

[56 & 57 VICT.] *Portsea Island Building Society* [Ch. clxxxvi.]
(Arbitration) Act, 1893.



CHAPTER clxxxvi.

An Act to effect a settlement of the affairs of the Portsea Island Building Society. A.D. 1893.
[27th July 1893.]

WHEREAS the Portsea Island Building Society (in this Act called "the Society") was constituted under the Building Societies Acts in or about the year one thousand eight hundred and forty-six and on the twentieth day of September one thousand eight hundred and seventy-six was incorporated under the Building Societies Act 1874 by the name of the Portsea Island Benefit Building Society and on the fourteenth day of October in the same year its name was changed and registered anew by the name of the Portsea Island Building Society :

And whereas the Society is now insolvent and by an order made by the judge of the Portsmouth County Court dated the twenty-first day of January one thousand eight hundred and ninety-two is now in course of being wound up under the supervision of the said county court :

And whereas owing to various acts of fraud and mismanagement extending over twenty years the affairs of the Society are involved in great confusion and the respective rights and priorities of the parties interested as members or depositors can only be determined (if at all) after long inquiry and protracted litigation and in the ordinary process of winding up no adequate means exist for putting an end within any reasonable period to the doubts and difficulties which have arisen upon matters of fact and of law :

And whereas after the Society had suspended payment a committee was appointed at meetings of the members and depositors from among their number to represent their respective interests and in order to avoid delay and expense in dividing the Society's assets this committee concurred in recommending an equal division of such assets among the members and depositors in proportion to

[Ch. clxxxvi.] *Portsea Island Building Society* [56 & 57 Vict.]
(Arbitration) Act, 1893.

A.D. 1893. the amounts standing to their credit in their respective names in the Society's books and accounts at the date of the winding-up order :

And whereas in the month of September one thousand eight hundred and ninety-two with the approval of the judge of the county court a circular signed on behalf of the said committee was sent by the liquidators to the registered addresses of the members and depositors requesting them to express their assent or dissent as regards the equal division of assets recommended by the committee :

And whereas the total number of members and depositors and the total amount standing to the credit of these two classes respectively in the Society's books and accounts is shown in the following table :—

	Number.	Amount credited.
Members - - - - -	1,168	£ 173,849 s. 8 d. 7
Depositors - - - - -	9,738	635,665 4 1

And whereas in reply to the circular before mentioned assents have been received shown in number and in amount of interest respectively in the table following :—

	Number.	Amount credited.
Members - - - - -	967	£ 156,605 s. 16 d. 3
Depositors - - - - -	6,934	589,403 5 4

And the dissents similarly received are as follows :—

	Number.	Amount credited.
Members - - - - -	15	£ 5,313 s. 19 d. 6
Depositors - - - - -	66	8,839 15 0

[56 & 57 VICT.] *Portsea Island Building Society* [Ch. clxxxvi.]
(Arbitration) Act, 1893.

A.D. 1893.

And in the following cases no replies have been received:—

	Number.	Amount credited.
Members - - - - -	186	£ 11,929 s. 12 d. 10
Depositors - - - - -	2,738	37,422 3 9

And whereas under the circumstances herein-before recited it is expedient to transfer the winding up of the Society's affairs to an arbitrator specially constituted for the purpose and to give to the arbitrator such powers as in this Act are contained for the settlement of all matters and questions relating to the affairs of the Society as fully and effectually as could be done by Parliament:

And whereas in the course of the proceedings taken to wind up the Society William Edmonds accountant of Portsmouth and William Frederick James Hunt accountant of Portsmouth have been appointed liquidators and it is expedient to confer upon the liquidators of the Society the powers in this Act contained:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it 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. This Act may be cited for all purposes as the *Portsea Island Building Society (Arbitration) Act 1893.* Short title.

2. In this Act—

“The arbitrator” means the arbitrator appointed under this Act and any successor of such arbitrator so appointed;

“The county court” means the county court for the Portsmouth district;

“The liquidators” means the liquidators before mentioned or their successors in office or any one or more liquidators duly appointed and acting with the sanction of the arbitrator under this Act;

“The winding-up order” means the winding-up order made by the county court on the twenty-first day of January one thousand eight hundred and ninety-two;

Interpretation.

