

COMPANIES ACT, 1893-1938.

56 VICT., No. 8.

Reprinted pursuant to the Amendments Incorporation Act, 1938, as amended by 60 Vic., No. 2; 61 Vic., No. 35; 62 Vic., No. 28; 63 Vic., No. 54; 1 & 2 Ed. VII., No. 14; 2 Ed. VII., No. 19; No. 31 of 1922; No. 28 of 1929; No. 19 of 1930; No. 48 of 1931, and No. 40 of 1938.

AN ACT to consolidate and amend the Law relating to Companies.

[Assented to 13th January, 1893.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY

1. This Act may be cited as the *Companies Act*, 1893-1938.

Short title.
1938, No. 22,
s 4.

2. This Act is divided into Parts, as follows:—

Division.

PART I.—SECTIONS 1 TO 8: PRELIMINARY.

PART II.—SECTIONS 9 TO 24: CONSTITUTION
AND INCORPORATION OF COM-
PANIES.

PART III.—SECTIONS 25 TO 82: MANAGE-
MENT AND ADMINISTRATION.

PART IV.—SECTIONS 83 TO 100: COMPANIES
AUTHORISED TO REGISTER
UNDER THIS ACT.

SECTIONS 101 TO 109: CO-OPER-
ATIVE COMPANIES.

PART V.—SECTIONS 110 TO 198: THE
WINDING UP OF COMPANIES.

PART VI.—SECTIONS 199 TO 204: THE
WINDING UP OF UNREGISTERED
COMPANIES.

PART VII.—SECTION 205: STRIKING DE-
FUNCT COMPANIES OFF THE
REGISTER.

PART VIII.—SECTIONS 206 TO 240: FOREIGN
COMPANIES.

PART IX.—SECTIONS 241 TO 249: NO-
LIABILITY COMPANIES.

PART X.—SECTIONS 250 TO 253: LIABILITY
OF PROMOTERS AND DIRECTORS.

PART XI.—SECTIONS 254 TO 277: MISCEL-
LANEOUS.

**Interpreta-
tions.**

56 Vic., No.
8, s. 3.

3. In this Act and the Schedules hereto, and any rules made hereunder, the following terms have the meanings hereinafter respectively assigned to them, if not inconsistent with the context or subject matter—

“Articles” means the articles of association of a company;

61 Vic., No.
35, s. 1.

62 Vic., No.
28, s. 1.

“Attorney” in sections two hundred and twenty-three to two hundred and forty, inclusive, includes agent, director, manager, and secretary, whether appointed by power of attorney or otherwise, or any person for the time being discharging any of such offices in this State;

63 and 64
Vic., ch. 12,
s. 6 (*Imp.*).

In Parts III., VII., X., and XI. “Company” means a company registered under the Joint Stock Companies Ordinance, 1858, the Mining Companies Act, 1888, or this Act;

In Part IX. “Company” means a company registered as a no-liability company under the Mining Companies Act, 1888, or this Act;

61 Vic., No.
35, s. 1.

63 and 64
Vic., ch. 12,
s. 6 (*Imp.*).

“Colonial Seal” means the common seal of a foreign company in use in this State;

“Colony” means the Colony of Western Australia;

“Contributory” means every person liable to contribute to the assets of a company in the event of the same being wound up, and shall also, in all proceedings for determining the persons who are to be deemed contributories and in all pro-

ceedings prior to the final determination of such persons, include any person alleged to be a contributory;

“Court” means the Supreme Court or any Judge thereof;

“Creditor” means a person who, in the event of the winding up of a company, would be entitled to prove under such winding-up;

“Deed of settlement” shall include any contract of co-partnership or other instrument constituting or regulating a company and not being an Act of Parliament or Royal Charter or Letters Patent, or the articles of association of a company heretofore incorporated under the Joint Stock Companies Ordinance, 1858, or incorporated under this Act;

“Foreign company” means any joint stock company, or corporation duly incorporated for trading or other business purposes according to the laws in force in the country in which it is incorporated, other than a company incorporated in Western Australia;

“Gazette” means the *Government Gazette*.

No. 30 of
1918, s. 4.

“Judge” means a Judge of the Supreme Court;

“Liability,” in Part V., includes any compensation for work or labour done; any obligation or possibility of an obligation to pay money or money’s worth pursuant to or on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur or is or is not likely to occur or capable of occurring before the conclusion of the winding-up of a company; and generally includes any express or implied covenant, contract, agreement, engagement, or undertaking to pay, or capable of resulting in the payment of money or money’s worth, whether such payment be, as respects amount, fixed or unliquidated, and payable in one sum or by instalments, or periodical payments, as respects time, present or future, certain, or dependent on any one contingency, or two or

more contingencies, or as to mode of valuation capable of being ascertained by fixed rules, or assessable only as matter of opinion;

“Limited company” means a company the liability of the members of which is by the memorandum limited to the amount (if any) unpaid on the shares respectively held by them;

61 Vic., No.
35, s. 1.
See 62 Vic.,
No. 28.

“Local Register” means the register established under the Companies Act, 1893, Amendment Act, 1897;

“Memorandum” means the memorandum of association of a company under this Act, or the Joint Stock Companies Ordinance, 1858;

“Mining purposes” means the purpose of obtaining any metal or mineral by any mode whereby soil, earth, rock, or stone may be disturbed, or smelted, refined, crushed, or otherwise dealt with;

“Month” means “calendar month”;

“No-liability company” means a company formed with no liability on the part of its members;

“Ordinance” means the Joint Stock Companies Ordinance, 1858, and any amendment thereof;

“Prescribed” means prescribed by rule;

61 Vic., No.
35, s. 1.

“Principal register” means the register of members of any foreign company kept at the principal office of such company outside this State;

“Registrar” means the Registrar of Companies;

“Registration office” means the office for the registration of companies;

“Representative” means an executor or administrator, and includes the Curator of Intestate Estates in cases where the Court shall have authorised him to administer the estate of a deceased person. It also includes “devisee” and “heir at law” where a devisee or heir at law is liable as a contributory;

“Rule” means a rule contained in the Seventh Schedule to this Act, or made under the authority of this Act;

“Special resolution” means a resolution passed at a general meeting of a company of which notice has been duly given specifying the intention to propose such resolution, and at which such resolution is passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the articles of the company to vote as may be present in person or (in cases where the articles allow proxies) by proxy;

“This Act” means the Companies Act, 1893, as amended;

“The principal Act” means the Companies Act, 1893;

“This State” means the State of Western Australia, and prior to the 1st day of January, 1901, the Colony of Western Australia;

“Unlimited company” means a company formed on the principle of having no limit placed on the liability of its members.

4. (1) The Acts mentioned in the First Schedule to this Act are repealed. Such repeal shall not affect—

Repeal First
Schedule.
56 Vic., No.
2, s. 4.

- (a) anything done under any Act hereby repealed;
- (b) the incorporation of any company under any Act hereby repealed;
- (c) any provision relating to evidence contained in any repealed Act except where such provision is inconsistent with this Act;
- (d) any right or privilege acquired or liability incurred under any Act hereby repealed;
- (e) any pecuniary penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed;
- (f) any disability incurred under any Act hereby repealed;
- (g) Table B in the Schedule annexed to the Ordinance so far as the same applies to any company existing at the commencement of this Act.

Any proceedings begun under the repealed Acts, or any of them, may be continued and concluded as though this Act had not been passed.

(2) The repeal effected by this section shall not affect any of the provisions of the Mining Companies Act, 1888, relating to the winding up of companies already registered thereunder except to the extent to which the same relate to the winding up of no-liability companies registered under the said Act and not under liquidation at the coming into operation of this Act.

Act not to apply to certain societies and companies.

56 Vic., No. 8, s. 5.

5. Subject to the provisions of the next following section and except as to Part VI. and the provisions therein contained or incorporated, this Act shall not apply to any Friendly Society, Benefit Society, or Building Society, nor to any company or co-partnership which carries on the business of life insurance, either alone or together with any other business, unless such company is already registered under the Ordinance, nor to any company or co-partnership formed or to be formed for the purpose of carrying on the business of banking.

References in Acts to the Ordinance to be read as references to this Act.

56 Vic., No. 8, s. 6.

6. Where any unrepealed Act enacts that the Ordinance or any of the provisions thereof shall apply to life assurance or other companies, or requires or empowers anything to be done or any penalties to be recovered by reference to such Ordinance or provisions, such enactments shall be deemed to refer to this Act and the corresponding portions of this Act.

Prohibition of partnership exceeding a certain number of persons.

56 Vic., No. 8, s. 7.

7. No company, association, or partnership consisting of more than twenty persons shall be formed after the commencement of this Act, for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or unless it is formed or constituted under the provisions of some Act of the Imperial Parliament, or of the Parliament of the said Colony, or of this State, or by Letters Patent, or Royal Charter.

63 and 64 Vic., ch. 12, s. 6 (*Imp.*).

Appointment of Registrar of Companies.

56 Vic., No. 8, s. 8.

8. (1) The Governor may appoint a Registrar of Companies for the purposes of this Act; and until such appointment shall be made, the Registrar of the Supreme Court shall be such Registrar.

(2) The Registrar of Companies shall have a seal, and such seal shall bear the words "Registrar of Companies, Western Australia." Registrar's seal.

PART II.—CONSTITUTION AND INCORPORATION OF COMPANIES. Part II.

Memorandum of Association.

9. Any five or more persons associated for any lawful purpose, may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company with or without limited liability or, as to a company formed for mining purposes, with no liability. Mode of forming company.
56 Vic., No. 8, s. 9.

10. The liability of the members of a company with limited liability shall be limited to the amount, if any, unpaid on the shares respectively held by them. Mode of limiting liability of members.
56 Vic., No. 8, s. 10.

11. (1) The memorandum of a limited or no-liability company shall contain— Requisites of memorandum.
56 Vic., No. 8, s. 11.

- (a) The name of the company with the word "limited," or the word "no-liability," as the case may require, as the last word:
- (b) The objects for which the company is established:
- (c) A declaration that the liability of the members is limited, or that the members take no liability, as the case may require:
- (d) The amount of the capital of the company divided into shares of a certain fixed amount.

(2) The memorandum of an unlimited company shall contain—

- (a) The name of the company:
- (b) The objects for which the company is established.

The memorandum may be in one of the Forms in the Sixth Schedule. Sixth Schedule.

12. No company shall be registered as a no-liability company until it is proved by statutory declaration to the satisfaction of the Registrar that five per cent. of the nominal capital of the company has been paid up and lodged to the credit of the company in some bank approved by the Registrar. Company not to be registered until five per cent. of nominal capital paid.
56 Vic., No. 8, s. 12.

Each subscriber to take at least one share in company with share capital.
56 Vic., No. 8, s. 13.

13. As to all companies having capital divided into shares, each subscriber to the memorandum shall take and subscribe for one share at least, and shall write opposite to his name the number of shares he takes.

Limited company may have directors, etc., with unlimited liability.
56 Vic., No. 8, s. 14.

14. In the case of a limited company the liability of the directors or manager, or managing director, may be unlimited, in which case, in lieu of the declaration referred to in section eleven, subsection (c), the memorandum shall contain a declaration that the liability of ordinary members is limited, but that the liability of the directors, manager, or managing director, as the case may require, is unlimited.

Signature to and effect of memorandum.
56 Vic., No. 8, s. 15.

15. (1) The signature of each subscriber to the memorandum shall be attested, and the memorandum shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Memorandum not to be altered save as provided.

(2) No alteration shall be made by any company in its memorandum save as hereinafter provided.

Articles of Association.

Signature and effect of articles.
56 Vic., No. 8, s. 16.

16. (1) The memorandum may, in the case of a limited company, and shall, in the case of a no-liability company or an unlimited company, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum, and prescribing regulations for the company: Provided that in the case of a company which has passed a memorandum or articles at any meeting convened under section eighteen, no memorandum or articles shall be filed other than the memorandum or articles as passed at such meeting, or as altered at a subsequent meeting under the same section.

Regulations to be prescribed by articles of association.

Form of articles.

(2) The articles shall be expressed in separate paragraphs numbered in arithmetical progression, and may adopt all or any of the regulations contained in the table marked A in the Second Schedule hereto. They shall, in the case of an unlimited company that has a capital

Second Schedule.

divided into shares, state the amount of capital with which the company proposes to be registered, and in the case of an unlimited company, that has not a capital divided into shares, state, for the purpose of enabling the Registrar to determine the fees payable on registration, the number of members with which the company proposes to be registered.

17. In the case of a limited company, if the memorandum be not accompanied by articles, or in so far as the articles do not exclude or modify the regulations contained in the table marked A in the Second Schedule hereto, such regulations shall, so far as applicable, be deemed to be the articles of the company in the same manner and to the same extent as if they had been registered as such.

Application of
table A.

56 Vic., No.
8, s. 17.

18. (1) The persons who have agreed to become members of a company may before incorporation pass a memorandum with or without articles not inconsistent with this Act for the purposes of the company, or alter any such memorandum or articles already passed, at a meeting to be convened for that object.

Passing mem-
orandum
and articles
before incor-
poration.

56 Vic., No.
8, s. 18.

(2) The following provisions shall apply to any such meeting—

(a) A chairman shall be appointed by show of hands of those present and entitled to vote:

(b) Every proposition shall be first submitted to a show of hands on which each person personally present and entitled to vote shall have one vote:

(c) The chairman's declaration that any proposition is carried or lost shall be conclusive evidence of the fact unless a poll is demanded by a person entitled to vote:

(d) On such poll being demanded it shall be taken either forthwith or at such time and place as the majority of persons present and entitled to vote shall by show of hands determine. The chairman's decision as to such determination shall be conclusive evidence thereof:

(e) On such poll, in case of a company having a capital divided into shares, each person entitled to vote shall have votes in respect of the shares

which he has agreed to take according to the following scale:—For every share up to ten, one vote; for every five shares beyond the first ten up to one hundred, one additional vote; for every ten shares beyond the first hundred, one additional vote. In case of an unlimited company, that has not a capital divided into shares, each person entitled to vote shall have one vote:

- (f) The chairman's written certificate of the result of the poll, signed by him, shall be conclusive evidence of such result:
- (g) Any person entitled to vote may, by writing signed by him, appoint any other person so entitled as his proxy to vote on his behalf on any poll at such meeting, or at any adjournment thereof. The chairman's decision as to the sufficiency of any appointment of a proxy shall be conclusive.

(3) Any such meeting shall be convened—

- (a) By the promoters of the company or a majority of them by advertisement published not more than fourteen or less than seven days before the date of such meeting in one daily newspaper in Perth: or
- (b) By such person and in such manner as shall be provided in the prospectus of the company, or in any agreement by which the persons who have agreed to take shares shall be bound.

(4) Any such meeting may be adjourned to such time and place as the majority of those present and entitled to vote shall by show of hands determine. The chairman's decision as to such determination shall be conclusive evidence thereof.

(5) A copy of the memorandum or articles with a certificate signed by the chairman of the meeting or the last adjournment thereof within three months after such memorandum or articles shall have been fully passed, that such copy is a true copy of the memorandum or articles of the company as duly passed under this section, shall be conclusive evidence of the fact.

(6) If a memorandum or articles passed in pursuance of this section shall contain anything which is inconsistent with or a departure from the terms or conditions

upon which any person shall have applied for shares in or agreed to become a member of the company, such person may, within one month from the passing of the memorandum or articles, give written notice to the Registrar that he withdraws from the company, which notice shall operate as a rescission of such person's agreement to take shares in or become a member of the company.

(7) Nothing in this section shall affect the validity of a memorandum or articles agreed to otherwise than as in this section provided.

19. The signature of each subscriber to the articles shall be attested, and the articles shall, when registered, bind the company and all members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform thereto, subject to the provisions of this Act.

Effect of
articles.
56 Vic., No.
8, s. 19.

All moneys payable by any member to the company, in pursuance of the articles, shall be deemed to be a specialty debt due from such member to the company.

General Provisions.

20. (1) The memorandum and the articles, if any, shall be delivered to the Registrar, who shall retain and register the same.

Registration
of memoran-
dum and ar-
ticles and
effect thereof.
56 Vic., No.
8, s. 20.

(2) Upon such registration the Registrar shall certify, under his hand and seal, that the company is incorporated as a limited company, a no-liability company, or an unlimited company, as the case may be.

(3) The subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, and with such liability on the part of the members to contribute to the assets of the company, in the event of the same being wound up, as is hereinafter mentioned.

Certificate to be gazetted, and *Gazette* or certificate to be conclusive of incorporation.

56 Vic., No. 8, s. 21.

21. After signing and sealing such certificate of incorporation, the Registrar shall insert a notice in the *Gazette* stating the issue of such certificate, and the terms thereof, and the said certificate, or a copy thereof, certified as correct under the hand and seal of the Registrar for the time being, or the *Gazette* containing such notice, shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

Inspection of documents.

56 Vic., No. 8, s. 22.

22. Any person may inspect the documents kept by the Registrar relating to companies, and may require a certificate of the incorporation of any company, or a copy or extract of any other such document, or any part thereof, to be certified by the Registrar.

Copies of memorandum and articles to be given to members.

56 Vic., No. 8, s. 23.

23. A copy of the memorandum having annexed thereto the articles, if any, shall be supplied to every member at his request, on payment of one shilling, or such less sum as may be prescribed by the company; and if any company makes default in supplying a copy of the memorandum and articles, if any, to a member in pursuance of this section, the company shall for each offence incur a penalty not exceeding one pound.

Prohibition against identity of names in companies.

56 Vic., No. 8, s. 24.

24. No company shall be registered under a name identical with that by which an existing company is already registered, or so nearly resembling the same as in the opinion of the Registrar to be calculated to deceive, except where the existing company is in course of being wound up, and testifies its consent in such manner as the Registrar requires.

Part III.

PART III.—MANAGEMENT AND ADMINISTRATION.

Nature of interest in company.

56 Vic., No. 8, s. 25.

25. The shares or other interest of any member in a company shall be personal estate, capable of being transferred in manner provided by the articles, and shall not be of the nature of real estate; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Manner in which shares are to be issued and held.

56 Vic., No. 8, s. 26.

26. Every share in a company, excepting a no-liability company, shall be deemed to have been issued and to be held subject to the payment of the whole amount thereof

in cash, unless it shall have been otherwise determined by the memorandum or articles or by a contract, duly made in writing, and filed with the Registrar, at or before the issue of such shares.

27. The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Definition of
"members."
56 Vic., No.
8, s. 27.

28. Any transfer of the share or other interest of a deceased member of a company made by his representative shall, notwithstanding such representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by
representa-
tive.
56 Vic., No.
8, s. 28.

29. Every company shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:—

Register of
members.
56 Vic., No.
8, s. 29.

- (1) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, and of the amount paid or agreed to be considered as paid on the shares of each member:
- (2) The date at which the name of any person was entered in the register as a member:
- (3) The date at which any person ceased to be a member:

63 Vic., No.
54, s. 9.

Every company not complying with this section shall incur a penalty not exceeding five pounds for every day during which such non-compliance continues; and every director or manager of such company who knowingly and wilfully authorises or permits such non-compliance shall incur the like penalty.

Yearly list of members.
56 Vic., No. 8, s. 30.

30. Every company having a capital divided into shares, shall make once in every year a list of all persons who, on the thirty-first day of March then next preceding, are members of the company; and such list shall contain the names, and addresses, and occupations, if any, of all the members therein mentioned, the number of shares held by each of them, and a summary specifying the following particulars:—

- (1) The amount of the capital of the company, and the number of shares into which it is divided:
- (2) The number of shares taken from the commencement of the company up to the said thirty-first day of March:
- (3) The amount of calls made on each share:
- (4) The total amount of calls received:
- (5) The total amount of calls unpaid:
- (6) The total amount of shares forfeited:
- (7) The names and addresses, and occupations, if any, of the persons who have ceased to be members since the thirty-first day of March next preceding the completion of the last list, and the number of shares held by each of them on the same thirty-first day of March.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after the said first-mentioned thirty-first day of March, and a copy shall forthwith be forwarded to the Registrar: Provided that this section shall not apply to a no-liability company.

Penalty on company not keeping a proper register.
56 Vic., No. 8, s. 31.

31. If any company having a capital divided into shares make default in complying with the provisions of the last preceding section, such company shall incur a penalty not exceeding five pounds for every day during which such default continues; and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits any such default shall incur a like penalty.

No entry of trusts on register.
56 Vic., No. 8, s. 32.

32. No notice of any trust, expressed, implied, or constructive, shall be entered on the register of members, or be receivable by the Registrar.

33. A certificate under the common seal of the company, specifying any share or shares, or stock, held by any member thereof, shall be *prima facie* evidence of the title of the member to the share or shares, or stock therein specified.

Certificate of shares.
56 Vic., No. 8, s. 32.

34. (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed as hereinafter mentioned, shall, during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day upon which the registered office of the company shall be open for business, be appointed for inspection), be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection, and every such member, or other person, may demand a copy of such register, or of any part thereof, or of any list or summary prepared under section thirty, on payment of sixpence for every one hundred words required to be copied.

Inspection of register.
56 Vic., No. 8, s. 34.

(2) If such inspection or copy be refused, or if the company shall neglect to comply with a lawful demand for such inspection or copy, the company shall incur for each refusal or neglect a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal or neglect continues, and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such refusal or neglect shall incur the like penalty. In addition to the above penalty a Judge may by order compel an immediate inspection of the register, and make such further or other order as the nature of the case requires.

35. Any company may, upon giving notice by advertisement in any newspaper published in Perth, or in the place nearest to the registered office of the company, close the register of members for any time or times not exceeding in the whole thirty days in each year, provided that the register shall not be closed at any one period for more than seven consecutive days.

Power to close register.
56 Vic., No. 8, s. 35.

Remedy for
improper
entry, or
omission of
entry in
register.

56 Vic., No.
8, s. 36.

36. (1) When the name of any person is, without sufficient cause, entered in, or omitted from, the register of members of any company, or when default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may apply to the Court for an order that the register may be rectified, and the Court may either refuse such application, with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company, or any other party to the proceedings, to pay all the costs of such application, and the damages any party aggrieved may have sustained.

(2) The Court may, in any proceedings under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register, and may direct an issue to be tried in which any question of law may be raised in addition to any question of fact.

Notice to
Registrar of
rectification
of register.

56 Vic., No.
8, s. 37.

37. When an order has been made rectifying the register in the case of a company hereby required to send in a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to
be evidence.

56 Vic., No.
8, s. 38.

38. The register of members shall be *prima facie* evidence of all matters by this Act directed or authorised to be inserted therein:

Registered
office of
company.

56 Vic., No.
8, s. 39.

63 and 64
Vic., ch. 12
(Imp.).

39. (1) Every company shall have a registered office in some town or place in this State, to be approved of by the Registrar, to which all communications and notices may be addressed, and which office shall, while the business of the company is being carried on, be accessible to the public for not less than four hours on at least two days in each week.

(2) Notice of the situation of such registered office, and the days and hours during which it is accessible to the public, and of any change therein, shall be inserted in the *Gazette* and in one daily newspaper published in Perth or in any district in which such office is situated, and shall be given to the Registrar, and, if approved, recorded by him. Until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Notice of
situation of
registered
office.

