



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART V

WINDING UP.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Supplementary Powers of Court.

346 Meetings to ascertain wishes of creditors or contributories.

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

347 Judicial notice of signature of officers.

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

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348 Special commission for receiving evidence.

- (1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judge exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in England or Scotland, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner although he is out of the jurisdiction of the court that made the winding up order.
- (2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of county courts, judge exercising the said bankruptcy jurisdiction, county court judge, recorder or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.
- (3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

349 Court may order examination of persons in Scotland.

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

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the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

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

- (1) Where any petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of such petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.
- (2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

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

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