



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART V

WINDING UP.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims.

316 Debts of all descriptions may be proved.

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or- claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

317 Application of bankruptcy rules in winding up of insolvent English companies.

In the winding up of an insolvent company registered in England the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

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318 Ranking of claims in Scotland.

In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,—

- (a) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends;
- (b) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of references to the company for references to the bankrupt, and with any other necessary modifications.

319 Preferential payments.

(1) In a winding up there shall be paid in priority to all other debts—

- (a) the following rates and taxes,—
 - (i) all local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date;
 - (ii) all land tax, income tax, profits tax, excess profits tax or other assessed taxes assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;
 - (iii) the amount of any purchase tax due from the company at the relevant date, and having become due within twelve months next before that date;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;
- (c) any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation where the default by reason of which the order for compensation was made occurred before the relevant date, whether or not the order was made before that date;
- (d) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;
- (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during, the twelve months next before the relevant date by the company as the employer of any persons under the Unemployment Insurance Act, 1935, the National Health Insurance Act, 1936, the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946;
- (f) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section seven of the Workmen's

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Compensation Act, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act, being amounts which have accrued before the relevant date in satisfaction of a right which arises or has arisen in respect of employment before the fifth day of July, nineteen hundred and forty-eight (that is to say; the day appointed for the purposes of the National Insurance (Industrial Injuries) Act 1946);

- (g) the amount of any debt which, by virtue of subsection (5) of section three of the Workmen's Compensation (Coal Mines) Act, 1934, is due from the company to an insurer in respect of a liability in respect of the satisfaction of a right falling within the last foregoing paragraph.
- (2) Notwithstanding anything in paragraphs (b) and (c) of the foregoing subsection, the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed two hundred pounds:

Provided that where a claimant Under the said paragraph (b) is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

- (3) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (f) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.
- (4) Where any payment has been made—
- (a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or
- (b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;
- out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.
- (5) The foregoing debts shall—
- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) in the case of a company registered in England, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given

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by paragraph (e) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

- (7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

- (8) For the purposes of this section—
- (a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;
 - (b) the expression “accrued holiday remuneration ” includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;
 - (c) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period; and
 - (d) the expression “the relevant date ” means—
 - (i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
 - (ii) in any case where the foregoing sub-paragraph does not apply, means the date of the passing of the resolution for the winding up of the company.
- (9) This section shall not apply in the case of a winding up where the relevant date as defined in subsection (7) of section two hundred and sixty-four of the Companies Act, 1929, as originally enacted, occurred before the commencement of this Act, and in such a case the provisions relating to preferential payments which would have applied if this Act had not passed shall be deemed to remain in full force.

Effect of Winding Up on antecedent and other Transactions.

320 Fraudulent preference.

- (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating- to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference,

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shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made or done before the commencement of this Act, this subsection shall have effect with the substitution, for references to six months, of references to three months.

- (2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.
- (3) In the application to Scotland of this section, the expression “fraudulent preference” includes any alienation or preference which is voidable by statute or at common law on the ground of insolvency or notour bankruptcy, the expression “bankruptcy petition” means petition for sequestration and for the words “three months” there shall be substituted the words “sixty days”.

321 Liabilities and rights of certain fraudulently preferred persons.

- (1) Where, in the case of a company wound up in England, anything made or done after the commencement of this Act is void under the last foregoing section as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.
- (2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.
- (3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

322 Effect of floating charge.

- (1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury:

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Provided that, in relation to a charge created more than six months before the commencement of this Act, this section shall have effect with the substitution, for the words “twelve months ”, of the words “six months ”.

- (2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

323 Disclaimer of onerous property in case of company wound up in England.

- (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.
- (3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.
- (4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.
- (5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

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- (6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

- (7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.
- (8) This section shall not apply in the case of a winding up in Scotland.

324 Liability for rentcharge on company's land after disclaimer.

- (1) Where on a disclaimer under the last preceding section land in England vests subject to a rentcharge in the Crown or any other person that shall not, subject to the next following subsection, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.
- (2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.
- (3) This section shall apply to land vesting and sums accruing due before, as well as after, the commencement of this Act.

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325 Restriction of rights of creditor as to execution or attachment in case of company being wound up in England.

- (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up;
 - (b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
 - (c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.
- (2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.
- (3) In this section the expression “goods ” includes all chattels personal, and the expression “sheriff” includes any officer charged with the execution of a writ or other process.
- (4) This section shall not apply in the case of a winding up in Scotland.

326 Duties of sheriff as to goods taken in execution.

- (1) Subject to the provisions of subsection (3) of this section, where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.
- (2) Subject to the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for

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the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

- (3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
- (4) In this section the expression “goods ” includes all chattels personal, and the expression “sheriff” includes any officer charged with the execution of a writ or other process.
- (5) This section shall not apply in the case of a winding up in Scotland.

