



# Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

## PART IV

### WINDING UP.

#### *Preliminary.*

#### **122 Modes of winding up.**

- (1) The winding up of a company may be either—
  - (i) by the court; or
  - (ii) voluntary; or
  - (iii) subject to the supervision of the court.
- (2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

#### *Contributories.*

#### **123 Liability as contributories of present and past members.**

- (1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—
  - (i) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up :
  - (ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member :

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- (iii) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:
  - (iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect, of which he is liable present or past member :
  - (v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up :
  - (vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract :
  - (vii) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustment, of the rights of the contributories among themselves.
- (2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company : Provided that—
- (i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up :
  - (ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office :
  - (iii) Subject to the articles of the company, a director or , manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts . and liabilities of the company, and the costs, charges, and expenses of the winding up.
- (3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

## 124 Definition of contributory.

The term “contributory ” means every person liable to contribute to the assets of a company in the event of its being-wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

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## **125 Nature of liability of contributory.**

The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

## **126 Contributories in case of death of member.**

- (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.
- (2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.
- (3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

## **127 Contributories in case of bankruptcy of member.**

If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

- (1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of - ;his liability to contribute to the assets of the company ; and
- (2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

## **128 Provision as to married women.**

- (1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.
- (2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

### *Winding up by Court.*

## **129 Circumstances in which company may be wound up by court.**

A company may be wound up by the court—

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- (i) if the company has by special resolution resolved that the company be wound up by the court;
- (ii) if default is made in filing the statutory report or in holding the statutory meeting ;
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;
- (iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ;
- (v) if the company is unable to pay its debts ;
- (vi) if the court is of opinion that it is just and equitable that the company should be wound up.

### **130 Company when deemed unable to pay its debts.**

A company shall be deemed to be unable to pay its debts—

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds, then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or
- (ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (iii) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made ; or
- (iv) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts/the court shall take into account the contingent and prospective liabilities of the company.

### **131 Jurisdiction to wind up companies in England.**

- (1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and' Durham, and the county courts.
- (2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.
- (3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.
- (4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into-a contract for such

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working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

- (5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

- (6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.
- (7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.
- (8) For the purposes of this section the expression “registered office ” means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

### **132 Conduct of winding-up business in High Court in England.**

Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

### **133 Transfer of proceedings.**

- (1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.
- (2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

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- (3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

#### **134 Jurisdiction to wind up companies in Ireland.**

The court having jurisdiction to wind up companies registered in Ireland shall be the High Court :

Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

#### **135 Jurisdiction to wind up companies in Scotland.**

The court having jurisdiction to wind up companies registered in Scotland shall be the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during session, and in time of vacation the Lord Ordinary on the bills.

#### **136 Power in Scotland to remit winding up to Lord Ordinary.**

Where the court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

#### **137 Provisions as to applications for winding up.**

- (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately :  
Provided that

- (a) A contributory shall not be entitled to present a petition for winding up a company unless—

- (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ; or

- (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the

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eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder ; and

- (b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ; and
  - (c) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.
- (2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or -contributories.
- (3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, -the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

### **138 Effect of winding-up order.**

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

### **139 Commencement of winding up by court.**

A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

### **140 Power to stay or restrain proceedings against company.**

At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

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**141 Powers of court on hearing petition.**

- (1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

**142 Actions stayed on winding-up order.**

When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

**143 Copy of order to be forwarded to registrar.**

On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

**144 Power of court to stay winding up.**

The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

**145 Court may have regard to wishes of creditors or contributories.**

The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

*Official Receiver.*

**146 Definition of official receiver.**

- (1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term “official receiver” shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.
- (2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.



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#### **147 Statement of company's affairs to be submitted to official receiver.**

- (1) Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.
- (2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.
- (3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.
- (4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.
- (5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.
- (6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

#### **148 Report by official receiver.**

- (1) Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—
  - (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
  - (b) if the company has failed, as to the causes of the failure; and
  - (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
- (2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any

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director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

*Liquidators.*

**149 Appointment, remuneration, and title of liquidators.**

- (1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.
- (2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.
- (3) Where the proceedings are in England—
  - (a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed :
  - (b) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such :
  - (c) When a person other than 'the official receiver' is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.
- (4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.
- (5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.
- (6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.
- (7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court. In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.
- (8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.
- (9) A liquidator shall be described as follows (that is to say):—
  - (a) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and
  - (b) in a winding up in Scotland or Ireland, by the style of the official liquidator, of the particular company in respect of which he is appointed, and not by his individual name.

