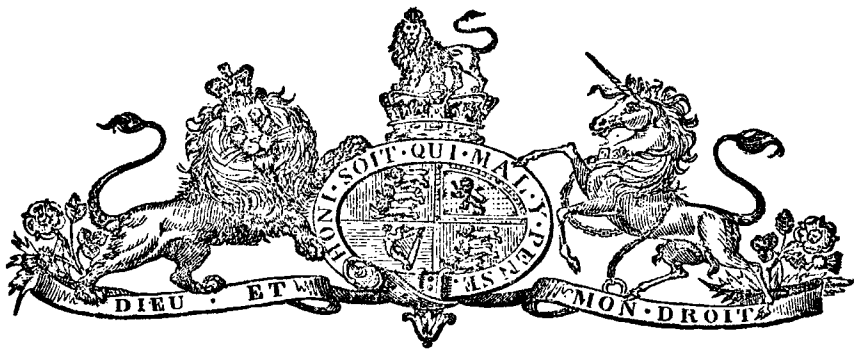


ANNO VICESIMO PRIMO & VICESIMO SECUNDO

VICTORIÆ REGINÆ.

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CAP. LX.

An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.

[23d *July* 1858.]

WHEREAS by the Nineteenth Section of "The Joint Stock Companies Act, 1857," it is amongst other things provided, that where a Company is in course of being wound up voluntarily, and Proceedings are taken for having the same wound up by the Court, the Court may, instead of making an Order that the Company should be altogether wound up by the Court, direct that the voluntary Winding-up should continue, but subject to such Supervision of the Court, and with such Liberty for Creditors, Contributories, and others to apply to the Court, and generally upon such Terms and subject to such Conditions as the Court thinks just: And whereas it is expedient to make further Provision for enabling Companies to be wound up in manner directed by the said Nineteenth Section: And whereas it is expedient to explain and amend the Acts herein-after referred to as the Joint Stock Companies Acts, that is to say, "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Act, 1857," and "The Joint Stock Banking Companies Act, 1857:" Be it enacted by the Queen's most Excellent Majesty,

20 & 21 Vict. c. 14.

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:

Short Title.

I. This Act may be cited for all Purposes as "The Joint Stock Companies Amendment Act, 1858," and it shall be included in the Expression "Joint Stock Companies Acts," as herein-after used, unless there is something in the Context inconsistent with its being so included.

Petition for winding up, subject to Supervision.

II. A Petition praying wholly or in part that a voluntary Winding-up may continue, subject to the Supervision of the Court, shall, for the Purpose of giving Jurisdiction to the Court over Suits and Actions, and over the Appointment of a Receiver, be deemed to be a Petition for winding up the Company by the Court; and in determining whether a Company is to be wound up altogether compulsorily or under the Provisions of the said Nineteenth Section, the Court may have regard to the Wishes of the Majority in Number and Value of the Creditors as proved to it by any sufficient Evidence.

Power of Court in proceeding under Sect. 19. of 20 & 21 Vict. c. 14. to appoint additional Liquidators.

III. Where any Order is made by the Court, in pursuance of the said Nineteenth Section, for the Continuance of a voluntary Winding-up, the Court may in such Order or in any subsequent Order appoint any additional Liquidator or Liquidators; and any Liquidator or Liquidators so appointed by the Court shall have the same Powers, be subject to the same Obligations, and in all respects stand in the same Position as if they had been appointed by the Company: The Court may from Time to Time remove any Liquidator or Liquidators so appointed by the Court, and fill up any Vacancy occasioned by such Removal, or by the Death or Resignation of any such Liquidator or Liquidators: The Court shall in the Appointment of a Liquidator or Liquidators under this Section consult any Creditor or Classes of Creditors it may think expedient to consult for the Purpose of ascertaining what Appointments are most for the Interest of the Creditors.

Effect of Order of Court under the said 19th Section.

IV. Where an Order is made by the Court, in pursuance of the said Nineteenth Section, for the Continuance of a voluntary Winding-up, the Liquidators appointed to conduct such Winding-up may, subject to any Order made by the Court, exercise all Powers given to them, without the Intervention of the Court, in the same Manner as if the Company were being wound up altogether voluntarily; but, save as aforesaid, any Order made by the Court, in pursuance of the said Nineteenth Section, for the Continuance of a voluntary Winding-up, shall for all Purposes, including the Application of any Provision relating to fraudulent Preference, be deemed to be an Order of the Court for winding up the Company by the Court, and shall confer full

full Authority on the Court to make Calls, or to enforce Calls made by the Liquidators, and to exercise all other Powers which it might have exercised of its own Motion, or on the Application of the official Liquidators, if an Order had been made for winding-up the Company altogether by the Court.

