

Liabilities and rights of persons who have been unfairly preferred

605. (1) Where—

(a) a company is being wound up, and

(b) any act done is void under section 604 as an unfair 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 section) the person preferred shall be subject to the same liabilities and shall have the same rights as if he or she 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 or her interest, whichever is the less.

(2) The value of the foregoing person's interest shall be determined as at the date of the act constituting the unfair preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court in relation to any payment on the ground that the payment was an unfair preference of a surety or guarantor, the court—

(a) may determine any questions relating to the payment arising between the person to whom the payment was made and the surety or guarantor and grant relief in respect thereof, and

(b) 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,

and jurisdiction to do any of those things may be exercised notwithstanding that it is not necessary to exercise such jurisdiction for the purposes of the winding up.

(4) Subsection (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies to payments.