



Stannaries Act 1869

1869 CHAPTER 19

Procedure of the Court

27 Affidavits used in the court.

Whereas since the passing of the Act eighteen Victoria, chapter thirty-two, for amending and extending the jurisdiction of the court of the vice-warden, and of the Companies' Act, 1862, the experience of the court has suggested the expediency of some amendment of the provisions of those Acts, so far as they relate to the stannaries and the jurisdiction of the court: Be it enacted, that all affidavits, affirmations, and declarations shall be available in suits, causes, and matters in the court, although not sworn, made, and taken by or before a commissioner of the court; provided the same shall have been sworn, made, or taken by or before any commissioner authorized to administer oaths in the superior courts of equity or of common law in England or Ireland, or in the Isle of Man or the Channel Islands, or by the officers exercising like powers to administer oaths in Scotland, or by any of the courts, judges, or other persons having like authority in the dominions of the crown beyond seas, or in foreign parts, specified or described in the Act fifteen and sixteen Victoria, chapter eighty-six, section twenty-two, and the Act sixteen and seventeen Victoria, chapter seventy-eight; and the vice-warden or registrar shall, on the production before him of such affidavits, affirmations, or declarations, purporting to be duly and regularly sworn, made, or taken by any of the courts or persons herein-before referred to, presume the same to have been so sworn, made, or taken, unless the contrary be proved to his satisfaction; and in case of wilful and corrupt false swearing, affirming, or declaring in such document so produced, or of the production or use by any party of such document, knowing the same to be a forged or spurious one, the offender shall be liable to all the penalties, punishments, and consequences specified in sections twenty-three and twenty-four of the Act fifteen and sixteen Victoria, chapter eighty-six: Provided also, that all lawful fees due and demandable upon swearing, making, or taking such affidavits, affirmations, or declarations, by or before any of the courts or persons above referred to, shall be paid or tendered to such court or person by the party applying for such document.

28 No demand necessary before enforcing order to pay, produce, or deliver.

Whenever a decree or order of the court for payment of money, or production or filing or delivery up of any books, papers, deeds, or accounts, or the delivery up of property, real or personal, shall have been made in a suit or matter whereof the said court has cognizance, no formal demand shall be necessary, but the person or party who shall have been so decreed or ordered to pay such money, or produce or file or deliver up such documents or property, on being duly served with such decree or order, shall be bound To obey the same, and process shall thereupon issue to enforce performance, without further special application to the court.

29 Enforcing process through the registrar of a county court.

In enforcing execution of any judgment, decree, or order of the court by writ sent to the registrar of any county court under sections nine and ten of the Act eighteen Victoria, chapter thirty-two, the person or party entitled to recover any monies awarded to him by such judgment, decree, or order may issue such process to the county court, although the sum sought to be recovered may exceed the sum of fifty pounds, provided the sum do not exceed two hundred and fifty pounds, including the costs of applying to the court for leave to issue such execution, where such leave shall be necessary by the rules of the court; and such process shall hereafter be available to any party entitled to levy such money, not exceeding the said sum of two hundred and fifty pounds, by a like writ of execution sent to the registrar of any county court within the stannaries, as well as beyond the stannaries, subject to the payment of all lawful fees for execution in such county court, and subject in other respects to the provisions of sections nine and ten of the Act last above mentioned, except that the judge of a county court within the stannaries may, if he thinks fit, remit any claim of interpleader arising on the execution of such writ for determination by the court.

30 Execution of process of attachment within the stannaries.

If any person residing or being within the stannaries shall be in contempt for disobedience of any order of the court other than for the payment of money leviabie by the ordinary civil process of the court, and be thereupon attached by the bailiffs of the court, or by a messenger or messengers of the court specially named or appointed by the court for execution of the writ of attachment issued by the court, such bailiffs or messengers shall forthwith take into their custody the person so attached, and bring him with all convenient speed to Truro, there to be examined by or before the vice-warden, if he shall then be sitting at Truro, or before the registrar there, touching the matter of his alleged contempt; and upon such examination the vice-warden or registrar shall, if the offender shall have sufficiently cleared himself of the contempt, discharge him out of custody, or if he shall not have so cleared himself, shall commit him to the common gaol at Bodmin, or, in case of contempt within the stannaries of Devon, to the borough gaol at Plymouth, there to remain until he shall have submitted to the order of the court, or shall be otherwise discharged in due course of law; and such writ of attachment, and any commitment thereon, shall issue in the name of the lord warden of the stannaries, with the seal of the court attached.

31 Service of process, &c, beyond the stannaries.

Whereas the service of process on the common law side of the court in any part of England, without the special order of the vice-warden, has been found inconvenient, and in some cases liable to abuse: Be it enacted, that no such service of process out;

of the limits of the stannaries, in suits or plaints on the common law side of the court, shall hereafter be effected without the special order of the vice-warden, made on a statement of the nature and object of melt suit or plaint; except in the case of actions of ejectment brought under the authority of section fifteen of the Act eighteen Victoria, chapter thirty-two.