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- (10) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

## **150 Custody of company's property.**

- (1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.
- (2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

## **151 Powers of liquidator.**

- (1) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—
- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;
  - (b) to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof;
  - (c) in the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction;
  - (d) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.
- (2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—
- (a) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
  - (b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
  - (c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
  - (d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business;
  - (e) To raise on the security of the assets of the company any money requisite;
  - (f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for

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obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :

- (g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
- (4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.
- (5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.
- (6) In a winding up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

## **152 Meetings of creditors and contributories in English winding up.**

- (1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—
  - (a) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver ; and
  - (b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.
- (2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.
- (3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

## **153 Liquidator to give information to official receiver.**

Where in the winding up of a company, by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

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#### **154 Payments of liquidator in English winding up into bank.**

- (1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid :

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business, of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

- (2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.
- (3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

#### **155 Audit of liquidator's accounts in English winding up.**

- (1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.
- (2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.
- (3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (4) When the account has been audited, one copy thereof shall be filed, and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.
- (5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

#### **156 Books to be kept by liquidator in English winding up.**

Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed,

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and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

**157 Release of liquidators in England.**

- (1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.
- (2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

**158 Exercise and control of liquidator's powers in England.**

- (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.
- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.
- (3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.
- (4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

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- (5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

**159 Control of Board of Trade over liquidators in England.**

- (1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.
- (2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.
- (3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

*Committee of Inspection, Special Manager, Receiver.*

**160 Committee of inspection in English winding up.**

- (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.
- (2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.
- (4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting.
- (7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy,

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and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

- (8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.
- (9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

#### **161 Power in England to appoint special manager.**

- (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
- (2) The special manager shall give such security and account in such manner as the Board of Trade direct.
- (3) The special manager shall receive such remuneration as may be fixed by the court.

#### **162 Power in England to appoint official receiver as receiver for debenture holders or creditors.**

Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

#### *Ordinary Powers of Court.*

#### **163 Settlement of list of contributories and application of assets.**

- (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members-in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.
- (2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

#### **164 Power to require delivery of property.**

The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is prima facie entitled.



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**165 Power to order payment of debts by contributory.**

- (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.
- (2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager -whose liability is unlimited or to his estate the like allowance.
- (3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

**166 Power of court to make calls.**

- (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
- (2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

**167 Power to order payment into bank.**

- (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.
- (2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

**168 Order on contributory conclusive evidence.**

- (1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.
- (2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only prima facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

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**169 Power to exclude creditors not proving in time.**

The court may fix a time or times 'within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

**170 Adjustment of rights of contributories.**

The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

**171 Power to order costs.**

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

**172 Dissolution of company.**

- (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.
- (3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

**173 Delegation to liquidator of certain powers of court in England.**

General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories ;
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets ;
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls ;
- (e) fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

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*Extraordinary Powers of Court.*

**174 Power to summon persons suspected of having property of company.**

- (1) The court may, after it has made a winding-up-order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.
- (2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.
- (3) The court may require him to produce any books and papers in his custody or power relating to the company ; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.
- (4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

**175 Power in England to order public examination of promoters, directors, &c.**

- (1) When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.
- (2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.
- (3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.
- (4) The court may put such questions to the person examined as the court thinks fit.
- (5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.
- (6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him : Provided that if he is, in the opinion of

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the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

- (7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (8) The court may, if it thinks fit, adjourn the examination from time to time.
- (9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of the court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

#### **176 Power to arrest absconding contributory.**

The court, at anytime either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

#### **177 Powers of court cumulative.**

Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

### *Enforcement of and Appeal from Orders.*

#### **178 Power to enforce orders.**

- (1) Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.
- (2) For the purposes of this Part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction ; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

#### **179 Order for calls on contributories in Scotland.**

Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the

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liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignment, unless with special leave of the court.

#### **180 Enforcement of orders throughout United Kingdom.**

- (1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.
- (2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.
- (3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

#### **181 Appeals from order.**

- (1) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.
- (2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation, that—
  - (i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution ; and
  - (ii) Every other order or judgment (except as herein-after mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against

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them, be carried out and receive effect until the reclaiming note is disposed of by the court.