(3) If any company carries on business without having such an office so accessible, or without having given such notice as aforesaid, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

40. The directors of every company shall appoint a secretary, who shall, while the business of the company is being carried on, be present at the registered office of his company by himself, or his agent or clerk, on every day at the hours on and at which the registered office is to be accessible to the public. Any such secretary who shall omit to comply with this section shall be liable to a penalty not exceeding one pound for every day on which such omission to be so present occurs.

Directors to
appoint
secretary.

56 Vic., No.
8, s. 40.

41. (1) Every company shall paint or affix and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Publication
of name by
company.

56 Vic., No.
8, s. 41.

(2) If any company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted

Penalties on
non-publica-
tion of name.

or affixed, and every director or manager of the company who knowingly and wilfully authorises or permits such default shall be liable to the like penalty.

(3) If any director, manager, secretary, or other officer of such company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note or endorsement, cheque, or order for money or goods, or issues, or authorises to be issued, any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Accounts to
be kept by
company.

56 Vic., No.
8, s. 42.

42. The directors of every company shall cause true accounts to be kept—

of the stock-in-trade of the company;

of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and

of the assets and liabilities of the company.

And for any default under this section any director, who shall knowingly and wilfully permit such default, shall be liable to a penalty not exceeding ten pounds for each day for which such default continues.

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of members during the hours of business.

Register of
mortgages.

56 Vic., No.
8, s. 43.

43. (1) Every company shall keep a register of all mortgages, bills of sale, and other charges specifically affecting property of the company, and shall enter in such register, in respect of each mortgage, bill of sale,

or charge, a short description of the property mortgaged or charged, the amount of charge created, and the rate of interest payable, and the names of the mortgagees or persons entitled to such charge.

(2) If any property of a company shall be mortgaged or charged, or if any bill of sale shall be given without such entry as aforesaid being made, every director, manager, secretary, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds.

(3) The register of mortgages, bills of sale, and charges required by this section shall be open to inspection by any member or creditor of the company, at all reasonable times, and if such inspection be refused, any officer of the company refusing the same, and every director, manager, or secretary of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and in addition to the above penalty, a Judge may, by order, compel an immediate inspection of the register.

44. The manager, or other authorised officer, of every insurance company under the Ordinance or this Act, shall, on the first Monday in February and the first Monday in August in every year during which it carries on business, make before some justice a declaration in the form contained in the Fifth Schedule hereto, or as near thereto as circumstances will admit; and a copy of such declaration shall be put in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and shall be given to any member or creditor of the company who applies for the same, upon payment of a sum not exceeding sixpence. If default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day while such default continues, and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Certain companies to publish statements.

56 Vic., No. 8, s. 44

Fifth Schedule.

List of directors, etc., to be sent to Registrar of Companies.

56 Vic., No. 8, s. 45.

45. (1) Every company not having a capital divided into shares shall keep at its registered office a register containing the names and addresses, and the occupations of its directors and managers, and shall send to the Registrar a copy of such register, and shall from time to time notify to him any change that takes place in such directors or managers.

Penalty on company not keeping register of directors, etc.

(2) If any company not having a capital divided into shares make default in keeping a register of its directors and managers, or in sending a copy of such register to the Registrar, in compliance with this section, or in notifying to the Registrar any change that takes place in such directors or managers, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of such company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Contracts, how made.

56 Vic., No. 8, s. 46.

46. Contracts on behalf of any company may be made, varied, or discharged, as follows:—

- (1) Any contract which, if made between private persons, would be by law required to be in writing under seal, may be made, varied, or discharged, in the name and on behalf of the company, in writing, under the common seal of the company;
- (2) Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made, varied, or discharged, in the name and on behalf of the company, in writing, signed by any person acting under the express or implied authority of the company;
- (3) Any contract which, if made between private persons, would by law be valid, although made by parole only, and not reduced into writing, may be made, varied, or discharged by parole, in the name and on behalf of the company, by any person acting under the express or implied authority of the company;

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be

binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

47. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company, if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by, or on behalf or on account of the company, by any person acting under the authority of the company.

Promissory
notes and
bills of
exchange.
56 Vic., No.
8, s. 47.

48. If any company carries on business when the number of its members is less than five, for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognisant of the fact that it is so carrying on business with fewer than five members, shall be severally liable for the payment of the whole debts of the company contracted during such time.

Prohibition
against
carrying on
business with
less than five
members.
56 Vic., No.
8, s. 48.

49. (1) Every company registered under this Act shall hold a general meeting within four months after the memorandum is registered; and if such meeting be not held, the company shall be liable to a penalty not exceeding five pounds for every day after the expiration of such four months until the meeting is held; and every director, manager, or secretary of the company who knowingly authorises or permits such default, shall be liable to the same penalty.

Company to
hold meeting
within four
months after
registration.
56 Vic., No.
8, s. 49.

(2) A general meeting of every company shall be held once at least in every year.

General
meeting of
company.

50. (1) Subject to the provisions of this Act and to the conditions contained in the memorandum, any company may in general meeting from time to time by special resolution alter or repeal all or any of the articles of the company, whether registered articles or articles contained in Table B in the Schedule to the Ordinance, or in Table A in the Second Schedule to this Act (where either of such tables is applicable to the

Power to alter
regulations by
special
resolution.
56 Vic., No.
8, s. 50.

company), or make new articles to the exclusion of or in addition to all or any of the articles of the company.

(2) Any articles made under this section shall be deemed to be articles of the company of the same validity as if they had been the original articles, and shall be subject in like manner to be altered or repealed by any subsequent special resolution.

(3) At any meeting convened for passing a special resolution, unless a poll be demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same. In computing the majority, where a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the articles.

(4) Notice of any such meeting shall be deemed to be duly given, and the meeting to be duly held, whenever such notice is given, and meeting held in manner prescribed by the articles.

Provisions
where no
articles as to
meeting.

56 Vic., No.
8, s. 51.

51. In default of any article as to voting, every member shall have one vote at any general meeting of a company; in default of any article as to summoning general meetings, a meeting shall be deemed to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by Table A in the Second Schedule hereto; in default of any articles as to the persons to summon meetings, five members may summon the same; and in default of any article as to who is to be chairman of a meeting, any person elected by the members present may preside.

Effect of
special reso-
lution in
certain cases.

56 Vic., No.
8, s. 52.

52. Anything by this Act authorised to be done by special resolution may be so done, notwithstanding anything to the contrary contained in the memorandum or articles of any company now registered or hereafter to be registered.

Registration
of special
resolutions.

56 Vic., No.
8, s. 53.

53. When a special resolution is passed by a company, a copy thereof shall be printed and forwarded to the Registrar, and be recorded by him. If such copy

be not so forwarded within fifteen days from the date of the passing of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default shall be liable to a like penalty.

54. Where articles have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles that may be issued after the passing of such resolution. Where no articles have been registered a copy of any special resolution shall be forwarded to any member requesting the same, on payment of one shilling, or such less sum as the company may direct. If any company make default in complying with this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director, manager, and secretary of the company, who knowingly and wilfully authorises or permits such default, shall incur the like penalty.

Copies of
special
resolutions.

56 Vic., No.
8, s. 54.

55. Any company may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in this State; and every deed under the seal of such attorney, and signed by him on behalf of the company, shall be binding on the company and have the same effect as if it were under the common seal of the company.

Execution of
deeds abroad.

56 Vic., No.
8, s. 55.

56. The Governor may appoint one or more competent inspectors to examine into the affairs of any company, and to report thereon in such manner as the Governor may direct, upon the application following, that is to say:—

Examination
of affairs of
company by
inspectors.

56 Vic., No.
8, s. 56.

- (1) In the case of any company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued;

- (2) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Application
for inspection
to be sup-
ported by
evidence.

56 Vic., No.
8, s. 57.

57. The Governor, before appointing any inspector, may require the applicants to satisfy him that they have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same, and to give security for payment of the costs of the inquiry.

Inspection of
books.

56 Vic., No.
8, s. 58.

58. It shall be the duty of all officers and agents of the company to produce all books and documents in their custody or power for the examination of the inspectors. Every inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Penalty.

Result of
examination.
how dealt
with.

56 Vic., No.
8, s. 59.

59. Upon the conclusion of the examination, the inspectors shall report to the Governor their opinion, and a copy of such report shall be sent to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor shall direct the same to be paid out of the assets of the company, which he is hereby authorised to do.

Power of
company to
appoint
inspectors.

56 Vic., No.
8, s. 60.

60. Any company may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor with this exception,

that instead of making their report to the Governor, they shall make the same in such manner and to such persons as the company in general meeting directs, and the officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Governor.

61. A copy of the report of any inspectors appointed under this Act purporting to be authenticated by the signatures of such inspectors or by the seal of the company shall be admissible in any legal proceeding as evidence of the opinion of the inspectors, in relation to any matter contained in such report.

Report of
inspectors to
be evidence.

56 Vic., No.
8, s. 61.

62. Every company shall cause minutes of all resolutions and proceedings of meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books. Any such minute as aforesaid, if signed by any person purporting to be the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting of the company, or of directors, or managers, in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat and proceedings had to have been duly passed and had, and all appointments of directors, managers, secretaries, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, secretaries, and liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Evidence of
proceedings
at meetings.

56 Vic., No.
8, s. 62.

63. In any action brought by a company against any member to recover any call or other money due from such member in his character of member it shall not be necessary to set forth the special matter but it shall be

Pleadings in
action against
members.

56 Vic., No.
8, s. 63.

sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made, or other money due.

Provision as to security for costs in actions brought by certain companies.

56 Vic., No. 8, s. 64.

64. Where a limited or no-liability company, whether incorporated under this Act, the Ordinance, or the Mining Companies Act, 1888, is plaintiff or complainant in any action or other legal proceeding other than such as is in the last preceding section mentioned, any Judge or Magistrate of a Local Court or Justice of the Peace having jurisdiction in the matter may, if he have reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Governor may alter forms in Schedule.

56 Vic., No. 8, s. 65.

65. The forms set forth in the Sixth Schedule hereto, or forms to the like effect or as near thereto as circumstances admit, shall be used in all matters to which such forms refer. The Governor may from time to time make alterations in and additions to the tables and forms contained in the Second, Fifth, and Sixth Schedules hereto, and make alterations in the tables in the Third and Fourth Schedules, but so that the amount of fees payable to the Registrar under the last mentioned Schedules be not increased. Any such table or form when altered shall be published in the *Gazette*, and shall thereupon have the same force as if it were included in the Schedules to this Act; but no alteration made by the Governor in the table marked A contained in the Second Schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

Power for companies to refer matter to arbitration.

56 Vic., No. 8, s. 66.

66. Any company may from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration, any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms, order anything to be done, or determine any matter

capable of being lawfully determined by the parties to the reference themselves or the directors or other managing body of any company party to the reference.

67. (1) Any company may, with the sanction of a special resolution of the company, and with the approval of the Registrar (certified by him in writing under his hand and to be registered by him), change its name, and, upon such change being made, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of the alteration of name.

Power of
companies to
change name.
56 Vic., No.
8, s. 67.

(2) No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

(3) Any alteration so made shall be advertised by the Registrar once in the *Gazette*, and in one newspaper published in this State near to the registered office of the company.

(4) A certificate or an advertisement in the *Gazette* under this section shall be conclusive evidence of the alteration to which it relates.

68. (1) Subject to the provisions hereinafter contained, any company may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company so far as may be required for all or any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement either with or without any alteration as aforesaid with respect to the objects of the company.

Power to alter
memorandum
with regard
to objects.
56 Vic., No.
8, s. 68.

(2) The purposes for which the alteration of the memorandum of association or deed of settlement may be made with respect to the objects of a company are:—

- (a) To carry on the company's business more economically or more efficiently;

- (b) To attain its main purpose by new or improved means;
- (c) To enlarge or change the local area of its operations;
- (d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company;
- (e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

(3) No alteration under this section shall take effect until confirmed by the Court on petition.

(4) Before confirming any such alteration the Court must be satisfied—

- (a) That the alteration is desired for all or some or one of the purposes in this section above mentioned;
- (b) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and
- (c) That with respect to every creditor who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has determined, or has been secured to the satisfaction of the Court.

(5) The Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(6) An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit; and the Court may confirm any such alteration either wholly or in part, and may make such orders as to costs as it deems proper.

(7) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of

the members of the company, or of any class of such members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interest of dissentient members, and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided that it shall not be lawful to expend any part of the capital of the company in any such purchase.

69. (1) Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a copy of the substituted memorandum and articles of association, as the case may be, shall be delivered by the company to the Registrar within fifteen days from the date of the order. The Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requirements of this Act, with respect to such alteration and the confirmation thereof, have been complied with, and that the alteration and confirmation are valid, and thenceforth 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 as if it were a company registered under Part II. of this Act, with such memorandum and articles, and the company's deed of settlement shall cease to apply to the company.

Registration
of order
confirming
alteration.
56 Vic., No.
8, s. 69.

(2) If a company make default in delivering to the Registrar any document required by this section 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.

Modification
of memoran-
dum with
regard to
capital.
56 Vic., No.
8, s. 70.

70. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum as to effect all or any of the following purposes:—

- (1) The increase of its capital by the issue of new shares of such amount as may be thought expedient:
- (2) The consolidation and division of its capital into shares of larger amount than its existing shares:
- (3) The division (by subdivision of its existing shares or any of them) of its capital or any part thereof into shares of smaller amount than fixed by its memorandum: Provided that in such subdivision the proportion between the amount which is paid or deemed paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the share or shares from which the share of reduced amount is derived:
- (4) The conversion of its paid up shares into stock:
- (5) The reduction of its capital, whether paid up or not, including the cancellation of any lost capital, or any capital not represented by available assets, or the payment off of any capital which may be in excess of the wants of the company; and as to paid up capital, the reduction thereof, either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company. To the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved:
- (6) The reduction of its capital by the cancellation of any shares which at the date of the passing of the special resolution authorising such cancellation have not been taken or agreed to be taken by any person:
- (7) Making the liability of the directors or managers or of the managing director unlimited.

Company to
add "and
reduced" to
its name for
a limited
period.
56 Vic., No.
8, s. 71.

71. Subject to subsection (4) of the next following section every company which has passed a special resolution for reducing its capital shall, from the date of

such resolution, add to its name until such date as the Court shall fix, the words "and reduced" as the last words in its name, and such words shall, until such last-mentioned date, be deemed part of the name of the company.

72. (1) No resolution for subdivision of shares under subsection (3) of section seventy, or for reduction of capital, either with or without cancellation or payment off of capital, under subsection (5) of section seventy, shall come into operation until an order confirming such subdivision or reduction shall have been made by the Court and registered by the Registrar.

Confirmation
of resolutions
in certain
cases.

56 Vic., No.
8, s. 72.

(2) Such order shall be applied for by the company on petition, and the Court may, in any case, require the company to publish, in such manner as the Court shall think fit, the reasons for the subdivision of its shares or reduction of its capital, or such other information in respect to such subdivision or reduction as the Court may think expedient, with a view to giving proper information to the public in relation to such subdivision or reduction, and, if the Court thinks fit, the causes which led to the same.

(3) On the hearing of the petition every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company would be admissible in proof against the company, shall, subject to subsection (4) of this section, be entitled to object to the proposed subdivision or reduction and to be entered on the list mentioned in subsection (5) of this section.

(4) Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any member of any paid up capital, the creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction, nor shall it in such a case be necessary, before the presentation of the petition for confirming the reduction, to add the words "and reduced," as provided by section seventy-one of this Act, and the Court may dispense altogether with the addition of such words.

(5) The Court shall settle a list of the creditors entitled to object under subsection (3) of this section, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors, and the nature and the amount of their debts or claims; and may publish notices, fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed subdivision or reduction.

(6) On the hearing of the petition the Court may, if satisfied that in the case of every creditor who under this section is entitled to object to the subdivision or reduction, such creditor has so consented, or that his debt or claim has been discharged or has determined, or that it has been secured under subsection (7) of this section, make an order confirming the subdivision or reduction, on such terms and subject to such conditions as the Court shall think fit.

(7) Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed subdivision or reduction, the Court may dispense with such consent on the company securing the payment of the debt or claim of such creditor, by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned, that is to say:—

- (a) If the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.
- (b) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent, or not ascertained, then the Court may inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were

being wound up under order of the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

73. The Registrar, upon the production to him of an order of the Court confirming the subdivision of the shares or the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing with respect to the capital of the company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount, if any, at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Order and minute to be registered.
56 Vic., No. 8, s. 73.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the subdivision of shares or the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

74. (1) The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be of the same validity, and subject to the same alterations as if it had been originally contained in the memorandum; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable, in respect of any share, to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Minute to form part of memorandum.
56 Vic., No. 8, s. 74.

(2) A copy of such registered minute shall be embodied in every copy of the memorandum issued after the registration of the minute, and if any company shall make default in complying with the provisions of this subsection, it shall incur a penalty not exceeding one

pound for each copy of the memorandum in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Saving of
rights of
creditors who
are ignorant
of proceeding.
56 Vic., No.
8, s. 75.

75. (1) If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable within the meaning of section one hundred and eighteen of this Act to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration.

(2) On the company being wound up, either under order of the Court or voluntarily, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may settle a list of such contributories accordingly, and the liquidator may make and recover calls and the Court may make and enforce orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Notice of
increase of
capital and of
members to
be given to
Registrar.
56 Vic., No.
8, s. 77*

76. Notice of any increase beyond the registered capital in the capital of a company having a capital divided into shares, whether such shares have or have not been converted into stock, or of any increase beyond the registered number in the number of members of a company not having a capital divided into shares, shall be given to the Registrar; in the case of an increase of capital, within fifteen days from the date of the passing

*Section 76 repealed by Criminal Code Act, 1902. See section 547 of the Code as re-enacted by Act No. 28 of 1913.

of the resolution by which such increase has been authorised; and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on, or has taken place. The Registrar shall forthwith record the amount of such increase of capital or members, and a copy of such notice shall be inserted in the *Gazette*. If such notice be not given within the period aforesaid, the company shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues; and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

77. Every company having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar of such consolidation and division or of such conversion, specifying the shares so consolidated and divided or so converted.

Company to give notice of consolidation or conversion of capital into stock.

56 Vic., No. 8, s. 78.

78. Where any company, having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act, which are applicable to shares only, shall cease as to so much of the capital as is converted into stock, and the register of members required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list, instead of the amount of shares, and the particulars relating to shares, hereinbefore required.

Effect of conversion of shares into stock.

56 Vic., No. 8, s. 79.

79. (1) A limited company may, by special resolution, declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in such event and for such purpose. Such resolution shall be advertised in the *Gazette*, and the Registrar shall note the same on the memorandum; and every copy of the memorandum subsequently issued by the company shall contain a note of such special resolution.

Limited company may prevent further capital being called up except on winding up.

56 Vic., No. 8, s. 80.

(2) Any company not complying with this section shall incur a penalty not exceeding one pound for each copy of the memorandum in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Company may have some shares fully paid and others not.

56 Vic., No. 8, s. 81.

80. Any company, including a no-liability company, may, by special resolution, authorise any one or more of the following things, namely:—

- (1) The making of arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls:
- (2) The acceptance from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made.
- (3) The payment of dividends in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Bonus debentures and shares.

No. 31 of 1922, s. 2.

81. Notwithstanding any provision in the memorandum of association of any company for payment amongst shareholders of a portion of the profits of the business of the company *pro rata* to the business done by each shareholder with the company, any such company may, in lieu of payment to its shareholders on a cash basis, issue to them bonus debentures or bonus shares for the amount of the profits any shareholder is entitled to receive; and the issue of any bonus debenture or bonus share to any shareholder for any such amount before the passing of this Act is hereby declared valid and binding on any company that may have issued the same, and on any shareholder of such company who may have received the same:

Provided that such bonus, debentures, or bonus shares shall not or do not carry any liability for further payments or contributions on the part of such shareholders:

Provided also that no debentures or shares shall be issued under this section in excess of the portion of profits available for the time being for distribution as aforesaid, and no such bonus shares shall be issued in excess of the authorised capital of the company for the time being:

Provided also that any shareholder who has before the passing of this Act* made application in writing for dividends in cash instead of bonus shares, shall receive the amount of such dividend due to such shareholder in cash.

82. (1) Where the capital of any company limited by shares is by the memorandum of association of the company divided into different classes of shares, one or more of which classes of shares entitle the holders of shares of the class or classes to a preferential right to a dividend at a specified rate (whether of a cumulative character or not), or to a preferential right in a winding-up of the company to payment of arrears of a preferential dividend (whether declared or earned or not) up to the commencement of the winding-up, or to a preferential right to the return of capital in a winding-up, such company may at any time, or from time to time by special resolution of the company (consented to or confirmed by a special resolution or special resolutions of a separate meeting or separate meetings of the holders of the shares of the classes affected by such resolutions), so far modify or alter the provisions of the memorandum of association of the company as to effect a modification or alteration or an abandonment of all or any of such preferential or cumulative rights, either generally or for such limited period of time as may be specified in the special resolution.

Provision for modification, alteration, or abandonment of preferential or cumulative rights in relation to certain classes of shares.

No. 48 of 1931, s. 2.

(2) "Special resolution," when applied to meetings of holders of a class of shares, means a resolution passed at a general meeting of the holders of shares of that class (of which at least twenty-one clear days' notice in writing has been given in the same manner as is provided by the articles of association of the company in the case of general meetings of the company, specifying the intention to propose such resolution) and at which such resolution is passed by a majority of not

*No. 31 of 1922 (13th December, 1922).

less than three-fourths of the votes of such members of the class for the time being as may be present in person or by proxy.

(3) At any meeting of a class held under the provisions of this section, each member of the class present in person or by proxy at the meeting shall be entitled to one vote for each share of that class held by such member.

(4) No such resolution of the company shall come into operation or have effect until an order confirming the modification, alteration, or abandonment sought to be effected shall have been made by the Court and registered by the Registrar.

(5) Such order shall be applied for by the company on petition, and the Court may in any case require the company to publish in such manner as the Court shall think fit a notice of the petition, and a copy of the special resolution, with a view to giving holders of shares of any class or classes an opportunity to attend before the Court and object to the proposed modification, alteration, or abandonment.

(6) On the hearing of the petition the Court may make an order confirming the modification, alteration, or abandonment, on such terms and subject to such conditions as the Court may think fit.

(7) Nothing in this section contained or implied shall be deemed to impair or prejudicially affect any lawful power, authority, or provision now or hereafter conferred in any memorandum of association or otherwise lawfully vested in any company whereby the rights of classes of shares may be altered, modified, or abandoned without recourse to the provisions of this section.

Part IV.

PART IV.—COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

Regulations
as to registra-
tion of
existing com-
panies.

56 Vic., No.
S. s. 82.

83. The following regulations shall be observed with respect to the registration of companies under this Part of this Act (that is to say)—

(1) No company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint-stock company as hereinafter defined, shall register under this Act in pursuance of this Part thereof:

- (2) No company having the liability of its members limited by Act of Parliament or by letters patent shall register under this Act, in pursuance of this Part thereof, as an unlimited company:
- (3) No company that is not a joint-stock company, as hereinafter defined, shall, in pursuance of this Part of this Act, register under this Act as a limited company:
- (4) No company shall register under this Act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the articles of the company, at some general meeting summoned for the purpose:
- (5) Where a company, not having the liability of its members limited by Act of Parliament or letters patent, is about to register as a limited company, the majority required to assent, as aforesaid, shall consist of not less than three-fourths of the members present personally or by proxy at such last-mentioned general meeting.

In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles of the company of which he is a member.