[Ch. clxxxvi.] *Portsea Island Building Society* [56 & 57 VICT.]
(*Arbitration*) Act, 1893.

A.D. 1893.

“The members and depositors” means members and depositors in the Society respectively and shall include the legal personal representatives of members and depositors deceased or incapacitated.

Arbitrator.

3. For the purpose of winding up the affairs of the Society and of settling the matters by this Act made subject to arbitration the arbitrator shall be such person as the Lord Chancellor shall appoint.

Transfer of winding up proceedings to arbitrator.

4. From and after the passing of this Act all proceedings in the winding up of the Society's affairs shall be transferred to the arbitrator and in the exercise of his jurisdiction the arbitrator may subject to the provisions of this Act adopt or vary upon such terms as he may prescribe all or any of the orders made or other proceedings taken in the county court in the course of the said winding up prior to such transfer and any order ruling or decision of the arbitrator in winding up the Society under this Act shall not be subject to appeal but shall be binding and conclusive on all parties and persons to all intents and purposes whatsoever.

Terms on which matters to be settled by arbitrator.

5. In exercising the jurisdiction conferred upon him by this Act the arbitrator shall have regard to the interests of the members and depositors generally and to the expediency of as speedy and economical a collection and distribution of the Society's assets as possible and in furtherance of such objects he may settle and determine all matters coming before him under this Act not only in accordance with the legal and equitable rights of the parties as recognised in the High Court or any division thereof but on such terms and in such manner in all respects as he in his absolute and unfettered discretion may think most fit equitable and expedient and as fully and effectually as could be done by Act of Parliament.

Distribution of Society's assets.

6. Subject as in this Act provided the arbitrator shall get in or direct the getting in of the Society's assets and from time to time shall apply or distribute or direct the application or distribution of such assets in manner following:—

(1.) As to the members and depositors (herein-after in this section called “the assenting members and depositors”) who have signified or may after the passing of this Act signify their assent to an equal distribution of the Society's assets as in this Act mentioned the arbitrator shall by order direct that such assets shall be distributed rateably among the assenting members and depositors in equal proportions according to the amounts inclusive of dividends bonuses and interest (if any) which as regards members were at the date of the winding-up

A.D. 1893.

order credited to them respectively in the books kept by the Society after deducting all liabilities of such members inclusive of interest (if any) to the Society in respect of their shares and as regards depositors according to the amounts inclusive of interest which were at the date of the winding-up order credited to them respectively in the books kept by the Society or which shall otherwise appear to the arbitrator to be due to them respectively. Provided that the arbitrator may if he thinks fit direct such inquiries as he may deem necessary with a view to determine whether the Society's books contain any fictitious entries of persons as members or depositors or any fraudulent entries or alterations as regards the amounts to which members or depositors are entitled and he may make such order as he thinks fit for the purpose of rectifying any fictitious or fraudulent entry or alteration :

(2.) As to the members and depositors (hereafter in this section called "the dissentient members and depositors") who have as in this Act mentioned signified their dissent to the said equal distribution of the Society's assets the arbitrator shall fix a term of not less than three months from the passing of this Act within which the dissentient members and depositors or any of them may apply to him to determine their respective claims rights and priorities if any and from time to time the arbitrator may extend the term so fixed as regards all or any of the dissentient members and depositors as he shall think fit ;

The arbitrator may order that such notice of the fixing or extension of the said term shall be given as he thinks fit and be published in such newspapers as he thinks fit ;

At the expiration of the term so fixed or extended the arbitrator shall proceed to settle and determine the respective rights and priorities of the dissentient members and depositors whether they shall or shall not have applied to him as aforesaid and he may at his discretion direct that any dissentient members and depositors shall share rateably in the Society's assets with the assenting members and depositors as provided in the preceding sub-section :

