



Judicial Factors (Scotland) Act 1889

1889 CHAPTER 39

An Act to amend and extend the Law relating to Judicial Factors and others in Scotland, and to unite the Offices of the Accountant of the Court of Session and the Accountant in Bankruptcy in Scotland, [12th August 1889]

WHEREAS it is expedient to amend the Act twelfth and ' thirteenth Victoria, chapter fifty-one, intituled "An Act " of Parliament for the better protection of the property of pupils, " absent persons, and persons under mental incapacity in Scotland," herein-after called the Pupils Protection Act, 1849, and the Judicial Factors (Scotland) Act, 1880, and to put all judicial factors under the supervision of the accountant of court in Scotland:

And whereas it is expedient to unite the offices of accountant of the Court of Session in Scotland and accountant in bankruptcy in Scotland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1 Appointment of accountant.

From and after the commencement of this Act, section nine of the Pupils Protection Act, 1849, and section one hundred and fifty-six of the Bankruptcy (Scotland) Act, 1856, shall be and are hereby repealed, and in lieu thereof it shall be lawful for Her Majesty and Her heirs and successors to appoint a person versant in law and accounts, to be called the accountant of court (hereinafter referred to as the accountant), with such yearly salary, as may from time to time be fixed by the Commissioners of Her Majesty's Treasury, payable out of any moneys to be voted by Parliament for that purpose, and the accountant shall, subject to the approval of the Secretary for Scotland, appoint such number of clerks as may from time to time be necessary, and with such salaries as may be fixed by the Treasury, which salaries shall be paid out of any moneys to be voted by Parliament for that purpose.

No person, other than the accountant, herein-after appointed under the provisions of this section shall be entitled to superannuation unless he has been admitted to his office with a certificate from the Civil Service Commissioners: Provided that it shall be lawful for the Treasury, if and so far as they shall see fit, to grant superannuation to persons serving in the office of the accountant of the Court of Session or the accountant in bankruptcy at the passing of this Act, in all respects as if they had been admitted to their offices with such certificates.

2 Accountant to hold no other office.

The accountant to be appointed under this Act, and his successors in office, shall hold no other office, and shall not directly or indirectly, by himself or any partner, be engaged in or transact any business for profit other than the business devolving upon him as accountant of court.

3 Union of existing clerical staffs.

The existing clerical staffs of the offices of accountant of the Court of Session and accountant in bankruptcy shall be so united that each member thereof shall be liable to perform any duties which may be assigned to him by the accountant.

4 Compensation to accountant of Court of Session.

It shall be lawful for the Treasury to grant out of moneys to be provided by Parliament to the holder of the office of accountant of the Court of Session at the date of the passing of this Act such compensation on the abolition of his office as they shall think proper having reference to the tenure of his office, length of service, and all other circumstances of his case.

5 Pupils Protection and Bankruptcy Acts to apply to accountant.

The provisions of the Pupils Protection Act, and of the Bankruptcy Acts and Cessio Acts, relating to the accountant of the Court of Session and accountant in bankruptcy respectively, shall, so far as not altered by this Act, apply to the accountant to be appointed in terms of this Act and his successors in office.

6 All judicial factors to be under supervision of accountant.

In addition to the factors specified in the recited Act of 1849, the accountant shall superintend the conduct of all other factors and persons already appointed or to be appointed by the Court of Session or any of the lords ordinary in the said court, or by any of the sheriffs or sheriff substitutes in the several sheriff courts in Scotland, to hold, administer, or protect any property or funds belonging to persons or estates in Scotland ; and all such factors and others, subject to such rules as may from time to time be made by Acts of sederunt as herein-after provided, shall be and hereby are made subject to the provisions affecting judicial factors of the said recited Act of 1849, and of any Acts amending the same, or in terms of the Judicial Factors (Scotland) Act, 1880, and of any Acts of sederunt made in terms of said Acts, and the accountant shall see that they duly observe all rules and regulations affecting them for the time : Provided that nothing in this section contained shall be held to apply to executors dative or to trustees appointed by the Court under the Trusts (Scotland) Acts, the Entail

(Scotland) Act, 1882, or in virtue of any other power ; but nothing in this section contained shall prevent trustees appointed by the court from availing themselves of the powers contained in section eighteen of this Act.

7 Penalties for misconduct.

Any person who in virtue of his office is subject to the provisions of this Act, and who fails to comply therewith, or who misconducts himself or fails in the discharge of his duties, shall be liable to the penalties imposed by section six of the Pupils Protection Act, 1849, or to any one or more of them as the court in its discretion shall decide.