In compulsory Winding-up, or Continuance of voluntary Winding-up, by Decree or Order, Contributories may be decreed to pay Calls.

V. Where an Order, Interlocutor, or Decree has been made in *Scotland* for winding up a Company compulsorily, or where an Order, Interlocutor, or Decree has been made in pursuance of the said Nineteenth Section for the Continuance of a voluntary Winding-up, it shall be competent to the Court in *Scotland* during Session, and to the Lord Ordinary on the Bills during Vacation, on Production by the Liquidators of a List certified by them of the Names of the Contributories liable in Payment of any Calls which they may wish to enforce, and of the Amount due by each Contributory respectively, and of the Date when the same became due, to pronounce forthwith a Decree against such Contributories for Payment of the Sums so certified to be due by each of them respectively, with Interest from the said Date till Payment at the Rate of Five Pounds *per Centum per Annum*, in the same Way and to the same Effect as if they had severally consented to Registration for Execution, on a Charge of Six Days, of a legal Obligation to pay such Calls and Interest; and such Decree may be extracted immediately, and no Suspension thereof shall be competent, except on Caution or Consignation, unless with special Leave of the Court or Lord Ordinary.

Actions and Suits to be stayed.

VI. Where an Order has been made for winding up a Company compulsorily, or where an Order has been made, in pursuance of the said Nineteenth Section, for the Continuance of a voluntary Winding-up, no Suit, Action, or other legal Proceeding shall be proceeded with or commenced against the Company or the Public Officer thereof, or any Member of the Company in respect of a Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

Inspection of Books.

VII. Where an Order has been made for winding up a Company compulsorily, or where an Order has been made, in pursuance of the said Nineteenth Section, for the Continuance of a voluntary Winding-up, the Court may make such Order as it thinks just as to the Inspection by the Creditors and Contributories of Books and Papers of the Company, and such Books and Papers may be inspected by Creditors or Contributories, in conformity with such Order of the Court, but not further or otherwise.

Appointment of voluntary

VIII. Where an Order has been made in pursuance of the said Nineteenth Section for the Continuance of a voluntary Winding-up, and

Liquidators as official Liquidators.

and such Order is afterwards superseded by an Order directing the Company to be wound-up compulsorily, the Court may in such last-mentioned Order, or in any subsequent Order, appoint the voluntary Liquidators or any of them, either provisionally or permanently, and either with or without the Addition of any other Persons, to be official Liquidators.

Power of Court to give Discretion to official Liquidators.

IX. Where the Court makes an Order for winding up a Company compulsorily, it may, if it thinks fit, provide by that or any subsequent Order that the official Liquidators may exercise any specified Powers without the Intervention of the Court.

General Scheme of Liquidation may be sanctioned by Court.

X. Where an Order has been made for winding up a Company compulsorily, or where an Order has been made, in pursuance of the said Nineteenth Section, for the Continuance of a voluntary Winding-up, the Liquidators may, with the Sanction of the Court, and upon such Notice to Creditors as to the Court shall seem fit, at any Stage of the Winding-up, pay any Classes of Creditors in full, or make such other Arrangement with Creditors as the Court may sanction; and any general or partial Scheme of Liquidation, if approved of by the Court, shall be binding on all the Creditors and Contributories of the Company.

Reservation of Practice under old Winding-up Acts.