32 On appeals to the lord warden, a deposit to be made.

In all cases of appeals against any judgment, decree, or order of the court, besides the bond to the registrar required by the Act eighteen Victoria, chapter thirty-two, section twenty-six, a deposit of twenty pounds shall be made in the hands of the registrar, to be paid to the opposite party when the judgment, decree, or order is not reversed, unless the court shall otherwise direct; and if the appeal against any decree or order be prosecuted in the name or on the behalf of any registered company with limited liability, or in the name or on behalf of any person who has recently become bankrupt, or has executed any unsatisfied deed of arrangement, composition, or inspectorship under any Bankruptcy Act, the registrar of the court may require that a sufficient surety be joined as co-obligor in the bond which the appellant is bound to give in such case, who shall be personally liable to pay the taxed costs of the appeal to the extent of fifty pounds, if the judgment, decree, or order be not reversed; and the appellant shall also deposit in the hands of the registrar the sum of twenty pounds, payable as hereinabove directed in the ease of ordinary appeals.

33 Duties of registrar in liquidation of a company.

Where an order is made for the winding up a company in the court, whether the same be a registered or an unregistered company, and no official liquidator is appointed, the registrar shall have authority, with the sanction of the vice-warden, to perform all the ordinary duties of an official liquidator, and to exercise all the powers assigned by the Companies Act, 1862, to such liquidator, so far as such duties or powers are not incompatible with his official duties as registrar.

Provided always, that the registrar shall not in such case be called upon to give any such security as may be required of an official liquidator under section ninety-two of the last-mentioned Act, unless the lord warden of the stannaries or the vice-warden by some general rule of the court shall otherwise order, nor shall he be entitled to any remuneration for the performance of the said duties, other than the salary now received by or that may hereafter be assigned to him in his official character of registrar; nor shall it be necessary for him to use the name or style of official liquidator, nor any other style than that of registrar, unless it shall become necessary for him to take out letters of administration to any deceased contributory; and in proving a debt due from any contributory who shall have become a bankrupt within the intent and meaning of section eighty-seven of the Companies Act, 1862, a certificate of the debt signed by the registrar, with the seal of the court attached, shall be accepted in the Court of Bankruptcy as sufficient proof of such debt as against the estate of the bankrupt, without requiring the oath or affidavit of the registrar.

Provided also, that the registrar in the performance of such duties and exercise of such powers shall not be liable to any penalty prescribed by the said Companies Act, 1862, and imposed on official liquidators as such, or become personally liable in respect of any act done or proceeding taken by him by the order or authority or with the sanction of the vice-warden acting in his judicial character.

34 Attachment of debt due to a contributory on winding up.

In cases where several companies are in course of liquidation by or under the superintendence of the court, if it shall appear to the vice-warden that a person who is a contributory of one of the said companies is also a creditor claiming a debt against one of the other companies, the vice-warden may, in his discretion, and after due inquiry into the facts, direct that the said debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain, as a security for payment of all or any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applicable and applied to such payment in due course; provided that no such order of attachment shall prejudice any claim which the company so indebted to him as creditor may have against him by way of set-off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the said debt in favour of any third person.

35 Fraudulent transfers of shares.

A transfer of shares made for the purpose of getting rid of the further liability of a shareholder, as such, for a nominal or no consideration, or to a person without any apparent pecuniary ability to pay the reasonable expenses of working a mine, or to a person in the menial or domestic service of the transferrer, shall be presumed to be a fraudulent transfer, and need not be recognised by the company, or by the court on the winding-up of the company, Whether the company be a registered or unregistered company.

36 Jurisdiction to restrain sales of setts.

The jurisdiction or the court to grant injunctions restraining sales of machinery and other effects on mines is hereby extended so as to authorize the granting of injunctions restraining sales of setts where equity so requires, and the jurisdiction conferred by this section may be exercised in creditors' suits, or on the application of a shareholder in a company.

37 Issuing injunction orders by the registrar in certain cases.

It shall be competent for the registrar, on the application of either a creditor or a shareholder, to issue injunction orders in customary creditors' suits pending in the court, and to forbid the sale of setts, leases, machinery, or other effects on or belonging to the mine on the usual allegation of urgency, or to issue such orders in other cases of like urgency or imminent waste or damage to property; and in such cases the party or parties so enjoined may appear and show cause before the registrar, and apply to him to suspend or dissolve the order; but such application to the registrar shall not be exclusive of the existing power of the vice-warden to issue such orders, though he may not then be sitting within the stannaries, nor prevent him from reconsidering the order of the registrar, on the motion or complaint of any of the parties interested in it.

38 Hearing of petition for winding-up,

The provision of section eighty-three of the Companies Act, 1862, contained in second paragraph thereof, shall be amended and read as follows; namely, that the vice-warden may direct that petitions to wind up a company shall be heard by him at such time or place as he may think fit within the stannaries, or within or near to the place where the

registered or other chief office of the company is situate, or if such office be distant one hundred and fifty miles or more from Truro (measured by the public railways), then in London or Westminster; or with the consent of the party or parties petitioning, and of the company represented by its secretary, purser, or other proper officer, the hearing may be in any part of England; and all orders made by the vice-warden on such hearing in any of the above cases shall be as valid and effectual as if they had been made at Truro.