8 Return of factors, &c. to be supplied to accountant by clerks of court, &c.

Immediately after the passing of this Act it shall be incumbent on such one or more of the depute or assistant clerks of session, or of the clerks in the office of the Bill Chamber or other qualified person or persons as shall be selected by the principal clerks of session with the approval of the Lord Advocate, to prepare under the supervision of the said principal clerks a return setting forth the following particulars applicable to all factors and other persons referred to in section six hereof appointed after the first day of January one thousand eight hundred and seventy, and to all factors and other persons under any factory constituted prior to said last-mentioned date in which proceedings have been taken in court since that date not embraced under the provisions of the Pupils Protection Act, 1849, the Judicial Factors (Scotland) Act, 1880, and the Bankruptcy Acts, and where the factories or other offices held by them still subsist, viz.:—(1) the date of the factor's appointment; (2) his name and designation; (3) the name of the estate on which he is factor; (4) the date of his lodging of the inventory, if lodged; (5) the date of the last petition for the audit of his accounts ; (6) the latest date of the accounts so submitted to audit; (7) the date of the interlocutor approving of the accounts; and the said return, with the whole of the factors' inventories, accounts, and reports thereon, so far as lodged in process, shall be transmitted to the accountant on or before the thirtieth day of June one thousand eight hundred and ninety, and it shall also be incumbent on the sheriff clerks to prepare the like returns applicable to all factors and other persons appointed in the sheriff courts, and not embraced under the provisions of the Pupils Protection Act, 1849, the Judicial Factors (Scotland) Act, 1880, and the Bankruptcy Acts.

9 Inventories, &c. to be lodged with accountant.

The accountant shall have power to require every factor and other such persons named in such return, unless evidence to his satisfaction is produced that the factories or other offices held by them have ceased to subsist, to lodge with him, within a period to be specified by him, a copy of the original inventory of the estate, copies of any reports on the audit of his accounts, and his accounts and vouchers if not in process from the latest date to which the same have been judicially approved of to a date to be fixed by the accountant, and the factor and other persons aforesaid shall be bound to comply with such requisition within the time specified, failing which the matter shall be reported by the accountant to the court by which such factor or other person was appointed.

10 Accountant in certain cases to apply for appointment of successor to factor deceased.

In the event of its being found that any factor or other person referred to in section six hereof has died undischarged or has ceased to discharge the duties of his office without anyone having been appointed in succession to him, unless the purposes of his appointment have, in the opinion of the accountant, been exhausted, it shall be the duty of the accountant, unless the persons interested in such factory or any of them shall make the application on his requisition, to apply to the court for the appointment of a factor in place of such factor or other person, and it shall be the duty of the factor so appointed to investigate the accounts of the former factor or other person aforesaid and to receive any balance due from his representatives or his cautioner or cautioners.

11 Factors loco tutoris to pupils to become curators on pupil attaining minority.

After the passing of this Act it shall not be necessary to apply for the appointment of a curator bonis to a minor whose estate has, up to the date of his becoming a minor, been administered by a duly appointed factor loco tutoris, and the said factor shall, ipso facto, become curator bonis to the said minor, and shall continue the administration of the estate until the majority of the said minor, or until he has himself chosen curators in the manner directed by law.

12 Audit of accounts.

In all cases coming for the first time under the supervision of the accountant he shall be required to audit the accounts from their commencement, and if for this purpose it shall appear to him to be necessary, he shall have power to remit such cases or any of them to such duly qualified persons as he may with the approval of the Lord Advocate select to audit, but all such audits shall be supervised by him, and he shall be responsible for the correctness thereof, and such persons shall be paid such remuneration for their services in such audit as the Lord Advocate with the approval of the Treasury shall determine, out of moneys to be provided by Parliament.

Provided always, that the accountant may, if he thinks fit, on the production of reports of a professional or official auditor in any case, accept such report as sufficient for the period up to the date thereof, and shall not be required to audit the said accounts for that period.

13 Funds, &c. furth of Scotland to be paid to factor, &c. on the production of official extract of appointment.

An official extract of the appointment of any judicial factor, trustee, tutor, curator, or other person judicially appointed and subject to the provisions of the recited Acts or of this Act, shall have throughout the British Dominions, as well out of Scotland as in Scotland, the full force and effect of an assignment or transfer, executed in legal and appropriate form, of all funds, property, and effects situated or invested in any part of the British dominions, and belonging to or forming part of the estate under his charge; and all debtors and others holding any such funds, property, or effects, shall be bound, on production of such official extract, to pay over, assign, or transfer the same to such judicial factor, trustee, tutor, curator, or other person.

14 Procedure before court.

All applications under this Act or any of the recited Acts shall, except as after mentioned and notwithstanding any provision in any of the recited Acts to the contrary, be dealt with in the manner directed by sections four, five, six, and ten of an Act passed in the twentieth and twenty-first year of the reign of Her Majesty, intituled " An Act to regulate the distribution of business " in the Court of Session in Scotland : " Provided always, that cases arising under the Bankruptcy Acts shall be dealt with in the manner directed by the said Acts.

