

1854

N.B. tpi and acts 1-4 bound at rear, after no 24.

For nos 1-2-3-4 of 1854 see end of this vol.



1854.

No. 5.

An Act to facilitate the dissolution, and provide for winding up the affairs of, Joint Stock Companies.

[Assented to, November 13, 1854.]

See Act 25-1855-6  
No 5-1854.

WHEREAS it is expedient to afford facilities for winding up the concerns of certain Joint Stock Companies already existing in South Australia, or which may hereafter be established therein—Be it Enacted, by the Lieutenant-Governor of South Australia, with the advice of the Legislative Council thereof, as follows:

Preamble.

1. When any persons or Companies shall have entered into any contract, covenant, or agreement, in writing or otherwise, for the formation of a Company or partnership, for the prosecution of any undertaking or the carrying on of any business, project, or operation whatsoever, the capital whereof shall be divided into certain equal shares of not less than seven in number, it shall be lawful for such persons or Companies to dissolve the said Company or partnership, contract, covenant, or agreement in manner hereinafter mentioned, and that, whether or not such contract, covenant, or agreement shall contain any powers or provisions for dissolution of the Company or partnership, intended to be thereby formed: Provided, nevertheless, that nothing herein contained shall prevent any such persons or Companies from exercising any power or provision for dissolution in their contract, covenant, or agreement contained if they shall see fit at any time before availing themselves of the powers in this Act contained.

Existing and future Companies may be dissolved.

2. It shall be lawful for the Directors or other persons by such contract, covenant, or agreement as aforesaid, entrusted with the management and carrying into effect of any undertaking, business, project,

Directors may call meetings of Shareholders to consider dissolution.

project, or operation in respect of which any such Company or partnership as aforesaid shall be established, which Directors or other persons as aforesaid are hereinafter called "the Directors," to call a meeting of the Shareholders for the purpose of determining whether the partnership or Company so established as aforesaid, and which is hereinafter called "the Company," shall be dissolved; and that if such meeting shall determine as after-mentioned that the Company shall be dissolved, then, as from the date of the resolution come to at such meeting, the Company shall be taken to be dissolved; and the Directors shall not have power to proceed any further with the business of the Company except so far as it may be necessary for the winding up the affairs thereof: Provided always, that if at any time there shall be no Directors of the Company duly elected and acting in the management of the business and affairs thereof, it shall be lawful for any three Shareholders to exercise all the powers of Directors for the purposes of this Act.

Shareholders may call meetings.

3. It shall be lawful for any three Shareholders, as after defined, by writing under their hands, to require the Directors to call a meeting for the purpose aforesaid; and if such Directors shall refuse or neglect for six days after any such requisition shall have been left at the usual place of business of the Company, or shall have been served personally on any one of the Directors, or on the Secretary or Manager of the Company, to call such meeting by notice as after-mentioned, or if for any reason whatever such meeting shall not be convened and held in pursuance of the directions herein contained, it shall be lawful for any three Shareholders to call such meeting.

Meeting duly called although votes disallowed.

4. The meeting shall be held to have been duly called, although the votes of the parties calling the same, or any such votes, shall be disallowed at the meeting by the scrutineers to be appointed as hereinafter-mentioned.

Notice of meeting by advertisement.

5. The calling of any such meeting shall be by notice signed by any one of the Directors, or, in case the meeting shall be called by the Shareholders, then by the Shareholders calling the same; such notice to be advertised for four consecutive weeks in the *South Australian Government Gazette*, and also fourteen clear days at the least before the time to be therein fixed for holding such meeting, twice at the least in one or more Adelaide newspapers.

Notice to specify time and place of meeting, &c.

6. Every notice of meeting shall specify the day, hour, place, and purpose of meeting; and the persons entitled to be present at such meeting shall be the persons producing the certificates of shares, scrip, or receipts for deposits paid upon shares in the Company, or the proxies after-mentioned: Provided always, that every such meeting shall be held in some part of Adelaide, if the place of business of the Company shall be, or have usually been, in Adelaide, or otherwise at the usual place of business of the Company, or some place convenient thereto.

