



Companies Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 17

Recovery of Damages and Penalties

And with respect to the Recovery of Damages not specially provided for, be it enacted as follows:

CXLIV Provision for Damages not otherwise provided for.

In all Cases where any Damages, Costs, or Expences are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the Method of ascertaining the Amount or enforcing the Payment thereof is not provided for, such Amount, in case of Dispute, shall be ascertained and determined by the Sheriff; and if the Amount so ascertained be not paid by the Company or other Party liable to pay the same within Seven Days after Demand, the Amount may be recovered by Poinding and Sale of the Goods of the Company or other Party liable as aforesaid; and the Sheriff shall, on Application, issue his Warrant accordingly.

CXLV Distress, &c. against the Treasurer.

If sufficient Goods of the Company cannot be found whereon to levy any such Damages, Costs, or Expences, payable by the Company, the same may, if the Amount thereof do not exceed Twenty Pounds, be recovered by Poinding and Sale of the Goods of the Treasurer of the Company; and the Sheriff, on Application, shall issue his Warrant accordingly; but no such Poinding and Sale shall be executed against the Goods of such Treasurer unless Seven Days previous Notice in Writing, stating the Amount so due, and demanding Payment thereof, have been given to such Treasurer, or left at his Residence; and if such Treasurer pay any Money under such Distress or Poinding and Sale as aforesaid, he may retain the Amount so paid by him, and all Costs and Expences occasioned thereby, out of any Money belonging to the Company coming into his Custody or Control, or he may sue the Company for the same.

CXLVI Method of proceeding before the Sheriff or Justices in Questions of Damages, &c.

Where, in this or the special Act, or any Act incorporated therewith, any Question of Expences, Charges, or Damages is referred to the Determination of any Sheriff or Justices, it shall be lawful for the Sheriff or any Justice, upon the Application of either Party, to summon the other Party to appear before such Sheriff, or before Two Justices, as the Case may require, at a Time and Place to be named in such Summons ; and upon the Appearance of such Parties, or, in the Absence of any of them, upon Proof of due Service of the Summons, it shall be lawful for such Sheriff, or such Two Justices, as the Case may be, to hear and determine such Question, and for that Purpose to examine such Parties or any of them, and their Witnesses, on Oath; and the Costs of every such Inquiry shall be in the Discretion of such Sheriff or Justices, and he or they shall determine the Amount thereof.

CXLVII Publication of Penalties.

The Company shall publish the short Particulars of the several Offences for which any Penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any Bye Law of the Company affecting other Persons than the Shareholders, Officers, or Servants of the Company, and of the Amount of every such Penalty, and shall cause such Particulars to be painted on a Board, or printed upon Paper and pasted thereon, and shall cause such Board to be hung up or affixed on some conspicuous Part of the principal Place of Business of the Company, and where any such Penalties are of local Application shall cause such Boards to be affixed in some conspicuous Place in the immediate Neighbourhood to which such Penalties are applicable or have reference; and such Particulars shall be renewed as often as the same or any Part thereof is obliterated or destroyed; and no such Penalty shall be recoverable unless it shall have been published and kept published in the Manner herein-before required.

CXLVIII Penalty for defacing Boards used for such Publication.

If any Person pull down or injure any Board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the Purpose of publishing any Bye Law or Penalty, or shall obliterate any of the Letters or Figures thereon, he shall forfeit for every such Offence a Sum not exceeding Five Pounds, and shall defray the Expences attending the Restoration of such Board.

CXLIX Penalties to be summarily recovered before the Sheriff or Two Justices.

Every Penalty or Forfeiture imposed by this or the special Act, or by any Bye Law made in pursuance thereof, the Recovery of which is not otherwise provided for, may be recovered by summary Proceeding before the Sheriff or Two Justices; and on Complaint being made to any Sheriff or Justice he shall issue an Order requiring the Party complained against to appear before himself, if the Order be issued by a Sheriff, or before Two or more Justices, if the Order be issued by a Justice, at a Time and Place to be named in such Order; and every such Order shall be served on the Party offending, either in Person or by leaving the same with some Inmate at his usual Place of Abode; and upon the Appearance of the Party complained against, or in his Absence, after Proof of the due Service of such Order, it shall be lawful for any Sheriff or Two Justices to proceed to the hearing of the Complaint; and upon Proof of the Offence, either by the Confession of the Party complained against, or upon the Oath of One credible Witness or more, it shall be lawful for such Sheriff or Justices to convict

the Offender, and upon such Conviction to adjudge the Offender to pay the Penalty or Forfeiture incurred, as well as such Costs attending the Conviction, as such Sheriff or Justices shall think fit.