84. With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the coming into operation of this Act, including companies registered under the Ordinance and consisting of five or more members, and any company hereafter formed in pursuance of any Act of Parliament, other than the Mining Companies Act, 1888, or this Act, or of letters patent, or otherwise duly constituted by law, and consisting of five or more members, may, at any time hereafter, register itself under this Act as an unlimited company, or a limited company, and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Permissive
registration
of companies.
56 Vic., No.
8, s. 83.

Definition of
joint-stock
companies.
56 Vic., No.
8, s. 84.

85. For the purpose of this Part of this Act, so far as the same relates to the description of companies empowered to register themselves as limited companies, a joint-stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount divided into shares, also of fixed amount or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company, when registered with limited liability under this Act, shall be deemed to be a limited company.

Requisitions
for registra-
tion by
companies.
56 Vic., No.
8, s. 85.

86. Previously to the registration in pursuance of this Part of this Act of any joint-stock company, there shall be delivered to the Registrar the following documents:—

- (1) A list showing the names, addresses, and occupations of all persons who, on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:
- (2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnership, or other instrument constituting or regulating the company:
- (3) If any such joint-stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars:—
 - (a) The nominal capital of the company and the number of shares into which it is divided:
 - (b) The number of shares taken and the amount paid on each share:
 - (c) The name of the company, with the addition of the word "limited," as the last word thereof.

87. Previously to the registration in pursuance of this Part of this Act of any company not being a joint-stock company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers, if any, of the company, and a copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnership, or other instrument constituting or regulating the company.

Requisitions for registration by existing company not being a joint-stock company.

56 Vic., No. 8, s. 86.

88. Where a joint-stock company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who are holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Power for existing company to register amount of stock instead of shares.

56 Vic., No. 8, s. 87.

89. The lists of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar, shall be verified by a declaration, made in pursuance of this Act, of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company.

Authentication of statements of existing companies.

56 Vic., No. 8, s. 88.

90. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint-stock company, as hereinbefore defined.

Registrar may require evidence as to nature of company.

56 Vic., No. 8, s. 89.

91. No fees shall be charged in respect of the registration, in pursuance of this Part of this Act, of any company in cases where such company is not registered as a limited company, or where, previously to its being registered as a limited company, the liability of the shareholders was limited by some other Act of the Parliament of this State or by letters patent.

Exemption of certain companies from payment of fees.

56 Vic., No. 8, s. 90.

92. Every company authorised by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

Power to company to change name.

56 Vic., No. 8, s. 91.

Registration
of existing
companies to
be noted in
Government
Gazette.

56 Vic., No.
8, s. 92.

93. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees as are payable under the Third and Fourth Schedules hereto, the Registrar shall certify under his hand and seal that the company so applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited; and thereupon such company shall be incorporated and shall have perpetual succession and a common seal, and the Registrar shall notify such certificate in the *Gazette*.

Certificate to
be evidence
of compliance
with Act.

56 Vic., No.
8, s. 93.

94. Such certificate, or the notification in the *Gazette*, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

Vesting of
property in
company.

56 Vic., No.
8, s. 94.

95. All such property, real and personal, including all interests, and rights in, to, and out of property, real and personal, and including obligations and things in action as may belong to or be vested in the company at the date of its registration under this Act shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Registration
under this
Act not to
affect obliga-
tions incurred
previously to
registration.

56 Vic., No.
8, s. 95.

96. The registration in pursuance of this Part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred or any contract entered into by, to, with, or on behalf of such company previously to such registration.

Continuation
of existing
actions.

56 Vic., No.
8, s. 96.

97. All such actions or other legal proceedings as may at the time of the registration of any company registered in pursuance of this Part of this Act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless execution shall not issue

against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company.

98. When a company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, deed of settlement, letters patent, or other instrument constituting or regulating the company, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if they were contained in a registered memorandum and registered articles; and all the provisions of this Act shall apply to such company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following:—

Effect of
registration
under Act.
56 Vic., No.
8, s. 97.

- (1) That Table A, in the Second Schedule of this Act, shall not, unless adopted by special resolution, apply to any company registered under this Part of this Act;
- (2) That the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;
- (3) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company;
- (4) That no company shall have power, without the sanction of the Governor, to alter any provision contained in any letters patent relating to the company;
- (5) That, in the event of the company being wound up, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum

for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; and in the event of the death or bankruptcy of any such contributory, or the marriage of any such contributory being a female, the provisions hereinafter contained with respect to the representatives of deceased contributories and the trustees or assignees of bankrupt contributories and the consequences of the marriage of female contributories shall apply;

- (6) That nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of co-partnership, letters patent, or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the memorandum, and are not authorised to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act, in pursuance of this Part thereof, by virtue of any Act of Parliament, deed of settlement, contract of co-partnership, letters patent, or other instrument constituting or regulating the company.

Power of
Court to re-
strain pro-
ceedings.
56 Vic., No.
8, s. 98.

99. The Court may, at any time after the presentation of a petition for winding up a company registered in pursuance of this Part of this Act, and before making an order for winding up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action or other legal proceeding against any contributory of the company, as well as against the company, as hereinbefore provided, upon such terms as the Court thinks fit.

100. When an order has been made for winding up a company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company except with the leave of the Court, and subject to such terms as the Court may impose.

Effect of order
for winding-
up company.

56 Vic., No.
8, s. 99.

*Co-operative Companies.**

101. No person, and no company or association (whether incorporated or not) other than—

Prohibition of
trading as
co-operative,
except by
registered
companies,
etc.

1929, No. 28,
s. 2.

- (a) a building society registered under the Building Societies Act, 1920; or
- (b) a society registered under the Co-operative and Provident Societies Act, 1903; or
- (c) a company registered under this Act as amended by the Companies Act Amendment Act, 1929; or
- (d) a partnership or firm consisting only of two or more companies registered under the principal Act as amended by the Companies Act Amendment Act, 1929,

1920, No. 19,
s. 2.

shall after the commencement of the Companies Act Amendment Act, 1929,† trade or carry on business under any name or title of which the word “Co-operative,” or any other word importing a similar meaning is part, or in any manner represent that the trade or business is co-operative:

Provided that, if at the commencement of the Companies Act Amendment Act, 1929, any person or any company or association, whether incorporated or not, and, if incorporated, whether incorporated in this State or elsewhere, is trading or carrying on business in this State under any name of which the word “co-operative” or any other word importing a similar meaning is part, or is in any manner holding out that the trade or business is co-operative, this section shall not apply to such person, company or association until one year after the commencement of the Companies Act Amendment Act, 1929, but at or before the expiration of that time any such per-

* The provisions of the Companies Act Amendment Act, 1929, intitled “An Act to amend the law relating to Co-operative Trading, and the Registration of Co-operative Companies” (No. 28 of 1929), are inserted in this subdivision of Part IV. of the Companies Act, 1893, as reprinted with amendments pursuant to the Amendments Incorporation Act, 1938.

† 11th December, 1929.

son, company, or association shall, unless registered under the principal Act as amended by the Companies Act Amendment Act, 1929, cease to use as part of such name or title the word "co-operative," or any word importing a similar meaning, and shall not in any manner represent that the trade or business is co-operative.

(2) Any person and any company or association that contravenes this section of this Act, and any director, manager, or other officer of a company or association who knowingly or wilfully authorises or permits such contravention, shall be guilty of an offence and liable on conviction to a penalty not exceeding five pounds for every day during which the offence continues.

Existing companies may be registered under this Act as amended.

1929, No. 28,
s. 5.

102. (1) Any company registered under this Act, and any society registered under the Co-operative and Provident Societies Act, 1903, may, upon application to the Registrar of Companies within one year from the commencement of the Companies Act Amendment Act, 1929, be registered under this Act as amended by the Companies Act Amendment Act, 1929, without payment of fees or stamp duty, if the memorandum and articles of association comply with this Act as amended; and the fees and stamp duty payable on any such registration after one year from the commencement of the Companies Act Amendment Act, 1929, shall be reduced by an amount equal to the fees and stamp duty paid on the first registration of the company or society.

(2) From and after the date that any such society shall become registered under this Act as amended by the Companies Act Amendment Act, 1929, then the registration thereof under the Co-operative and Provident Societies Act, 1903, shall be annulled or cancelled, and the rights, duties, or obligations of such society under the last-mentioned Act shall cease, without prejudice to any subsisting right or claim by or against the society.

(3) Every society not already registered under this Act shall file with its application a memorandum and articles prepared in accordance with this Act, and comply with such provisions thereof as the Registrar under this Act may require.

103. A company, society, or association applying for registration as a company under this Act as amended by the Companies Act Amendment Act, 1929, and having in its name or title the word "co-operative" or any other word importing a similar meaning, shall contain in its memorandum and articles of association the provisions—

Memorandum and articles of association of co-operative companies.

1929, No. 28, s. 3.

- (a) that the rate of dividend on the shares of the company shall not in respect to any year exceed an amount which is five pounds per centum per annum in excess of the Commonwealth Bank rate of interest for the time being on fixed deposits for two years;
- (b) that before declaring a dividend out of the profits for the then last financial year of the company, the directors may in their discretion provide for the payment of a dividend upon the shares which had been issued and were held by shareholders during any one or more of the three preceding financial years in respect of which no dividend has been declared: Provided that such dividend shall be payable to the persons registered as owners of such shares at the date of the declaration of such dividend;
- (c) that all surplus profits in any year in which a dividend for such year shall be declared, after setting aside to the credit of any reserve fund, as may from time to time be authorised by the memorandum or articles of association of the company, shall be distributed by way of bonus, either in cash or bonus shares or debentures in proportion to the business done by shareholders with the company, or to profits earned by the company on such shareholders' business;
- (d) that every shareholder qualified to vote shall have an equal voting power, irrespective of the number of shares held by him; and
- (e) such other provisions as may be prescribed.

104. Any company registered under the principal Act, and any society registered under the Co-operative and Provident Societies Act, 1903, which may desire to apply for registration under the principal Act as amended by the Companies Act Amendment Act, 1929,

Memorandum and articles of association may be altered to comply with amending Act of 1929.

1929, No. 28, s. 6.

may, without being required to make any application or present any petition to the Court in that behalf, as required by this Act, alter its memorandum, articles of association, or rules to conform with the requirements of the Companies Act Amendment Act, 1929,* by special resolution of a general meeting of such company or society, and every such special resolution shall be forwarded to and filed or recorded by the Registrar in terms of the provisions of this Act; but after such registration the memorandum and articles shall only be altered in accordance with the relevant provisions of this Act.

Power to
purchase
shares.

1929, No. 28,
s. 4.

105. A co-operative company registered under the principal Act as amended by the Companies Act Amendment Act, 1929, may, if authorised by its memorandum or articles of association, purchase out of its reserve funds any shares of a member of the company, but the shares so purchased and not sold or disposed of shall not at any time exceed one-twentieth part of the paid up capital of the company:

Provided that such shares shall not be deemed to be cancelled nor to be a reduction of capital, but may be sold or disposed of by the company in accordance with the provisions of its articles of association.

Co-operative
companies
may enter
into part-
nership.

1930, No. 19,
s. 3.

106. Any two or more companies registered under the principal Act as amended by the Companies Act Amendment Act, 1929, may, with the sanction of a special resolution of each of the companies, enter into partnership with one another, and carry on together any business, industry, or trade which could be lawfully carried on by the said companies or any one of them.

Distribution
of reserve
funds and
assets of co-
operative
company, and
payment for
shares on
voluntary
winding-up.
1929, No. 28,
s. 7.

107. (1) On any distribution of reserve funds or other assets of a co-operative company, or on the winding up voluntarily or compulsorily of a co-operative company, no shareholder shall receive in payment for his shares any amount exceeding the capital paid up in respect thereof, with dividends (if any) due, and any other moneys to which he may then be entitled under paragraph (c) of section one hundred and three.

*Sections 101 to 109 of this compilation.

(2) A co-operative company shall not be wound up voluntarily if its net assets are in excess of its subscribed capital, except with the consent of not less than three-fourths of the shareholders, or with the sanction of a Judge of the Supreme Court.

108. No society shall, after the commencement of the Companies Act Amendment Act, 1929, be registered under the Co-operative and Provident Societies Act, 1903, as a co-operative society.

Co-operative societies not to be registered after 11th December, 1929.
1929, No. 28, s. 8.

109. The Governor may make regulations, as may be necessary, to give effect to the Companies Act Amendment Act, 1929,* and by such regulations may so modify the provisions of this Act and the Schedules thereto as may be necessary to adapt the same to the requirements of the Companies Act Amendment Act, 1929.

Regulations.
1929, No. 28, s. 9.

PART V.—THE WINDING UP OF COMPANIES.

110. This Part of this Act shall not apply to a limited company registered under the Mining Companies Act, 1888, but shall apply to all other companies registered under the said Act, or the Ordinance, or this Act, if not inconsistent with the context or subject matter.

Application of this Part.
56 Vic., No. 8, s. 100.

Liability of Members.

111. Where a company is wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts of the company, and the costs, charges, and expenses of winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say:—

Liability of members.
56 Vic., No. 8, s. 101.

(1) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for one year or upwards prior to the commencement of the winding-up;

(2) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

* Sections 101 to 109 of this compilation.

- (3) No past member shall be liable to contribute to the assets of the company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (4) No contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (5) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance, or other contract, whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract;
- (6) No sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories among themselves.

Liability of
directors.
56 Vie., No.
8, s. 102.

112. With respect to contributions to be required in the event of the winding-up of a limited company from any director, or manager, whose liability is unlimited under this Act, the following rules shall apply:—

- (1) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were, at the date of the commencement of such winding-up, a member of an unlimited company;
- (2) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;

- (3) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;
- (4) Subject to the provisions contained in the articles of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up.

113. The liability of any person to contribute to the assets of a company, in the event of the same being wound up, shall be deemed to create a specialty debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability.

Nature of
liability of
contributory.
56 Vic., No.
8, s. 103.

114. Where any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his representatives shall be liable, in due course of administration, to contribute to the assets of the company in discharge of the liability of such deceased contributory, and shall be deemed to be a contributory accordingly.

Contributories
in case of
death.
56 Vic., No.
8, s. 104.

115. Where a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his trustee or assignee shall, unless he shall disclaim the shares of such contributory under the Bankruptcy Act, 1892, be deemed to be a contributory in respect of such shares.

Contributories
in case of
bankruptcy.
56 Vic., No.
8, s. 105.

116. Where a female contributory marries, either before or after she has been placed on the list of contributories, her separate property, present and future, shall be liable to contribute to the assets of the company, and her husband shall also be liable so to contribute to the

Marriage of
female
contributory.
56 Vic., No.
8, s. 106.

extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any legal proceeding in respect of any matters as to which his wife was liable before her marriage; but he shall not be liable to contribute any further or otherwise. This section shall be subject to section nineteen of the Married Women's Property Act, 1892, as if this section had been included in such Act.

Winding up under Order of Court.

Circumstances under which company may be wound up under order of Court.

56 Vic., No. 8, s. 107.

117. A company may be wound up under an Order of the Court under the following circumstances, that is to say:—

- (1) When the company has passed a special resolution requiring the company to be wound up under Order of the Court;
- (2) When the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (3) When the members are reduced in number to less than five;
- (4) When the company is unable to pay its debts;
- (5) When the Court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

56 Vic., No. 8, s. 108.

118. A company shall be deemed unable to pay its debts—

- (1) When a creditor, by assignment or otherwise, to whom the company is indebted at law or in equity in a sum not less than twenty-five pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand, or if such creditor be a corporation then under the seal of such corporation, requiring the company to pay the sum so due, and the company has, for three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;

- (2) When execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor at law or in equity in any proceeding instituted by such creditor against the company is returned unsatisfied in whole or in part;
- (3) When it is proved to the satisfaction of the Court that the company is unable to pay its debts.

119. An application to the Court for an order for the winding up of a company shall be by petition presented either by the company or by one or more creditor or creditors, shareholder or shareholders, contributory or contributories, or by all or any of such parties, together or separately; but no contributory of a company shall be capable of presenting a petition for winding up such company unless the members of the company are reduced to less than five or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him and registered in his name for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder.

Application for winding-up to be by petition.

56 Vic., No. 8, s. 109.

120. Every order made upon any such petition shall operate in favour of all the creditors and all the shareholders and contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a shareholder or contributory; and the Court may refer to the Master of the Court any matter arising under this Act.

Order on petition to be in favour of all creditors and contributories.

56 Vic., No. 8, s. 110.

121. The winding up of a company under order of the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Commencement of winding-up by Court.

56 Vic., No. 8, s. 111.

122. The Court may at any time after the presentation of a petition for an order for the winding-up of a company under this Act, and before making such order, upon the application of the company, or of any creditor, shareholder, or contributory of the company, restrain further proceedings in any action or proceeding against the company upon such terms as the Court thinks fit; and

Court may grant injunction.

56 Vic., No. 8, s. 112.

may also at any time after the presentation of such petition, and before the first appointment of a liquidator, appoint provisionally an Official Liquidator of the estate and effects of the company.

Powers of Court on hearing petition.

56 Vic. No. 8, s. 113.

123. Upon hearing the petition the Court may grant the application wholly or in part, or may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Actions to be stayed under order for winding up.

56 Vic., No. 8, s. 114.

124. When an order has been made for winding up a company, no action or other proceeding shall be continued or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Copy of order to be forwarded to Registrar of Companies.

56 Vic., No. 8, s. 115.

125. When an order has been made for winding up a company, a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

Power of Court to stay proceedings.

56 Vic., No. 8, s. 116.

126. The Court may, at any time after an order has been made for winding up a company, upon the application by motion of any creditor, shareholder, or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Power of Court to transmit winding up to Court of Bankruptcy.

56 Vic., No. 8, s. 117.

127. (1) Where the Court makes an order for winding up a company, it may direct all or any subsequent proceedings for winding up the same to be had before the Bankruptcy Court or any Local Court of Bankruptcy, and upon such order being made, the Bankruptcy Court or the Local Court of Bankruptcy therein named shall have the same jurisdiction and may exercise the same powers with respect to winding up such company, or any proceedings in relation to such winding up, as the Court by which such order is made has and could have exercised.

(2) There shall be the same right of appeal to the Supreme Court from any order, determination, or direction of the Bankruptcy Court or a Local Court of Bankruptcy under this section, and the proceedings upon such appeal shall be the same as nearly as may be as if the order, determination, or direction had been made, arrived at, or given in bankruptcy matter within the jurisdiction of such last-mentioned Court.

Official Liquidators.

128. (1) The Court may from time to time appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of Official Liquidator or Official Liquidators, for the purpose of winding up any company, but so that there shall not be more than three Official Liquidators at one time for the same company.

Official
Liquidators—
56 Vic., No.
8, s. 118.

(2) If more persons than one are appointed Official Liquidators, the Court shall declare whether any act hereby required or authorised to be done by the Official Liquidator is to be done by all or may be done by any one or more of such persons.

(3) The Court may determine whether any and what security is to be given by any Official Liquidator on his appointment, and whether a declaration of secrecy is to be demanded.

(4) During any period in which there shall be no Official Liquidator all the property of the company shall be deemed to be in the custody of the Court.

(5) Any Official Liquidator may resign or be removed by the Court on due cause shown, and any vacancy in the office of an Official Liquidator appointed by the Court may be filled by the Court.

(6) There shall be paid to the Official Liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more Official Liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

129. The Official Liquidator shall be described by the style of the Official Liquidator of the particular company in respect of which he is appointed, and not by his indivi-

Style and
duties of
Official
Liquidator..
56 Vic., No.
8, s. 119.

dual name, and shall take into his custody, or under his control, all the property, effects, and things in action to which the company is or appears to be entitled, and shall, subject to the control of the Court, perform such duties in reference to the winding-up of the company as may be necessary.

**Powers of
Official
Liquidator.**
56 Vic., No.
8, s. 120.

130. The Official Liquidator shall have power—

- (1) To bring or defend any action, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company:
- (2) To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same:
- (3) To sell the real and personal property, effects, and things in action of the company, together or in parcels, by public auction or private contract, with power to convey and transfer the property sold to any person or company:
- (4) To do all acts, and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal:
- (5) To prove, rank, claim, and draw a dividend, in the matter of the bankruptcy or insolvency of any contributory, for any balance against the estate of such contributory, and to receive dividends in respect of such balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:
- (6) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company; also to raise, upon the security of the assets of the company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted,

made, or indorsed by or on behalf of such company in the course of carrying on the business thereof:

- (7) To take out (if necessary) in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company. In all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such money shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the Official Liquidator himself:
- (8) With the sanction of the Court, to employ a solicitor to assist him in the performance of his duties. The sanction aforesaid must be 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:
- (9) To appoint a special manager or secretary of the estate or business of the company during such time as he may see fit, at such remuneration as he may determine, and with such powers as may be entrusted to him, in writing, under the hand of the Official Liquidator; if he shall be satisfied that the nature of the estate or business of the company, in the interests of the creditors or contributories generally, requires such an appointment:
- (10) To apply to the Court for directions in relation to any particular matter arising under the winding-up:
- (11) To do all such other things as may be necessary for winding-up the affairs of the company, and distributing its assets

Discretion of
Official
Liquidator
restrained.

56 Vic., No.
8, s. 121.

131. The Court may by the order appointing an Official Liquidator, whether provisionally or otherwise, or by any subsequent order, restrain him from exercising any of the above powers without the sanction or intervention of the Court.

Collection and
application
of assets.

56 Vic., No.
8, s. 122.

132. As soon as may be after the making of an order for winding up a company, other than a no-liability company, the Official Liquidator shall settle a list of contributories with power to apply to the Court to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities. Any list of contributories settled by the Official Liquidator shall be *prima facie* evidence of the liability of the persons named therein to be contributories.

Provision as
to repre-
sentative con-
tributories.

56 Vic., No.
8, s. 123.

133. In settling the list of contributories the Official Liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories as representing or being liable for the debts of others. It shall not be necessary, where the representative, other than the heirs or devisees, of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, but such heirs or devisees may be added by the Court as and when it thinks fit.

Power of
Court to re-
quire delivery
of property.

56 Vic., No.
8, s. 124.

134. The Court may, at any time after an order for winding up a company has been made, require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith or within such time as the Court directs, to or into the hands of the Official Liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being and to which the company is *prima facie* entitled.

Power of
Court to or-
der payment
of debts by
contributory.

56 Vic., No.
8, s. 125.

135. (1) The Court may, on the application of the Official Liquidator, at any time after making an order for winding up a company, other than a no-liability company, make an order on any contributory for the time being settled on the list of contributories, directing payment

to be made in manner in the said order mentioned of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made in pursuance of this Part of this Act.

(2) The Court may in making such order, when the company is not limited, or when the contributory, or the person whom he represents, is or was a director or manager with unlimited liability, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit. Set-off.

(3) Where all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call.

136. (1) The Official Liquidator may, at any time after an order has been made for winding up a company, other than a no-liability company, and either before or after he has ascertained the sufficiency of the assets of the company, make calls on, and the Court may, on application by the Official Liquidator, order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums deemed necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

Power of
Liquidator to
make calls.

56 Vic., No.
8, s. 126.

(2) The Official Liquidator may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

137. The Official Liquidator may require, and the Court may, on his application, order any contributory, purchaser, or other person from whom money is due to the company to pay the same into some bank named in

Power of
Official Liqui-
dator or Court
to order
payment into
bank.