7. Every

7. Every meeting so called shall elect a chairman within one hour of the time appointed for holding such meeting, and the person to be in the chair at every such meeting shall be some one of the Directors, to be elected by a majority of the Shareholders then present, in person or by proxy, or if there shall be no Director present, or if no Director present shall consent to take the chair, then some Shareholder entitled to vote shall be elected by the meeting, and every person present, either in respect of shares or of a proxy, shall have one vote only for the election of the chairman and scrutineers, and every chairman shall have a casting vote in addition to any other vote which he may be entitled to; and if any such chairman shall refuse to give his casting vote on the question of dissolution or insolvency as after-mentioned, the question shall be considered as carried in the affirmative.

Chairman to be elected by majority.

Chairman's casting vote.

8. The chairman at every such meeting shall be bound to put to the meeting any question proposed for the dissolution of the Company, or as to the insolvency thereof, and also as to the election of scrutineers, and no business shall be transacted at any such meeting other than the consideration of any such question so proposed, and the election of a chairman.

Chairman to put questions proposed. No other business to be transacted.

9. Immediately after the election of a chairman, the meeting shall proceed to elect as scrutineers three Shareholders in the Company, whose business it shall be to verify as after-mentioned, and take the votes of the Shareholders entitled to vote, and cast up and declare the same, and the decision in writing of them, or of any two of them, shall be final in all respects.

Three scrutineers to be elected.

10. In case it shall be discovered by, or shown to the scrutineers, that the chairman at any meeting is not entitled to vote as a Shareholder, it shall be lawful for the meeting either to elect a new chairman, or to maintain such existing chairman, but such chairman so maintained in office shall not thereby acquire the right of voting as a Shareholder, or of giving a casting vote; and in case the votes shall be equally divided, the resolutions shall be considered as carried in the affirmative for the dissolution or as to the insolvency of the Company: Provided always, that all votes, acts, and deeds by any chairman not entitled to vote, or by the meeting presided over by him, given or done before the discovery of his not being so entitled, or given or done afterwards if he be so maintained, shall be valid and effectual; and as regards the election of chairman and scrutineers by the votes of the parties present producing certificates, scrip, or proxies, no objection after the election shall be made, on its being shown that they were not entitled to be present.

Case of the chairman not being entitled to vote.

11. At any such meeting as aforesaid, in the event of the prescribed quorum after-mentioned not being present and voting at such meeting, then the chairman shall cause the votes of the persons attending and voting at the said meeting to be taken and recorded, and shall then adjourn the same to be held at the same place and

If a quorum not present, the meeting to be adjourned.

on

on a day to be declared by the chairman, such day not being less than three days and not more than one week from the original day of meeting, such day and the time and place of meeting, in the meantime, being advertised in one or more newspapers published in Adelaide; and at such adjourned meeting the votes of such persons attending and voting at the same as had not voted at the original meeting, shall be taken and recorded, and the total amount of votes given at the original and adjourned meeting shall be recorded as if given at one and the same meeting.

Right of persons to vote at meetings of Shareholders.

12. The only persons entitled to be present and to vote at any such meeting, as Shareholders, by themselves or proxies, shall be those persons who shall for the time being be in possession of and produce certificates or receipts declaring parties entitled to shares in any Company, or acknowledging the receipt of a deposit for shares in such Company, usually termed "scrip or receipts" for deposits or shares, and that notwithstanding the party in possession may not be the party to whom such certificates, receipts, or scrip were originally granted, or that the same may not have been legally assigned to the party in possession, or notwithstanding the same may be possessed by the holder as a mere mortgagee, or in any other manner, or the same may be subject to any charge or lien, and which parties are in this Act called "Shareholders:" Provided, that nothing herein contained shall authorize more than one vote either for dissolution or insolvency to be given in respect of the same share, notwithstanding any transfer or delivery of such share after a vote shall have been given in respect thereof.

Scale of voting.

13. Every Shareholder shall, in voting on the questions of dissolution or insolvency, be entitled to one vote, by himself or proxy, in respect of every share held by him in respect of which certificates, scrip, or receipts may have been issued, or deposits paid; and, that all Shareholders, holding such certificates, scrip, or receipts, shall be entitled to attend meetings, and to appoint proxies according to the form contained in the Schedule hereunto annexed marked A, or in some form to the like effect: Provided always, that the fact of any such party attending any such meeting shall not in anywise (except as in this Act provided) increase or alter, either in law or in equity, his right or liabilities.

Proxies how to be signed.

