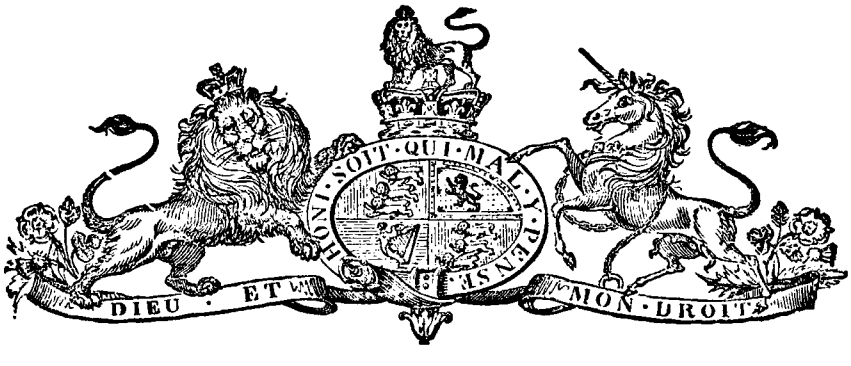


ANNO VICESIMO & VICESIMO PRIMO

VICTORIÆ REGINÆ.

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CAP. LXXVIII.

An Act to amend the Act Seven and Eight *Victoria*, Chapter One hundred and eleven, for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the "Joint Stock Companies Winding-up Acts, 1848 and 1849."

[25th *August* 1857.]

WHEREAS it is expedient to amend the Act Seven and Eight *Victoria*, Chapter One hundred and eleven, intituled *An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements*, and also to amend the "Joint Stock Companies Winding-up Acts, 1848 and 1849," and also to make Provision for the more equal Distribution amongst Creditors as well of the Assets to arise from the separate Estates or Contributions of Shareholders in any Company as of the joint Assets thereof: 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

7 & 8 Vict. c. 111.

this present Parliament assembled, and by the Authority of the same, as follows:

Judge or Master by Advertisement may call Meetings of Creditors to appoint Representative of Creditors.

I. In all Cases in which an Order heretofore has been or hereafter shall be made for the Dissolution and Winding up or for the winding up of any Company, it shall be lawful for the Judge or Master charged with the winding up of any Company, at the Instance of any Creditor of such Company or otherwise, in all Cases in which it shall appear expedient, and for the Benefit of the Parties interested, in and by the Advertisement for Proof of Debts required by the Seventy-second Section of the "Joint Stock Companies Winding-up Act, 1848," or by subsequent Advertisements, or by Notice transmitted to each of the Creditors by Post, as directed by the said Two before-mentioned Acts, from Time to Time to call upon the Creditors of the Company to meet before such Judge or Master at such Time and Place as shall be fixed by him, for the Purpose of appointing One or more Person or Persons other than the Official Manager to represent all the Creditors of the said Company in and about the said Proceedings before him, or in and about so many and such of the same Proceedings as to such Judge or Master shall from Time to Time seem expedient; and it shall be lawful for Two Thirds in Value of the Creditors present at such Meetings, whose Debts shall have been proved before the said Judge or Master, or who shall previously to such Meeting have lodged an Affidavit of their Debt before him, and who would be entitled to vote in the Choice of Assignees under a Bankruptcy, by themselves or by some Person authorized by any Letter or Writing under the Hand of such Creditor, and which Letter or Writing shall require no Stamp Duty to be paid thereon, to choose some Person or Persons to represent all the Creditors of any such Company accordingly; and the Proceedings of such Meeting shall be conducted before and by the said Judge or Master in the same Manner as would be the Case if the said Creditors were proceeding to the Election of Assignees in Bankruptcy; provided, that the said Judge or Master may reject any Person or Persons so chosen who shall appear to him unfit to be such Representative or Representatives, or may remove any such Representative or Representatives, and upon such Rejection or Removal a new Choice of a Representative or Representatives shall be made in like Manner; and from and after the issuing of any such Advertisement as aforesaid all the Creditors of the said Company shall be deemed Parties to the Winding-up: Provided always, that in case such Company heretofore has been or hereafter shall be adjudged bankrupt, the Assignees of the Estate and Effects of such Bankrupt Company shall be deemed and taken to be and they are hereby constituted (without such Advertisement or Meeting as herein-before mentioned) the Representatives of the Creditors for the Purposes

After such Advertisement, Creditors to be deemed Parties to the Winding-up.

Assignees of Bankrupt Companies to be such Representatives.