XI. The Practice hitherto in use in the Court of Chancery in *England* in winding up Companies, under "The Joint Stock Companies Winding-up Act, 1848," and "The Joint Stock Companies Winding-up Act, 1849," including the Service of Summonses, Notices, and other Documents by Post, and including the Payment of a Per-centage in lieu of Fees to the Suitors Fee Fund, the Non-entry of Orders at the Registry Office, and all Powers and Jurisdictions given to the said Court of Chancery by the said Acts, and not conferred by the Joint Stock Companies Acts, shall be applicable to the winding up under the said Joint Stock Companies Acts of Companies by the Court of Chancery and Courts of Bankruptcy in *England*, until Rules for regulating such Winding-up are made in pursuance of the Powers for that Purpose given by the said Joint Stock Companies Acts; and the Courts of Chancery and Courts of Bankruptcy in *England* may adopt such Practice, Powers, and Jurisdictions to the same Extent as if the Companies were being wound up under "The Joint Stock Companies Winding-up Act, 1848," and "The Joint Stock Companies Winding-up Act, 1849;" and in the Case of Companies engaged in working any Mines within and subject to the Jurisdiction of the Stannaries, and registered under the Joint Stock Companies Acts, 1856, 1857, the like Practice, Powers, and Jurisdiction may, by Rules to be made under the Ninety-eighth

eighth Section of "The Joint Stock Companies Act, 1856," be adopted and exercised by the Court of the Vice-Warden of the Stannaries, so far as such Practice, Powers, and Jurisdiction are or can be made applicable to that Court.

Order made in England to be enforced in Ireland and Scotland.

XII. Any Order made by the Court in *England* for or in the Course of the Winding-up of a Company under the Joint Stock Companies Acts shall be enforced in *Scotland* and *Ireland* in the Courts that would respectively have had Jurisdiction in respect of such Company if the registered Office of the Company had been established in *Scotland* or *Ireland*, and in the same Manner in all respects as if such Order had been made by the Courts that are hereby required to enforce the same; and in like Manner Orders, Interlocutors, and Decrees made by the Court in *Scotland* for or in the Course of the Winding-up of a Company shall be enforced in *England* and *Ireland*, and Orders made by the Court in *Ireland* for or in the Course of winding up a Company shall be enforced in *England* and *Scotland*, by the Courts which would respectively have had Jurisdiction in the Matter of such Company if the registered Office of the Company were established in the Division of the United Kingdom where the Order is required to be enforced, and in the same Manner in all respects as if such Order had been made by the Court required to enforce the same in the Case of a Company within its own Jurisdiction.

Mode of dealing with Orders to be enforced by other Courts.

XIII. Where any Order, Interlocutor, or Decree made by one Court is required to be enforced by another Court, as herein-before provided, an Office Copy of the Order, Interlocutor, or Decree so made shall be produced to the proper Officer of the Court required to enforce the same, and the Production of such Office Copy shall be sufficient Evidence of such Order, Interlocutor, or Decree having been made, and thereupon such last-mentioned Court shall cause such Order, Interlocutor, or Decree to be registered, or shall take such other Steps in the Matter as may be requisite for enforcing such Order, Interlocutor, or Decree, in the same Manner as if it were the Order, Interlocutor, or Decree of the Court enforcing the same.

Power for Liquidators in voluntary Winding-up to apply to Court for Aid.

XIV. Where a Company is being wound up altogether voluntarily, the Liquidators may apply to the Court, or to the Lord Ordinary on the Bills in *Scotland* in Time of Vacation, by Petition, Motion, the Presentation of a Special Case, or in such other Manner as the Court may direct, to determine any Question arising in the Matter of such Winding-up, or to exercise, as respects the enforcing any Calls, or in respect of any other particular Matter, all or any of the Powers which the Court might exercise if the Company were being wound up compulsorily; and the Court, or Lord Ordinary in the

Case aforesaid, if satisfied that the Determination of such Question or the required Exercise of Power will be just and beneficial, may accede, wholly or partially, to such Application, upon such Terms and subject to such Conditions as the Court thinks fit, or it may make such other Order, Interlocutor, or Decree on such Application as the Court thinks just.

Power of Company to fill up Vacancies in Liquidators.

XV. Where any Company is being wound up altogether voluntarily, or is being wound up subject to the Provisions of the said Nineteenth Section, the Company in General Meeting may fill up any Vacancy occasioned by the Death or Resignation of any Liquidator or Liquidators appointed by the Company.

Power for Liquidators to invest.

XVI. In case of any Company being wound up compulsorily, the Liquidators may invest any Moneys for the Time being in their Hands, or standing to their Credit in the Bank of *England*, arising from such Winding-up, in Government Securities, including Exchequer Bills.

Manner of making a Call.