(3.) As to the members and depositors from whom no reply has been received with regard to the said proposal for an equal distribution of the Society's assets the arbitrator shall fix a term of not more than three months after the passing of this Act within which the said members and depositors may signify their assent or dissent to such proposal and may from time to

A.D. 1893.

time extend the term so fixed as regards all or any of such members and depositors as he shall think fit ;

The arbitrator may order that such notice of the fixing or extension of the said term shall be given as he thinks fit and be published in such newspapers as he thinks fit ;

The arbitrator shall at the expiration of the term so fixed or extended make such order as he shall think fit with respect to the rights and priorities of members and depositors not replying in accordance with such notice and he may at his discretion direct that such members and depositors shall share rateably in the Society's assets with the assenting members and depositors as provided in sub-section (1) ;

All members and depositors dissenting from the said equal distribution in accordance with such notice shall be subject to the provisions of the preceding sub-section with regard to dissentient members and depositors ;

Before deciding on any claims arising under this and the preceding sub-section the arbitrator may upon application made to him for that purpose by any of the members and depositors allow the members and depositors so applying to be heard before him either jointly or separately or in classes as he may direct and for the purposes of such decision as aforesaid the arbitrator may order such inquiries and may take such evidence and hear such parties as he thinks fit :

(4.) The arbitrator may by any decision or order given or made by him in settling arranging and determining the claims of members and depositors under this section and in accordance with the provisions thereof absolutely bar all claims rights and interests of members and depositors other than those allowed by such decision or order :

(5.) For the security of the dissentient members and depositors whose claims may for the time being be undetermined and of the members and depositors from whom no reply has been received as aforesaid and whose claims may for the time being be undetermined the arbitrator shall have regard to the amount of their respective claims before sanctioning any distribution of the Society's assets and shall keep in hand or direct the liquidators to keep in hand as much of the Society's assets as he may think sufficient to satisfy all claims for the time being in abeyance :

(6.) The arbitrator may make any order he thinks fit with regard to the costs of any application made to him or of any other proceedings taken under this section.

7.—(1.) The arbitrator may if he thinks fit appoint a day after which he may cause to be paid into the Chancery Division of the High Court any sums left unreceived by the parties entitled thereto or he may at his discretion order such sums or any of them not exceeding five hundred pounds to be paid into the county court.

A.D. 1893.
As to sums left unreceived by parties entitled.

(2.) Where any sums are paid into court as aforesaid there shall be filed in such court under the direction of the arbitrator a list distinguishing the sums paid in and the names addresses and descriptions of the several persons entitled thereto as far as the same have been ascertained in the arbitration.

(3.) The list shall be conclusive evidence of the title of the persons aforesaid to the several sums specified in the said list.

(4.) The court aforesaid shall from time to time on application at chambers or otherwise cause those several sums (subject to payment of any proper costs or expenses) to be paid out to the persons entitled thereto according to the said list or to their respective representatives or assigns.

(5.) The arbitrator may after such payments have been made fix a period after which all unclaimed moneys shall be paid over to the liquidators and form part of the Society's assets. Such period shall not be less than five years after the date of the winding-up order and may at the arbitrator's discretion be from time to time extended. In pursuance of any order to that effect by the arbitrator the court aforesaid shall pay over to the liquidators any moneys lodged with such court under this section and such order shall thereafter bar absolutely all claims to the moneys in question.

8. With respect to the powers authority and jurisdiction of the arbitrator generally but subject to the foregoing enactments the following provisions shall have effect namely :—

General powers and jurisdiction of arbitrator.

(1.) The arbitrator shall have power to determine as he thinks fit all claims of whatsoever nature made against the Society and all rights liabilities and interests of the members and depositors and to arrange compromise and settle at his discretion such claims rights liabilities and interests subject to such deductions terms and conditions as he thinks fit :

(2.) The arbitrator shall have power generally to wind up and finally settle the affairs of the Society :

(3.) In exercising the jurisdiction by this Act conferred upon him the arbitrator may at his discretion direct inquiries to be made by the liquidators or other persons and may take the advice and opinion of actuaries accountants and other experts and adopt and act on any such advice or opinion if and as far as he thinks fit :

[Ch. clxxxvi.] *Portsea Island Building Society* [56 & 57 VICT.]
(*Arbitration*) Act, 1893.