327 Effect of diligence within 60 days of winding up in case of Scottish company and in case of effects in Scotland of English company.

- (1) In the winding up of a company registered in Scotland, the following provisions shall have effect:—
 - (a) the winding up shall, as at the date of the commencement thereof, be equivalent to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding, and no arrestment or poinding of the funds or effects of the company executed on or after the sixtieth day prior to that date shall be effectual, and those funds or effects or the proceeds of those effects if sold shall be made forthcoming to the liquidator:

Provided that any arrester or pointer before that date who is thus deprived of the benefit of his diligence shall have preference out of those funds or effects for the expense bona fide incurred by him in such diligence;

- (b) the winding up shall, as at the date aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said date, subject to such preferable heritable rights and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided;
- (c) the provisions of sections one hundred and eight to one hundred and thirteen and of section' one hundred and sixteen of the Bankruptcy (Scotland) Act, 1913, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid, and for the purposes of this Act the words “sequestration ” and “trustee ” occurring in those sections shall mean respectively “winding up ” and “liquidator,” and the expression “the Lord Ordinary or the court ” shall mean “the court ” as defined by this Act with respect to Scotland;
- (d) no poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator:

Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the date aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

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- (2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in Scotland, apply in the case of a company registered in England as it applies in the case of a company registered in Scotland.

Offences antecedent to or in course of Winding Up.

328 Offences by officers of companies in liquidation.

- (1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
 - (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
 - (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
 - (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company; or
 - (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards; or
 - (f) makes any material omission in any statement relating to the affairs of the company; or
 - (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or
 - (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
 - (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
 - (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
 - (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or
 - (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before, the commencement of the

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winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (a) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

- (2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (f) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable—
 - (a) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour;
 - (b) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.
- (3) For the purposes of this section, the expression “officer ” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

329 Penalty for falsification of books.

If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of

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any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

330 Frauds by officers of companies which have gone into liquidation.

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up,—

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any "tiff" or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company ;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company ;

he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months.

331 Liability where proper accounts not kept.

- (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months.
- (2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

332 Responsibility for fraudulent trading of persons concerned.

- (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were

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knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

On the hearing of an application under this subsection the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

- (2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

- (3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both.
- (4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up in England, the declaration shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section one of the Bankruptcy Act, 1914.

333 Power of court to assess damages against delinquent directors, &c.

- (1) If in the course of winding, up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.
- (2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

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- (3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section one of the Bankruptcy Act, 1914.

334 Prosecution of delinquent officers and members of company.

- (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate.
- (2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of "any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate and shall furnish to the Director or Lord Advocate, as the case may be, such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as they respectively may require.
- (3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further enquiry, and the Board shall thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board or any person designated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.
- (4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.
- (5) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

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- (6) If any person fails or neglects to give assistance in manner required by the last foregoing subsection, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Supplementary Provisions as to Winding up.

335 Disqualification for appointment as liquidator.

A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and—

- (a) any appointment made in contravention of this provision shall be void; and
- (b) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding one hundred pounds.

336 Corrupt inducement affecting appointment as liquidator.

Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine not exceeding one hundred pounds.

337 Enforcement of duty of liquidator to make returns, &c.

- (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.
- (2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.
- (3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

338 Notification that a company is in liquidation.

- (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

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- (2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of twenty pounds.

339 Exemption of certain documents from stamp duty on winding up of companies.

- (1) In the case of a winding up by the court of a company registered in England, or of a creditors' voluntary winding up of such a company,—
- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and
 - (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up, shall be exempt from duties chargeable under the enactments relating to stamp duties.
- (2) In the case of such a winding up as aforesaid of a company registered in Scotland—
- (a) every conveyance relating solely to property which forms part of the assets of the company and which, after the execution of the conveyance, is or remains the property of the company for the benefit of its creditors; and
 - (b) every power of attorney, commission, factory, oath, affidavit, articles of group or sale, submission, decree arbitral, and every other instrument and writing whatsoever relating solely to the property of the company; and
 - (c) every deed or writing forming a part of the proceedings in the winding up, shall be exempt from duties chargeable under the enactments relating to stamp duties.
- (3) In subsection (1) of this section the expression “assurance ” includes deed, conveyance, assignment and surrender, and in subsection (2) of this section the expression “conveyance ” includes assignation, instrument, discharge, writing and deed.

340 Books of company to be evidence.

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

341 Disposal of books and papers of company.

- (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:—
- (a) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs;
 - (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

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- (2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.
- (3) Provision may be made by general rules for enabling the Board of Trade to prevent, for such period (not exceeding five years from the dissolution of the company) as the Board think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Board and to appeal to the court from any direction which may be given by the Board in the matter.
- (4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Board thereunder, he shall be liable to a fine not exceeding one hundred pounds.