14. The appointment of any such proxy shall be signed by the party appointing the same, if resident in South Australia, before a Notary Public of the Province, or if resident out of the Province, before a Notary Public of the country where the party appointing resides; and that, on signing the same, the certificate, scrip or receipt, in respect of which the proxy is intended to be appointed, shall be produced to the Notary Public, and the number of the shares or the number of such shares referred to in such certificate, scrip, or receipt, and the name of the Company stated in the appointment of the proxy, shall be ascertained and verified before such Notary Public.

15. To

15. To constitute a meeting under the provisions of this Act for the purpose of deciding on a dissolution or insolvency, persons representing, at least, one-third part of the shares in the Company, actually issued or given either as shares, scrip, or receipts, must be present, either in person or by proxy, and vote, and the question shall be decided by a majority of votes.

Number of persons to constitute a meeting.

16. That, if at any such meeting a dissolution of the Company shall be resolved upon, the meeting shall elect not less than three nor more than five persons to be Trustees for the purpose of winding up the affairs of the Company, and the chairman at every such meeting shall sign a minute of the proceedings of such meeting containing the names of the persons present and voting at such meeting, and also the names of the persons appointed Trustees for the purpose last aforesaid, also a copy of all resolutions passed at such meeting, and that every minute so signed shall be advertised, within the shortest possible time, in the same manner in which notice of the original meeting is hereinbefore required to be given; and such minute, directed to be advertised, shall be filed of record in the Supreme Court of South Australia, and shall be evidence of the meeting having been duly called and held, and of the number of Shareholders therein mentioned having been present at such meeting, and of the resolutions recorded having been duly passed by a majority, and of the persons therein named as Trustees having been duly appointed, and of the truth of all other the statements in such minute contained; and every such minute shall be countersigned by, at least, two of the three scrutineers aforesaid, and that any party signing minutes false or incomplete in any material particular, knowing the same to be false or incomplete, shall be guilty of a misdemeanor.

Trustees to be appointed.

17. Upon and by virtue of the appointment of such Trustees as last aforesaid, all the personal estate and effects of the Company shall vest in such Trustees, and the survivors or survivor of them, who shall have full power to sell and dispose thereof, and shall forthwith proceed so to do for the benefit of the Company; and all the real estate of the Company shall be conveyed so as the same may vest in such Trustees, and the survivors and survivor of them, upon trust for absolute sale; and the said Trustees, or the survivors or survivor of them, shall forthwith sell such real estate by public auction, subject to such conditions or stipulations and in such manner as they shall deem expedient, and either together or in parcels; and the receipts of such Trustees, or the survivors or survivor of them, shall effectually discharge purchasers and others from all liability as to the application of the money in such receipts expressed to be received; and for the purposes of this Act, the person or persons in whom, at the time of the appointment of such Trustees as aforesaid, the legal estate of the real property of the Company shall be vested, shall be deemed dry Trustees of such legal estate for the Trustees so appointed as aforesaid, and shall be deemed to be Trustees within the meaning of the Act of the Imperial Parliament called "the Trustee Act of one thousand eight hundred and fifty."

Property of the Company to be vested in Trustees.

*Real Estate*

*Auction*

Trustee Act of 1850

How order under  
Trustee Act can be  
obtained.

18. An order under the said Trustee Act of one thousand eight hundred and fifty may be made on the petition of any one or more of the Shareholders named in the minute of the meeting or meetings for the dissolution of the Company, filed in the Supreme Court as hereinbefore provided.

Before meeting held,  
memorial to be filed  
in Supreme Court.

19. One calendar month, at least, previous to any meeting for the dissolution of any Company, a memorial of the Company, in the form or to the effect of, and containing the particulars required in, the Schedule to this Act marked B, shall be filed in the Supreme Court aforesaid, which memorial shall be signed by three or more of the Directors of the Company, or by the Secretary, Chairman, or Manager; or if there shall be no Director, Secretary, Chairman, or Manager, or it shall be uncertain who are or is the Directors, Secretary, Chairman, or Manager, then by three or more of the Shareholders of the Company; and the person or persons signing such memorial shall verify the contents thereof, upon oath before one of the Judges, or the Master, or other officer of the said Supreme Court having authority to take affidavits; and such memorial, when so filed and verified, shall be evidence, to all intents and purposes, of the truth of the statements in such memorial contained.

How assets to be dis-  
posed of by Trustees.