15 Fees to be charged in bankruptcy cases.

The Court of Session shall, with the sanction of the Treasury, from time to time prescribe a scale of fees and percentages to be paid to the accountant for and in respect of proceedings under the Bankruptcy Acts and section eighteen of this Act, and the accountant shall annually prepare an account showing the receipts from bankruptcy cases to be laid before the Queen's and Lord Treasurer's Remembrancer, who is hereby required to examine and audit such account, and submit it thereafter to the Lord President of the Court of Session, with a view to the reconsideration by the court of the fees in use to be charged, and such fees shall be regulated, increased, or diminished as the court, with such sanction as aforesaid, shall think proper.

16 Fee fund to cease and future fees to be paid in stamps.

The fee fund established by section thirty-nine of the Pupils Protection Act, 1849, shall cease from the commencement of this Act, and any accumulated balance which may then exist shall be paid into Her Majesty's Exchequer, and thereafter all the fees payable in the office of the accountant shall be collected by means of stamps.

17 Commission or fees in bankruptcy cases not to be paid without approval of accountant.

Every trustee appointed under the Bankruptcy Acts shall intimate by circular to every creditor upon the estates under his charge, and also to the bankrupt, the deliverance of the commissioners fixing a commission or fee to be allowed to such trustee, and every such trustee and also every creditor and the bankrupt shall be entitled to appeal to the accountant against any such deliverance, and that within ten days of the issue of such circular, by addressing a note to the accountant stating his objections to such deliverance, and the trustee shall thereupon lay the deliverance of the commissioners and the account to which such deliverance applies before the accountant, and such commission or fee shall not be paid to the trustee, or entered in his account, until the accountant has intimated his approval of the commission or other payments sanctioned by the commissioners. In the event of the accountant not concurring with the commissioners, he shall intimate his objections and the grounds thereof to the trustee or bankrupt or creditor appealing, and shall indicate the sum he would suggest, and in the event of the trustee or bankrupt or creditor or the commissioners not acquiescing in this suggestion, the matter shall be reported forthwith by the accountant to the lord ordinary officiating on the bills in the Court of Session or to the sheriff, whose decision shall be final; and in the event of such appeal the procedure enacted under sections one hundred and twenty-seven, one hundred and thirty, one hundred and thirty-one, and one hundred and thirty-two of the Bankruptcy (Scotland) Act, 1856, shall, in cases to which such sections apply, be postponed till the decision is given in the appeal; and where the deliverance of the commissioners is altered, the trustee shall

give effect to the alteration in his accounts, and the commissioners shall in such cases reconsider and declare, within eight days after the date of the decision, the amount to be divided among the creditors in terms of sections one hundred and twenty-five, one hundred and thirty, one hundred and thirty-one, and one hundred and thirty-two of the Bankruptcy (Scotland) Act, 1856, after taking such alteration into account, and the trustee shall, within four days thereafter, and in cases where no alteration is made in the deliverance of the commissioners within eight days from the date of the decision, give the notice in the Gazette, and give the notifications to creditors directed by sections one hundred and twenty-seven, one hundred and thirty, and one hundred and thirty-two of the said Act. The provisions of this section shall not apply to trustees appointed under the Cessio Acts.

18 Testamentary trustees, &c. may apply to Court for superintendence order as to investment and distribution of estate.

Section one hundred and sixty-six of the Bankruptcy (Scotland) Act, 1856, shall be and is hereby repealed, and in lieu thereof be it enacted that where a person deceased has left a settlement appointing trustees or other persons with power to manage his estate, it shall be competent for such trustees or other persons to apply to the Court of Sessions for an order on the accountant to superintend their administration of the estate, in so far as it relates to the investment of the estate and the distribution thereof among the creditors of the deceased and the beneficiaries under the settlement, and the Court may grant such order accordingly ; and, if such order be granted, the accountant shall annually examine and audit the accounts of such trustees or other persons, and at any time, if he thinks fit, he may report to the Court upon any question that may arise in the administration of the estate with regard to any of the aforesaid matters, and obtain the directions of the Court thereupon.

19 Application of 50 & 51 Vict. c.18 to judicial factors.

The provisions of the Trusts (Scotland) Act, 1867, Amendment Act, 1887, shall apply to and include all trusts and trustees, as defined by the second section of the Trusts (Scotland) Amendment Act, 1884.

20 Application of s.23 of 12 & 13 Vict. c.51.

Section twenty-three of the Pupils Protection Act shall be held to apply to all factories brought under the supervision of the accountant by virtue of this Act.

21 Power to pass Acts of sederunt

It shall be competent to the Court of Session, and they are hereby authorised and required, from time to time to pass such Acts of sederunt as shall be necessary or proper relating to all matters requisite for effectually carrying out the purposes of this Act.

22 Interpretation.

The expressions "Bankruptcy Acts" and "Cessio Acts" shall respectively have the meanings assigned to them by the fourth section of the Bankruptcy and Cessio (Scotland) Act, 1881.

23 Short title and commencement of Act.

This Act may be cited as the Judicial Factors (Scotland) Act, 1889, and shall take effect on and after the first day of January one thousand eight hundred and ninety.