A.D. 1893.

- (4.) For the purposes of this Act the arbitrator may hold sittings at his discretion in Portsmouth or in London or elsewhere at such times as he may appoint after such public notice thereof as he may think expedient :
- (5.) The arbitrator may appoint from among the committee elected by the members and depositors of the Society such persons as he thinks fit to act as a committee of inspection during the winding up of the Society and may authorise such committee to exercise subject to the provisions of this Act such powers or any of them as belong to a committee of inspection in the case of companies being wound up by order of the court under the Companies (Winding up) Act 1890 The arbitrator may at his discretion dissolve the committee of inspection or may remove from the committee any person acting on the same and from time to time may appoint other members and depositors to fill up vacancies in the said committee :
- (6.) The arbitrator shall have such powers and authorities as an arbitrator appointed by consent of parties or by order of a court or of a judge has at common law or by statute and in addition thereto and to the powers and authorities expressly given to him by this Act he shall have all the powers authorities and jurisdiction vested in or exerciseable by the county court in the winding up of the Society pending in such court at the passing of this Act and shall also have all the powers authorities and jurisdiction which would have been vested in or exerciseable by a judge having jurisdiction under the Companies (Winding up) Act 1890 if the Society had been a company within the meaning of that Act and the winding up of the Society had been pending in the High Court at the passing of this Act :
- (7.) The arbitrator may make all such orders and from time to time vary the same and do all such acts and things as the county court or the judge having jurisdiction as aforesaid might have made or done in any such winding up as aforesaid :
- (8.) Every order act and thing so made and done by the arbitrator shall have to all intents the like effect as if it had been made or done by the county court or by the judge having jurisdiction as aforesaid and shall be acted on obeyed executed and enforced by all sheriffs and other officers and persons accordingly :
- (9.) For the purposes of this Act all provisions of any statute applicable to the winding up of the Society shall have effect as if throughout those provisions the arbitrator were mentioned instead of the county court or the High Court respectively.

9. It is hereby provided that William Ward of Coburg Street Portsmouth builder and contractor shall be treated for all purposes within the meaning of this Act as an assenting depositor in respect of the sum of two thousand five hundred pounds received from him by the Society on the 10th day of December 1891 if within two months after the passing of this Act he shall surrender the mortgage security given to him by or on behalf of the Society.

A.D. 1893.

For protec-
tion of
William
Ward.

10. It is hereby provided that Edith Mares of 112 Laurence Road Southsea spinster shall be treated for all purposes within the meaning of this Act as an assenting depositor in respect of the sum of eight hundred pounds received from her by the Society on the 9th day of December 1891 if within two months after the passing of this Act she shall surrender the mortgage security given to her by or on behalf of the Society.

For protec-
tion of Edith
Mares.

11. No suit action or proceeding shall after the passing of this Act and pending the arbitration be instituted brought or taken otherwise than before the arbitrator in respect of any of the matters which by this Act are placed within his jurisdiction.

Prohibition
of actions
&c.

12. Any suit action or proceeding which at the passing of this Act is pending in or under appeal from any court in respect of any of the matters by this Act placed within the arbitrator's jurisdiction shall not be carried on after the passing of this Act otherwise than before the arbitrator. Provided that nothing in this or the preceding section contained shall be held to prohibit stay or otherwise interfere with the following matters:—

Stay of pro-
ceedings.