20. The said Trustees shall stand possessed of the moneys to arise by the sale and conversion into money of the real and personal estate and effects of the Company, upon trust to pay the debts of the Company, whether such debts are due to Shareholders or other persons, and the expense of executing the trust, and all other costs and expenses incidental to the dissolution and winding up the affairs of the Company, and after payment thereof upon trust to pay to the Shareholders the surplus or balance of the moneys arising from such sale and conversion, in proportion to the several interests of such Shareholders in the capital or joint stock of the Company; and it shall be lawful for the said Trustees to employ all such accountants, clerks, receivers, agents, and other persons, as they shall think necessary, for the due and effectual discharge of the trusts reposed in them, and to pay out of the moneys which shall come to their hands, such expenses as shall be thereby incurred: Provided always, that no Trustee shall be liable for the payment of any debt due from the Company, of which they shall not have had previous notice, after they shall, by advertisement in the *South Australian Government Gazette*, and in one or more newspaper or newspapers published in Adelaide, have required all creditors to send in their claims, and three months shall have expired from the date of the last advertisement: Provided always, that the said Trustees shall, within seven days after the receipt of any moneys so to arise as aforesaid, pay the same into one of the Banks in the said Province to the credit of the said Trustees as such Trustees.

Trustees to pay  
surplus into Court  
within twelve months.

21. If any unclaimed balance or surplus of moneys shall remain in the hands of the Trustees, they shall, within twelve calendar months, pay such balance or surplus into the Supreme Court of South

South Australia, to the credit of the Company; and such balance or surplus shall be distributed amongst the Shareholders who shall not have claimed from the Trustees, in such manner and upon such proof as the said Court shall order and direct.

22 In addition to the question of dissolution, it shall be imperative on the meeting to decide, whether such dissolution shall, or shall not, be taken to be an Act of Insolvency for the purpose of having the affairs of the Company wound up, under the provisions hereinafter contained.

Meeting to decide if dissolution to be an act of insolvency.

23. When any meeting, called to consider the question of dissolution, shall have determined the question of the dissolution of the Company in the negative, no new meeting shall be called to consider the question of dissolution, or any matter relating thereto, until the lapse of six calendar months from the day the question was last resolved in the negative.

If proposal for dissolution be rejected, no new meeting to be called for six months.

24. Provided always, that if, after any adjourned meeting, it shall be ascertained that at the first and adjourned meeting there were not a sufficient number of Shareholders present, in person or by proxy, to constitute the quorum required by this Act, and the majority of such Shareholders present, in person or by proxy, shall have voted for the dissolution of the Company, then it shall be lawful for any three or more Shareholders to apply by petition to the Supreme Court, or to one of the Judges thereof, setting forth the fact that the said meetings had been called and held as aforesaid, but that a sufficient number of Shareholders had not attended to enable the Company to dissolve, but that the majority of the Shareholders present, in person or by proxy, at the said meetings had voted for a dissolution of the Company, and that the Company had been established for twelve calendar months and had not commenced operations, or that the Company had discontinued operations for the space of twelve calendar months prior to the first of such meetings, and that it would be for the benefit of the Shareholders or members of the Company that the said Company should be dissolved, and the affairs thereof wound up, and, if the Company shall be possessed of any real estate, setting forth concisely the particulars and description of such real estate, and the name or names of the person or persons in whom such real estate shall at the time of such application be vested, and praying that certain persons, to be named in such petition, or such other persons as the Court may think fit, might be appointed Trustees for the purpose of winding up the affairs and concerns thereof; and it shall be lawful for the said Supreme Court, or one of the Judges thereof, to make an order in pursuance of the prayer of such petition, appointing the persons in such petition named, or such other persons as aforesaid, Trustees for the purpose of winding up the affairs of the Company, and vesting in the said Trustees all the personal estate of the Company, and such real estate as shall in such petition be described, and such order shall have the effect, without conveyance

Supreme Court may order dissolution of Company in certain cases.

conveyance or assignment, of vesting all such real and personal estate in the said Trustees, their heirs, executors, administrators, and assigns, according to the nature and quality thereof; and the said Trustees shall have full power to proceed in the sale of the said real and personal estate, and in the disposal of the proceeds of such sale, in like manner as if they had been duly appointed Trustees at a meeting of Shareholders as hereinbefore provided.

How order made and petition intituled.