56 Vic., No.
8, s. 127.

such request or order to the account of the Official Liquidator, instead of to the Official Liquidator, and such order may be enforced in the same manner as if it had directed payment to the Official Liquidator.

Regulation of
account with
Official
Liquidator.

56 Vic., No.
8, s. 128.

138. All moneys, bills, notes, and other securities paid and delivered into any bank in the event of a company being wound up, by order of the Court, shall be subject to such order and regulation for the keeping of the account of such money and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same as the Court directs.

Order conclu-
sive evidence.

56 Vic., No.
8, s. 129.

139. An order made by the Court, in pursuance of this Act, upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due, and all other pertinent matters stated in such order are to be taken to be truly stated against all persons and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Official Liqui-
dator may
exclude credi-
tors not
proving within
certain time.

56 Vic., No.
8, s. 130.

140. The Official Liquidator may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such proof.

Official Liqui-
dator to
adjust rights
of contribu-
tories.

56 Vic., No.
8, s. 131.

141. Subject to the order of the Court on the application of any shareholder or contributory, the Official Liquidator shall adjust the rights of the shareholders or contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Dispositions
after the
commence-
ment of the
winding-up
avoided.

56 Vic., No.
8, s. 132.

142. Where a company is being wound up by order of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the

winding-up and the order for winding-up, shall, unless the same be confirmed by the Official Liquidator, or by the Court, be void.

143. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Dissolution of company.
56 Vic., No. 8, s. 133.

144. Any order so made shall be reported by the Official Liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Registrar of Companies to make minute of dissolution of company.
56 Vic., No. 8, s. 134.

145. If the Official Liquidator makes default in reporting to the Registrar, in the case of a company being wound up under an order of the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Penalty on not reporting dissolution of company.
56 Vic., No. 8, s. 135.

146. Any petition for winding up a company under this Act shall constitute a *lis pendens* within the meaning of any Act now or hereafter in force relating to the effect of a *lis pendens* upon purchasers or mortgagees.

Petition to be *lis pendens*.
56 Vic., No. 8, s. 136.

Voluntary Winding Up of Company.

147. A company may be wound up voluntarily—

Circumstances under which company may be wound up voluntarily.
56 Vic., No. 8, s. 137.

- (1) When the period, if any, fixed for the duration of the company by the articles expires, or when the event, if any, occurs, upon the occurrence of which it is provided by the articles that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:
- (2) When the company has passed a special resolution requiring the company to be wound up voluntarily.

148. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up.

Commencement of voluntary winding-up.
56 Vic., No. 8, s. 138.

Effect of
voluntary
winding-up on
status of
company.

56 Vic., No.
8, s. 139.

149. When a company is wound up voluntarily the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidator, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding that it is otherwise provided by its articles, continue until the affairs of the company are wound up.

Notice of
resolution to
wind up
voluntarily.

56 Vic., No.
8, s. 140.

150. Notice of any resolution passed for winding up a company voluntarily shall be given by advertisement in the *Gazette*, and a copy of such resolution shall be forthwith forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

Consequences
of a volun-
tary winding-
up.

56 Vic., No.
8, s. 141.

151. The following consequences shall ensue upon the voluntary winding-up of a company:—

- (1) A liquidator or liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property:
- (2) The company, in general meeting, shall appoint such person or persons as it thinks fit to be liquidator or liquidators, and may fix the remuneration to be paid to him or them:
- (3) If several persons are appointed, all the provisions herein contained, in reference to one liquidator, shall apply to them:
- (4) Upon the appointment of a liquidator, all the powers of the directors shall cease, except in so far as the company in general meeting, or the liquidator, may sanction the continuance of such powers:
- (5) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two:

- (6) The liquidator may exercise all powers and discretions, and shall perform all duties by this Act given to or imposed upon the Official Liquidator:
- (7) Any list of contributories settled by the liquidator shall be *prima facie* evidence of the liability of the persons named therein to be contributories.

152. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by special resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators, or any of them, and supplying any vacancies in the appointment of liquidators; or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidator, and the manner in which they are to be exercised; and any act done by the creditors, in pursuance of such delegated power, shall have the same effect as if it had been done by the company.

Power of company to delegate authority to appoint liquidators.

56 Vic., No. 8, s. 142.

153. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned. Creditors for under five pounds are for the purposes of this section to be reckoned in value only.

Arrangement, when binding on creditors.

56 Vic., No. 8, s. 143.

154. Any creditor, contributory, or member of a company that has, in manner aforesaid, entered into any arrangements with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Appeal.

56 Vic., No. 8, s. 144.

155. Where a company is being wound up voluntarily, the liquidator may, from time to time, during the continuance of such winding-up, summon general meetings of the company, for the purpose of obtaining the sanction of the company, by special resolution, or for any

Power of Liquidators to call general meeting.

56 Vic., No. 8, s. 145.

other purposes he thinks fit, and in the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing his acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

Power to fill
up vacancy in
liquidators.
56 Vic., No.
8, s. 146.

156. Where any vacancy occurs in the office of a liquidator appointed by the company, by death, resignation, or otherwise, the company in general meeting may (subject to any arrangement they may have entered into with their creditors) fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidator (if any) or by any contributory or shareholder of the company; and shall be deemed to have been duly held, if held in manner prescribed by the articles of the company, or in such other manner as may, on application by the continuing liquidator (if any), or by any contributory or shareholder of the company, be determined by the Court.

Power of
Court to
appoint a
liquidator or
liquidators.
56 Vic., No.
8, s. 147.

157. Where, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a creditor, contributory, or member of the company, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in a voluntary winding-up.

Liquidator on
conclusion of
winding-up to
prepare an
account.
58 Vic., No.
8, s. 148.

158. As soon as the affairs of the company are fully wound up, the liquidator shall prepare an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of, and thereupon he shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidator. The meeting shall be called by advertisement, specifying the time, place, and object of such meeting, and such advertisement shall be published in the *Gazette* one month at least previously to the meeting.

159. The liquidator shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. If the liquidator make default in making such return to the Registrar, he shall incur a penalty not exceeding five pounds for every day during which such default continues.

Liquidators to report meeting to Registrar of Companies.

56 Vic., No. 8, s. 149.

160. The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up under order of the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Creditor's right to have winding-up by Court.

56 Vic., No. 8, s. 150.

161. Where a company is being wound up voluntarily and proceedings are taken to have it wound up under order of the Court, the Court may, notwithstanding that it makes an order directing the company to be wound up under order of the Court, provide in such order, or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.

56 Vic., No. 8, s. 151.

162. The Court may, in determining whether a company is to be wound up under order of the Court or voluntarily, and also in the appointment of an official liquidator or official liquidators, and in all other matters relating to a winding-up, either under order of the Court or voluntarily, have regard to the wishes of the creditors, members, or contributories, as proved to it by sufficient evidence, and may direct meetings of the creditors, members, or contributories to be summoned, held, and regulated in such manner as the Court may direct, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court. In the case of creditors regard shall be had to the value of the debts due to each creditor, and in the case of members or contributories to the number of votes conferred on each member or contributory by the articles of the company.

Court may have regard to wishes of creditors, members, or contributories.

56 Vic. No. 8, s. 152.

Provisions applying to Winding-up, whether under the Order of the Court or Voluntary.

56 Vic., No.
8, s. 153.

163. In the sections in this part of this Act hereinafter contained the word "liquidator" shall include "Official Liquidator."

Priority of
debts.
56 Vic., No.
8, s. 154.

164. (1) In the distribution of the assets of any company being wound up there shall be paid in priority to all other debts—

- (a) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the date of the commencement of the winding-up, not exceeding fifty pounds; and
- (b) All wages of any labourer or workman, not exceeding twenty-five pounds, whether payable for time or for piece-work, in respect of services rendered to the company during two months before the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the commencement of the winding-up.

(2) The above-mentioned debts shall rank equally between themselves and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs of the winding-up or otherwise, the abovementioned debts shall be discharged forthwith, so far as the assets of the company are sufficient.

Company's
property, how
disposed of.
56 Vic., No.
8, s. 155.

165. The property of the company shall, subject to the provisions of the last preceding section, be applied in satisfaction of its liabilities *pari passu* and subject thereto shall, unless it be otherwise provided by the articles, be distributed amongst the members according to their rights and interests in the company.

166. (1) The liquidator may from time to time summon general meetings of the creditors or contributories, or in case of a no-liability company, of the shareholders, for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as such creditors, contributories, or shareholders, 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, contributories, or shareholders, as the case may be.

Liquidator to summon meetings of creditors, contributories, or shareholders.

56 Vic., No. 8, s. 156.

(2) Subject to the power of control given to the Court, the liquidator shall in the administration and realisation of the property of the company have regard to any directions that may be given by resolution of the creditors, contributories, or shareholders, at any general meeting, and any directions so given by the creditors shall, in case of conflict, be deemed to override any directions given by the contributories or shareholders.

Liquidator to have regard to directions of creditors, contributories, or shareholders.

167. (1) Where a company is being wound up under order of the Court or voluntarily, the liquidator, or any creditor, contributory, or shareholder of the company may apply to the Court to determine any question arising in the matter of such winding-up, to direct or control the exercise of any power or discretion vested in the liquidator, and whether or not such power or discretion is subject to the sanction of any resolution or meeting of the company or its contributories, or shareholders, or of creditors, and, in the case of a voluntary winding-up, to exercise as to enforcing calls, or as to the staying of actions or other proceedings or as to any other matter, all or any of the powers which the Court might exercise if the company were being wound up by order of the Court.

Power for liquidators, creditors, contributories, or shareholders in voluntary winding-up to apply to Court.

56 Vic., No. 8, s. 157.

(2) The Court, if satisfied that the determination of such question, the direction or control of such power or discretion, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as justice may require.

168. Unless the contrary shall be provided by the memorandum or articles, no call shall be made for the purpose only of placing shares not fully paid up upon an

No call in certain cases.

56 Vic., No. 8, s. 158.

equality with shares issued as paid up to a greater amount in cases where such greater amount shall not have been actually paid in cash.

Power of Court to summon persons before it suspected of having property of company.
56 Vic., No. 3, s. 159.

169. (1) The Court may, after it has made an order for winding up the company, summon before it the liquidator or any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company, and the Court may require any such liquidator, officer, or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company.

(2) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses or neglects to come before the Court at the time appointed, having no lawful impediment made known to the Court at time of sitting and allowed by it, the Court may cause such person to be apprehended and brought before the Court for examination.

(3) Where any person claims any lien on papers, deeds, writings, or documents produced by him, his production thereof shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Examination of parties by Court.

(4) The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it under this section concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person and require him to subscribe the same.

Power to arrest contributory about to abscond or to remove or conceal any of his property.
56 Vic., No. 3, s. 160.

170. The Court may, at any time before or after it has made an order for winding up a company, or after the passing of a resolution for winding up a company voluntarily, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit this State or otherwise abscond, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company,

cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

171. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory, or debtor, or his estate, and such proceedings may be instituted accordingly.

Powers of Court cumulative.

56 Vic., No. 8, s. 161.

172. The contributories or shareholders shall not be entitled to have any surplus, after payment of twenty shillings in the pound on the debts of the company, divided amongst themselves until, first, the creditors of the company whose debts are entitled to carry interest shall have received interest on such debts at the rate of six pounds per centum per annum, to be calculated from the date of the order for winding-up the company; and, secondly, all other creditors shall have been paid interest on their debts, from the same date, at the rate of five pounds per centum per annum.

Creditors to receive interest before surplus is divided.

56 Vic., No. 8, s. 162.

173. All costs, charges, and expenses properly incurred in the winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company, in priority to all other claims.

Costs of liquidation.

56 Vic., No. 8, s. 163.

174. If any person, made a contributory as representative of a deceased contributory, makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the real estate and personal estate of such deceased contributory, or either of such estates, and of compelling payment thereof of the moneys due.

Provision in case of representative contributory not paying moneys ordered.

56 Vic., No. 8, s. 164.

175. When any company is being wound up, all books, accounts, and documents of the company and of the liquidator shall, as between the contributories or members of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

The books of the company to be evidence.

56 Vic., No. 8, s. 165.

As to disposal
of books,
accounts, and
documents of
company.

56 Vic., No.
8, s. 166.

176. Where any company has been wound up under this Act, and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in such way as the Court, in the case of a winding-up under order of the Court, or the company, by special resolution, in case of a voluntary winding-up, shall direct; but, after the lapse of three years from the date of such dissolution, no responsibility shall rest upon the company or the liquidators, or anyone to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made available for any party or parties claiming to be interested therein.

Inspection of
books.

56 Vic., No.
8, s. 167.

177. When an order has been made for winding up a company, the Court may make such order for the inspection by the creditors, members, and contributories of the company of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected by creditors, members, or contributories, in conformity with the order of the Court.

Power of
assignee to
sue.

56 Vic., No.
8, s. 168.

178. Any person to whom anything in action belonging to the company is assigned in pursuance of this Act may bring or defend any action relating to such thing in action in his own name.

All debts or
liabilities to be
provable
debts.

56 Vic., No.
8, s. 169.

179. All debts or liabilities, present or future, liquidated or unliquidated, certain or contingent, to which a company shall be subject at the commencement of the winding-up, or to which the company may become subject by reason of any obligation incurred previously to such commencement, shall be deemed debts provable in the winding-up: Provided that nothing herein contained shall apply to demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise.

Liquidator to
make valuation
of provable
debts.

56 Vic., No.
8, s. 170.

180. An estimate shall be made according to the rules, so far as they may be applicable, and when they are not applicable, then, at the discretion of the liquidator, of the value of any such provable debt as aforesaid, which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

181. Any person aggrieved by any estimate made by the liquidator as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made, such debt or liability shall, for the purposes of this Act, be deemed not to be a provable debt; but if the Court think that the value of the debt or liability is capable of being fairly estimated, it may direct such value to be assessed before the Court with or without a jury, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be a provable debt.

Person, aggrieved by liquidator's estimate may appeal to Court.

56 Vic., No. 8, s. 171.

182. Section eight, subsection (1), of the Supreme Court Act, 1880, shall be read as if the words "or the Companies Act, 1893," were inserted therein after the words "the Joint Stock Companies Ordinance, 1858," and the same subsection shall, in regard to companies, be subject to the provisions of this Act.*

Amendment of section 8 of Supreme Court Act, 1880.

56 Vic., No. 8, s. 172.

183. The liquidator may, with the sanction of a special resolution of the company, pay any classes of creditors in full, or make such compromise or other arrangements as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained, or sounding only in damages against the company whereby the company may be rendered liable.

General scheme of liquidation may be sanctioned.

56 Vic., No. 8, s. 173.

184. The liquidator may, with the sanction of a special resolution of the company, 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, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums payable at such times and generally upon such terms as may be

Power to compromise.

56 Vic., No. 8, s. 174.

* See Supreme Court Act, 1935, section 25, subsection (1).

agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Where compromise proposed, Court may order meeting of creditors to decide as to same.

(1) Where any compromise or arrangement shall be proposed between a company, which is at the time of the passing of this Act or afterwards in the course of being wound up, and the creditors of such company, or any class of such creditors, the Court may, on the application in a summary way of any creditor or liquidator, order that a meeting of such creditors, or class of creditors, shall be summoned in such manner as the Court shall direct.

(2) If a majority in number representing three-fourths in value of such creditors, or class of creditors, present either in person or by attorney or proxy at such meeting and voting, shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors, or class of creditors, as the case may be, and also on the liquidator, members, and contributories of the company: Provided that where any creditor is secured, wholly or partially, the benefit of his security shall not be taken away or affected by any proceeding under this section.

Power for liquidators to accept shares, etc., as a consideration for sale of property of company.

56 Vic., No. 8, s. 175.

185. Where any company is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidator of the first-mentioned company may, with the sanction of a special resolution of the company which is being wound up conferring either a general authority on the liquidator, or an authority in respect of any particular arrangement, receive in compensation, or part compensation for such transfer or sale, shares, policies, or like interests in such other company, for the purpose of distribution amongst the members of the company being wound up; or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from the purchasing company. Any sale

made, or arrangement entered into by the liquidators, in pursuance of this section, shall be binding on the members of the company being wound up.

186. In the case mentioned in the next preceding section, if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member, at the meeting held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidator, and left at the registered office of the company, not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidator to do one of the following things, as the liquidator may prefer, that is to say—either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member, at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidator in such manner as he may think fit. Where there are more liquidators than one, the notice of dissent may be addressed to any of them.

Protection of dissentient members.

56 Vic., No. 8, s. 176.

187. No resolution shall be deemed invalid, for the purposes of the two next preceding sections, by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the company, or for appointing liquidators.

Resolutions not invalidated by winding-up of company.

56 Vic., No. 8, s. 177.

188. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but, if the parties differ about the same, such difference shall be settled by arbitration, and each party shall for the purposes of such arbitration be deemed to have entered into a written agreement to submit such difference to the arbitration of two arbitrators, one to be appointed by each party, and an umpire to be chosen by the arbitrators; and the dissentient member shall in writing appoint an arbitrator and give the liquidator written notice thereof, and the liquidator shall within fourteen days after receipt of such notice, appoint an arbitrator on his part and give notice of such appointment to the dissentient member. The submission to arbi-

Mode of determining price.

56 Vic., No. 8, s. 178.

tration may be made a Rule of the Court, and the umpire shall be appointed and the reference conducted in the manner by the seventeenth and eighteenth sections of the Railways Act, 1878, directed with respect to arbitrations under that Act.

Certain attachments, sequestrations, and executions to be void.

56 Vic. No. 8, s. 179.

189. Where a company is being wound up, any attachment, sequestration, distress, or execution, put in force against the estate or effects of such company after the commencement of the winding-up, shall be void to all intents.

Fraudulent preference.

56 Vic., No. 8, s. 180.

190. (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, which would, if made or done by or against any individual person, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such person shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly.

(2) For the purposes of this section, the presentation of a petition for winding-up a company shall, in case of a company being wound up under order of the Court, and a resolution for winding-up the company shall, in the case of a voluntary winding-up, be deemed to correspond with an act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment made by a company of all its estate and effects to trustees, for the benefit of all its creditors, shall be void to all intents.

Power of Court to assess damages against delinquent directors and officers.

56 Vic., No. 8, s. 181.

191. Where in the course of the winding-up under this Act, or under the Ordinance, of any company, it appears that any person who has taken part in the formation or promotion thereof, 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 has been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor, member, or contri-

butory of the company, and notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such person, director, manager, liquidator, or other officer 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.

192. Where any company is being wound up, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company, or any other person has been guilty of any offence in relation to the company, for which he is criminally responsible, the Court may, on the application of the liquidator or any person interested in the winding-up, or of its own motion, direct the liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses of such prosecution or prosecutions to be paid out of the assets of the company.

Prosecution of delinquent directors, etc., in case of winding-up.
56 Vic., No. 8, s. 184.

193. No liquidator of a company which is being wound up shall pay any sums received by him as liquidator into his private banking account.

Liquidator not to pay money into private account.
56 Vic., No. 8, s. 185.

194. If any person (or persons) is aggrieved by any act or decision of the liquidator of a company which is being wound up under this Act, 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.

Appeal to Court against liquidator.
56 Vic., No. 8, s. 186.

195. All dividends not claimed within two years from the declaring thereof, and all unclaimed sums of money remaining in the hands of the liquidator for two years, shall be paid to the Treasurer for the public use of this State; but on the order of the Registrar any unclaimed dividend or other moneys shall be repaid by the Treasurer to the person or persons named in such order.

Unclaimed dividends to be paid to Treasurer.
56 Vic., No. 8, s. 187.

Power to
enforce orders.
56 Vic., No.
8, s. 188.

196. All orders made by the Court under this Act may be enforced in like manner to that in which any order of the Supreme Court made in any action pending therein may be enforced.

Member of
no-liability
company not
liable for
calls.
56 Vic., No.
8, s. 189.

197. Nothing contained in this Part of this Act shall have the effect of rendering the member of a no-liability company liable for the payment of any calls.

Rules.
Seventh
Schedule.
56 Vic., No.
8, s. 190.

198. (1) The rules in the Seventh Schedule hereto shall come into force immediately on this Act coming into operation, and shall remain in force until repealed or modified by rules to be made under subsection (2) of this section, and when so modified shall remain in force subject to such modification.

(2) Any two Judges of the Supreme Court may from time to time make rules regulating and prescribing the winding-up of companies under this Act, the practice of the Court, and the forms of proceedings and notices, and for any purposes similar to those of the rules in the Seventh Schedule hereto, and generally for better carrying this Act into effect, and for adding to, modifying, or repealing any such rules, or the rules in the said Seventh Schedule.

(3) No rules made by Judges under this section shall have any force until confirmed by the Governor and published in the *Gazette*.

Part VI.

PART VI.—THE WINDING UP OF UNREGISTERED COMPANIES.

Winding-up
of unregis-
tered com-
panies.
56 Vic., No.
8, s. 191.

199. Subject as hereinafter mentioned, any partnership, association, or company consisting of more than five members, and not registered under the Ordinance, the Mining Companies Act, 1888, or this Act, whether registered under any other Act or not, and hereinafter included under the term “unregistered company,” may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such company, with the following exceptions and additions:—

(1) Where proceedings for winding up an unregistered company are instituted, the principal place of business of such company shall, for all the purposes of this Act, be deemed to be the registered office of the company:

- (2) No unregistered company shall be wound up under this Act otherwise than by order of the Court:
- (3) The circumstances under which an unregistered company may be wound up by order of the Court are as follows:—
 - (a) When the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs:
 - (b) When the company is unable to pay its debts:
 - (c) When the company, by reason of being unable to enforce contribution of capital from its members, or by reason of insufficient capital, or for any other reason, is unable satisfactorily to continue its business:
 - (d) When the Court is of opinion that it is just and equitable that the company should be wound up.
- (4) An unregistered company shall, for the purposes of this Act, be deemed unable to pay its debts—
 - (a) When a creditor to whom the company is indebted at law or in equity, by assignment or otherwise, in a sum not less than fifty pounds then due, has served on the company by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand, or if such creditor be a corporation then under its common seal, requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor:
 - (b) When any action or other legal proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due from the company or from him in his character of member of the company, and notice in writing of the institution of such action or other legal proceeding hav-

ing been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against all costs, damages, and expenses to be incurred by him by reason of the same:

- (c) When execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, in any proceeding instituted by such creditor, against the company, or against any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied:
- (d) When it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

Who to be deemed a contributory in the event of company being wound up.

56 Vic., No. 8, s. 192.

200. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or to contribute to the payment of the costs, charges, and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death or the bankruptcy of any contributory, or the marriage of any female contributory, the provisions of this Act with respect to the representatives of a deceased contributory, and to the trustees of a bankrupt contributory, and to the consequences of the marriage of a female contributory, shall apply.

201. The Court may, at any time after the presentation of a petition for winding-up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action or legal proceeding against any contributory of the company as well as against the company, as by this Act provided, upon such terms as the Court thinks fit.

Power of Court to restrain further proceedings.

56 Vic., No. 8, s. 193.

202. When an order has been made for winding up an unregistered company, in addition to the provisions of this Act contained in the case of companies formed under this Act, it is hereby further provided that no action or other legal proceeding shall be commenced, or proceeded with, against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Effect of order for winding-up company.