- (3) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.
- (4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

### *Voluntary Winding Up.*

#### **182 Circumstances in which company may be wound up voluntarily.**

A company may be wound up voluntarily—

- (1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :
- (2) If the company resolves by special resolution that the company be wound up voluntarily :
- (3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

#### **183 Commencement of voluntary winding up.**

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

#### **184 Effect of voluntary winding up on status of company.**

When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

#### **185 Notice of resolution to wind up voluntarily.**

When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the. Gazette.

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## **186 Consequences of voluntary winding up.**

The following consequences shall ensue on the voluntary winding up of a company :—

- (i) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company :
- (ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them :
- (iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof :
- (iv) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court :
- (v) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves:
- (vi) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories:
- (vii) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (viii) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator:
- (ix) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

## **187 Notice by liquidator of his appointment.**

- (1) The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.
- (2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

## **188 Rights of creditors in a voluntary winding up.**

- (1) Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.
- (2) At the meeting to be held in pursuance of the foregoing-provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator

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appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

- (3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.
- (4) No appeal shall lie from any order of the court upon an application under this section.
- (5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

#### **189 Power to fill vacancy in office of liquidator.**

- (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

#### **190 Delegation of authority to appoint liquidators.**

- (1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.
- (2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

#### **191 Arrangement when binding on creditors.**

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three fourths in number and value of the creditors.
- (2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.



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**192 Power of liquidator to accept shares, &c. as consideration for sale of property of company.**

- (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company,) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.
- (2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.
- (3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.
- (4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.
- (5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators ; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.
- (6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding-up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and “the company” shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

**193 Power to apply to court.**

- (1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

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- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

#### **194 Power of liquidator to call general meeting.**

- (1) Where a company is being wound-up voluntarily, the liquidator may. summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.
- (2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

#### **195 Final meeting and dissolution.**

- (1) In the case of every voluntary winding-up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.
- (2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.
- (3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.
- (4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

- (5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar 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.

#### **196 Costs of voluntary liquidation.**

All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

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**197 Saving for rights of creditors and contributories.**

The voluntary winding up of a company shall: not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

**198 Power of court to adopt proceedings of voluntary winding up.**

Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.

*Winding Up subject to Supervision of Court.*

**199 Power to order winding up subject to supervision.**

When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

**200 Effect of petition for winding up subject to supervision.**

A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

**201 Court may have regard to wishes of creditors and contributories.**

The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

**202 Power for court to appoint or remove liquidators.**

- (1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator.
- (2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.
- (3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

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### **203 Effect of supervision order.**

- (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily.
- (2) A winding-up subject to the supervision of the court is not a winding-up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except subsection (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

### **204 Appointment of voluntary liquidator as liquidator in winding up by court in Scotland or Ireland.**

Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

#### *Supplemental Provisions.*

### **205 Avoidance of transfers, &c. after commencement of winding up.**

- (1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.
- (2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

### **206 Debts of all descriptions to 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.

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**207 Application of bankruptcy rules in winding up of insolvent English and Irish companies.**

In the winding up of an insolvent company registered in England or Ireland 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 or Ireland, as the case may be, 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.

**208 Ranking of claims in Scotland.**

In the winding up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptcy (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to creditor of the company voting in matters relating to the winding tip, and ranking for payment of dividends ; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the court.

**209 Preferential payments.**

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

- (a) All parochial or other local rates due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax 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;
- (b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and
- (c) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date : Provided that where any labourer in husbandry 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 said date ; and
- (d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability whereof accrued before the said date, subject nevertheless to the provisions of section five of that Act.

(2) The foregoing debts shall—

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- (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 or Ireland, 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.
- (3) Subject to the retention of such sums as maybe 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.
- (4) 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.
- (5) The date herein-before in this section referred to is—
- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
  - (b) in any other case, the date of the commencement of the winding up.

## **210 Fraudulent preference.**

- (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being-wound up, a fraudulent preference of its creditors, and be invalid accordingly.
- (2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding-up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.
- (3) 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.

## **211 Avoidance of certain attachments, executions, &c. in case of company registered in England or Ireland.**

Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

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**212 Effect of floating charge.**

Where a company is being wound up, a floating charge on the undertaking or property of the company created within three 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.

