'77

COMPANIES AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

1. SECTION 37 of the Companies Act is in the following terms:—

Reserve Capital.

A limited company may by special resolution declare that any portion of its capital not already called up shall not be called up except in the event of and for the purposes of the company being wound up; and thereupon it shall not be lawful to call up such portion of capital except in such event and for such purposes.

2. The original intention of the section, which is copied from the English Companies Act, was to enable shareholders of a company to provide that their capital, or part of their capital, should not be called up until the liquidation of the company, and that consequently the company during its life should finance on borrowed capital when the capital actually called up was insufficient. This was always understood to be the meaning of the section until by a comparatively recent decision of the Court of Appeal in England it was held that the section as worded enured to the benefit of the ordinary creditors of such a company, and that on the liquidation of the company a bank or other creditor which had advanced money to the company during its life upon the security of its uncalled capital had no such security. The result has been to make the section nugatory, because the shareholders of such a company cannot obtain any finance without first rescinding their special resolution relating to reserve capital. The object and effect of subclause (1) of clause 2 is to declare that the section has the meaning which prior to the English decision it was understood to have. The shareholders will still remain free from calls until the winding-up, but a security upon the uncalled capital is rendered effective, and on the winding-up will have priority.

3. Subclause (2) of clause 2 is absolutely essential, for the reason that the resolutions of private companies are not filed with the Registrar of Companies, and a private company may by a private resolution under section 37 defeat the security of the creditors who finance it. The great increase in the number of private companies has rendered section 37 dangerous in business relations with such companies.

This PUBLIC BILL *originated in the* LEGISLATIVE COUNCIL, *and, having this day passed as now printed, is transmitted to the* HOUSE OF REPRESENTATIVES *for its concurrence.*

Legislative Council,
3rd October, 1919.

Hon. Sir Francis Bell.

COMPANIES AMENDMENT.

ANALYSIS.

Title.
1. Short Title.
2. Protection of mortgages secured on uncalled capital. Provisions of principal Act as to reserve capital not applicable to private companies.

A BILL INTITULED

AN ACT to amend the Companies Act, 1908. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Companies Amendment Act, 1919, and shall be read together with and deemed part of the Companies Act, 1908 (hereinafter referred to as the principal Act). Short Title.

2. (1.) Section thirty-seven of the principal Act is hereby amended by adding the following proviso:—

"Provided that any mortgage or charge granted or created by a limited company on the whole or any part of its uncalled capital, whether before or after the passing of any such special resolution, shall have the same validity, force, and effect as if no such special resolution had been passed, save that, in the case of a mortgage or charge granted or created after the passing of such special resolution, the right of any person entitled by virtue of such mortgage or charge to require the calling-up of any uncalled capital affected by such special resolution shall be deferred until the event of the company being wound up." Protection of mortgages secured on uncalled capital.

(2.) Section thirty-seven of the principal Act shall not apply to private companies. Provisions of principal Act as to reserve capital not applicable to private companies.

By Authority: MARCUS F. MARKS, Government Printer, Wellington.—1919.