25. Every such petition, as last aforesaid, shall be intituled in the matter of this Act, and in the matter of the Company, the dissolution of which is prayed for, setting forth the name or style of such Company; and the said Supreme Court, or one of the Judges thereof, shall proceed in the matter of such petition, in manner provided by the Act of Council No 14, 1853, intituled "An Act to amend the practice and proceeding in the Equitable Jurisdiction of the Supreme Court of South Australia," in reference to petitions in ordinary cases: Provided always, that any fiat granted by the said Supreme Court, or one of the Judges thereof, requiring all parties interested to attend before the said Court, or Judge, or any order or other proceeding which, by any existing law or rule of Court, is required to be served upon any person affected thereby personally or otherwise, shall be served upon the Secretary, Manager, or Chairman of the Company, or left at the usual place of business of the Company, or if there be no Secretary, Manager, Chairman, or place of business of the Company, then the same shall, within the shortest possible time, be advertised in the *South Australian Government Gazette*, and one or more Adelaide newspapers, and such advertisements shall have the same force and effect to all intents and purposes as if the said fiat, order, or other proceeding had been personally served upon the several persons affected thereby.

Declaration of insolvency to be an act of insolvency.

26. If, at any meeting so to be held as aforesaid, it shall be decided that the dissolution of the Company shall be taken to be an act of insolvency, then the chairman of such meeting shall sign a minute of the resolution of such meeting, in the form contained in the Schedule hereunto annexed marked C, or in some form to the like effect, and also a declaration in the form contained in the Schedule hereunto annexed marked D, which minute and declaration shall be filed in the Supreme Court of South Australia, and the Company shall be deemed thereby to have committed an act of insolvency at the time of filing such declaration, provided a fiat in insolvency shall issue against such Company within two calendar months from the filing of such declaration, and such minute of resolution and declaration so filed, as aforesaid, shall be evidence of the said act of insolvency.

Company not paying a judgment debt within fourteen days an act of insolvency.

27. If any plaintiff shall recover judgment in any action personal, brought for the recovery of any debt or money demand in the said Supreme Court, due from the Company, against any person duly authorized to be sued as the nominal defendant on behalf of such Company, or against any Shareholder or Shareholders in any Company,



Company, and shall be in a situation to sue out execution upon such judgment, and such Company or person sued shall not within thirty days after notice, in writing, served upon the person against whom such judgment shall be recovered, or left at his last known or usual place of abode in South Australia; and, also, after like notice served upon the Company by leaving the same with the Secretary or Manager, or at the usual place of business of the Company, requiring immediate payment of such judgment debt, pay, secure, or compound for the same, to the satisfaction of such plaintiff, such Company shall be deemed to have committed an act of insolvency on the thirty-first day after service of the last day of such notices: Provided always, that, if there shall be no Secretary or Manager of the Company, or there shall be no known place of business of the Company, such notice, as last aforesaid, shall be published in the *South Australian Government Gazette*, and the said thirty days shall be computed from the day of the publication of such *Gazette*: Provided also, that if such execution shall, in the meantime, be suspended or restrained by any rule, order, or proceeding of any Court of Law or Equity having jurisdiction in that behalf, no further proceeding shall be had on such notice, but that it shall be lawful, nevertheless, for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

28. If any Member of the Company shall have paid any debt or debts due from the Company, after having been lawfully called upon so to do, or shall otherwise become a creditor of the Company, and shall call a meeting of the Shareholders of the Company by advertisement in the *South Australian Government Gazette*, and in one or more newspaper or newspapers published in Adelaide, such advertisement to be published twenty-one days, at the least, before the day appointed for such meeting, and to state the time, place, and object of such meeting, and to be according to the form, or to the effect, contained in the Schedule hereunto annexed marked E; and shall also leave at the office or place of business (if any) of the Company, a copy of such advertisement; then, if the Shareholders present at such meeting, shall not pay, secure, or compound with the person calling the said meeting, to the satisfaction of the person for the debt due to him from the Company, or if there shall be no Shareholders present on the expiration of one hour after the hour appointed for the holding of such meeting, such Company shall be deemed to have committed an act of insolvency on the day of such meeting.