CL Penalties to be levied by Distress.

If forthwith upon any such Adjudication as aforesaid the Amount of the Penalty or Forfeiture, and of such Costs as aforesaid, be not paid, the Amount of such Penalty and Costs shall be levied by Pounding and Sale; and such Sheriff or Justices, or either of them, shall issue his or their Warrant of Pounding and Sale accordingly.

CLI Imprisonment in default of Distress.

It shall be lawful for any such Sheriff or Justices to order any Offender so convicted as aforesaid to be detained and kept in safe Custody until Return can be conveniently made to the Warrant of Pounding and Sale to be issued for levying such Penalty or Forfeiture, and Costs, unless the Offender give sufficient Security, by way of Recognizance or otherwise, to the Satisfaction of the Sheriff or Justices, for his Appearance before him on the Day appointed for such Return, such Day not being more than Eight Days from the Time of taking such Security ; but if before issuing such Warrant of Pounding and Sale it shall appear to the Sheriff or Justices, by the Admission of the Offender or otherwise, that no sufficient Pounding and Sale can be had within the Jurisdiction of such Sheriff or Justices whereon to levy such Penalty or Forfeiture, and Costs, he or they may, if he or they think fit, refrain from issuing such Warrant; and in such Case, or if such Warrant shall have been issued, and upon the Return thereof such Insufficiency as aforesaid shall be made to appear to the Sheriff or Justices, then such Sheriff or Justices shall, by Warrant, cause such Offender to be committed to Gaol, there to remain without Bail for any Term not exceeding Three Months, unless such Penalty or Forfeiture, and Costs, be sooner paid and satisfied.

CLII Distress, &c. how to be levied.

Where in this or the special Act, or any Act incorporated therewith, any Sum of Money, whether in the Nature of Penalty or otherwise, is directed to be levied by Pounding and Sale, such Sum of Money shall be levied by Pounding and Sale of the Goods and Effects of the Party liable to pay the same, and the Overplus arising from the Sale of such Goods and Effects, after satisfying such Sum of Money and the Expences of the Pounding and Sale, shall be returned, on demand, to the Party whose Goods shall have been seized.

CLIII Distress, &c. not unlawful for Want of Form.

No Pounding and Sale made by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any Party making the same be deemed a Trespasser or Wrongdoer, on account of any Defect or Want of Form in the Summons, Conviction, Warrant, or other Proceeding relating thereto ; but all Persons aggrieved by such Defect or Irregularity may recover full Satisfaction for the special Damage in an Action before the Sheriff Court.

CLIV Application of Penalties.

The Sheriff or Justices by whom any such Penalty or Forfeiture shall be imposed, where the Application thereof is not otherwise provided for, may award not more than One Half thereof to the Informer, and shall award the Remainder to the Kirk Session of the Parish in which the Offence shall have been committed, for the Benefit of the Poor of such Parish.

CLV Penalties to be sued for within Six Months.

No Person shall be liable to the Payment of any Penalty or Forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any Offence made cognizable before the Sheriff or Justices, unless the Complaint respecting such Offence shall have been made before such Sheriff or some Justice within Six Months next after the Commission of such Offence.

CLVI Damage to be made good in addition to Penalty.

If, through any Act, Neglect, or Default on account whereof any Person shall have incurred any Penalty imposed by this or the special Act, or any Act incorporated therewith, any Damage to the Property of the Company shall have been committed by such Person, he shall be liable to make good such Damage, as well as to pay such Penalty ; and the Amount of such Damages shall, in case of Dispute, be determined by the Sheriff or Justices by whom the Party incurring such Penalty shall have been convicted ; and on Nonpayment of such Damages, on demand, the same shall be levied by Pounding and Sale, and such Sheriff or Justices shall issue his or their Warrant accordingly.

CLVII Penalty on Witnesses making Default.

It shall be lawful for any Sheriff or Justice to summon any Person to appear before him as a Witness in any Matter in which such Sheriff or Justice, or Two or more Justices, shall have Jurisdiction, under the Provisions of this or the special Act, or any Act incorporated therewith, at a Time and Place mentioned in such Summons, and to administer to him an Oath to testify the Truth in such Matter; and if any Person so summoned shall, without reasonable Excuse, refuse or neglect to appear at the Time and Place appointed for that Purpose, having been paid or tendered a reasonable Sum for his Expences, or if any Person appearing shall refuse to be examined upon Oath or to give Evidence before such Sheriff or Justice, or Justices, every such Person shall forfeit a Sum not exceeding Five Pounds for every such Offence.