56 Vic., No. 8, s. 194.

203. (1) If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights, in, to, and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons in trust for or on behalf of the company, or any part of such property is to vest in the Official Liquidator by his official name, and thereupon the same, or such part thereof as may be specified in the order, shall vest accordingly.

Provision in case of unregistered company.

56 Vic., No. 8, s. 195.

(2) The Official Liquidator may, in his official name, and after giving such indemnity, if any, as the Court directs, bring or defend any actions or other legal proceeding relating to any property vested in him, or any actions, or other legal proceedings necessary to be brought or defended, for the purposes of effectually winding up the company and recovering the property thereof.

204. The provisions made by this Part of this Act with respect to unregistered companies are in addition to, and not in restriction of, any provisions hereinbefore

Provisions in this part of Act cumulative.

56 Vic., No. 8, s. 196.

contained with respect to winding up companies by order of the Court; and the Court or Official Liquidator may, in addition to anything contained in this Part of this Act, exercise any powers, or do any act, in the case of unregistered companies, which might be exercised or done by it or him in relation to the winding up of companies formed under this Act, but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

Part VII.

PART VII.—STRIKING DEFUNCT COMPANIES OFF THE REGISTER.

Power of Registrar to strike names of defunct companies off register.
56 Vic., No. 8, s. 197.

205. (1) Where the Registrar of his own knowledge or upon information supplied in writing by a creditor or a shareholder has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within two months of sending the letter receive any answer thereto, he shall, within fourteen days after the expiration of that time, send to the company by post a registered letter, referring to the first letter and stating that no answer thereto has been received by the Registrar, and that if an answer be not received to the second letter within two months from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within the specified time after sending the second letter receive any answer thereto, the Registrar may publish in the *Gazette* and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice

thereof in the *Gazette*, and on such publication the company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced, and the company may be wound up, as if the company had not been dissolved.

(5) If any company or member of a company feels aggrieved by the name of such company being struck off the register, in pursuance of this section, the company or member may apply to the Court, and the Court, if satisfied that the company was at the time of striking off carrying on business or in operation, and that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of company had never been struck off.

(6) A letter or notice authorised or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the company whose name and address are known to the Registrar, or, if there be no director or officer of the company whose name and address are known to the Registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

PART VIII.—FOREIGN COMPANIES.

Part VIII.

206. Subject to the provisions of sections two hundred and twenty, a foreign company shall not commence or carry on business in this State until the following provisions in this section contained shall have been complied with:—

Foreign company not to commence or carry on business until provisions of this section complied with.

- (1) The company shall by power of attorney under its common seal, or executed in such manner as to be binding on the company, empower some person in this State, either generally or in respect

56 Vic., No. 8, s. 198.

of specified matters, to act as its attorney, and shall by such power of attorney empower the same person to sue and be sued, or otherwise appear or be impleaded in any Court in any civil or criminal proceedings whatsoever, or before any arbitrator or person having by law or consent of parties authority to hear evidence, and generally on behalf of such company, and within this State, to do all acts and execute all deeds and other instruments, whether of the nature of deeds or not, relating to the matters within the scope of the powers of the attorney.

- (2) A declaration shall be made by one of the directors or the general manager or secretary of the company, and indorsed on or annexed to the power of attorney, and shall be to the effect following, that is to say—

(a) That the company is incorporated in [*naming the country in which it has been incorporated*] under the style mentioned in the power of attorney, in accordance with the law of the country where it is so incorporated;

(b) That the seal (if any) affixed to the power of attorney is the common seal of the company; and

(c) That the seal (if any) has been affixed, and the power of attorney executed, and the powers and authorities purporting to be conferred thereby are authorised to be conferred under the constitution or act of incorporation of the company, and its regulations for the time being, and that the person making such declaration is a director or general manager or secretary thereof:

(d) In the event of there being no seal to the power of attorney, that by the law of the country in which the company was incorporated a seal is not necessary to the validity of such power:

- (3) The said declaration shall be made before a notary public, British Consul, Vice-Consul, Consular Agent, Commissioner for taking affidavits in the Supreme Court of this State, or other person lawfully authorised to take the same:

- (4) The attorney so appointed shall deposit in the office of the Registrar the power of attorney with the said declaration indorsed thereon or annexed thereto, and a certified copy of the certificate of incorporation of the company, or a document of similar effect, or the act of incorporation of the company;
- (5) The company shall have an office or place of business in some city, town, or place to be approved of by the Registrar in this State where all legal proceedings may be served upon and all notices addressed or given to the company, and the said attorney shall give notice in three consecutive issues of the *Gazette* and of a daily newspaper circulating in Perth stating where such office or place of business is situated, and a copy of each issue of the *Gazette* and of each daily newspaper shall be deposited in the office of the Registrar, and a fee of five shillings shall be payable in respect of all copies so filed; 60 Vic., No. 2, s. 3.
- (6) Where any foreign company shall, by power of attorney (hereinafter referred to as the original power of attorney) under its common seal, or executed in such manner as to be binding on the company, empower some person, whether in the State of Western Australia or elsewhere, to act as its attorney with the powers referred to in subsection one, and such attorney shall, in exercise of a power thereby conferred, delegate such powers to any other person or appoint a substitute in this State to exercise such powers, such company shall be deemed to have complied with the preceding subsections of this section: 2 Edw. VII., No. 19, s. 2.
- (a) A declaration with respect to such original power of attorney shall be made by one of the directors or the general manager or secretary of the company in accordance with the provisions of subsection two, and such declaration shall be indorsed on or annexed to such original power of attorney:
- (b) The deed under which such powers as aforesaid are delegated, or substitutionary power of attorney, as the case may be (which

deed and substitutionary power of attorney, as the case may be, are hereinafter included in the designation "the sub-power of attorney"), shall be executed in the presence of two witnesses, and there shall be attached thereto a statutory declaration, made before a notary, or other person authorised to take the same, by one of such attesting witnesses to the effect that such sub-power of attorney has been duly executed:

(c) The company shall deposit in the office of the Registrar of Companies the original power of attorney or a duly authenticated office copy thereof, and also the sub-power of attorney with the respective declarations attached thereto, and if the company shall be incorporated, evidence of its incorporation pursuant to section two hundred and eighteen of this Act:

(d) The attorney acting under the sub-power of attorney shall comply with subsection (5).

Acts of
attorney to
be binding on
company.
56 Vic., No.
8, s. 199.

207. Every act or thing done or purporting to be done, and every instrument executed or signed by an attorney appointed in pursuance of this Act on behalf of the company by whom he is appointed shall, if authorised by the power of attorney, bind the company in the same way and to the same extent, and have the same force and effect in every respect as if the same had been done by the company, and as if such instrument had been duly sealed with the common seal of the company, or otherwise executed or signed so as to bind the company.

Acts under
power of
attorney good
till notice filed
with Regis-
trar.

56 Vic., No.
8, s. 200.

208. Every power of attorney granted by a foreign company which shall have been so deposited in the office of the Registrar shall, so far as is practicable as between the company, its successors, and assigns on the one hand, and any person dealing with the attorney thereby appointed on the other hand, continue in force, notwithstanding the revocation of such power or the winding-up or dissolution of such company, until written notice of such revocation, winding-up, or dissolution, signed by the said attorney, or by an attorney appointed by the company in his place, shall have been filed at the office of the Registrar.

209. In the event of the death of any sole or sole surviving attorney whose power of attorney shall have been deposited in the office of the Registrar under this Part of this Act, or in the event of the filing under the last preceding section of a notice of revocation of the power of any such attorney, the company shall not, from the expiration of six months after such death or one month, or such extended time as may be allowed under special circumstances by the Registrar, after the filing of such notice, carry on business in this State until the provisions of subsections (1), (2), (3), and (4) of section two hundred and six shall have been complied with, or again complied with, as the case may be.

Proceedings on death or revocation of power of attorney.

56 Vic., No. 8, s. 201.

2 Edw. VII., No. 19, s. 3.

210. (1) If after notice given under subsection (5) of section two hundred and six of this Act of the situation of the office or place of business of the company the situation of the same shall be changed, the attorney of the company shall forthwith give notice of such change in three consecutive issues of the *Gazette*, and of one daily newspaper published in Perth, and a copy of each issue of the *Gazette* and of each daily newspaper shall be deposited in the office of the Registrar, and a fee of five shillings shall be payable in respect of all copies so filed.

Notice of change of office.

56 Vic., No. 8, s. 202.

60 Vic., No. 2, s. 3.

(2) If any attorney of a foreign company shall fail to comply with the provisions of this section he shall be liable to a penalty of five pounds for every day on which any business of the company is carried on until such provisions are complied with.

Penalty on attorney not complying.

211. (1) Any foreign company carrying on business contrary to this Part of this Act shall be liable to a penalty of twenty pounds for every day on which it shall so carry on business; and any attorney of such company, or any other person, who shall on behalf of such company wilfully and knowingly assist in the carrying on of such business contrary to this Part of this Act, shall incur a penalty of five pounds for every day on which he shall so assist.

Penalty on company not complying.

56 Vic., No. 8, s. 203.

(2) If any foreign company shall carry on business contrary to this Part of this Act, the validity of any contracts, dealings, or transactions in relation to such business shall not be affected by this Part of this Act, but such company shall not be entitled to bring or maintain

Effect of non-compliance.

any action, set-off, counter-claim, or legal proceeding in respect of any such contract, dealing, or transaction until it shall have complied with this Part of this Act.

Inspection.
56 Vic., No.
8, s. 204.

212. Every document deposited or filed with the Registrar under this Part of this Act shall be open to the inspection of any person on payment of one shilling.

Service at
office good
service on
company.
56 Vic., No.
8, s. 205.

213. Service of legal proceedings, or the delivery of any notice at the office or place of business of which notice shall have been given under this Act, as aforesaid, shall for all purposes be deemed good service on the company; but this section shall not derogate from the effect of any statute or rule now or hereafter in force regulating the service of legal process upon any person or corporate body according to the practice of the Court whence such process shall issue, but shall be deemed to be cumulative upon and in addition to any such statute or rule, nor shall this section affect the power of any court to direct what service of its process shall be effective as regards any company or corporation.

Declaration
or certified
copy evidence.
56 Vic., No.
8, s. 206.

214. A declaration complying with the provisions of section two hundred and six, subsection (2), and appearing to comply with subsection (3) of the same section, or a copy of such declaration purporting to be certified by the Registrar as a true copy, shall as against the company be final and conclusive evidence, and for all other purposes shall be presumptive evidence of the facts therein stated in pursuance of the same section.

Power of
attorney or
certified copy
receivable in
evidence.
56 Vic., No.
8, s. 207.

215. Any power of attorney deposited under the provisions of this Part of this Act, or a copy of such power of attorney purporting to be certified by the Registrar as a true copy, shall for all purposes be receivable in evidence before any court, person, or tribunal having authority by law to hear and receive evidence without further proof of the sealing, signature, or other execution thereof.

Foreign com-
pany to give
due notice of
intention to
cease carry-
ing on
business.
56 Vic., No.
8, s. 208.

216. (1) Before any foreign company shall voluntarily cease to carry on business in this State, at least three months' notice by its attorney of its intention so to do shall be published in three consecutive issues of the *Gazette* and of one West Australian daily newspaper circulating in Perth.

(2) For three months after the last publication of such notice legal proceedings, notices, or other documents may be served on the attorney of the company, or, if there shall be no such attorney, by leaving the same at any office or place of business where the company carried on business prior to the publication of such notice.

217. A statutory declaration made by the attorney of any foreign company, appointed under power of attorney complying with section two hundred and six, subsection (1), that he has not received any notice or information of the revocation of the power of attorney or of the winding-up or dissolution of the company, shall as against the company be conclusive proof that no such revocation, winding-up, or dissolution has taken place.

Statutory
declaration of
attorney to
be sufficient
proof of non-
revocation.

56 Vic., No.
8, s. 209.

218. (1) A certificate of incorporation purporting to be under the hand of an officer authorised by the law of the country in which a foreign company purports to be incorporated, to grant such certificate, duly certified by declaration made, or purporting to be made, by one of the directors or the general manager or secretary of such company before a notary public or British Consul, or other person lawfully authorised to take such declaration, shall as against the company be conclusive evidence, and for all other purposes be presumptive evidence, that such company has been duly incorporated.

Evidence of
incorporation
of company.

56 Vic., No.
8, s. 210.

(2) The date of incorporation mentioned in such certificate, or in such declaration, or if no such date be mentioned then the date of such certificate, or the date of such declaration as aforesaid, shall be deemed to be the date at which such company was incorporated.

(3) In the absence of a certificate of incorporation a copy of any Act of incorporation or document of similar effect to a certificate of incorporation, under which the company purports to be incorporated, duly certified as by subsection (1) of this section provided with regard to a certificate of incorporation, shall be equivalent to a certificate of incorporation under the same subsection.

219. Nothing in this Part of this Act contained shall be construed to authorise any foreign company to issue notes, or promissory notes, payable on demand, within this State, or shall do away with or diminish the respons-

Act not to
authorise issue
of bank or
promissory
notes or affect
implied re-
sponsibility.

56 Vic., No.
8, s. 211.

ibility of the company apart from this Part of this Act by reason of implied authority or otherwise for any act or thing done or omitted to be done by its attorney or agent.

One year for existing company to comply.

56 Vic., No. 8, s. 212.

220. Any foreign company carrying on business in this State at the commencement of this Act need not comply with any of the provisions of this Part of this Act until one year from such commencement.

Foreign company may obtain certificate of compliance with Act.

60 Vic., No. 2, s. 4.

Eighth Schedule.

221. Any foreign company which has complied, or may hereafter comply, with sections two hundred and six or two hundred and eight, and two hundred and nine, or two hundred and ten, as the case may require, may obtain from the Registrar (who shall give to such company) a certificate under his hand and seal, in the form in the Eighth Schedule hereto, that such company has complied with the provisions of the aforesaid sections; and such certificate shall be conclusive evidence that such sections have been complied with by the company, and shall, as against the company, be conclusive evidence, and, for all other purposes, be presumptive evidence that such company has been duly incorporated. A fee of one pound one shilling shall be payable on every such certificate.

Limitation of application of sections 223 and 224.

See 62 Vic., No. 28, s. 8.

63 Vic., No. 54, s. 9.

222. Sections two hundred and twenty-three and two hundred and twenty-four of this Act shall only apply to companies engaged in, or authorised to engage in, the business of mining, or the acquiring, cutting, or selling of indigenous timber, or the buying or selling of land, in Western Australia.

Local register to be kept by foreign companies.

62 Vic., No. 28, s. 3.

63 Vic., No. 54, s. 2.

223. (1) Every foreign company,* or the attorney of every foreign company, carrying on business in this State,† shall, in the case of companies carrying on business therein at the time of the passing of the Companies Act Amendment Act of 1898,‡ within two calendar months from such time, and as to all other companies so carrying on business at any time after the passing of the said Act, within two months from the deposit in the office of the Registrar of the power of attorney in accordance with section one hundred and ninety-eight of the Com-

* See section 222. † See section 3, Interpretation of "this State." ‡ 28th October, 1898.

panies Act, 1893, § open, keep, and maintain, or cause to be opened, kept, and maintained, at the registered office of the said company in the Colony,* a Register of Shareholders under this Act, to be called a Colonial Register, for the registration of all shareholders in such company who may apply in writing to such attorney to be registered therein.

(2) Every such register shall be kept in the manner provided by Part III. of the Companies Act, 1893, and transfers shall be effected on such register in the same manner and at the same charges as on the register kept at the head office of the company, and transfers lodged in the colonial office of the company shall be binding upon the company, and the Court shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-six of this Act vested in such Court with respect to a register of a company incorporated in this State.

(3) Every such foreign company failing or refusing to comply with the provisions of this section shall incur a penalty not exceeding one hundred pounds for every day during which such refusal or non-compliance shall continue, to be recovered in a summary manner before any two justices of the peace or by action or suit in the

63 Vic., No.
54, s. 2.

§ Section 206 of this compilation:—

LOCAL REGISTER TO BE KEPT BY FOREIGN COMPANIES.

(61 Vic., No. 35, s. 2.)

By section two of the Companies Act Amendment Act, 1897, it was enacted as follows:—

2. (1) Upon the application of a shareholder in any foreign company, and upon proof to the satisfaction of the Supreme Court or a Judge thereof that at least five per cent. of the shares actually issued in such company are held by shareholders resident in the Colony, the Court or Judge shall order and direct that a register of shareholders under this Act, to be called a Colonial Register, shall be opened and kept in the Colony within such time as shall to the Court or Judge seem expedient.

The attorney of any such company shall, within the time specified in such order, open and keep, or cause to be opened and kept, at the registered office of the said company in the Colony, a Colonial Register of all its members who may apply in writing to such attorney to be registered thereon: Every such register shall be kept in the manner provided by Part III. of the Companies Act, 1893, and the Court shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-six of the said Act vested in such Court with respect to a register of a company incorporated in the Colony.

Every such foreign company refusing to register a shareholder in compliance with this section shall incur a penalty not exceeding five pounds for every day during which such non-compliance continues; and every attorney of such company who, in the Colony, knowingly and wilfully authorises or permits such non-compliance shall incur the like penalty.

By section two of the amending Act of 1898 (62 Vic., No. 28), it was enacted as follows:—

2. Section two of the Companies Act, 1893, Amendment Act, 1897, is hereby repealed.

But by section eight of the amending Act of 1898, it was enacted that the *first six sections thereof* should only apply to companies engaged in the business of mining, or the acquiring, cutting, or selling of indigenous timber, or the buying, or selling of land in Western Australia.

* "This State" as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (*Imp.*)

Supreme Court, and shall be a charge on the property of the company, and in addition thereto, if such default continues for the space of three calendar months, the company, and every person acting as trustee or agent for the company or otherwise on its behalf, shall thereafter be incapable, while so in default, of bringing or maintaining in Western Australia any action, set-off, counter claim, or other legal proceeding whatsoever in this State.

Transfer of
shares.

62 Vic., No.
28, s. 5.

224. On the application of any shareholder on the Colonial Register, his shares shall be transferred to the register of the head office of the company.

Notice of
trust not to
be entered on
register.

61 Vic., No.
35, s. 3.

225. No notice of any trust, expressed, implied, or constructive, need be entered on the register of members, or be receivable by the company.

Power to re-
ject transfer
to vest in
attorney or
local board.

63 Vic., No.
54, s. 3.

226. If, by the constitution of the foreign company, the company or its directors have power to reject a transfer of shares, such power shall, in respect of transfers tendered for registration in the Colony,* be vested in the attorney for the company or the local board of directors.

Transfer of
shares to
Colonial
Register.

63 Vic., No.
54, s. 4.

Ninth
Schedule.

227. (1) Any shareholder in a foreign company who desires to be registered in the Colonial Register may deliver an application in the form of the Ninth Schedule hereto, together with a certificate of the shares in respect of which he desires to be registered, to the attorney of the company at its registered office in the Colony.*

Tenth
Schedule.

(2) The attorney shall thereupon give to the shareholder a certificate of deposit in the form of the Tenth Schedule hereto, and shall, with due diligence, forward the share certificate to the principal registered office of the company, and if it there appears that no encumbrances or unpaid calls are registered against or due upon the shares, the shares shall be transferred to the Colonial Register, and notice of such transfer shall be given to the shareholder.

(3) Upon production of the said certificate of deposit, after notification of such transfer, the attorney shall issue to the shareholder a certificate indorsed with the words

*"This State" as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (Imperial).

“Colonial Register,” showing that he is the proprietor of the shares, and such certificate shall be of the same force and effect as the superseded certificate.

(4) For any failure or refusal to comply with this section, the company shall incur the like penalties, and suffer the like disabilities as prescribed by section two hundred and twenty-three.

228. A Colonial Register shall, as regards the parties entered therein, be deemed to be a part of the company’s register of members, and shall be *prima facie* evidence of all particulars entered therein.

Colonial Register to be deemed part of Company’s Register of Members.

61 Vic., No. 35, s. 5.

229. There shall be kept at the office of every foreign company having a local register a colonial seal, and a certificate under the colonial seal of the company, specifying any share or shares or stock held by any member thereof, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Certificate to be *prima facie* evidence of title.

61 Vic., No. 35, s. 6.

230. (1) The local register of members shall be kept at the registered office of the company in the Colony*, and, except when closed as hereinafter mentioned, shall, during not less than two hours in each day upon which the registered office of the company shall be open for business, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling or such less sum as the company may prescribe for each inspection, and every such member or other person may demand a copy of such register, or any part thereof, or of any list or summary prepared under section thirty of this Act, on payment of sixpence for every one hundred words required to be copied.

Inspection of register.

61 Vic., No. 35, s. 7.

(2) If such inspection or copy be refused, or if the company shall neglect to comply with the lawful demand for such inspection or copy, the company shall incur, for each refusal or neglect, a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal or neglect continues, and every attorney of the company who knowingly and wilfully authorises or permits such refusal or neglect shall incur the like penalty. In addition to the

Penalty for refusal of inspection.

*“This State” as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (Imperial).

above penalty a Judge may, by order, compel an immediate inspection of the local register, and make such further or other order as the nature of the case requires.

Register may
be closed.

61 Vic., No.
35, s. 8.

231. Any foreign company may, upon giving notice by advertisement in any newspaper published in Perth, or in the place nearest to the registered office of the company, close the local register of members for any time or times not exceeding in the whole thirty days in each year, provided that the register shall not be closed at any one period for more than seven consecutive days.

Validity of
transfer of
shares of
deceased person.

61 Vic., No.
35, s. 9.

232. Any transfer of the shares or other interest registered in a Colonial Register of a deceased member of a foreign company, made by his representative, shall, notwithstanding such representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Notice of
rectification
to be given to
Registrar.

61 Vic., No.
35, s. 10.

233. When an order has been made rectifying the local register in the case of a company hereby required to send in a list of its members to the Registrar of Companies under this Act, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be
evidence.

61 Vic., No.
35, s. 11.

234. The local register of members shall be *prima facie* evidence of all matters by this Act directed or authorised to be inserted therein.

Dividends,
how payable.

61 Vic., No.
35, s. 12.

235. The dividends in foreign companies accruing due from time to time, in respect of shares on any local register, shall be notified by the officer in charge of such local register, by letter or post card, to the shareholders on such local register, and by advertisement in the newspaper published nearest to the place of such local register, and shall be payable at the registered office of the company in the Colony* to the shareholders on such local register at a time not later than fourteen days from the date on which such dividends have been declared payable at the foreign office of the company.

*"This State" as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (Imperial).

236. (1) Every foreign company shall keep at its registered office in the Colony* a register of all mortgages, bills of sale, and other charges specifically affecting property of the company in the Colony,* and shall enter in such register, in respect of each mortgage, bill of sale, or charge, a short description of the property mortgaged or charged, the amount of charge created, and the rate of interest payable, and the names of the mortgagees or persons entitled to such charge.

Register of mortgages, bills of sale, etc., to be kept.

81 Vic., No. 35, s. 13.

(2) If any such property of a foreign company registered in the Colony* shall be mortgaged or charged, or if any bill of sale shall be given without such entry as aforesaid being made, every attorney or other officer of such company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds.

Penalty for default.

(3) The register of mortgages, bills of sale, and charges required by this section shall be open to inspection by any person at all reasonable times, and if such inspection be refused, any officer of the company refusing the same and every attorney of the company authorising, or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and in addition to the above penalty a Judge may, by order, compel an immediate inspection of the register.

Register of mortgages, etc., to be open to inspection.