XVII. In fixing the Amount payable by any Contributory, in pursuance of the Joint Stock Companies Acts or any of them, he shall be debited with the Amount of all Debts due from him to the Company, including the Amount of the Call, and shall be credited with all Sums due to him from the Company on any independent Contract or Dealing between him and the Company, and the Balance, after making such Debit and Credit as aforesaid, shall be deemed to be the Sum due.

Calls proveable against Bankrupts or Insolvents Estates.

XVIII. All Calls made or to be made on any Shareholder or Contributory, in pursuance of any of the Joint Stock Companies Acts, shall, in the event of such Shareholder or Contributory becoming bankrupt or insolvent, be proveable against his Estate.

Section 16. of 20 & 21 Vict. c. 14. repealed, and this Section to be substituted.

XIX. The Sixteenth Section of "The Joint Stock Companies Act, 1857," shall be repealed; and in lieu thereof be it enacted as follows: The Liquidators shall have Power to compromise all Calls and Liabilities to Calls, Debts, and Liabilities capable of resulting in Debts, and all Claims, whether present or future, certain or contingent, ascertained, or sounding only in Damages, subsisting or supposed to subsist between the Company and any Contributory or alleged Contributory, or other Debtor or Person apprehending Liability to the Company, upon the Receipt of such Sums, payable at such Times, and generally upon such Terms as may be agreed upon, with Power for the Liquidators to take any Security for the Discharge of such Debts or Liabilities,

Liabilities, and to give complete Discharges in respect of all or any such Calls, Debts, or Liabilities; subject to the Proviso, that where an Order has been made by the Court for winding up a Company compulsorily, or where an Order has been made, in pursuance of the said Nineteenth Section, for the Continuance of a voluntary Winding-up, no such Compromise shall be made, except in accordance with the Directions of the Court, as expressed generally in any Order made by the Court, or as given in each particular Case, and after giving such Notice to Creditors, or any Portion of them, as the Court shall direct; and that where a Company is being wound up altogether voluntarily no such Compromise shall be effected, except with the Sanction of a special Resolution of the Company, or of a general or particular Power delegated to the Liquidators by a special Resolution.

Prosecution of delinquent Directors in the Case of voluntary Winding-up.

XX. Where any Order is made for winding up a Company compulsorily, or for the Continuance of a voluntary Winding-up, subject to the Provisions of the said Nineteenth Section, if it appear in the Course of such Winding-up that any past or existing Director, Manager, Public Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, the Court may, on the Application of any Person interested in such Winding-up, or of its own Motion, direct the official Liquidators, or the Liquidators, (as the Case may be,) to institute and conduct a Prosecution or Prosecutions for such Offence, and to order the Costs and Expenses to be paid out of the Assets of the Company.

Prosecution of delinquent Directors, &c. in case of compulsory Winding-up.

XXI. Where a Company is being wound up altogether voluntarily, if it appear to the Liquidators conducting such Winding-up that any past or existing Director, Manager, Public Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, it shall be lawful for the Liquidators, with the previous Sanction of the Court, to prosecute such Offender, and all Expenses properly incurred by them in such Prosecution shall be payable out of the Assets of the Company in Priority to all other Liabilities.

Application of Act to existing Winding-up.

XXII. This Act shall apply in Cases where an Order has been already made for winding up a Company compulsorily, or where an Order has been made, in pursuance of the Nineteenth Section, for the Continuance of a voluntary Winding-up, or where a Company is in the Course of being wound up altogether voluntarily.

Companies may register for Purposes of winding up.

XXIII. Any Company or Copartnership, consisting of Seven or more Persons, having by its Constitution a Capital of fixed Amount, divided into Shares, also of fixed Amount, if it legally carried on the Business of

of Banking previously to "The Banking Companies Act, 1857," is entitled to register itself or to continue registered under "The Joint Stock Banking Companies Act, 1857," for the Purpose of winding up under that Act, and if it legally carried on any other Business than Banking, except that of Insurance, previously to the passing of "The Joint Stock Companies Act, 1856," is entitled to register itself or to continue registered under "The Joint Stock Companies Act, 1856," or the Joint Stock Companies Acts, 1856, 1857, for the Purpose of winding up under those Acts.

Application of Act to other Acts.

XXIV. This Act shall extend to the Provisions of the Joint Stock Companies Acts, 1856, 1857, incorporated with "The Joint Stock Banking Companies Act, 1857."

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