



# 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.*

#### **321 Liabilities and rights of certain fraudulently preferred persons.**

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

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**Status:** This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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