237. (1) Whenever a foreign company carrying on business in this Colony* is reconstructed on the basis of a sale by the liquidator of the assets of the company or otherwise, the liquidator or the company shall reserve, for the benefit of the members of the company registered on the Colonial Register (hereinafter called the colonial members), a part of the consideration passing to the reconstructing company, proportioned to the interests of the colonial members, and shall forthwith cause notice of such reservation to be published in the *Gazette*, and to be delivered to each colonial member, or sent by post to his registered address; and at any time within two months after such publication every colonial member may, by writing under his hand delivered by post or

On reconstruction, liquidator or company to reserve colonial members' share of consideration.

63 Vic., No. 54, s. 5.

*"This State" as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (Imperial).

otherwise to the liquidator or the company, or the attorney of the liquidator, or of the company in the Colony,* claim the share proportioned to the interest of such shareholder in the part of the consideration so reserved, and shall be entitled to receive the same.

Liquidator to send to Registrar of Supreme Court declaration of compliance with this section, otherwise no property in the Colony to pass.

(2) The liquidator or the company shall forward to the Registrar at the Supreme Court a statutory declaration made by the liquidator or by a director or officer of the company authorised by the company in that behalf, stating how this section has been complied with; and until such declaration has been filed no conveyance, transfer, or dealing with any property of the company shall be registered in the Department of Mines or of Crown Lands or in the office of Land Titles or in the office for the registration of deeds; and no person holding any property, real or personal, as servant, agent, or trustee on behalf of the company shall convey, deal with, or dispose of the same, nor shall any property of the company in this Colony* pass to the purchaser thereof.

Examination of declaration before filing.

(3) Before filing any declaration purporting to comply with this Act, the Registrar shall examine the same and satisfy himself of such compliance.

On issue of new shares or debentures, colonial members' proportion to be reserved.

63 Vic., No. 54, s. 6.

238. Whenever a foreign company carrying on business in the Colony* has passed resolutions authorising the issue of debentures or additional shares, the company shall reserve for the benefit of the colonial members a part of such issue proportioned to the interests of the colonial members, and shall forthwith cause notice of such reservation to be published and to be delivered in like manner as is hereinbefore provided in the case of reconstruction; and, at any time within two months of such publication, every colonial member may, by writing under his hand delivered by post or otherwise to the company, or to the attorney of the company in this Colony,* claim his proportion of the new issue, and shall be entitled to receive or take up such proportion.

Notice of any right or option accruing to members to be given in *Gazette*, and their rights reserved.

63 Vic., No. 54, s. 7.

239. Whenever any foreign company carrying on business in the Colony* has passed any resolution, or entered into any arrangement whereby any right or option accrues to any members of the company, or its

*"This State" as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (Imperial).

attorney in the Colony,* the company shall forthwith cause notice of such right or option to be published and delivered in like manner as is hereinbefore provided in the case of reconstruction, and shall effectually reserve for the benefit of the colonial members the power to exercise such right or option till the end of two months from the date of such publication; and, at any time within such two months, every colonial member may, by writing under his hand, delivered by post or otherwise to the company, or to the attorney of the company in this Colony,* claim to exercise the right or option so accruing, in proportion to his interest, and shall thereupon be entitled so to do.

In case of non-observance of this or of the last preceding section, and if, within six months after such resolution is passed or arrangement entered into, a statutory declaration, as hereinafter required, has not been made and filed on behalf of the company with the Registrar of the Supreme Court, the company shall thereafter be incapable of bringing or maintaining, either directly or through any person acting as trustee or agent on its behalf in Western Australia, any action, set off, counterclaim, or other legal proceeding whatsoever in the Colony,* and shall so remain incapable until such statutory declaration is so made and filed.

The statutory declaration hereby required shall be made by a director, or some officer, or the local attorney of the company, who shall thereby declare that he is such officer or attorney, and is authorised by the company to make the declaration for the purpose of filing as aforesaid, and shall state that every colonial member who, within two months after the publication by the company, as hereinbefore required, of notice of the issue of debentures or additional shares, or the right or option, has claimed to receive a proportion of such issue or to exercise the right or option as aforesaid has been satisfied in respect thereof to the extent of his proportion.

240. Every foreign company required to maintain a Colonial Register shall, immediately after any report or balance-sheet is submitted to any meeting of its shareholders held out of Western Australia, forward to its

Foreign company to send copies of reports and balance sheets to local office.

63 Vic., No. 54, s. 8.

*"This State" as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (Imperial).

registered office in Western Australia a sufficient number of copies of such report or balance-sheet to admit of their distribution among the colonial shareholders; and it shall be the duty of the attorney for the company in the Colony* to send by post or deliver one of such copies to every colonial shareholder of the company.

Part IX.

PART IX.—NO-LIABILITY COMPANIES.

Calls.

Calls and
notice thereof.
56 Vic., No.
8, s. 213.

241. The calls upon shares in every company shall be made payable on a day not less than fourteen days from the day on which the call shall be made. When a call has been made, notice of the day when it will be payable, and of the place for payment thereof, shall be published in the *Gazette*, and in a daily newspaper published in Perth, or in case the registered office shall be in any place other than Perth, in one or more newspapers circulating in the locality wherein the registered office of the company shall be situated.

No call to be
made until
fourteen days
after previous
call payable.
56 Vic., No.
8, s. 214.

242. When a call shall have been made as provided in the last preceding section, no subsequent call shall be made until fourteen days from the day when the call so made is payable.

Forfeiture of
shares for
non-payment
of calls.
56 Vic., No.
8, s. 215.

243. Any share in a company upon which a call remains unpaid for fourteen days after the day upon which such call is payable, shall be absolutely forfeited without any resolution of the directors or other proceeding.

Forfeited
shares to be
sold by
auction.
56 Vic., No.
8, s. 216.

244. (1) Every such forfeited share shall be offered for sale by the company by public auction advertised in the *Gazette*, and in a daily newspaper published in Perth, and, in case such company shall have a registered office in any place other than Perth, then in one newspaper circulating in the locality wherein the registered office of the company is situated, not less than seven nor more than fourteen days before the day appointed for the sale.

*"This State" as from 1st day of January, 1901, 63 and 64 Vic., chapter 12 (Imperial).

(2) The proceeds of such sale shall be applied in payment of the expense of such advertisement, and any other expenses necessarily incurred in respect of the forfeiture, and in payment of the call due, and the balance (if any) shall be paid to the member whose share shall have been so sold on his delivering to the company the scrip representing such forfeited share.

245. Notwithstanding anything hereinbefore contained, the owner at law or in equity of a forfeited share shall be entitled, at any time before the day fixed for sale of the share, to redeem the share by payment to the secretary of all calls due thereon, and of all expenses incurred by the company in respect of the forfeiture, and he shall thereupon be entitled to the share as if the forfeiture had not been incurred.

Redemption of
forfeited
shares.

56 Vic., No.
8, s. 217.

246. Whenever, at any public auction called for the sale of forfeited shares in any company, there shall have been or shall be no bid for the purchase of such shares, or no bid sufficient to cover the call or calls then unpaid upon such shares, and the expenses of and attending the forfeiture and attempted sale, such shares shall become the absolute property of the company, and may be dealt with in any manner that the directors may think advisable for the benefit of the company.

Forfeited
shares which
are not sold to
become the
absolute pro-
perty of the
company.

56 Vic., No.
8, s. 218.

247. A minute in the books of a company signed by the chairman of directors for the time being that any shares were offered for sale by public auction, and that there was no sufficient bid to pay the arrears of calls then due thereon, and the expenses of and attending the forfeiture and attempted sale, shall be conclusive evidence that such shares became the absolute property of the company on the day when they were offered for sale, and that the previous owners of such shares have forfeited all claim to or in respect of the same.

Minute of
forfeiture to
be conclusive
evidence.

56 Vic., No.
8, s. 219.

248. Whenever any forfeited shares shall have been sold at public auction, or shall have become the property of the company, the directors may issue new scrip certificates in respect of such shares, which shall bear upon the face thereof the words "issued in lieu of forfeited share-scrip."

Power to issue
new scrip.

56 Vic., No.
8, s. 220.

Shareholder
not liable to
calls or
contributions.

56 Vic., No.
8, s. 221.

249. The acceptance of a share in a company, whether by original allotment or by transfer, shall not be deemed a contract on the part of the person accepting the same to pay any calls in liquidation or otherwise in respect thereof, or any contribution to the debts and liabilities of such company, and such person shall not be liable to be sued for any such calls or contributions; but he shall not be entitled to a dividend upon any share upon which a call shall be due and unpaid.

Part X.

PART X.—THE LIABILITY OF DIRECTORS AND PROMOTERS.

Liability for
statements in
prospectus.

56 Vic., No.
8, s. 222.

250. (1) Every prospectus of a company or intended company, and every notice inviting persons to subscribe for shares in any company or intended company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the company or intended company or otherwise, and the number of paid-up or partly paid-up shares held or to be taken by any promoter, and every other interest of such promoter or any person in trust for him, in the said company or intended company, and any prospectus or notice not containing the particulars aforesaid shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same as regards any person taking shares in such company on the faith of such prospectus unless he shall have had notice of such contract, shares, or interest.

(2) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director or provisional director of the company at the time of the issue of the prospectus or notice, and every person who, having authorised such naming of him, is named in the prospectus or notice as a director or provisional director of the company, or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company and every person who has authorised the issue of the prospectus or notice shall be liable to pay compensation to all persons who shall subscribe

for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue or misleading statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

- (a) With respect to every such untrue or misleading statement, not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe, and did, up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and
- (b) With respect to every such untrue or misleading statement, purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation: Provided that, notwithstanding that such untrue or misleading statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, provisional director, person named, promoter, or other person who authorised the issue of the prospectus or notice as aforesaid shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and
- (c) With respect to every such untrue or misleading statement, purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document that it was a correct and fair representation of such statement or copy of or extract from such document:

Or unless it is proved:

- (d) That, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent; or
- (e) That the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent; or
- (f) That, after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue or misleading statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(3) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing the untrue or misleading statement, but shall not include nor shall this section apply to any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(4) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Indemnity
where name
of person has
been improperly
inserted
as a director.
56 Vic., No.
8, s. 223.

251. Where any such prospectus or notice as aforesaid contains the name of a person as a director, provisional director, or promoter of the company, or as having agreed to become a director, provisional director or promoter thereof, and such person has not consented to become a director, provisional director, or promoter, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors, provisional directors, or promoters of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice, shall be liable to indemnify the person named as a director, provisional director, or promoter of the company, or as having agreed to become

a director, provisional director, or promoter thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

252. Every person who, by reason of his being a director, provisional director, or promoter, or named as a director, provisional director, or promoter, or as having agreed to become a director, provisional director, or promoter, or by reason of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Contribution
from co-
directors, etc.
56 Vic., No.
8, s. 224.

253. (1) Every registered company shall, within one week after issuing any prospectus or notice announcing for subscription, or containing an invitation to subscribe for any shares, debentures, or debenture stock of the company, send to the Registrar, to be kept by him, a copy of the prospectus or notice, signed by all the directors, and by the secretary of the company.

Copies of
prospectus to
be filed with
Registrar.
56 Vic., No.
8, s. 225.

(2) If any such prospectus or notice is issued on behalf of or with reference to an intended company before the registration thereof, a copy of the prospectus or notice shall, on the application for the registration of the company, be produced to the Registrar, to be kept by him.

(3) If default is made in complying with this section every person who is a director or promoter of the company at the time when the default is made, and knowingly authorises or permits such default, shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

PART XI.—MISCELLANEOUS.

254. (1) It shall not be lawful for any person to go from house to house, or from place to place, offering shares for subscription or sale to the public or any mem-

Part XI.

Restrictions
on offering of
shares for
subscription
or sale.*

*Companies Act Amendment Act, 1938, assented to 31st January, 1939.

No. 40 of
1938, s. 3, *cf.*
19 and 20 Geo.
V., c. 23,
s. 356.

S.A. No. 2196,
s. 368.

N.S.W. No. 33
of 1936, s.
343.

Q. No. 53 of
1931, s. 368;
Tas. 1927,
No. 89.

ber of the public: Provided that this subsection shall not apply to shares in a company to which the Registrar of Companies has granted a certificate of exemption from the provisions of this subsection. Such exemption may be in respect of the whole State or any particular district or districts thereof to be specified in the certificate and may be for a specified period only.

The Registrar shall not grant any such certificate unless he is satisfied that it is necessary and desirable for local or special reasons to grant it.

Every person acting under any such certificate shall produce the same or a copy thereof certified as such by the Registrar of Companies to any person to whom he is offering shares, and permit such person to inspect such certificate or certified copy thereof.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for sale, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section:

Provided that the provisions of this subsection shall not apply where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than the type known as eight point face.

(4) The said statement shall contain particulars with respect to the following matters—

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Western Australia where that principal can be served with process;

- (b) the date on which and the country or State in which the company was incorporated and the address of its registered or principal office in Western Australia;
- (c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;
- (d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) the names and addresses of the directors of the company, and of any person occupying the position of director of the company;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any stock exchange in the Commonwealth or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Western Australia where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be liable to imprisonment for a term not exceed-

ing six months or to a fine not exceeding two hundred pounds or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence, unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) Where any person makes an offer in contravention of the provisions of this section, any person contracting to take shares in consequence of such offer shall be in the same position as if such contract had been induced by the fraud of the offeror.

Interpretation.
No. 40 of
1938, s. 2.

255. In the last preceding section—

“**Debenture**” includes debenture stock, bonds, and any other securities of a company, whether constituting a charge on the assets of a company or not.

“**Director**” includes any person occupying the position of director by whatever name called.

“**Dividend**” includes interest.

“**Prospectus**” means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company.

“**Sale**” or “**Sell**” where not contrary to the context includes “exchange.”

“**Share**” means share in the share capital of a company, whether a company within the meaning of the principal Act or not, and includes stock, bonds, debentures, debenture stock, and other securities and units, whether having the benefit of security over the assets of the company or not.

“**Unit**” means any right or interest by whatever name called in a share.

256. All offences under section two hundred and fifty-four of this Act made punishable by any penalty may be prosecuted and disposed of summarily under the Justices Act, 1902-1926.

Summary
proceedings.
No. 40 of
1938, s. 4.

257. Where an allotment of shares, debentures, or debenture stock in a registered or intended company is made in pursuance of any prospectus or notice issued after the commencement of this Act, the allotment shall not be binding on the applicant unless—

Restriction
on allotment
of shares and
debentures.
56 Vic., No.
8, s. 226.

- (1) The minimum number stated in that behalf in the prospectus or notice, as a condition of allotment or of the formation of the company, or, if no minimum number is so stated, the whole number of shares or debentures offered by the prospectus or notice have been applied for at the time of the allotment:
- (2) The minimum amount stated in that behalf in the prospectus or notice as a condition of allotment or of the formation of the company, or, if no minimum amount is so stated, then one-tenth of the amount payable in cash in respect of each share, debenture, or debenture stock so applied for, has been paid at the time of the allotment; and
- (3) The allotment is made within three months from the day on which the application for such shares was left with the company, or the promoters of the intended company, or some person acting on their behalf.

258. For the purposes of this Act, and so far as practicable, any person who shall make a conveyance or assignment for the benefit of his creditors shall be deemed to have become bankrupt, and the provisions of this Act with respect to bankruptcy and the trustee of a bankrupt shall, so far as practicable, apply to such assignment and the trustee thereof.

Assignment
equivalent to
bankruptcy.
56 Vic., No.
8, s. 227.

259. Any secretary or manager of a company who shall, after having been lawfully directed so to do, wilfully neglect or refuse to lodge with the liquidator the register of members of a company which is being wound up, and all other books, documents, and other property

Liability of
secretary
neglecting to
lodge books
with liqui-
dator.
56 Vic., No.
8, s. 228.

of such company in his possession or under his control, shall be liable to a penalty not exceeding one hundred pounds for every such offence.

Liability of
secretary to
penalties.

56 Vic., No.
8, s. 229.

260. Any such secretary or manager or any director of a company who shall wilfully refuse or neglect to permit any person to inspect, or wilfully obstruct any person in inspecting, any book or account of a company, or report of directors thereof, or other document, to the inspection of which such person shall be entitled under this Act, shall be liable to a penalty of fifty pounds: Provided such person shall have paid or tendered the sum (if any) payable by him for such inspection.

Notice to be
given to
director on
his election
that his li-
ability will be
unlimited.

56 Vic., No.
8, s. 230.

261. (1) In any limited company in which in pursuance of this Act the liability of a director or manager is unlimited the directors or manager of the company (if any) and the member who proposes any person for election or appointment to such office shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, manager, and secretary (if any) of such company, or one of them, shall, before such person accepts such office, or acts therein, give him notice in writing that his liability will be unlimited.

(2) If any director, manager, secretary, or proposer make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default; but the liability of the person elected or appointed shall not be affected by such default.

Court to bring
certain cases
under notice
of Crown
Solicitor.

56 Vic., No.
8, s. 231.

262. It shall be the duty of the Court, in case at any time it has reason to believe that any of the offences mentioned in this Part of this Act (except section two hundred and fifty-four) has been committed, to bring the case under the notice of the Crown Solicitor with a view to a prosecution being instituted.

Reception of
certified copies
of documents
as legal
evidence.

56 Vic., No.
8, s. 236.

263. Every certificate of the incorporation of any company given by the Registrar for the time being under his hand and seal, shall be received in evidence as if it were the original certificate, and any copy of or extract

from any of the documents or part of the documents kept and registered at the registration office, if duly certified to be a true copy under the hand and seal of the Registrar, shall in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document, without proof of the appointment of the Registrar.

264. Any document appearing to be certified by some person as secretary or manager of any incorporated company as a true copy of, or extract from, any memorandum or articles of association, or rules or regulations of such company, shall in all courts be received as *prima facie* evidence of the contents of the instrument of or from which it appears to be a copy or extract.

Certified copy of articles of company to be *prima facie* evidence.

56 Vic., No. 8, s. 237.

265. Any document appearing on its face to be a certificate or memorandum of the title or ownership of any shares in any incorporated company and lawfully issued pursuant to the memorandum or articles of association, or rules or regulations of such company, shall in all courts be received as *prima facie* evidence of the title or ownership stated in such document.

Script certificate to be *prima facie* evidence.

56 Vic., No. 8, s. 238.

266. Every declaration required by this Act, or intended to be used in any matter or proceeding under this Act, may be made before a notary public, justice of the peace, or commissioner for taking affidavits in the Supreme Court, or out of this State, before any person authorised to take declarations in the place where such declaration shall be made, and it shall be sufficient if such declaration purports to be made under or in pursuance of this Act.

Declaration.

56 Vic., No. 8, s. 239.

267. Whenever a new incorporated company is formed by reconstruction upon the basis of a sale by the liquidator of a pre-existing company to the new company, it shall be lawful for the Treasurer, in his discretion, to exempt from *ad valorem* duty, wholly or partially, any instrument whereby the assets of the pre-existing company are transferred to the new company.

Exemption from stamp duty on reconstruction.

62 Vic., No. 28, s. 7.

Notices and Legal Proceedings.

268. Any summons, notice, order, or other document, requiring to be served upon any company may be served by leaving the same, or sending it through the post in a

Service of notices on company.

56 Vic., No. 8, s. 240.

prepaid letter addressed to the company at its registered office.

Rules as to
notices by
letter.

56 Vic., No.
8, s. 241.

269. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was posted as a prepaid letter.

Authentication
of notices of
company.

56 Vic., No.
8, s. 242.

270. Any summons, notice, order, or proceeding requiring authentication by a company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Court or
Judge may
order service
on officer,
manager or
agent of
corporations,
etc., to be
good.

56 Vic., No.
8, s. 243.

271. (1) In any proceeding in the Supreme or any other Court against any corporation or incorporated company, including a foreign company, the Court, or any judge or magistrate having jurisdiction in such Court, may order that service of any process or notice, and of all subsequent process and notices in such proceeding upon any officer, manager, or agent of such corporation or incorporated company, shall be deemed good and effectual service upon such corporation or incorporated company, under such terms and conditions as to such Court, judge, or magistrate shall seem fit.

(2) Such further proceedings may be had upon a service made under such order as might be taken against an individual resident in this State liable to such proceeding, and duly served with such process or notice.

(3) The said Court, or any such judge or magistrate, upon application made by such corporation or incorporated company, or such officer, manager, or agent, may revoke, vary, or alter such order, and may order by whom the costs arising from such application shall be paid.

(4) Nothing in this section contained shall derogate from any power which any Court, judge, or magistrate now has of directing effective service of any process or notice upon any corporation or incorporated company, or any power which any person now has of proceeding against the same.

272. All offences against this Act, or against any regulation made under this Act, in respect of which offences any fine or penalty is by this Act imposed (where no other provision for the recovery thereof is in that behalf made), shall be heard and determined, and such fines and penalties be awarded and imposed in a summary way, by and before any two or more justices of the peace for this State in petty sessions.

Proceedings
for penalties.
56 Vic., No.
8, s. 244.

273. All the proceedings before justices shall be regulated by Ordinance No. 5 of 1850, the 14 Victoria, No. 5, and any other Act that may be law in that behalf.*

Proceedings
before
Justices.
56 Vic., No.
8, s. 245.

274. In every case of the adjudication of a fine or pecuniary penalty or amends under this Act, and of the non-payment of such fine or pecuniary penalty or amends, any justice may commit the offender or person making default in payment to any gaol in this State for any term not exceeding twelve months, the imprisonment to cease on payment of the sum due and the costs of such proceedings as may have been taken for the recovery thereof.

On non-pay-
ment of
penalty, etc.,
Justice may
imprison.
56 Vic., No.
8, s. 246.

275. There shall be an appeal from any order of justices made under the provisions herein contained, and from any conviction by justices for any offence against this Act, and from any order dismissing any information or complaint under this Act, and from any other order or adjudication whatsoever by justices under this Act, and the proceedings in such appeal shall be conducted and regulated in manner prescribed by Part IX. of the Police Act, 1892.*

Appeal.
56 Vic., No.
8, s. 247.

276. The justices imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person upon whose information or at whose suit such penalty has been recovered,† and, subject to such direction, all penalties shall be paid to the Treasurer, for the public uses of this State.

Application of
penalties.
56 Vic., No.
8, s. 248.

277. The fees set forth in the Third and Fourth Schedules hereto shall be payable to the Registrar in respect of the several matters therein mentioned.

Fees.
Third and
Fourth
Schedules.
56 Vic., No.
8, s. 249.

*See Justices Act, 1902-1926. †See Fines and Penalties Appropriation Act, 1909.

SCHEDULES.First
Schedule,
section 4.**First Schedule.**

No. of Act.	Title.
22 Vic., 6	An Ordinance for the Incorporation and Regulation of Joint Stock Companies and other Associations, and for limiting the liability of certain of the same.
48 Vic., 19	An Act to extend the provisions of "The Joint Stock Companies Ordinance, 1858," to Insurance Companies.
51 Vic., 32	An Act for the Incorporation and winding-up of Mining Companies.

Second
Schedule,
section 16.**Second Schedule.**

TABLE A.

REGULATIONS FOR MANAGEMENT OF A LIMITED COMPANY.*Shares.*

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

3. If such certificate is worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Allotment of Shares.

4. The directors may allot and issue the shares of the company not already taken up in such manner as they shall deem advisable in the interests of the company. Any shares may be issued, if the company in general meeting think fit, with a fixed or preferential dividend, or any other special privileges or advantages which may seem expedient.