Company not paying Shareholders who are creditors of Company, after meeting called, to be deemed to have committed an act of insolvency

29. Upon the commission of any such act of insolvency as aforesaid, a fiat in insolvency may issue against the Company, by the name or style of the Company, upon the petition of any creditor or creditors of such company (whether a member or members of such Company or not), having a claim against such Company, to such amount as is now by law requisite to support a fiat in insolvency, and the Court or Commissioner authorized to act in the prosecution

Fiats in insolvency may issue against Companies.

of such fiat, and all persons acting under such fiat, may proceed therein in like manner as against other insolvents, subject always to the provisions hereinafter made: Provided always, that every vesting order made under authority of a fiat which is intended to affect real estate, shall contain a concise description of such real estate, and the name or names of the persons in whom such real estate shall, at the time of the issuing of the fiat, be vested; and every petitioning creditor shall, before the Court or Commissioner to whom any fiat may be directed shall proceed to adjudicate under such fiat, inform such Court or Commissioner by affidavit of the nature and description of the real estate of the Company, and the name or names of the person or persons in whom such real estate shall be then vested.

But not to affect members individually.

30. The insolvency of any such Company in its associated capacity shall not be construed to be the insolvency of any member of such Company in his individual capacity.

Notice to be published in *Government Gazette*.

31. All notices for the due prosecution of any fiat shall be published in the *South Australian Government Gazette*.

No surrender requisite.

32. It shall not be necessary to the due prosecution of any fiat to be issued under the provisions of this Act, that any Company, or any person on behalf of the Company, shall surrender to such fiat, or, unless summoned so to do, to attend any meeting of the creditors of the Company called under the authority or in prosecution of such fiat.

Assignees of the estate of a Company may maintain actions.

33. It shall be lawful for the assignees of the estate and effects of any Company to maintain an action, suit, or other proceeding against any person or persons, whether a member or members of such Company or not, to recover any debt or demand on behalf of the Company against such person or persons, and for any person or persons to prove or claim under the fiat against such Company such debt or demand as may be due to him or them (whether a member or members of such Company or not) on the balance of accounts between him or them and the said Company.

Members' share not to be set off against a demand by assignee.

34. Provided always, that no claim or demand which any member of any such Company may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus payable or apportionable in respect of such share shall be capable of being set off either at law or in equity against any demand which the assignees of the estate and effects of such Company may have against such member on account of any other matter or thing whatsoever; but all proceeding in respect of such matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus payable or apportionable in respect thereof.

35. No

35. No action, suit, or other proceeding, by any creditor or creditors of any such Company, shall, so far as concerns or may be necessary for the recourse of such creditor or creditors against the person, property, or effects, of any member or members thereof for the time being, or any former member or members thereof, be deemed to prejudice or in any manner to affect the right of such creditor or creditors to sue out or prosecute a fiat against such Company, or his or their right to prove or claim under any fiat against such Company, any debt or demand remaining unsatisfied, and that no such fiat, or proof, or proceeding thereunder shall be deemed to prejudice or in any manner affect the right of any creditor or creditors of such Company to institute or maintain any action, suit, or other proceeding, so far as concerns or may be necessary for the recourse of such creditor or creditors against the person, property, or effects, of any member or members thereof for the time being, or any former member or members thereof: Provided always, that nothing herein contained shall prevent remedy against copartners: Provided, also, that no execution in respect of any debt or demand provable under the fiat against any such Company adjudged insolvent shall be issued against the person, property, or effects, of any member or members for the time being of such Company, or against any former member or members thereof, until after such debt or demand shall have been proved under such fiat.

No action, &c., by a creditor to affect the right to issue a fiat against the Company, and a fiat, &c., not to affect any action by a creditor.

36. The law and practice of insolvency in force for the time being in South Australia shall extend, so far as the same may be applicable, to this Act, and to fiats in insolvency issued by virtue of this Act, and to all proceedings under such fiats, save and except as may be otherwise directed by this Act.

The existing laws respecting insolvency applicable to these fiats.

37. It shall be lawful for the Court or Commissioner authorized to act in the prosecution of a fiat in insolvency against any Company, at any time after the issuing of such fiat, to order that the persons who were at the date of such fiat Directors of such Company, or such of them as such Court or Commissioner shall think fit, or if there be no Directors, or it shall be unknown to the said Court or Commissioner who are the Directors, then that such members of the Company as the said Court or Commissioner shall think fit, shall prepare such balance-sheet and accounts, and in such form as such Court or Commissioner shall direct, and file the same in the Supreme Court of South Australia, ten days at least before the day appointed for the first meeting of creditors; and such balance-sheet and accounts may be amended, from time to time, as occasion shall require and such Court or Commissioner shall direct, before the final examination under such fiat; and such Court or Commissioner may, from time to time, make such allowance out of the estate of such Company for the preparation of such balance-sheet and accounts, and to such person or persons as such Court shall think fit.

