court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such liquidator. **Audit of liquidators accounts.**

(2.) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3.) The Board of Trade shall cause the accounts so sent to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4.) When any such account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5.) The Board of Trade shall cause the account or a summary thereof when audited to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

21. Every liquidator of a company which is being wound up by order of the court shall keep, in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may subject to the control of the court, personally or by his agent inspect any such books. **Books to be kept by liquidator.**

22.—(1.) When the liquidator of a company which is being wound up by order of the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court. **Release of liquidators.**

(2.) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

(3.) An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4.) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Discretionary powers of liquidator and control thereof.

23.—(1.) Subject to the provisions of the Companies Acts, the liquidator of a company which is being wound up by order of the court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2.) The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3.) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4.) Subject to the provisions of the Companies Acts, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to court against liquidator.

24. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the court, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over liquidators.

25.—(1.) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient.

(2.) The Board may at any time require any liquidator of a company which is being wound up by order of the court to answer any inquiry made by them in relation to any winding up in which the liquidator is engaged, and may, if the Board think fit, apply to the court to examine on oath the liquidator or any other person concerning the winding up.

(3.) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the court.

General rules and fees.

26.—(1.) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3.) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

(4.) There shall be paid in respect of the proceedings under this Act such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(5.) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

Officers and remuneration.

27.—(1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

(2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

(3.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

Annual accounts of receipts and expenditure in respect of

28.—(1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under

winding up proceedings. 38 & 39 Vict. c. 77.

this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2.) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns and give such information as the Treasury direct.

Returns by officers.

29.—(1.) The officers of the courts acting in the winding up of companies shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

(2.) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.

Proceedings of Board of Trade.

30.—(1.) All documents purporting to be orders or certificates made or issued by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

Application of Act.

31.—(1.) This Act shall not, except where it is expressed to have a more extended application, apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

(2.) For the purposes of this Act a company shall not be deemed to be wound up by order of the court if the order is to continue a winding up under the supervision of the court.

(3.) This Act shall not apply to any company unless the registered office of the company is situate in England or Wales.

Interpretation of terms.

32.—(1.) In this Act, unless the context otherwise requires,—

"The Companies Acts" means the Companies Act, 1862, and the Acts amending the same.

"General rules" means general rules made under this Act, and includes forms.

"Prescribed" means prescribed by general rules.

"Stannaries Court" means the court of the Vice-Warden of the Stannaries.

25 & 26 Vict. c. 89.

(2.) In Part IV. of the Companies Act, 1862, and in this Act the expression "the court," when used in relation to a company shall, unless the contrary intention appears, mean the court having jurisdiction under this Act to wind up the company.

(3.) For the purposes of this Act the expression "registered "office of a company" shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company, and shall include, in the case of an unregistered company, any place which in pursuance of section one hundred and ninety-nine of the Companies Act, 1862, is to be deemed the registered office of the company for the purpose of the winding up thereof.

Repeal.

33. The enactments mentioned in the Second Schedule to this Act are hereby repealed, as to England and Wales, to the extent appearing in the third column of that schedule.

Commencement of Act.

34. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-one.

Short title.

35.—(1.) This Act may be cited as the Companies (Winding up) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, may be cited together as the Companies Acts, 1862 to 1890.

SCHEDULES.

FIRST SCHEDULE.

Section 6.

MEETINGS OF CREDITORS AND CONTRIBUTORIES.

(1.) The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding up order, or within such further time as the court may approve, unless a special manager has been appointed, in which case such meetings shall be held within one month from the date of such order, or within such further time as aforesaid.

(2.) The official receiver of the company shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper. Notice of such meeting shall also be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

(3.) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(4.) The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors and contributories.

(5.) The official receiver, or some person nominated by him, shall be the chairman at the meetings.

(6.) A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

(7.) A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

(8.) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

(9.) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

(10.) It shall be competent to the official receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

(11.) The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(12.) A creditor or a contributory may vote either in person or by proxy.

(13.) Every instrument of proxy shall be in the prescribed form, and shall be issued by an official receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths in the Supreme Court of Judicature in England.

(14.) General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(15.) A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

(16.) A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—

(*a*) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and

(*b*) on all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

(17.) A proxy shall not be used unless it is deposited with the official receiver before the meeting at which it is to be used.

(18.) Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in

procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

(19.) A creditor or a contributory may appoint the official receiver to act in manner prescribed as his general or special proxy.

(20.) The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

(21.) A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

(22.) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

(23.) The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(24.) No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

SECOND SCHEDULE.

Section 31.

ENACTMENTS REPEALED AS TO ENGLAND AND WALES.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89. -	The Companies Act, 1862	Section eighty-one. In section ninety-two the words "The court shall "determine whether "any and what security "is to be given by any "official liquidator on "his appointment." Section ninety-seven. Section one hundred and sixty-five.
30 & 31 Vict. c. 131. -	The Companies Act, 1867	Sections forty-one to forty-six.