(1.) Any suit action or proceeding civil or criminal which at the passing of this Act may be pending or thereafter may be instituted brought or taken against any person or persons connected with the management of the Society for any fraudulent acts alleged to be done by him or them in that capacity before the date of the winding-up order:

(2.) An action now pending in the Chancery Division of the High Court of Justice entitled the Portsea Island Building Society and William Edmonds and William Frederick James Hunt plaintiffs against Charles Barclay Sir George Henry Chambers (Knight) John Hampton Hale Charles William House William Lowe and Robert Lowe defendants 1892 P. No. 2059. Provided always that the plaintiffs and defendants in the said action shall accept as final the decision of the said Chancery Division of the High Court or of the Court of Appeal and provided also that if and so far as the defendants in the said action Charles Barclay Sir George Henry Chambers (Knight)

A.D. 1893.

and John Hampton Hale shall as a result of the said action be deprived of the benefit of their mortgage securities for six thousand pounds and two thousand five hundred pounds respectively in the pleadings therein referred to then these defendants so far as they shall be so deprived of the same may come in under this Act as and shall in such case have the rights of assenting depositors within the meaning and for all the purposes of this Act.

Payment
and delivery
of money
securities &c.

13. All money and securities which at the passing of this Act were under the control of the county court or of the liquidators or either of them in the matter of the winding up of the Society and all books papers and documents relating thereto in the possession custody or control of the liquidators shall on the passing of this Act be paid or delivered up to the arbitrator or as he directs.

The liqui-
dators.

14.—(1.) The arbitrator may continue in office the liquidators already appointed in the winding-up proceedings or either of them or may appoint other liquidators or liquidator Any liquidator or liquidators shall have and exercise for the purposes of this Act the like powers and authorities in addition and subject to the powers and authorities conferred by this Act as a liquidator or liquidators appointed by the county court or under the Companies (Winding up) Act 1890.

(2.) Out of the Society's assets coming to their hands the liquidators shall pay under the arbitrator's direction the debts of the Society and from time to time declare such dividend and distribute the same in such manner as the arbitrator may determine Provided that the whole of the Society's assets shall be made available for dividend and the final dividend paid within five years or within such earlier or longer period as the arbitrator may determine having regard to the profitable realisation of the Society's estate.

(3.) With the sanction of the arbitrator the liquidators may bring or defend any legal proceedings in the name and on behalf of the Society.

(4.) They shall take such other steps and proceedings and do all such things as the arbitrator directs with reference to the winding up of the Society or any matters connected therewith.

(5.) At the end of each year from the commencement of the arbitration the liquidators shall if so directed by the arbitrator send to each member and depositor such a summary of their receipts and payments for the year together with such a report on the progress of the winding up as the arbitrator may approve.

15. The arbitrator may refer for taxation to the taxing officer under the Companies (Winding up) Act 1890 all bills of costs accounts of allowances and remuneration and other charges of solicitors liquidators and others claimed against the Society in respect of any matters relating to the winding up of the Society before or at the passing of this Act and the taxing officer to whom the same are referred shall (subject to any directions of the arbitrator) tax those bills and accounts as if they had been referred for taxation by the judge having jurisdiction under the Companies (Winding up) Act 1890 and shall report on the same to the arbitrator if so required by him.

A.D. 1893.
Taxation of costs.

16. Applications to the arbitrator shall be made in such manner and form and shall be heard and disposed of on the attendance of or notice to such parties or persons chosen as representatives of such parties on such written or other statements and on such evidence as the arbitrator by general regulations or otherwise from time to time directs and the costs of any such applications and of all proceedings before the arbitrator or under his authority or otherwise under this Act shall be in the discretion of the arbitrator and the opinion or decision of the arbitrator on any such application or with respect to the costs thereof or on any matter or thing within his jurisdiction shall not be subject to review or appeal and the amount of such costs may be ascertained by the arbitrator or by taxation as he directs.

Proceedings before arbitrator.

17. The arbitrator may make and vary such general rules regulations and orders as he from time to time thinks fit as to parties mode of procedure notices evidence or costs.

Power of arbitrator to make rules &c.

18. All awards orders certificates or other instruments made by or proceeding from the arbitrator shall be sufficiently authenticated if under his hand and may be in writing or print or partly in writing and partly in print and all courts in every part of Her Majesty's dominions shall take judicial notice of his signature.

Signature of arbitrator sufficient to authenticate orders &c.

19. Any notice issued by the arbitrator or any award order certificate or other instrument made by or proceeding from him shall if he so directs be published in the "London Gazette" or in any London newspaper or in any newspaper or newspapers published in the district of the county court.