342 Information as to pending liquidations.

- (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.
- (2) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

343 Unclaimed assets in England to be paid to Companies Liquidation Account.

- (1) If, where a company is being wound up in England, it appears either from any statement sent to the registrar under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.
- (2) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one hundred and fifty-three of the Bankruptcy Act, 1914, for the purpose of ascertaining and getting in the sums, funds and dividends referred to in that section.
- (3) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment thereof, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.
- (4) Any person dissatisfied with the decision of the Board of Trade in respect of a claim made in pursuance of this section may appeal to the High Court.

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344 Unclaimed dividends, &c, in Scotland to be lodged in bank.

When a company registered in Scotland has been wound up, and is about to be dissolved, the liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts therefor shall be transmitted to the Accountant of Court, and the provisions of section one hundred and fifty-three of the Bankruptcy (Scotland) Act, 1913, so far as consistent with this Act, shall, with any necessary modifications, apply to sums lodged in a bank in pursuance of this section in like manner as they apply to sums deposited in pursuance of that enactment.

345 Resolutions passed at adjourned meetings of creditors and contributories.

Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court.

346 Meetings to ascertain wishes of creditors or contributories.

- (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.
- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

347 Judicial notice of signature of officers.

In all proceedings under this Part of this Act, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court or of a county court in England, or of the Court of Session or of a sheriff court in Scotland, or of the High Court in Northern Ireland, and also of the official seal or stamp of the several offices of the High Court in England or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof.

348 Special commission for receiving evidence.

- (1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judge exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in England or Scotland, and the

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court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner although he is out of the jurisdiction of the court that made the winding up order.

- (2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of county courts, judge exercising the said bankruptcy jurisdiction, county court judge, recorder or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.
- (3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

349 Court may order examination of persons in Scotland.

- (1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory.
- (2) The order or commission to take the examination aforesaid shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.
- (3) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.
- (4) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.
- (5) The sheriff shall be entitled to such fees, and the witness shall be entitled to such allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.
- (6) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

350 Costs of application for leave to proceed against company being wound up in Scotland.

- (1) Where any petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted

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by the court, the costs of such petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.

- (2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

351 Affidavits, &c, in United Kingdom and dominions.

- (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the United Kingdom, or elsewhere within the dominions of His Majesty, before any court, judge or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.
- (2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.
- (3) Subsection (2) of section six of the Foreign Service Act, 1943 (which empowers His Majesty by Order in Council to make such amendments of any enactment as appear to him to be consequential on the establishment or reorganisation of His foreign service, including, in particular, such amendments of any reference to an office, rank or grade as appear to Him to be consequential on the abolition or alteration of the description thereof or on the creation of any new office, rank or grade corresponding thereto) shall have effect as if the reference to any enactment included a reference to this section.

Provisions as to Dissolution.

352 Power of court to declare dissolution of company void.

- (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.
- (2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

353 Registrar may strike defunct company off register.

- (1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

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- (2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.
- (3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in the last foregoing subsection.
- (5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that—

- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
 - (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.
- (6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.
 - (7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

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354 Property of dissolved company to be bona vacantia.

Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections, be deemed to be bona vacantia and shall accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

355 Power of Crown to disclaim title to property vesting under foregoing section.

- (1) Where any property vests in the Crown under the last preceding section, the Crown's title thereto under that section may be disclaimed by a notice signed by the Treasury Solicitor:
- (2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Crown under the last preceding section, and subsections (2) and (6) of section three hundred and twenty-three of this Act and section three hundred and twenty-four thereof shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section three hundred and twenty-three immediately before the dissolution of the company.
- (3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.
- (4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Treasury Solicitor, or, if an application in writing is made to the Treasury Solicitor by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.
- (5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Treasury Solicitor on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.
- (6) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him, and copies thereof shall be published in the Gazette and sent to any persons who have given the Treasury Solicitor notice that they claim to be interested in the property.
- (7) This section shall apply to property vested in the Crown as aforesaid at the commencement of this Act, and where the vesting came to the notice of the Treasury Solicitor more than six months before the commencement of this Act notice of disclaimer under this section may (except where an application is made to him under subsection (4) of this section) be executed at any time within six months thereafter.