Purposes of this Act, and shall have and exercise the same Rights and Powers as are hereby given to or vested in such Representative or Representatives; and provided also, that if any such Representative or Representatives of the Creditors shall have been chosen or appointed in the Matter of the winding up of any Company before the Appointment of Assignees under the Adjudication of Bankruptcy against the same Company, then upon such Appointment of Assignees the Rights, Powers, and Authorities of such Representative or Representatives shall cease and determine, and the same Rights, Powers, and Authorities shall thereupon become vested in and may lawfully be had and exercised by such Assignees as aforesaid; and such Representative or Representatives shall be entitled to his or their reasonable Costs in the Matter of the winding up of such Company.

Where Company bankrupt, and no Winding-up Order, Assignees may compromise with Shareholders so as to bind all theCreditors.

II. Whenever any such Company heretofore has been or hereafter shall be declared bankrupt, and no Winding-up Order shall have been made before such Company shall have become bankrupt, the Assignees may, with the Leave of the Court of Bankruptcy first obtained, after Notice to such Creditors, and subject to such Condition (if any) as to obtaining the Consent of Creditors, or any Proportion of them, as the said Court shall think fit to direct, and whether the whole of the Assets of such Company shall have been collected or converted or not, and having regard to the Sufficiency of the Assets of the Company for Payment of the Debts or Liabilities of such Company, and also to the Solvency and Means of the several Shareholders or Members of such Company, or any One or more of them, or to such other Matters as the said Court may deem material, accept and take from all or any or either of the Shareholders or Members of such Company such reasonable Sum or Sums in discharge and satisfaction of the Liability of all and every the Shareholders and Members, or any or either of them, to the Debts and Liabilities of such Company, in such Manner and at such Times as the Assignees for the Time being of the Estate of such Company shall think fit, or make any other Compromise, Composition, or other Arrangement in the Matter; and all such Sum or Sums as shall be payable thereunder shall be paid to and received by the Official Assignee, and shall be applied as Part of the Estate and Effects of such Company; and the said Court shall, at the Request of the Assignees for the Time being of such Company, give to the several Shareholders and Members, or such of them as shall be so discharged, a Certificate under the Hand and Seal of the Commissioner, setting forth the Circumstances of such Discharge, so far as he may deem the same material, and such Certificate shall thenceforth operate to all Intents and Purposes as an absolute Release to the Shareholders and Members to whom the same shall relate,

relate, and may be by them pleaded and used in bar and in discharge of any Action Execution, or other Proceeding by any Creditor whose Debt or Claim is by Law provable under such Bankruptcy; and every such Shareholder and Member shall be entitled, as between himself and the other Shareholders or Members of the Company, to Credit in respect of such Sum or Sums as shall by such Certificate be declared to have been paid by him.

Representatives of Creditors may concur in Proceedings, and in Compromises.

III. It shall be lawful for such Representatives or Representative as herein-before mentioned to join and concur or take part in all the Proceedings in and about the winding up of the said Company, or such of the same Proceedings as the Judge or Master shall deem expedient for the Interest of the Creditors, and also, subject as hereinafter is mentioned, and so far as the Creditors of the said Company are concerned, to make or enter into, take part in, consent to, or approve of any Compromise, Composition, or Arbitration or other Arrangement, whether for the Discharge and Satisfaction of the Liability of all and every the Shareholders and Members, or any or either of them, to the Debts and Liabilities of such Company or otherwise, as such Representatives or Representative for the Time being shall think fit, and the Certificate of the Judge or Master shall be deemed and taken as full and sufficient Evidence and Proof of every such Compromise, Composition, Arbitration, or other Arrangement, and of any Discharge or Release which may have been thereby effected; and it shall also be lawful for such Representatives or Representative as herein-before mentioned (subject as aforesaid) to take part in, consent to, or approve of any Compromise, Composition, Arbitration, or other Arrangement which the Official Manager may propose to make or enter into with the Debtors or Creditors of the said Company or otherwise in respect of its Estate or Affairs; and all the Creditors of the said Company, whether their Debts shall have been then proved or not, shall, subject to the Provisions herein-after contained, be fully and effectually bound by the Acts of such Representatives or Representative as to all such Matters as are authorized by this Act.

All Creditors to be bound thereby.

Compromise, &c. to be subject to Consent of Creditors, if required by Judge or Master.

IV. No such Compromise, Composition, Arbitration, or other Arrangement as in the last Section mentioned shall be valid as against the Creditors of the Company, unless the same be made with the Consent of such Representatives, and with Leave of the Judge or Master, who shall give Leave to the Official Manager to be heard thereon; and every such Compromise, Composition, Arbitration, or other Arrangement shall be subject to such Conditions (if any) as to Payment of the Costs of any Actions, Suits, or other Proceedings, and as to obtaining the Consent of Creditors or any Proportion of them, as the said Judge or Master shall think fit to direct.

V. No

Creditors Rights against Third Persons not to be prejudiced.