Publication of notices &c.

20. The arbitrator may from time to time make any certificate award order or other instrument touching any one or more of the questions matters or things before him and may by any subsequent certificate award order or other instrument supplement or vary any

Power of arbitrator to make orders &c.

[Ch. clxxxvi.] *Portsea Island Building Society* [56 & 57 VICT.]
(*Arbitration*) Act, 1893.

A.D. 1893. — previous certificate award order or other instrument and shall within five years after the passing of this Act or within such earlier or extended period as he by writing under his hand from time to time appoints in this behalf make a final order or award for the settlement of all matters by this Act placed within his jurisdiction.

Orders &c.
made by
arbitrator to
be binding.

21. All awards orders certificates or other instruments made by or proceeding from the arbitrator shall be binding and conclusive on all parties and persons to all intents and purposes whatsoever and shall not be removed or removable by certiorari or by other writ or process into the High Court or any Court of Appeal and the proceedings or acts of the arbitrator shall not be liable to be interfered with by any such court or courts by way of mandamus prohibition injunction or otherwise and no such award order certificate or other instrument shall be set aside for any irregularity or informality or by reason of any matter within the arbitrator's jurisdiction under this Act being left undecided and no such award order certificate or other instrument shall be subject to review or appeal or be liable to be questioned on any ground before or after the making of the final order or award in any court by any proceeding against the respective members depositors liquidators or liquidator creditors or debtors or against the arbitrator or against any sheriff or other officer or person or otherwise and every such order award certificate or other instrument shall have the like effect as if it had been enacted or confirmed by Act of Parliament.

Notice of
orders
awards &c.

22. Such notice if any as the arbitrator may direct shall be given of any award order certificate or other instrument made given or executed by him and at his discretion the same or any one or more of the same shall be enrolled in the High Court and a copy thereof certified by the proper officer of such court or printed by the Queen's printers shall be evidence of the contents thereof and that it was duly made and that all the requisitions of this Act in relation thereto were complied with.

Power to
trustees and
others.

23. All trustees executors and administrators and all corporations and representatives of bankrupt or insolvent estates being entitled to or interested in any of the Society's assets and all guardians and committees respectively of infants and lunatics respectively who may be entitled to or interested in the same may agree to accept the equal proportionate or other share of such assets divisible by virtue of this Act in lieu of the full amount which they might or would otherwise be entitled to claim and by virtue of this Act they shall be indemnified in respect of such acceptance and every deed or other instrument or any testamentary or other disposition

[56 & 57 VICT.] *Portsea Island Building Society* [Ch. clxxxvi.]
(*Arbitration*) Act, 1893.

relating to the same shall take effect with reference to such proportionate and reduced part of the said claims in substitution for the full amount thereof. The receipts of minors being members or depositors for the moneys or dividends payable to them under this Act shall operate as a full discharge in respect of the amount to which they might or would otherwise be entitled.

A.D. 1893.

24. If the arbitrator appointed by this Act or any succeeding arbitrator under this Act dies resigns or from any cause becomes incapable of acting or unwilling to act an arbitrator shall be appointed in his place by the Lord Chancellor and the provisions of this Act relating to the arbitrator shall extend to any person so appointed.

Vacancy in office of arbitrator.

25. The arbitrator may appoint and employ any registrar assessor examiner secretary clerks or other officers for the purposes of this Act and fix their remuneration and such remuneration shall form part of the expenses of the arbitration.

Appointment of clerks &c. by arbitrator.

26. The expenses of the arbitrator (including such remuneration for his personal services as the Lord Chancellor from time to time approves) and all costs charges and expenses preliminary to and of and incident to the preparing applying for obtaining and passing of this Act shall form part of the expenses of liquidation and be paid out of the assets of the Society.

Expenses of arbitration and costs of Act.

Printed by EYRE and SPOTTISWOODE,
FOR

T. DIGBY PIGOTT, Esq., C.B., the Queen's Printer of Acts of Parliament.

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