



Companies Act 1985

1985 CHAPTER 6

PART XX

WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

CHAPTER V

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Effect of winding up on antecedent and other transactions

615 Fraudulent preference

- (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within 6 months before the commencement of its winding up which, had it been made or done by or against an individual within 6 months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, is in the event of the company being wound up deemed a fraudulent preference of its creditors and invalid accordingly.
- (2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void to all intents.
- (3) In the application of this section to Scotland, " bankruptcy petition " means petition for sequestration.

616 Liabilities and rights of those fraudulently preferred (England and Wales)

- (1) Where in the case of a company wound up in England and Wales anything made or done is void under section 615 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice

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to any rights or liabilities arising apart from this provision) the person preferred is subject to the same liabilities, and has the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

- (2) The value of the person's interest is determined as at the date of the transaction constituting the fraudulent preference, and as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.
- (3) On an application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court has jurisdiction to determine any question with respect to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect of it.
- (4) The court's jurisdiction under subsection (3) is exercisable notwithstanding that the determination of the question is not necessary for the purposes of the winding up; and the court may for the purposes of that subsection give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.
- (5) Subsections (3) and (4) apply, with the necessary modifications, in relation to transactions other than the payment of money as they apply in relation to payments.

617 Effect of floating charge

- (1) Where a company is being wound up, a floating charge on its undertaking or property created within 12 months of the commencement of the winding up is invalid (unless it is proved that the company immediately after the creation of the charge was solvent), 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.
- (2) Interest under this section is at the rate of 5 per cent, per annum or such other rate as may for the time being be prescribed by order of the Treasury in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where a company is being wound up in Scotland, a floating charge over all or any part of its property is not to be held an alienation or preference voidable by statute (other than by the provisions of this section) or at common law on the ground of insolvency or notour bankruptcy.

618 Disclaimer of onerous property (England and Wales)

- (1) Where any part of the property of a company which is being wound up consists of land (of any tenure) burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding its possessor to the performance of any onerous act or to the payment of any sum of money, the liquidator may, with the leave of the court and subject to the provisions of this section and the next, disclaim the property.
- (2) The power to disclaim is exercisable notwithstanding that the liquidator has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation to it; and the disclaimer must be in writing signed by him.

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- (3) The power is exercisable at any time within 12 months after the commencement of the winding up or such extended period as may be allowed by the court; but where any such property has not come to the liquidator's knowledge within one month after the commencement of the winding up, he may disclaim at any time within 12 months after he has become aware of it or such extended period as may be so allowed.
- (4) The disclaimer operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the company's property, in or in respect of the property disclaimed; but it does not (except so far as is necessary for the purpose of releasing the company and its property from liability) affect the rights or liabilities of any other person.
- (5) This section does not apply in the case of a winding up in Scotland.

619 Further provisions about disclaimer under s. 618

- (1) The court, before or on granting leave to disclaim under section 618, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter, as the court thinks just.
- (2) The liquidator is not entitled to disclaim property under section 618 in a case where application in writing has been made to him by persons interested in the property requiring him to decide whether he will or will not disclaim and he has not within 28 days after the receipt of the application (or such further period as may be allowed by the court) given notice to the applicant that he intends to apply to the court for leave to disclaim.
- (3) In the case of a contract, if the liquidator after such an application does not within that period or further period disclaim the contract, the company is deemed to have adopted it.
- (4) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just; and any damages payable under the order to such a person may be proved by him as a debt in the winding up.
- (5) The court may, on an application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Act in respect of disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just.
- (6) On such a vesting order being made, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignment for that purpose.
- (7) Part I of Schedule 20 has effect for the protection of third parties where the property disclaimed is of a leasehold nature.
- (8) A person injured by the operation of a disclaimer under section 618 and this section is deemed a creditor of the company to the amount of the injury, and may accordingly prove the debt in the winding up.