V. No Creditor or Claimant shall be prejudiced or affected by any Compromise, Composition, Arbitration, or other Arrangement hereinbefore authorized, or by carrying the same into effect, as to his Right or Remedy against any Person other than the Members and Contributories thereof, to whom the same shall relate, nor otherwise than may be provided thereby; and in the event of any such Compromise, Composition, or other Arrangement as mentioned in the Second and Third Sections of this Act being made with the Contributories or alleged Contributories of the said Company, or any or either of them, whereby or in consequence whereof all or any of such Contributories may be or become discharged from further Liability to the Creditors of the said Company, then and thereupon the Creditors of the said Company, as regards their Rights and Remedies against the Persons, Property, and Effects of any Persons who were Shareholders of the said Company at the Times when the respective Debts or Causes of Action of such Creditors arose, shall be in the same Position, and have the same Remedies against such former Shareholders as last aforesaid, their Persons, Property, and Effects, as if such Creditors had obtained Execution on a Judgment Order or Decree for the Amount of their respective Debts against the Persons, Property, and Effects of the Contributories of the said Company who shall be or become so discharged as aforesaid, and had been unable thereby or otherwise to obtain Satisfaction of such Judgment Decree or Order, or Debts, from such Execution or from such Contributories beyond the Amount received by such Creditors respectively on account of his or their Debts out of the Monies so paid or satisfied by the said Contributories or any of them under such Composition, Compromise, or Agreement as aforesaid.

Proceedings under this Act subject to Appeal.

VI. All Orders, Directions, Reports, and other Proceedings of or before the Judge or Master under this Act shall be subject to the Appeals given by the Two aforesaid "Joint Stock Companies Winding-up Acts, 1848 and 1849;" and all Orders, Directions, Reports, and other Proceedings of or before the Court of Bankruptcy under this Act shall be subject to the Appeals given by the Bankrupt Law Consolidation Act, 1849.

After Advertisements for Representative, Creditors not to sue at Law without Leave of Judge or Master, and Time is not to run against them.

VII. When any such Company heretofore has been or hereafter shall be adjudicated bankrupt, then, if or so soon as Creditors Assignees shall have been appointed, or, when any such Company shall not have been or be adjudicated bankrupt, then after the Judge or Master shall by Advertisement have called on the Creditors to appoint a Representative or Representatives as herein-before mentioned, no such Action as is mentioned in the Seventy-third Section of the said "Joint Stock Companies Winding-up Act, 1848," shall be commenced or proceeded with,

with, otherwise than for the Purpose of making the Company bankrupt, nor shall any Execution or Scire facias be issued or proceeded with against the Person, Property, or Effects of any Member or Members for the Time being of such Company, or any former Member or Members thereof, except by Leave of the Court of Bankruptcy where such Company has been made bankrupt before an Order shall have been made for winding up the Company, or of the said Judge or Master where such Company has not been made bankrupt before such Order shall have been made; and no Time which shall elapse after the Appointment of Creditors Assignees as aforesaid, or after the said Creditors shall be so called on, shall be reckoned as Part of the Time which by virtue of any Statute of Limitations or otherwise is or shall be limited for commencing or prosecuting any Action, Suit, Step, or Proceeding against the Company, or the Persons being Members or Contributories thereof, or any former Members or Contributories thereof, with reference to or in respect of any Debt or Demand which might be discharged or affected by any such Compromise, Composition, Arbitration, or other Arrangement as is herein-before mentioned.

Court may require Security.

VIII. On the Hearing of the Application of any Creditor of any such Company for Leave to commence or proceed with any such Action (otherwise than as aforesaid), or to issue or proceed with a Writ of Scire facias or Execution as aforesaid, it shall be a sufficient Ground for refusing such Leave if the Person against whom or against whose Property or Effects such Action, Scire facias, or Execution shall be sought to be commenced, issued, or proceeded with shall give or shall have given to the Official Assignee, in case such Company shall have been declared bankrupt before an Order shall have been made for winding up the Company, or to the Official Manager in case such Company shall not have been declared bankrupt before such Order shall have been made, Security to the Satisfaction of the Court of Bankruptcy or of the Master or Judge, as the Case may be, for Payment of such Sum or Sums of Money, and upon such Terms, and to be applied in such Manner, as the said Court or the said Master or Judge shall require, having regard to the Debts and Liabilities of such Company and to the Circumstances of the Case, and upon Payment of such Costs as the said Court of Bankruptcy or the said Master or Judge may think fit: Provided always, that such Security to the Official Manager shall be subject to the Consent of the Representative (if any) for the Time being of the Creditors of such Company, or if there shall be no such Representative at the Time of giving such Security, then the same shall be subject to the Consent of the Representative of such Creditors when appointed.