5. Any shares may, if the directors think it advisable, be issued at such premium as the directors may think fit, whether such shares shall or shall not have been previously forfeited.

Calls on Shares.

6. The directors may, from time to time, make such calls as they think fit, upon the members in respect of all moneys unpaid on their shares and not by the conditions of allotment made payable at fixed times, provided that fourteen days' notice, at least, be given of each call. Each member shall be liable to pay the amount of calls so made at the registered office of the company at the time appointed by the directors. A call may be made payable by instalments.

A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

7. On the trial or hearing of any action by the company against any member to recover any debt due for any call, it shall be sufficient to prove that the name of the member sued is on the register of members as the holder, or one of the holders, of the number of shares in respect of which such debt accrued, and that notice of such call was given in pursuance of the company's regulations, and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the board when such call was made, nor that the meeting at which such call was made was duly convened or constituted, nor any other matter whatsoever, but proof of the matters first above mentioned shall be conclusive evidence of the debt.

8. If the call payable in respect of any share is not paid on or before the day appointed for payment thereof, the holder for the time being of such shares shall be liable to pay interest for the same at the rate of eight pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

9. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

10. The instrument of transfer of any share in the company shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

11. Shares in the company shall be transferred in the following form, or in a form to the like effect:—

I, A.B., of _____, in consideration of the sum of _____ paid to me by C.D., of _____, do hereby transfer to the said C.D. the share [or shares] numbered, _____, standing in my name in the books of the _____ Company, Limited, to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution hereof; and I, the said C.D., do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands the _____ day of _____,

12. The company may decline to register any transfer of shares upon which any call shall be due.

13. The transfer books shall be closed during the fourteen days immediately preceding each ordinary general meeting.

Transmission of Shares.

14. The legal personal representative of a deceased member shall be the only person recognised by the company as having any title to his share.

15. Any person becoming entitled to a share in consequence of the death or bankruptcy of any member may be registered as a member upon such evidence being produced as may from time to time be required by the company.

16. Any person who has become entitled to a share in consequence of the death or bankruptcy of any member may, instead of being himself registered, elect to have some person to be named by him registered as a transferee of such share.

17. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

18. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

19. If any member fail to pay any call or instalment on or before the day appointed for payment thereof, and for fourteen days thereafter, the directors may, while the call or instalment remains unpaid, serve a notice on him requiring him to pay the same, together with any interest and expenses that may have accrued by reason of such non-payment.

20. The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. The notice shall also state that, in the event of non-payment at or before the time appointed, the shares in respect of which such call was made will be forfeited.

21. If the requisitions of the notice are not complied with, any shares in respect of which such notice has been given may at any time thereafter before payment of all calls or instalments, interest and expenses, due in respect thereof has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends in respect of the forfeited shares, not actually paid before the forfeiture. When any share shall have been so forfeited, notice of the resolution shall be given to the member in whose name it stood prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register.

22. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the directors, subject to the control of the company in general meeting, think fit.

23. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

24. A declaration in writing under the Companies Act, 1893, that the call in respect of a share was made, and notice thereof given and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share; and such declaration, and the receipt of the company for the price of such share, shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

25. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

26. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

27. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company and for other purposes as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not if existing in shares have conferred such privileges or advantages.

Increase in Capital.

28. The directors may, with the sanction of a special resolution of the company, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or if no direction be given, as the directors think expedient.

29. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined. After the expiration of such time, or on the receipt of an intimation

from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

30. Any capital raised by the creation of new shares shall be considered as a part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General Meetings.

31. The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place as the directors may determine.

32. Subsequent general meetings shall be held once at least in every six months, at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed a general meeting shall be held on the first Monday in February and August respectively in every year, at such place as may be determined by the directors.

33. The above-mentioned general meetings shall be called ordinary meetings; all other meetings shall be called extraordinary.

34. The directors may, whenever they may think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

35. Every requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

36. Upon receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date when the requisition was left at the registered office of the company, the requisitionists, or any members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

37. Seven days' notice at the least specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, by advertisement or otherwise, as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

38. All business shall be deemed special that is transacted at an extraordinary meeting, and also all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts and balance-sheets, and the ordinary report of the directors.

39. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business, and such quorum

shall be ascertained as follows: if the members of the company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, but no quorum shall in any case exceed twenty.

40. If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

41. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

42. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman.

43. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

44. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the minute book of the proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

45. If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

45a. Minutes of the proceedings at every general meeting shall be entered and kept in a book, and the minutes so entered shall be signed in the said book by the chairman of the meeting, or in the case of his refusing to sign the same, or neglecting to do so for fourteen days after the meeting, then such minutes may be signed by any two members entitled to vote and be present, and who were actually present at the meeting; and the said book when so signed shall be conclusive evidence that the proceedings minuted therein, and purporting to be signed as aforesaid, were regular, and actually took place as minuted at a meeting duly convened and held, and shall be binding on all the members of the company, except as to any irregular proceedings, which may be annulled at an extraordinary general meeting called for the purpose, and held within three months after the holding of such general meeting.

Votes of Members.

46. Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

47. If any member is a lunatic or idiot he may vote by his committee.

48. If two or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

49. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been the registered holder of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

50. Votes may be given either personally or by proxy, or, when the member is absent from the Colony at the time of voting, by attorney.

51. The instrument appointing a proxy shall be in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal, and shall be attested. No person shall be appointed a proxy who is not a member of the company: Provided that when the member appointing the proxy is a body corporate other than the company the proxy may be a member of the same body, though not personally a member of the company. Such a proxy shall, during the continuance of his appointment, be taken in virtue thereof to be a shareholder in the company to which his appointment relates, holding the number of shares held by the corporation by whom he is appointed, for all purposes except the transfer of any share or the giving of receipts for any dividend thereon.

52. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

53. An instrument appointing a proxy may be in the following form, altered to meet the particular circumstances of each case:—

Company, Limited.

I, of , being a member of the Company, Limited, and entitled to vote [*or* votes], hereby appoint , of , as my proxy to vote for me and on my behalf at the ordinary [*or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof [*or* at any meeting of the company that may be held in the year].

As witness my hand this day of .

Signed by the said in the presence of

Directors.

54. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

55. Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

56. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

57. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Companies Act, 1893, or by these articles required to be exercised by the company in general meeting, subject, nevertheless, to these articles, to the provisions of the said Act, and to such regulations, not inconsistent with the said articles or provisions, as may be prescribed by the company in general meeting; but no regulations made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulations had not been made.

58. The continuing directors may act, notwithstanding any vacancy in their body.

Disqualification of Directors.

59. The office of director shall be vacated if the person filling it—
 shall cease to be the holder of shares in his own right in the company;
 shall hold any other office or place of profit under the company;
 shall become bankrupt or assign his estate in pursuance of any Bankruptcy Act for the time being in force in the said Colony; or
 shall be concerned in, or participate in, the profits of any contract with the company:

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for the company of which he is director. Nevertheless, he shall not vote in respect of such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

60. At the first ordinary meeting after the incorporation of the company the whole of the directors shall retire from office, and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

61. The one-third, or other nearest number, to retire during the first and second years following the first ordinary meeting of the company shall, unless the directors agree amongst themselves, be determined by ballot. In every subsequent year, the one-third, or other nearest number, who have been longest in office, shall retire.

62. A retiring director shall be re-eligible.

63. The company, at a general meeting at which any directors retire in manner aforesaid, shall fill up the vacated offices by electing a like number of persons.

64. If at any meeting at which an election of directors ought to take place the places of the retiring directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the retiring directors are not filled up, the retiring directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

65. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

66. Any casual vacancy occurring in the board of directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the director, in whose place he is appointed, would have retained the same if no vacancy had occurred.

67. The company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

68. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

69. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose one of their number to be chairman of such meeting.

70. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, and may revoke all or any of the powers so delegated. Any committee so formed shall, in the exercise of powers so delegated, conform to any regulations that may be imposed on them by the directors.

71. A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

72. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

73. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

74. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to the number and nominal amount of their shares.

75. No dividend shall be payable except out of the profits arising from the business of the company.

76. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserve fund upon such securities as they may select.

77. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls.

78. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for six years after having been declared shall not after that time be claimable, unless otherwise ordered by the Court, and shall be paid to the Treasurer for the public use of the Colony, but on the order of the Court any unclaimed dividend shall be paid to the person entitled thereto.

79. No dividend shall bear interest as against the company.

Accounts.

80. The directors shall cause true accounts to be kept—

Of the stock-in-trade of the company;

Of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and

Of the assets and liabilities of the company.

The books of accounts shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of members during the hours of business.

81. Once at least in every six months the directors shall lay before the company, in general meeting, a statement of the income and expenditure for the period succeeding that embraced by the then last statement, made up to a date not more than three months before such meeting.

82. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure, which may in fairness be distributed over several years, has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

83. A balance-sheet shall be made out in every half-year and laid before the company in general meeting, and such balance-sheet shall contain a summary of the assets and liabilities of the company, arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

84. A printed copy of such balance sheet shall, seven days previously to such meeting, be served on the Registrar of Companies and every member, in the manner in which notices are hereinafter directed to be served.

Audit.

85. Once at least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

86. The first auditors shall be appointed by the directors, who may fill any vacancy in the office of an auditor appointed by them. Subsequent auditors shall be appointed by the company in general meeting.

87. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

88. The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

89. The election of auditors shall be made by the company at their ordinary meeting in each year.

90. The remuneration of the first auditors shall be fixed by the directors; that of any subsequent auditors shall be fixed by the company in general meeting.

91. Any auditor shall be re-eligible on quitting office.

92. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

93. If no election of auditors is made in manner aforesaid, the Governor may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

94. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

95. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts; and he may, in relation to such accounts, examine the directors or any other officers of the company.

96. The auditors shall make a report to the members upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs: and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

97. A notice may be given or served by the company to or upon any member, either personally or by sending it through the post in a prepaid letter, addressed to such member at his registered place of abode.

98. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

99. Any notice, if served by post, shall be deemed to have been served on the day after the day on which it shall be posted, although the person to whom it shall be directed were dead, or shall never receive the same; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office.

Dr.

Balance Sheet of the

Company, Limited, made up to

19 .

Cr.

122

Companies.

CAPITAL AND LIABILITIES.				PROPERTY AND ASSETS.			
I.—Capital	III.—Property held by the company
	1	Showing—	£ s. d.		7	Showing—	£ s. d.
	2	The number of shares	£ s. d.			Immovable Property, distinguishing—	£ s. d.
	3	The amount paid per share				(a) Freehold lands	
	4	If any arrears of calls, the nature of the arrears and the names of the defaulters			8	(b) Freehold buildings	
		The particulars of any forfeited shares				(c) Leasehold buildings	
II.—Debts and liabilities of the company	...	Showing—				Movable property, distinguishing—	
	5	The amount of loans on mortgages or debenture bonds				(d) Stock-in-trade	
	6	The amount of debts owing by the company, distinguishing—		IV. — Debts owing to the company	...	(e) Plant	
		(a) Debts for which acceptance have been given			9	The cost to be stated with deductions for deterioration in value, as charged to the reserve fund or profit and loss.	
		(b) Debts to tradesmen for supplies of stock-in-trade or other articles			10	Showing—	
		(c) Debts for law expenses				Debts considered good, for which the company holds bills or other securities	
		(d) Debts for interest on debentures or other loans			11	Debts considered good, for which the company holds no security	
		(e) Unclaimed Dividends				Debts considered doubtful and bad—	
		(f) Debts not enumerated above				Any debt due from a director or other officer of the company to be separately stated	
VI. — Reserve fund	...	Showing—		V.—Cash and investments	...	Showing—	
		The amount set aside from profits to meet contingencies			12	The nature of investment and rate of interest	
VIII. — Profit and loss	...	Showing—			13	The amount of cash, where lodged, and if bearing interest	
		The disposal balance for payment of dividend, etc.					
Contingent liabilities	...	Claims against the company not acknowledged as debts					
		Moneys for which the company is contingently liable					

Third Schedule.

Third
Schedule,
section 277.*Table of Fees to be paid to the Registrar of Companies by a Company
having a Capital divided into Shares.*

For registration of a company whose nominal capital does not exceed £2,000, a fee of	£	s.	d.
	2	0	0
For registration of a company whose nominal capital exceeds £2,000, the above fee of £2, with the following additional fees, regulated according to the amount of nominal capital, that is to say:—			
For every £1,000 of nominal capital or part of £1,000 after the first £2,000, up to £5,000	1	0	0
For every £1,000 of nominal capital or part of £1,000 after the first £5,000, up to £100,000	0	5	0
For every £1,000 of nominal capital or part of £1,000 after the first £100,000	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per £1,000 or part of £1,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than £50, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies or receiving any notice or other document required to be given to or left or filed with the Registrar, a fee of ..	0	5	0
On a change of name, for registration of the new name and issue of certificate thereon	2	0	0

Fourth
Schedule,
section 277.

Fourth Schedule.

Table of Fees to be paid to the Registrar of Companies by a Company not having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, does not exceed twenty	2	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds twenty but does not exceed one hundred.. .. .	5	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds one hundred, but is not stated to be unlimited, the above fee of £5, with an additional 5s. for every fifty members, or less number than fifty members after the first one hundred.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every fifty members or less than fifty members of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than £20, in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, or receiving any notice or other document required to be given to or left or filed with the Registrar, a fee of	0	5	0
On a change of name, for registration of the new name, and issue of certificate thereon	2	0	0

Fifth Schedule.

Fifth
Schedule,
section 44.FORM OF STATEMENT REFERRED TO IN SECTION 44
OF ACT.I [*manager, or as the case may be*] do solemnly and sincerely declare—

That the liability of the members is limited.

*That the capital of the company is divided into shares
of each.

That the number of shares issued is

That calls to the amount of pounds per share have been made,
under which the sum of pounds has been received.That the liabilities of the company on the first day of January
[or July] last were:—

Debts owing to sundry persons by the company:

On judgments £
 On specialties £
 On notes or bills £
 On simple contracts £
 On estimated liabilities £

That the assets of the company on that day were—

Government securities [*stating them*] £
 Bills of exchange and promissory notes £
 Cash at the bankers £
 Other securities and assets £

And I make this declaration under the Companies Act, 1893-1938.

Sixth Schedule.

Sixth
Schedule,
section 11.

FORM A.

MEMORANDUM OF ASSOCIATION OF A LIMITED OR NO-LIABILITY COMPANY.

Memorandum of Association of "The.....Company,
Limited" [or "The..... Company, No-Liability"].1. The name of the company is "The.....Company,
Limited" [or "The.....Company, No-Liability"].2. The objects for which the company is established are [*set
forth objects*].3. The liability of the members is limited [*or the members take
no liability, or the liability of ordinary members is limited, but the
liability of the directors, or manager, or managing director, is un-
limited*].4. The capital of the company is.....pounds, divided
into.....shares of.....pounds each.* If the company has no capital divided into shares the portion of the statement
relating to capital and shares must be omitted.

Companies.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Dated the day of , 19 .

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.	Witness.
Total Shares taken ...		

FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY.

Memorandum of Association of "The.....Company."

1. The name of the company is "The.....Company."
2. The objects for which the company is established are.....
.....

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Dated the day of , 19 .

Names, Addresses, and Description of Subscribers.	Witness.

Articles of Association of the.....Company.

Capital of the Company.

The capital of the company is.....pounds, divided into..... shares of.....pounds each.

[If the company has not a capital divided into shares, then, in place of the above statement, insert the following: Number of members. The number of members of the company is.....]

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the company [or, insert the articles of the company if Table A is not adopted, mentioning such articles of Table A (if any) as are adopted].

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite to our respective names.

Dated day of , 19 .

Names, Addresses, and Description of Subscribers.	Number of Shares taken by Subscriber.	Witness.
Total Shares taken ...		

[If the company has not a capital divided into shares, state as follows: We, the several persons whose names and addresses are subscribed, agree to become members of the company, and omit the column giving the number of shares taken by each subscriber.]

Seventh Schedule.

Seventh
Schedule,
section 198.

*Rules for Proceedings for Winding up Companies by Order
of the Court.*

Petition.

1. Every petition for winding up a company by order of the Court shall be intitled in the matter of the Companies Act, 1893-1938, and of the company to which the petition relates, describing the company by its most usual name or firm.

2. Every such petition shall be advertised seven clear days before the hearing, as follows:—

(a) In the case of a company whose registered office, or if there be no such office, then whose principal, or last-known principal, place of business is or was situated within ten miles of the General Post Office in Perth, once at least in the *Government Gazette*, and once at least in one daily Perth newspaper.

(b) In the case of any other company, once at least in the *Government Gazette* and a daily Perth newspaper, and once at least in one local newspaper circulating in the district in which such office or place of business is or was situated.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor, and the Perth agent of his solicitor, if any.

3. Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and, if there be no registered office, then at the principal or last-known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there; or, in case of no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct.

4. Every petition for the winding up of any company by order of the Court shall be verified by an affidavit referring thereto, in the form or to the effect set forth in the table of forms annexed hereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if there be more than one; or in case the petition is presented by the company, by some director and secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and shall be sufficient *prima facie* evidence of the statements in the petition.

5. Every creditor, contributory, or shareholder shall be entitled to be furnished by the solicitor to the petitioner with a copy of such petition, within twenty-four hours after requiring the same, on paying at the rate of sixpence per common law folio for such copy.

Order to Wind up a Company.

6. Every order made for the winding up of a company shall, within twelve days after the date thereof, be advertised by the petitioner once in the *Government Gazette*, and shall be served upon such persons (if any) and in such manner as the Court may direct.

7. A Judge's summons shall be taken out to proceed with the winding up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall, if the Judge thinks fit, be fixed for the appointment of an official liquidator.

Reports and Examination by Official Liquidator.

8. Where the Court has made an order for winding up a company, the official liquidator may, if he thinks fit, and shall, if ordered by the Court, 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;
- (b) if the company has failed, as to the cause 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.

9. The official liquidator may also, if he thinks fit, and shall, if ordered by the Court, 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.

10. 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.

11. The official liquidator shall take part in the examination, and for that purpose may employ a solicitor or counsel, or both.

12. The official liquidator, and any creditor, contributory, or shareholder of the company may also take part in the examination, either personally or by solicitor or counsel.

13. The Court may put such questions to the person examined as to the Court may seem expedient.

14. The person examined shall be examined on oath, and shall 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 liquidator's report, and shall also at his own cost be entitled to employ at such examination a solicitor or counsel, or both, 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.

15. 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.

16. The Court may, if it thinks fit, adjourn the examination from time to time.

17. A public examination under the foregoing rules numbered 10, 11, 12, 13, 14, 15, and 16 may, if the Court so directs, be held before any officer of the Supreme Court, and the powers of the Court under rules numbered 13, 14, and 16 may be exercised by the person before whom the examination is held.

Official Liquidators.

18. The official liquidator shall be appointed by order, which shall direct that all moneys to be received shall be paid into some bank, approved for the purpose by the Judge, within seven days after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly, and an office copy of the order shall be lodged at the bank.

19. The official liquidator shall, whenever required by a Judge, satisfy the Judge that his sureties are living and resident in Western Australia, and have not become bankrupt or assigned their estate for the benefit of, or compounded with, their creditors; and in default thereof, may be required to enter into fresh security within such time as shall be directed.

20. Every appointment of an official liquidator shall be advertised in such manner as the Judge shall direct, immediately after the appointment has been made.

21. Where it is desired to appoint provisionally an official liquidator, an application for that purpose may, at any time after the presentation of the petition or an order for winding up the company, be made by summons, without advertisement or notice to any party, unless the Judge otherwise directs.

22. In the case of the death, removal, or resignation of an official liquidator, another shall be appointed in his place in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by any party interested.

23. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company, and shall provide and keep such books of account as may be necessary for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger, which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made, as provided by the said Act and these rules.

24. The official liquidator shall be allowed in his accounts, or otherwise be paid, such salary or remuneration as the Judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had, and such salary or remuneration may either be fixed at the time of the appointment of the official liquidator, or at any time thereafter, as the Judge may think fit.

Proof of Debts.

25. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued by the official liquidator, and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator, and shall appoint a day for determining as to the allowance of such debts or claims.

26. The creditors need not attend upon the determination, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator, but upon such notice being given, they are to come in and prove their debts, within a time to be therein specified.

27. The official liquidator shall investigate the debts and claims sent to him, and ascertain, as far as he is able, which of such debts and claims are justly due from the company.

28. At the time appointed for determining as to the allowance or otherwise of the debts and claims, or at any adjournment thereof, the official liquidator may either allow the debts and claims, or may require the same, or any of them, to be proved by the claimants by affidavit, and adjourn the determination thereon to a time to be then fixed, and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance.

29. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed that they are required to prove the same by affidavit, by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be), for determining as to the allowance of such debts and claims.

30. The value of any provable debt coming under section 168 of the foregoing Act shall, so far as is possible, be estimated according to the value thereof, at the date of the order to wind up the company.

31. The result of the determination upon debts and claims shall be stated in a certificate made by the official liquidator, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner, and notice shall be given by the official liquidator to the several creditors who have filed affidavits of the allowance or disallowance of their respective claims.

List of Contributories.

32. The official liquidator shall, with all convenient speed after his appointment, make out a list of the contributories of the company, if not a no-liability company, and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares, or extent of interest to be attributed to each contributory, and distinguish the several classes of contributories, and such list may, from time to time, be varied or added to by the official liquidator.

33. The official liquidator shall appoint a time to settle the list of contributories, and shall give notice in writing to every person included in such list of such appointment, stating in what character, and for what number of shares or interest, such person is included in the list, and where any variation or addition to such list is at any time made by the official liquidator, a similar notice shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

34. The result of the settlement of the list of contributories shall be stated in a certificate by the official liquidator, and certificates may be made from time to time, for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

Sales of Property.

35. The official liquidator may sell any real or personal property belonging to the company either by public auction or private contract, either in one lot or in several lots, and the official liquidator shall do all acts and things necessary for effecting and completing such sale.

Payment in of Moneys and Deposit of Securities.

36. If any official liquidator do not pay all moneys received by him into some bank approved by a Judge within seven days next after the receipt thereof, such official liquidator shall, unless the Judge otherwise directs, be charged in his account with twenty shillings or any sum amounting to one hundred pounds, and a proportionate sum for any larger amount retained in his hands beyond such period, for every seven days during which the same have been so retained; and the Judge may also, for any such retention, disallow his salary or remuneration, or any part thereof.

37. All bills, notes, and other securities payable to the company, or to the official liquidator thereof, shall, as soon as they come to the hands of the official liquidator, be deposited by him in some bank as aforesaid, for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

Investment and Payment out of Moneys.

38. All bills, notes, and other securities paid and delivered into a bank shall be delivered out upon a request, signed by the official liquidator; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator.

39. All or any part of the money, for the time being standing to the credit of the account of the official liquidator, at any bank, and not immediately required for the purposes of the winding-up, may be invested in the name of the official liquidator in the purchase of Government securities, or in such other manner as trust funds are directed or authorised by statute to be invested.

Direction or Sanction of the Judge.

40. Should the official liquidator require the direction or sanction of the Judge for any proceeding or act to be taken, or done by him, the same shall be obtained upon summons, and an order shall be drawn up thereon, unless the Judge shall otherwise direct.