The Court or Commissioner may order persons to prepare and file balance-sheet and accounts.

38. The

Court or Commis-  
sioner may summon  
any person.

38. The Court or Commissioner, acting in the prosecution of any such fiat as aforesaid, shall have all the powers of compelling the attendance of persons whom such Court or Commissioner shall think capable of giving information respecting the affairs and concerns of any Company, and of calling for the production of books, papers, deeds, and other documents, and of examining such persons upon oath, and of committing such persons as such Court or Commissioner now has by law in ordinary cases of insolvency.

Court or Commis-  
sioner may order  
contribution.

39. In case of the assets of any Company, against which a fiat in insolvency shall be issued under this Act, being found insufficient to discharge the debts of the Company, after the said debts shall have been duly proved, it shall be lawful for the Court or Commissioner, acting in the prosecution of such fiat, to make an order for contribution of the deficiency by the members of the Company, or such of them as the said Court or Commissioner shall think fit; and such order shall, after a copy thereof being personally served upon such members respectively, have all the force and effect of an order in the Supreme Court for the payment of money, and may be enforced by execution or otherwise in like manner: Provided always, that no execution or other proceeding shall issue, or be had or taken upon any such order until after the expiration of one calendar month from such personal service, and that, in the meantime, it shall be lawful for any person served with such order to apply, by petition, to the Supreme Court, or one of the Judges thereof, for relief; and the said Court, or any Judge thereof, shall have full power to alter, vary, or annul such order, and to grant such relief to the petitioner as to the said Court or Judge shall seem fit.

Court or Commis-  
sioner may order  
distribution of surplus.

40. When the assets of any Company, against which a fiat in insolvency shall be issued under this Act, shall exceed the amount of the Company's debts proved under the fiat, and a surplus or balance shall remain in the hands of the assignees after payment of such debts, such balance or surplus shall be distributed by the assignees amongst the several members of the Company, rateably and in proportion to the interests of such members in the joint stock or capital of the Company; such interests to be determined by the Court or Commissioner acting in prosecution of the fiat, in such manner as such Court or Commissioner shall think fit.

Certificates of con-  
formity may be  
granted.

41. A certificate of conformity may be granted to any Company in every case, when all the debts of the Company duly proved shall have been discharged, in like manner as in cases of ordinary insolvencies under the laws for the time being in force in South Australia, on the application of any members of the Company who shall have been a party to the filing of the balance-sheet and accounts of the Company, or who shall have attended any meeting of creditors before the said Court or Commissioner, and shall have given evidence touching the affairs of the Company; and such certificate shall effectually discharge the Company, and the individual members thereof, from all future liability in

in respect of any debt or debts which shall not have been proved under the fiat; and such certificate shall be filed of record in the Supreme Court of South Australia, in order that the same may be produced in defence of any action or suit commenced against the Company, or any Shareholder or Shareholders therein.

42. In any case in which a Company within the meaning of this Act shall, before the passing of this Act, have been dissolved by any resolution or resolutions of the members thereof, at a meeting or meetings of such members, purporting to have been held according to the rules and regulations of such Company, and any real estate of such Company shall have been sold or contracted to be sold, or shall have been conveyed to any purchaser or purchasers thereof, it shall be lawful for the Trustees, Directors, or other persons who shall have been parties to such sale, contract, or conveyance, after the expiration of twelve calendar months from the date of such dissolution, if no action or suit at law or in equity shall be pending in respect of the dissolution of such Company, or such sale, contract, or conveyance, to call a meeting of the persons who at the time of the passing of such resolution or resolutions were members of the Company, for the purpose of confirming such sale, contract, or conveyance, by notice in the *South Australian Government Gazette*, and every newspaper published in Adelaide; such notice to state the time, and place, and object of such meeting, and to be published at least fourteen days before the day appointed for the holding of the same; and at such meeting, a chairman shall be appointed by the persons present, who at the time of the dissolution of the Company were members of the same; and every such person shall be entitled to one vote in respect of every share held by him in the Company; and in case the meeting shall, by a majority of votes, agree to confirm such sale, contract, or conveyance, the chairman shall sign a minute of the proceedings, which minute shall contain the names of the persons voting, and the number of shares respectively held by them, the time and place of meeting, the object for which such meeting was called, and the resolution at such meeting determined upon; and such minute, so signed, if filed in the Supreme Court of South Australia, and verified by affidavit of the person signing the same, shall effectually bar all persons claiming, or who may thereafter claim as shareholders in the Company, any equitable interest in the lands so sold or conveyed, as against any *bona fide* purchaser for a valuable consideration.

