



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART V

WINDING UP.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Effect of Winding Up on antecedent and other Transactions.

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

(1) In the winding up of a company registered in Scotland, the following provisions shall have effect:—

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

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

- (b) the winding up shall, as at the date aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said date, subject to such preferable heritable rights and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided;
- (c) the provisions of sections one hundred and eight to one hundred and thirteen and of section' one hundred and sixteen of the Bankruptcy (Scotland) Act,

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1913, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid, and for the purposes of this Act the words “sequestration ” and “trustee ” occurring in those sections shall mean respectively “winding up ” and “liquidator,” and the expression “the Lord Ordinary or the court ” shall mean “the court ” as defined by this Act with respect to Scotland;

- (d) no poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator:

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

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