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620 Liability for rentcharge on company's land after disclaimer

- (1) Where on a disclaimer under section 618 land in England and Wales vests subject to a rentcharge in the Crown or any other person, that does not impose on the Crown or that other person, or on its or his successors in title, any personal liability in respect of the rentcharge.
- (2) But this section does not affect any liability in respect of sums accruing due after the Crown or other person, or some person claiming through or under it or him, has taken possession or control of the land or has entered into occupation of it.
- (3) This section applies to land whenever vesting, and to sums whenever accrued.

621 Effect of execution or attachment (England and Wales)

- (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator in the winding up unless he has completed the execution or attachment before the commencement of the winding up.
- (2) However—
 - (a) if a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which he had notice is substituted, for the purpose of subsection (1), for the date of commencement of the winding up,
 - (b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which execution has been levied in all cases acquires a good title to them against the liquidator, and
 - (c) the rights conferred by subsection (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
- (3) For purposes of this Act—
 - (a) an execution against goods is completed by seizure and sale, or by the making of a charging order under section 1 of the Charging Orders Act 1979 ;
 - (b) an attachment of a debt is completed by receipt of the debt; and
 - (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under section 1 of the Act above-mentioned.
- (4) In this section, " goods " includes all chattels personal; and " the sheriff " includes any officer charged with the execution of a writ or other process.
- (5) This section does not apply in the case of a winding up in Scotland.

622 Duties of sheriff where goods seized in execution (England and Wales)

- (1) The following applies where a company's goods are taken in execution and, before their sale or the completion of the execution (by the receipt or recovery of the full amount of the levy), notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding up has been passed.

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- (2) The sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator; but the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them, for the purpose of satisfying the charge.
- (3) If under an execution in respect of a judgment for a sum exceeding £250 a company's goods are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 14 days.
- (4) If within that time notice is served on the sheriff of a petition for the winding up of the company having been presented, or of a meeting having been called at which there is to be proposed a resolution for voluntary winding up, and an order is made or a resolution passed (as the case may be), the sheriff shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.
- (5) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit
- (6) In this section, " goods " includes all chattels personal; and " the sheriff " includes any officer charged with the execution of a writ or other process.
- (7) The money sum for the time being specified in subsection (3) is subject to increase or reduction by regulations under section 664; but no increase or reduction of it affects any case where the goods are sold, or the payment to avoid sale is made, before the coming into force of the increase or reduction.
- (8) This section does not apply in the case of a winding up in Scotland.

623 Effect of diligence within 60 days of winding up

- (1) The following applies in the case of the winding up of a company registered in Scotland.
- (2) The winding up is equivalent as at the date of its commencement, to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding; and—
 - (a) no arrestment or poinding of the funds or effects of the company executed on or after the 60th day prior to that date is effectual, and
 - (b) those funds or effects (or their proceeds if sold) shall be made forthcoming to the liquidator:

But any arrester or poinder before that date who is thus deprived of the benefit of his diligence has preference out of those funds or effects for the expense bona fide incurred by him in the diligence.

- (3) As at the date of its commencement, the winding up is equivalent to a decree of adjudication of the heritable estates of the company for the payment of its whole debts, principal and interest, accumulated at that date, subject to such preferable heritable rights and securities as existed at that date and are valid and unchallengeable, and the right to poind the ground provided below in this section.
- (4) Sections 108 to 113 and 116 of the Bankruptcy (Scotland) Act 1913 apply (so far as is consistent with this Act) to the realisation of heritable estates affected by such

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heritable rights and securities as are mentioned above ; and for the purposes of this Act those sections are modified as follows—

- (a) " sequestration" and " trustee" mean respectively " winding up " and " liquidator ", and
 - (b) " the Lord Ordinary or the court " means " the court " as defined by this Act with respect to Scotland.
- (5) No pouncing of the ground which has not been carried into execution by sale of the effects 60 days before the date of commencement of the winding up is available (except to the extent provided below) in any question with the liquidator.

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

- (6) This section, so far as relating to any estate or effects of the company situated in Scotland, applies in the case of a company registered in England as in the case of one registered in Scotland.