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- (8) This section shall apply to property vested in the Duchy of Lancaster or the Duke of Cornwall under the last preceding section as if for references to the Crown and to the Treasury Solicitor there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to the Duchy of Lancaster or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.
- (9) This section shall apply to property in Scotland as if for references to the Treasury Solicitor there were substituted references to the King's and Lord Treasurer's Remembrancer, and as if section three hundred and twenty-three of this Act applied in the case of a winding up in Scotland, with the substitution, however, for references to property of a leasehold nature, to an under-lessee, and to a mortgagee by demise or a chargee by way of legal mortgage, of references respectively to property held under a lease, to a sub-lessee, and to the creditor in a security constituted by the assignation of a lease recorded under the Registration of Leases (Scotland) Act, 1857.

356 Liability for rentcharge on company's land after dissolution.

- (1) Section three hundred and twenty-four of this Act shall apply to land in England which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under section three hundred and twenty-three of this Act.
- (2) In this section the expression “company ” includes any body corporate.

Special Provisions as to Stannaries.

357 Attachment of debt due to contributory on winding up in stannaries court.

When several companies are in course of liquidation by or under the supervision of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of 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 applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set-off, counterclaim or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

358 Preferential payments in stannaries cases.

- (1) In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—
- (a) in the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall not extend to the principal agent, manager, purser or secretary;
 - (b) all wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description

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of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to four months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts;

- (c) the following debts, that is to say:—
- (i) wages of any miner, artizan or labourer and accrued holiday remuneration becoming payable to or in right of any miner, artizan or labourer as mentioned in paragraph (d) of subsection (1) of section three hundred and nineteen of this Act, being wages or remuneration unpaid at the commencement of the winding up;
 - (ii) all such amounts due in respect of contributions payable in respect of a miner under the enactments mentioned in paragraph (e) of the said subsection (1) as are given priority by that paragraph; and
 - (iii) all such amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1925, payable to a miner or the dependants of a miner as are given priority by paragraph (f) of the said subsection (1);

shall be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary or accrued holiday remuneration due to them;

- (d) subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the debts to be paid in priority under the last foregoing paragraph, together with interest thereon at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof, and as soon as the said sum has been so advanced, the said debts shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs;
- (e) the provision giving a right of priority to a person who has advanced money for the making of payments on account of wages, salary or accrued holiday remuneration shall have effect subject to the modifications contained in this section.
- (2) References in the foregoing subsection to wages shall be construed as including references to such remuneration in respect of a period of holiday or absence from work as is deemed for the purposes of section three hundred and nineteen of this Act to be wages, and for the purposes of that subsection the expression “accrued holiday remuneration” has the same meaning as it has for the purposes of that section.
- (3) The foregoing provisions of this section shall not apply in the case of such a winding up as is mentioned in subsection (9) of the said section three hundred and nineteen, and in such a case the provisions which, by virtue of that subsection, are deemed to remain in force shall have effect in their application to companies within the stannaries subject to the modifications subject to which they would have had effect if this Act had not passed.

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359 Provisions as to mine club funds.

- (1) On the winding up of a company within the stannaries, contributions of the miners, artizans or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.
- (2) Where the winding up is a voluntary winding up, any person claiming to be entitled to any such contributions or fund shall have the same right as the liquidator of applying to the court for directions, or to determine any question arising in the matter.

Central Accounts.

360 Companies Liquidation Account.

- (1) An account, to be called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.
- (2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

361 Investment of surplus funds on general account.

- (1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury and shall pay over the whole or any part of that excess, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities to be placed to the credit of the said account.
- (2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.
- (3) The dividends, on investments under this section shall be paid into the Bankruptcy and Companies Winding-up (Fees) Account established under the Economy (Miscellaneous Provisions) Act, 1926.

362 Separate accounts of particular estates.

- (1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in

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respect of that company's estate, the Board shall on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

- (2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.
- (3) The dividends on investments under this section shall be paid to the credit of the company.
- (4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury.
- (5) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Officers.

363 Officers and remuneration.

- (1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.
- (2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase or diminish that remuneration as they think fit.

364 Returns by officers in English winding up.

The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times, and in such manner and form, as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Rules and Fees.

365 General rules and fees for winding up.

- (1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

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- (2) All rules made under this section shall be judicially noticed and shall have effect as if enacted by this Act.
- (3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in -what manner the same are to be collected and accounted for:

Provided that in fixing the fees aforesaid regard shall be had to the provisions of section fourteen of the Economy (Miscellaneous Provisions) Act, 1926.

- (4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words “vice-chancellor ” for the word “judge,” and of the word “registrar ” for the word “master,” and of the words “chambers of the registrar ” for the words “chambers of the judge ” and “ judge's chambers ”, and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.
- (5) The powers conferred by this section on the Lord Chancellor, the Court of Session and the Treasury shall be exercisable by statutory instrument, and—
 - (a) a statutory instrument containing general rules shall be laid before Parliament after being made;
 - (b) the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing general rules made by the Court of Session in like manner as if the rules had been made by a Minister of the Crown.