CLVIII Transient Offenders.

It shall be lawful for any Officer or Agent of the Company, and all Persons called by him to his Assistance, to seize and detain any Person who shall be found committing any Offence against the Provisions of this or the special Act, or any Act incorporated therewith, and whose Name and Residence shall be unknown to such Officer or Agent, and convey him, with all convenient Despatch, before the Sheriff or a Justice, without any Warrant or other Authority than this or the special Act; and such Sheriff or Justice shall proceed with all convenient Despatch in the Matter of the Complaint against such Offender.

CLIX Proceedings by Sheriff need not be in Writing.

Any Sheriff to whom any Application is authorized to be made, and before whom any Judicial Proceedings shall in consequence take place or become necessary, under or by virtue of this or the special Act, or any Act incorporated therewith, shall and he is hereby authorized and required summarily to call before him all Parties who appear to him to be interested therein, and to proceed forthwith to hear viva voce, and pronounce Judgment regarding the Matters mentioned in such Application or Proceeding, or to do the several Matters and Things required by this Act to be done by him, without waiting the ordinary Course of the Roll of Causes before him, and without written Pleadings, or a written Record, or reducing any Evidence which may be led by either of the Parties to Writing, unless and except where the said Sheriff shall consider that the Matters mentioned in such Application or Proceedings can with more Advantage be decided with written Pleadings and with a written Record, in which Case he shall proceed to make up a Record, and bring the said Matters to a Conclusion with all convenient Despatch; and the Orders and Judgments of the said Sheriff, when pronounced without a Record, shall be final and conclusive, and not subject to Review by Suspension or Advocation, or to Reduction, on any Ground whatever.

CLX Form of Conviction.

The Sheriff or Justice, or Justices, before whom any Person shall be convicted of any Offence against this or the special Act, or any Act incorporated therewith, may cause the Conviction to be drawn up according to the Form in the Schedule (G.) to this Act annexed.

CLXI Proceedings not to be quashed for Want of Form, nor removed by Suspension.

No Proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for Want of Form, nor shall the same be removed by Suspension or otherwise into any Superior Court.

CLXII Power of Appeal to Sheriff.

In all Cases which may come before any Sheriff Substitute under this or the special Act, or any Act incorporated therewith, in which written Pleadings shall have been allowed, and a written Record shall have been made up, and where the Evidence which has been led by the Parties shall have been reduced to Writing, but in no other Case whatever, it shall be competent for any of the Parties thereto, within Seven Days after a final Judgment shall have been pronounced by such Sheriff Substitute, to appeal against the same to the Sheriff of the County, by lodging a Minute of Appeal with the Sheriff Clerk of such County, or his Depute ; and the said Sheriff shall thereupon review the Proceedings of the said Sheriff Substitute, and whole Process, and, if he think proper, hear the Parties viva voce thereon, and pronounce Judgment; and such Judgment shall in no Case be subject to Review by Suspension or Advocation, or to Reduction, on any Ground whatever.

CLXIII Parties allowed to appeal from Justices to Quarter Sessions, on giving Security.

If any Party shall feel aggrieved by any Determination or Adjudication of any Justice, or Two or more Justices, with respect to any Penalty or Forfeiture under the Provisions of this or the special Act, or any Act incorporated therewith, such Party may appeal

to the General Quarter Sessions for the County or Place in which the Cause of Appeal shall have arisen ; but no such Appeal shall be entertained unless it be made within Four Months next after the making of such Determination or Adjudication, nor unless Ten Days Notice in Writing of such Appeal, stating the Nature and Grounds thereof, be given to the Party against whom the Appeal shall be brought, nor unless the Appellant forthwith after such Notice enter into Recognizances, with Two sufficient Sureties, before a Justice, conditioned duly to prosecute such Appeal, and to abide the Order of the Court thereon.

CLXIV Court to make such Order as they think reasonable.

At the Quarter Sessions for which such Notice shall be given the Court shall proceed to hear and determine the Appeal in a summary Way, or they may, if they think fit, adjourn it to the following Sessions; and upon the hearing of such Appeal the Court, may, if they think fit, mitigate any Penalty or Forfeiture, or they may confirm or quash the Adjudication, and order any Money paid by the Appellant, or levied by Distress upon his Goods, to be returned to him, and may also order such further Satisfaction to be made to the Party injured as they may judge reasonable; and they may make such Order concerning the Costs, both of the Adjudication and of the Appeal, as they may think reasonable.