Companies already dissolved may avail themselves of this Act, and in what manner.

43. Nothing in this Act contained shall apply to any Company or partnership other than such as shall have been formed or established for a period of not less than twelve calendar months; and shall not have commenced the prosecution of the undertaking or the carrying on of the business, project, or operation for which the same shall have been formed, and such as shall, after having commenced the prosecution of the undertaking, or the carrying on of the business, project, or operation for which the same shall have been formed have discontinued to carry on operations for the space of twelve calendar months.

Act not to apply to any Company but such as shall have carried on operations for twelve months.

44. Every

**Certain orders, &c., to  
have the effect of  
conveyances.**

44. Every order, or other proceeding, or instrument, having the effect of transferring real estate under this Act, shall be deemed a conveyance within the meaning of the Acts and Ordinances of Council for the time being in force in South Australia providing for the registration, enrolment, or deposit of deeds and instruments affecting lands.

**Commencement of  
Act.**

45. This Act shall commence and take effect from and after the first day of January, one thousand eight hundred and fifty-five.

SCHEDULES REFERRED TO.

A

FORM OF PROXY.

(Name or style of Company.)

Proxy to vote in respect of \_\_\_\_\_ shares.  
 I, A.B., of \_\_\_\_\_ holder of \_\_\_\_\_ shares numbered respectively  
 (here insert the numbers) in the \_\_\_\_\_ Company (Association or Society) do  
 hereby appoint C.D., of \_\_\_\_\_ to be my proxy upon any matter relating to  
 the dissolution or insolvency of the said Company (Association or Society), to vote,  
 dissent, and act as he shall think proper. Witness my hand the \_\_\_\_\_ day of \_\_\_\_\_  
 Signed in my presence, I having previously compared the  
 numbers of the shares and the name of the Company  
 with the documents produced to me.

(Signature) \_\_\_\_\_ E. F., Notary Public.

B

MEMORIAL OF THE \_\_\_\_\_ COMPANY (Association or Society).

Name of the Company.	Business or purpose.	Place of business, or of original chief office (if any).	Number of shares in the Company.	Names of Directors (if any), or of the Chairman, Secretary, or Manager (if any), or of the Shareholders intending to call the meeting.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (Signature.)

C

MINUTE OF A RESOLUTION OF A MEETING HELD IN PURSUANCE OF THE FOREGOING ACT AUTHORIZING A DECLARATION OF INSOLVENCY.

A resolution was duly passed on the \_\_\_\_\_ day of \_\_\_\_\_ at a meeting of the Shareholders of the \_\_\_\_\_ Company (Association or Society), duly summoned for the purpose, that the said Company was then unable to meet its engagements; and that a Declaration of Insolvency should be forthwith filed in the Supreme Court of South Australia, in the form directed by the Act of Council in that case made and provided.

(Signature of Chairman of the meeting.)

D

## D

## DECLARATION OF INSOLVENCY OF COMPANY.

By virtue of a resolution duly passed on the            day of            , 18            ,  
 at a meeting of Shareholders of the            Company (Association, or Society),  
 duly summoned for that purpose, it is hereby declared, that the said Company (or  
 Association, &c., as the case may be) is unable to meet its engagements.

Dated this            day of            , 18            .

Witness (A. B.), Attorney of the Supreme Court of South Australia.

(            Chairman of the Meeting)

## E

I, A. B., of            , one of the Shareholders of a Joint Stock Company  
 called            , do hereby give notice, that I  
 claim of the said Company, a debt or sum of money, amounting to            pounds  
 and upwards, for (money paid, or goods sold, &c., as the case may be); and that I  
 hereby require the Shareholders of the said Company to meet at            , on  
 the            day of            at the hour of            , for the  
 purpose of considering and liquidating my said claim.

Dated this            day of            , in the year of our Lord, 18           

(Signature.)