**213 Effect in case of company registered in Scotland of diligence within sixty days of winding up by or subject to supervision of court.**

In the winding up, by or subject to the supervision of the court, of a company registered in Scotland, the following provisions shall have effect :—

- (1) The winding up shall, in the case of a winding up by the court as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, 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 the commencement of the winding up by the court, or to the presentation of the petition on which a supervision order is made, as the case may be, 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 poinder before the date of the winding up, or of the petition, as the case may be, 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 :
- (2) The winding up shall, as at the respective dates afore said, 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 dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided:
- (3) The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, 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:
- (4) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after 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 respective dates 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.

**214 General scheme of liquidation may be sanctioned.**

- (1) The liquidator may, with the sanction following (that is to say)—

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- (a) in the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection ;
- (b) in the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and
- (c) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

do the following things or any of them :—

- (i) Pay any classes of creditors in full ;
  - (ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable ;
  - (iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
- (2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

## **215 Power of court to assess damages against delinquent directors, &c.**

- (1) Where 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) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.
- (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 four of the Bankruptcy Act, 1883.
- (4) So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.



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**216 Penalty for falsification of books.**

If any director, 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 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.

**217 Prosecution of delinquent directors, &c.**

- (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 director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.
- (2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

**218 Penalty on perjury.**

if any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

**219 Meetings to ascertain wishes of creditors or contributories.**

- (1) Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court 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 the articles.

**220 Books of company to be evidence.**

Where any 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.

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## **221 Inspection of books.**

After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

## **222 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 voluntary winding up in such way as the company by extraordinary resolution directs.
- (2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of tire same not being forthcoming to any person claiming to be interested therein.

## **223 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, to file with the registrar of companies 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.

## **224 Information as to pending liquidations in England.**

- (1) Where a company is being wound up in England, if 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) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself-or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.
- (3) if a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

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- (4) If it appears from any such statement 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, the liquidator shall forthwith pay the same 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.
- (5) 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 exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.
- (6) 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 of the same, 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.
- (7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

## **225 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 in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stannaries jurisdiction, 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.

## **226 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 the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders; in Ireland, 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 any part of the United Kingdom, and the 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 a county court, judge of the High Court, assistant barrister or 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.

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- (3) The examination so taken shall be returned or reported, to the court which made the order in such manner as that court directs.

**227 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 ; and the order or commission to take the examination 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.
- (2) 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.
- (3) 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.
- (4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like 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.
- (5) 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.

**228 Affidavits, &c. in United Kingdom and colonies.**

- (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Great Britain or Ireland, 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.

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## **229 Companies liquidation account defined.**

- (1) An account, 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 connection 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.

## **230 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 to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

## **231 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 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.

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**232 Certain receipts and fees to be applied in aid of expenditure.**

The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the winding up of companies in England.

**233 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.
- (3) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as he thinks fit.

**234 Annual accounts of English, winding up.**

- (1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act in relation to the winding up of companies in England, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.
- (2) The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

**235 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.

**236 Proceedings of Board of Trade.**

- (1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in

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that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

- (2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

#### *Rules and Fees.*

### **237 Rules and fees for winding up in England.**

- (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.
- (2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and 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, and to what account they are to be paid.
- (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 authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890, which are in force at the commencement of this Act.

### **238 Powers to make rules of procedure.**

- (1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—
- (a) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England :
  - (b) As regards the Court of Session, by act of sederunt:
  - (c) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland :
  - (d) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

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- (2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the commencement of this Act.

*Special Provisions as to Stannaries.*

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

When several companies are in course of liquidation by or under the superintendence 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.

**240 Preferential payments in stannaries cases.**

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 :—

- (1) 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 be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary:
- (2) 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 of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts :
- (3) Wages of any miner, artizan, or labourer, unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's, Compensation Act, 1906, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accrued before the commencement of the winding-up, shall, to the extent aforesaid, 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, and, 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 said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this



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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 wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

#### **241 Provisions as to mine club funds.**

- (1) On the winding up of a company within the stannaries, contributions of the miners, artisans, 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 company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

#### *Removal of Defunct Companies from Register.*

#### **242 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 shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.
- (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 from the company to the effect that it 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 after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding 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 the liability (if any) of

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every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

- (6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor 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 thereupon 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 letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or 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.