39 Adjournment of sittings and appointment of deputy vice-warden.

Sections seven and eight of the Act two and three Victoria chapter fifty-eight, and the section twenty-four of the Act eighteen and nineteen Victoria, chapter thirty-two, are hereby repealed ; and in lieu thereof be it enacted, That if in consequence of illness, or accident, or other disability, the vice-warden shall not attend at Truro on the day and time appointed for his sittings there, the registrar shall have power to open the court, and adjourn the sittings to some other day, on which adjournment day all persons summoned or bound to attend the sittings shall be in attendance, as if the vice-warden himself had adjourned them; and if, by reason of such illness, accident, or other disability, or for any other cause deemed by the lord warden to be a reasonable cause, the vice-warden shall desire to appoint a deputy for a time certain, not exceeding six months, he may, with the approval of the lord warden, appoint such deputy, being a barrister of five years' standing and not less, with all the powers and judicial functions of the vice-warden himself; and if the vice-warden shall, by reason of such illness, accident, or disability, be unable or shall neglect to make such appointment, it shall be competent for the lord warden of the stannaries to nominate such temporary deputy, with the qualification, powers, and functions aforesaid, with such directions touching the remuneration of such deputy as he may think fit.

40 Provision for a temporary registrar on a future vacancy.

Whereas inconvenience may hereafter be occasioned by the death of the registrar and the delay in appointing a successor, be it enacted, that the vice-warden for the time being shall in such case have power to employ the assistant registrar, if there be one, or any other competent person, being a clerk or officer of the court, to execute, under the direction of the vice-warden, all or any of the necessary duties of registrar, until such time as the successor of the deceased registrar shall have been duly appointed, and such temporary registrar may, if the lord warden shall think fit, be remunerated for such extra duty out of the salary accruing between the decease of the last registrar and the appointment of his successor, who shall be entitled to receive the balance (if any) of the salary so accruing during that interval.

41 Provision as to half-yearly remissions.

From and after the passing, of this Act, the whole of the several provisoes contained in section thirty of the Act six and seven William the Fourth, chapter one hundred and six, and in section thirty-six of the Act eighteen and nineteen Victoria, chapter thirty-two, respectively, which in any way relate to, or empower, or require half-yearly remissions of the assessment, in such provisoes respectively mentioned or referred to, shall be and the same are hereby repealed, and thereupon the monies accruing by reason of such, remission shall be applicable and be applied to such of the several purposes specified in the one hundred and seventy-second section of " The Companies Act, 1862," touching the application of the fees arising under proceedings taken for

winding up mining companies, as the lord warden of the stannaries shall from time to time, on the application of the vice-warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall accumulate by investment, as to the whole or part of the accruing monies, in the manner directed in and by the provisions of that section.

42 Vacations in the court.

Whereas by the Act six and seven Victoria, chapter one hundred and six, section seventeen, the court is, for the purpose of the entry of pleadings, orders, proclamations, and other matters touching practice, process, or execution, to be at all times open, except on Sunday, Christmas day, Good Friday, and days of public fast or thanksgiving, and no other days or times are specified wherein the court or its offices may be lawfully closed, nor is any period of vacation for the court or its officers and clerks provided: Be it enacted, that the court and offices may hereafter be closed on Christmas day and the six following days, on Good Friday and the six following days, and that the space of six consecutive weeks, beginning On the first day of September in every year, shall be deemed to be the vacation of the said court, during which the attendance of the officers of the court will be dispensed with; so nevertheless that during the continuance of those days and times, and the above vacation, provision shall be made for the receipt and payment or payments of money by or to the proper officer of the court, whereof due notice shall be from time to time given: Provided also, that during such times and vacation applications may be made for injunction orders, either to the vice-warden or to the registrar, in any part of England, whether within or beyond the stannaries.

43 Power to make general rules and orders.

The powers contained in the Act eighteen Victoria, chapter thirty-two, sections twenty-three and twenty-six, for making general rules and orders of the court touching the procedure, practice, pleading, court fees, taxation of costs, and forms on the equity and common law side of the said court, and other business of the said court, and also touching the regulation of the practice, fees, and costs of appeals pending before the lord warden of the stannaries, whether heard by and before himself, or remitted by him for the determination of the Judicial Committee of the Privy Council, or to the Court of Appeal in Chancery, shall be deemed and taken to extend and apply to this Act, and to the several provisions contained herein. Rules and orders made in pursuance of the powers contained in the said Act or in this Act with respect to fees shall be made only with the sanction of the Commissioners of Her Majesty's Treasury,

44 Officer not entitled to compensation in case of alteration of duties or abolition of office.

A person shall not be entitled to any compensation in respect of any emoluments received by him for duties performed in pursuance of the provisions of this Act, or in respect of the emoluments of any office in or connected with the court, or with the lord warden of the stannaries or vice-warden, to which such person is appointed after the passing of this Act, in case any alteration is made in such duties or in the duties of such office, or in case such duties or such office are abolished.