41. When an advertisement is required for any purpose, except where these rules otherwise direct, the advertisement shall be inserted once in the *Government Gazette* and in such other newspaper or newspapers, and for such number of times as a Judge may direct. A Judge may in such cases, as he thinks fit, dispense with any advertisement required by these rules.

Filing of Documents.

42. All orders, exhibits, memorandums, admissions, and office copies of affidavits, examinations, depositions, certificates, and all other documents relating to the winding-up of any company, shall be filed

by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by the official liquidator, or otherwise, as the Judge may from time to time direct. Every contributory or shareholder of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such file free of charge, and at his own expense to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts, at a rate not exceeding sixpence per common law folio, and such file shall be produced in Court or before the Judge, and otherwise as occasion requires.

Admission of Documents.

43. Any party to any proceeding in Court or chambers relating to the winding-up of a company may, by notice in writing, call on any other party therein competent to admit the same, to admit any document, saving all just exceptions, and, in case of refusal or neglect so to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, unless the Judge is of opinion that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice has been given, except in cases where the omission to give notice is, in the opinion of the taxing officer, a saving of expense.

Attendance and Appearance of Parties.

44. Every shareholder of the company, and every person for the time being on the list of contributories of the company, and every person having a debt or claim against the company allowed by the official liquidator, shall be at liberty at his own expense to attend the proceedings before the Judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall, by written request, desire to have notice of; but if the Judge be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs, which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

45. The Judge may from time to time appoint any one or more of the creditors, contributories, or shareholders, as he thinks fit, to represent before him at the expense of the company, all or any class of the creditors, contributories, or shareholders upon any question as to a compromise with any of the creditors, contributories, or shareholders, or in or about any other proceedings before him relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall, if they desire to appoint a solicitor, unite in employing the same solicitor to represent them.

46. No creditor, contributory, or shareholder shall be entitled to attend any proceedings at the chambers of the Judge unless and until he has entered in a book, to be kept there for that purpose, his name and address, and the name and address of his solicitor (if any), and, upon any change of his address or of his solicitor, his new address and the name and address of his new solicitor. The address of any such solicitor shall be in Perth.

Provisional Liquidator.

47. All the above rules relating to an official liquidator shall, so far as circumstances will permit, and subject in each case to the direction of the Judge, apply to a provisional liquidator.

Services of Summonses, Notices, etc.

48. Services upon creditors, contributories, or shareholders may be effected (except when personal service is required) by sending the notice or a copy of the summons, or order, or other proceeding, through the post in a prepaid letter, addressed to the solicitor (if any) of the party to be served or otherwise to the party himself, at the address entered or last entered pursuant to the above rule No. 46, or if no such entry has been made, then, as to a contributory or shareholder, to his last-known address or place of abode in the Colony, and such notice or copy of summons, order, or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office.

49. Service on a creditor in a case where the last preceding rule does not apply, or on a contributory or shareholder in any special case, may be effected in such manner as a Judge shall direct.

50. No service under these rules shall be deemed invalid by reason of the christian name or any of the christian names of the person on whom service is sought to be made being omitted, or designated by initial letters in the list of contributories, or in the summons, notice, order, or other document wherein the name of any creditor, contributory, or shareholder is contained, if the Judge is satisfied that such service has been in other respects sufficient.

Termination of Winding-up.

51. Upon the termination of the winding-up of any company, a balance-sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit. And the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified by the associate.

52. When the official liquidator has passed his final account, a certificate shall be made by the associate that the affairs of the company have been completely wound up.

53. When the proceedings for winding up any company have been completed, the book containing the account of the official liquidator shall be deposited in the Registrar's office.

54. Where no mode of proceeding is prescribed by these rules for any application authorised under the said Act to be made to the Court, and there is no mode of proceeding defined according to the general practice of the Court, such application may be made by summons in chambers, or in such other manner as the Court may direct.

55. The Court shall have power, notwithstanding these rules, to enlarge the time for doing any act, or taking and proceeding although such time may have expired, to abridge any such time, to adjourn or review and proceeding, and to give any direction as to the course of proceeding.

Forms.

56. The forms set forth or referred to in the Table of Forms annexed to these rules, or forms to the like effect, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in the titles of such forms.

FORMS.

No. 1.—*Advertisement of Petition.*

In the matter of the Companies Act, 1893-1938, and of the Company.

Notice is hereby given that a petition for an order for winding up the above-named company was on the day of , 19 , presented to by the said company [or by A.B. of], a creditor [or contributory or shareholder] of the said company [or as the case may be]. And the said petition is directed to be heard on the day of , 19 , and any creditor, contributory, or shareholder of the said company desirous to oppose the making of an order for the winding up of the said company, under the above Act, should appear at the time of hearing, by himself or his counsel, for that purpose; and a copy of the petition will be furnished to any creditor, contributory, or shareholder of the said company requiring the same, by the undersigned, on payment of the regular charge for the same.

C. and D., of, etc. [agents for E. and F., of etc.], solicitors for the petitioner.

No. 2.—*Affidavit verifying Petition.*

In the Supreme Court.

In the matter, etc.

I, A.B., of etc., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, etc.

No. 3.—*Order by the Court for winding up.*

In the Supreme Court, day the day of , 19 .

In the matter, etc.

Upon the petition of the above-named company [or A.B., of etc., a creditor [or contributory, or shareholder] of the above-named company], on the day of , 19 , preferred unto and upon hearing counsel for the petitioner and for , and upon reading the said petition and the affidavit of (the said petitioner) filed, etc., verifying the said petition and the affidavit of L.M., filed the day of , 19 , the *Government Gazette* of the day of , the newspaper, of the day of [enter any other papers], each containing an advertisement of the said

Companies.

petition [*enter any other evidence*], His Honour [*or this Court*] doth order that the said _____ company be wound up under the provisions of the Companies Act, 1893-1938.

No. 4.—*Advertisement of Order to wind up.*

In the Supreme Court.

In the matter, etc.

By an order made by _____ in the above matter, dated the _____ day of _____, 19____, on the petition of the above-named company [or A.B., of _____] it was ordered that, etc. [as in order].

C. and D., of, etc.,

Solicitor for the said petitioner.

No. 5.—Order Appointing Official Liquidator.

In the Supreme Court.

In the matter, etc.

Upon the application, etc., and upon reading, etc., His Honour doth hereby appoint R.P., of etc., official liquidator of the above-named company. And it is ordered that all moneys to be received by the said R.P. be paid into the bank of _____ to the credit of the account of the official liquidator of the said company within seven days after the receipt thereof. [*In case two or more official liquidators are appointed, add*], And His Honour doth declare that the following acts, required or authorised by the above statute to be done by the official liquidator, may be done by either [*or any one or two*] of the official liquidators hereby appointed, that is to say [*describe the acts*], and that all other acts so required or authorised to be done, be done by both [*or all*] the official liquidators hereby appointed.

Dated the day of , 19 .

No. 6.—*Order Appointing a Provisional Official Liquidator.*

In the Supreme Court.

In the matter, etc.

Upon hearing the application, etc., and upon reading, etc., His Honour doth hereby appoint R.P., of etc., provisionally official liquidator of the above-named company [add directions as to payment into bank, as in Form No.]. And His Honour doth hereby limit and restrict the powers of the said R.P. as such provisional official liquidator to the following acts, that is to say [describe the acts which the provisional official liquidator is to be authorised to do].

Dated the day of , 19 .

No. 7.—*Order for Payment of Money or Delivery of Books, etc., to Official Liquidator.*

In the Supreme Court.

In the matter, etc.

Upon the application of, etc., and on reading, etc., His Honour doth order that A.B., of etc., do, within four days after service hereof, pay to [or deliver, convey, surrender or transfer to, or into the hands of] R.P., the official liquidator of the said company, at the office of the said R.P., situate at, etc., the sum of £ , being the amount of debt appearing to be due from the said A.B. on his account with the said company [or any sum or balance books, papers, estate, or effects, or *specifically describe the property*] now being in the hands of the said A.B., and to which the said company is *prima facie* entitled [or *otherwise, as the case may be*].

Dated the day of , 19 .

No. 8.—*Advertisement of Appointment of Official Liquidator.*

In the matter, etc.

His Honour has, by an order dated the day of , 19 , appointed R.P., of , to be official liquidator of the above-named company.

Dated the day of , 19 .

H.B.T., Associate.

No. 9.—*Advertisement for Creditors.*

In the matter, etc.

The creditors of the above-named company are required, on or before the day of , 19 , to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to R.P., of , the official liquidator of the said company, and, if so required by notice in writing from the said official liquidator, are, by their solicitors or otherwise, to prove their said debts or claims at , the office of the official liquidator, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

day the day of , 19 , at o'clock in the noon, at the said office, is appointed for determining as to the allowance of the debts and claims.

Dated this day of , 19 , at Official Liquidator.

No. 10.—*Notice to Creditor of Allowance of Debt.*

In the matter, etc. [Place and date.]

Sir,—The debt claimed by you in this matter has been allowed by me at the sum of £ . [If *part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove the further amount claimed, etc., as in the next form.*]

I am, etc.,

To Mr. P.R.

R.P., Official Liquidator.

No. 11.—*Notice to Creditor to Prove Debt:*

In the matter, etc.

You are hereby required to prove the debt claimed by you against the above-named company, by filing an affidavit, and giving notice thereof to me on or before the day of next, and you are to attend personally or by your solicitor at , the office of the official liquidator, on the day of , 19 , at o'clock in the noon, being the time appointed for determining as to the allowance of the claim.

Dated this day of , 19 .

To Mr. S. T.

R.P., Official Liquidator.

No. 12.—*Affidavit of Creditor in Proof of Debts.*

In the Supreme Court.

In the matter, etc.

I, S.T., of etc., make oath and say as follows:—

1. The above-named company was on the day of , 19 , the date of the order of winding up the same, and still is, justly and truly indebted to me in the sum of £ for, etc. [*describe shortly the nature of the debt and exhibit any security for it; and in the case of a trade debt, exhibit a bill of parcels and verify the reasonableness of the charges, as in proving a debt in a suit*].

2. I have not, nor hath, nor have any person or persons by my order or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof [*if any security, add*] except the said [*describe security*] hereinbefore mentioned or referred to.

Sworn, etc.,

No. 13.—*Notice to Creditor of Allowance of Debt on Affidavit.*

In the matter, etc.

[Place and date.]

Sir,—The debt claimed by you in this matter, and in respect of which you have filed an affidavit, has been allowed by me at the sum of £ [*If part only allowed, add, If you claim to have a larger sum allowed, you must apply to the Supreme Court or a Judge thereof.*]

I am, etc.,

R.P., etc., Official Liquidator.

To Mr. P.R.

[Address.]

No. 14.—*Notice to Creditor of Disallowance of Debt after Affidavit Filed.*

In the matter, etc.

[Place and date.]

Sir,—The debt claimed by you in this matter, and in respect of which you have filed an affidavit, has been disallowed by me. If you

claim to have the same allowed, you must apply to the Supreme Court or a Judge thereof.

I am, etc.,
Official Liquidator.

To Mr.
[Address.]

No. 15.—Certificate of Official Liquidator as to Debts and Claims.

In the Supreme Court.

In the matter, etc.

I hereby certify that the result of my determination upon debts and claims against the above-named company, brought in pursuant to the advertisement issued in that behalf, dated the day of , 19 , so far as such determination has, up to the date of this certificate, been proceeded with, is as follows:—

The debts and claims which have been allowed are set forth in the first schedule hereto, and are due to the persons therein named, and amount altogether to £ .

The claims set forth in the second schedule hereto have been brought in by the persons therein named, and have been disallowed.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Debts and Claims Allowed.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total Due.
				£ s. d.
1	J. L. ...	street, Perth, Stationer Principal Interest at £ per cent. per annum, from 19 , to 19 , date of order for winding up	On bill of exchange dated, etc. £ £	
2	W. P. ...	15 street, Perth, Coal Merchant Principal	Goods sold £50 0 0 Total £	

THE SECOND SCHEDULE ABOVE REFERRED TO.

Claims Disallowed.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.

Dated this day of , 19 .
R.P., Official Liquidator.

*Companies.***No. 16.—*Notice to Contributories of Appointment to Settle List of Contributories.***

In the matter of, etc.

I, _____, of _____, the official liquidator of the above-named company, have appointed the _____ day of _____, 19____, at _____ of the clock in the _____ noon, at _____, to settle the list of the contributories of the above-named company, and you are included in such list in the character and for the number of shares [or extent of interest] stated below; and if no sufficient cause is shown by you to the contrary, at the time and place aforesaid, the list will be settled by me, including you therein.

Dated this _____ day of _____, 19____
R.P., Official Liquidator.

To, Mr. A.B. [and to
Mr. C.D., his solicitor.]

No. on List.	Name.	Address.	Description.	In what character included.	Number of share [or extent of interest].

No. 17.—*Certificate of Official Liquidator of Settlement of the List of Contributories.*

In the matter, etc.

I, _____, the official liquidator of the above-named company, do hereby certify that the result of the settlement of the list of contributories of the above-named company on the _____ day of _____, 19____, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the first schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [or extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable for the debts of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

Companies.

No. 18.—*Affidavit in Support of Application for Order for Payment of Call due from Contributories.*

In the Supreme Court.

In the matter, etc.

I, R.P., of etc., the official liquidator of the above-named company,
make oath, and say as follows:—

1. None of the contributories of the said company whose names are set forth in the schedule hereunto annexed, marked A, have paid or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the call of £ per share, made herein on the day of , 19 .

2. The respective amounts or sums set opposite the names of such contributors respectively in such schedule are the true amounts due and owing by such contributors respectively in respect of the said call.

3. [State how notice of call was given to each contributory, or show this by a separate affidavit.]

Sworn, etc.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what character included.	Amount due.

No. 19.—*Order for Payment of Call due from a Contributory.*
In the Supreme Court.

In the matter, etc.

Upon the application of the official liquidator of the above-named company, and upon reading an affidavit of _____ filed the _____ day of _____, 19____, and an affidavit of the said official liquidator, filed the _____ day of _____, 19____: His Honour _____ doth order that C.D., of etc. [or E.F., of etc., the representative of L.M., late of, etc., deceased], one of the contributories of the said company [of if against several contributories, the several persons named in the second column of the schedule to this order, being respectively contributories of the said company], do on or before the _____ day of _____, 19____, [or within four days after service of this order] pay into the Bank of _____ to the account

of the official liquidator of the company [or to A.B., the official liquidator of the said company, at his office] the sum of £ [if against a representative, add, out of the assets of the said L.M., deceased, in his hands as such representative, as aforesaid, to be administered in a due course of administration, if the said E.F. has in his hands so much to be administered, or if against several contributories, the several sums of money set opposite to their respective names in the sixth column of the said schedule hereto] such sum [or sums] being the amount [or amounts] due from the said C.D. [or L.M.] [or the said several persons respectively] in respect of the call of £ per share, made by the said official liquidator on the day of , 19 .

Dated this day of , 19 .

SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what character included.	Amount due.
					£ s. d.

No. 20.—*Memorandum of Agreement of Compromise
with a Contributory.*

In the matter, etc.

Memorandum of agreement entered into this day of , 19 , between R.P., of etc., the official liquidator of the above-named company, of the one part, and S.B., of etc., one of the contributories of the said company, of the other part.

Whereas the said S.B. has been settled on the list of contributories of the said company, as a contributory in respect of shares in the said company, and whereas a call of £ per share was made on all the contributories of the said company, and there is now due, from the said S.B. to the said company, the sum of £ , in respect of the said call. And whereas the said S.B. has proposed to pay to the said official liquidator the sum of , by way of compromise, and in satisfaction and discharge of the said sum of , and of all liability whatsoever as a contributory of the said company. And whereas the said official liquidator having investigated the affairs of the said S.B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the conditions and agreements hereinafter contained: Now it is hereby agreed, by and between the said parties hereto:

1st. That the said S.B. shall, within day from this date, pay to the said official liquidator the said sum of £ , and when thereto required shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing, to the said official liquidator, on behalf of the said company, or in such manner as the said official liquidator may direct, the said shares, held by the said S.B. in the said company, and all claim and demand whatsoever, which the said S.B. has, or may have, against the said company, in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

2nd. That the said sum of £ , and the transfer, or surrender and release of the said shares and interest of the said A.B., as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give, to the said S.B., full and complete discharge from all calls and liabilities, claims, and demands whatsoever, which the said company, or the official liquidator thereof, now has, or may hereafter have, or be entitled to against the said S.B., in respect of his being, or having been, the holder of the said shares, or otherwise as a contributory of the said company.

R.P., Official Liquidator.
S.B.

Witness to the signatures of the said
R.P., and S.B., C.D., of etc.

No. 21.—*Appearance Book.*

In the matter, etc.

Appearance Book.

Date when Appearance entered.	Party's Name.	Whether Creditor, Contributory, Shareholder.	If he appears in person his Address for Service.	If he appears by a Solicitor his Solicitor's Name.	Solicitor's Address.	Amount of Debt [or Number of Shares].

No. 22.—*Certificate of the Company being completely wound up, and of the Official Liquidator having passed his Final Account.*

In the matter, etc.

I hereby certify that R.P., the official liquidator of the above-named company, has passed his final account as such official liquidator, and that the balance of £ thereby certified to be due to [or from] the

said official liquidator has been paid in the manner directed by the order dated the day of , 19 . And that the affairs of the said company have been completely wound up.

The evidence produced, etc.

Dated this day of , 19 .
H.B.T., Associate.

No. 23.—*Order to Dissolve the Company.*

In the Supreme Court.

In the matter, etc.

Upon the application of the official liquidator of the above-named company, and upon reading the associate's certificate herein, dated the day of , whereby it appears that the affairs of the said company have been completely wound up, His Honour doth order that the said company be dissolved as from this day of , 19 .

RULES FOR MEETINGS OF CREDITORS, CONTRIBUTORIES, OR SHAREHOLDERS OF A COMPANY UNDER LIQUIDATION.

1. The liquidator of the company shall summon any meeting of creditors, contributories, or shareholders of the company, by giving not less than seven days' notice of the time and place thereof in the *Government Gazette*, and in daily newspapers published in Perth. Notice of such meeting shall also be sent by post to every person appearing to be a creditor of the company in the case of a meeting of creditors, and to every contributory or shareholder in the case of a meeting of contributories or shareholders. The notice shall state the object of the meeting, unless a Judge otherwise directs.

2. The meeting shall be held at such place as is in the opinion of the liquidator most convenient for the majority of the creditors or contributories or shareholders, as the case may be.

3. The liquidator, or some person nominated by him or by the Court, shall be the chairman at the meetings.

4. 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.

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

6. 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. He may, however, give up the security, and thereupon he may vote in respect of the whole sum due to him. 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.

7. A creditor shall not vote in respect of any debt 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 who has not been adjudicated bankrupt or made an assignment for the benefit of or compounded with his creditors, 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.

8. The liquidator may, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, 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 pounds 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 the liquidator may require him to give up the security for the benefit of the creditors generally on payment of such new value only.

9. 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.

10. A creditor, contributory, or shareholder may vote either in person or by proxy.

11. Every instrument of proxy shall be in the form at the foot of these rules, or in a similar form with variations as required, and shall be issued by the liquidator.

12. An instrument of proxy shall not be used unless it is deposited with the liquidator before the meeting at which it is to be used.

13. A creditor, contributory, or shareholder may appoint the liquidator to act as his proxy.

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

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

16. If within half an hour from the time appointed for the meeting a quorum of creditors, contributories, or shareholders 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 nor more than twenty-one days.

17. 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, or by the liquidator. Such minutes, or the chairman's certificate of the result of the meeting, shall be sufficient evidence of the result as stated in such minutes or certificate.

Forms.

The following forms, or forms to the like effect, may be used with such variations as circumstances require:—

Appointment of Proxy to Vote at Meeting of Creditors, Contributories, or Shareholders.

In the matter, etc.

I, W.S., of , being a creditor [or contributory, or shareholder] of the above-named company, hereby appoint , of , as my proxy, to vote for me and on my behalf at the meeting of the creditors [or contributories, or shareholders] of the said company to be held on the day of , and at any adjournment thereof.

As witness my hand this day of , 19 .

Signed by the said W.S., in the presence of W.S.
J.M., of etc.

Chairman's Certificate of Result of Meeting of Creditors, Contributories, or Shareholders.

In the matter, etc.

I, H.T., chairman of a meeting of the creditors [or contributories or shareholders] of the above-named company, summoned by advertisement [or notice], dated the day of , 19 , and held on the day of , 19 , at , do hereby certify the result of such meeting as follows: The said meeting was attended, either personally or by proxy, by creditors, who have proved debts against the said company amounting in the whole to the value of £ [or by contributories, or shareholders, holding in the whole shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned]. The question submitted to the said meeting was whether the creditors [or contributories, or shareholders] of the said company approved of the proposal of the official liquidator of the said company, that etc. [as the case may be], and wished that such proposal should be adopted and carried into effect. The said meeting was unanimously of opinion that the said proposal should [or should not] be adopted and carried into effect; or the result of the voting upon such question was as follows: The undermentioned creditors [or con-

tributories *or* shareholders] voted in favour of the said proposal being adopted and carried into effect:—

Name of Creditor [<i>or</i> Contributory <i>or</i> Shareholder].	Address.	Value of Debt [<i>or</i> Number of Shares].	Number of votes conferred on each Contributory [<i>or</i> Shareholder] by the Regulations of the Company.

The undermentioned creditors [*or* contributories *or* shareholders] voted against the said proposal being adopted and carried into effect:—

Name of Creditor [<i>or</i> Contributory <i>or</i> Shareholder].	Address.	Value of Debt [<i>or</i> Number of Shares].	Number of votes conferred on each Contributory [<i>or</i> Shareholder] by the Regulations of the Company.

Dated this day of , 19 .
(Signed) H.T., Chairman.

**Eighth
Schedule,
section 221.**

Eighth Schedule.

THE COMPANIES ACT, 1893-1938.

This is to certify that has complied with sections of this Act, and it appears that such company has been duly incorporated.

Given under my hand and seal this day of , A.D. 19 .

Registrar of Companies.

Ninth Schedule.

Ninth
Schedule.
section 227

THE COMPANIES ACT, 1893-1938.

*Application of Shareholder in Foreign Company to be placed
upon the Colonial Register.*

I, _____, of _____,
being the person mentioned in the annexed Certificate, as the registered
holder of _____ Shares, numbered _____ to _____ inclusive, in
the _____ incorporated in _____, do hereby apply to be
placed on the Colonial Register as proprietor of the said Shares.

Dated this _____ day of _____, 19 ____.

Witness

Tenth Schedule.

Tenth
Schedule.
section 227.

THE COMPANIES ACT, 1893-1938.

*Certificate of Deposit of Shares lodged for transfer to the
Colonial Register.*

This is to certify that _____, of _____, did on
the _____ day of _____, 19 ____, deposit with me at the Registered
Office, in the State of Western Australia, a Certificate of _____ Shares,
numbered _____ to _____ inclusive, in the _____, for the purpose
of having the same transferred to the Colonial Register under the
above Act.

As witness my hand, at _____, this _____ day of _____, 19 ____.

For the Company,

A.B.,
(Attorney).

Note.—This Deposit-note must be returned to the Office before a
Certificate of the Shares under the above Act can be issued; but it is
not to be considered as a guarantee that the shares will be so trans-
ferred.