IX. The

Creditors to be at liberty to attend Proceedings and inspect Books of Company.

IX. The Provisions contained in the Thirty-eighth, Fortieth, and Forty-eighth Sections of the "Joint Stock Companies Winding-up Act, 1848," shall extend to and comprise Creditors or Persons who have claimed to be Creditors of the said Company as well as Contributories and alleged Contributories; and after the Judge or Master shall have called on the Creditors to appoint a Representative or Representatives, as herein-before mentioned, such Creditors and Persons who have claimed to be Creditors shall be entitled to attend the Proceedings, and to submit such Proposals, and to inspect such Books, as in the said Sections of the said Act are mentioned.

Judge or Master may appoint Commissioners for receiving Evidence.

X. It shall be lawful for the Judge or Master of the High Court of Chancery in *England* acting in the winding up of any Company to appoint any Person in *Ireland*, and it shall be lawful for the Master of the High Court of Chancery in *Ireland* acting as aforesaid to appoint any Person in *England*, other than or in addition to the Commissioners, Judges, and other Persons named in the Twentieth Section of "The Joint Stock Companies Winding-up Act, 1849," to be Commissioners for the Purposes and with the same Powers and Authorities as in the said Twentieth Section of the last-mentioned Winding-up Act are named or referred to in that Behalf.

Rights of Creditor under Judgment obtained in Ireland not to be affected.

XI. Nothing in this Act contained shall apply to or affect the Rights and Remedies of any Creditor (unless with his own Consent) under or in respect of any Judgment obtained against any Shareholder in *Ireland*, which Judgment has been prior to the passing of this Act duly registered in manner required by the Act passed in the Session of Parliament holden in the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, intituled *An Act to amend the Laws relating to Judgments in* Ireland, or who shall have actually levied Execution or taken Proceedings to obtain an Attachment; but no such Creditor claiming to retain the Benefit of such registered Judgment, Execution, or Attachment, and not to be affected by any Compromise under this Act, shall be entitled to receive any further Dividend, or to have recourse to any other Remedy or Proceeding, other than such Right and Remedies as he may have in respect of such Judgment, Execution, or Attachment against the Lands which are affected by the same, until all the other Creditors shall have been paid in full.

Petitions for winding-up certain Mining Companies not to be filed in Court of Chancery,

XII. And whereas the Dissolution and Winding-up of unincorporated Companies for working Mines within and subject to the Jurisdiction of the Stannaries can now in most Cases be conveniently, cheaply, and expeditiously effected in the Court of the Vice-Warden of the Stannaries: Be it enacted, That no Petition shall hereafter be filed

except upon special Application to the Court of Stannaries, &c.

filed in the Court of Chancery under the Joint Stock Companies Winding-up Acts, 1848, 1849, by any Adventurer or Shareholder in such a Company, except upon special Application to that Court, alleging and showing to the Satisfaction of the Court that the Company cannot be effectually dissolved or wound up in the Court of the Vice-Warden, or unless the Vice-Warden shall certify to the Court of Chancery that the Jurisdiction and Powers of his Court are, under the Circumstances, insufficient effectually to dissolve or wind up the same.

In Cases where such Petitions are filed, Proof of Debts, Sales of Effects, &c., to be effected though the Court of Stannaries.

XIII. In all Cases where such a Petition shall, upon such Application or Certificate, be filed in the Court of Chancery, the Proof of Debts and Creditors Claims, the Sale of Machinery and other Effects of the Company within the Stannaries, and the Distribution of the Proceeds of such Sales, shall be effected (under the general Direction of the Court of Chancery), but by and through the immediate Agency of the Vice-Warden or Registrar of his Court, unless it shall appear to the Court of Chancery to be more conducive to the Interests or Convenience of Adventurers and Creditors, or to the saving of Time or Expense, that such Proceedings or any of them shall take place in the ordinary Course and Practice of the Court of Chancery under the Winding-up Acts above referred to.

Act to be deemed Part of Winding-up Acts.

XIV. This Act shall be taken and construed as a Part of the said "Joint Stock Companies Winding-up Acts, 1848 and 1849."

Interpretation of Terms.

XV. The Words Shareholder, Member, Contributory, and alleged Contributory shall be severally taken to include all Contributories or alleged Contributories within the Meaning of the said "Joint Stock Companies Winding-up Acts, 1848 and 1849," and also all Persons who may apprehend or desire to be discharged from Responsibility in respect of the Debts, Liabilities, or Obligations of the Company.

Short Title of Act.

XVI. In citing this Act in other Acts of Parliament, and in legal Instruments and in legal Proceedings, it shall be sufficient to use the Expression "The Joint Stock Companies Winding-up Amendment Act, 1857."

LONDON:
Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1857.