

the executors to recover the calls; at the same time they intimated that as that point was not discussed before them, they might not see fit to consider themselves bound by their present decision on that particular point. It may be well to note that the words of R.S.O., c. 132, s. 3 (2), are not identical with the English Act, but probably bear the same construction.

COMPANY—GENERAL MEETING—CHAIRMAN REFUSING TO PUT AMENDMENT—WAIVER.

*Henderson v. Bank of Australasia*, 45 Chy.D., 330, was an action brought to test the validity of a certain resolution passed at a general meeting of the shareholders of a company. The ground of objection was that the chairman had improperly refused to put an amendment, proposed by the plaintiff, to the meeting. The proposed amendment was not written out nor expressed very explicitly, but the Court of Appeal found as a fact that the chairman understood what was intended, and inquired if any one seconded it, and upon it being seconded stated that he was advised by the solicitor of the company that no amendment could be put, and accordingly refused to put it to the meeting. The original resolution was passed, the plaintiff moving its rejection and voting against it. The resolution was confirmed at a subsequent meeting, at which the plaintiff attended and protested on the ground that the resolution was not within the notice calling the meeting, and that the chairman had refused to put his amendment. The Court of Appeal (Cotton, Fry, and Lopes, L.JJ.) (overruling Chitty, J., who thought the plaintiff had waived his right to object by acquiescing in the chairman's ruling) held that the resolution must be set aside, and that there had been no waiver by the plaintiff of his right to object.

ILLEGAL CONTRACT—STIFLING PROSECUTION—INDICTMENT FOR OBSTRUCTING—SPECIFIC PERFORMANCE.

*Windhill Local Board v. Vint*, 45 Chy.D., 351, was an action for specific performance of a covenant to restore a highway, in which the doctrine of the illegality of stifling a prosecution appears to be carried to the verge of absurdity. The defendants were stone merchants and were indicted by the plaintiffs (a municipal body) for nuisance for interfering with a highway by excavating a stone quarry and for obstructing a footpath. The indictment came on for trial and the defendants pleaded "not guilty." On the same day an agreement was drawn up by the counsel and solicitors of the parties, whereby the defendants agreed within a limited time to abate the alleged nuisance, to the satisfaction of the defendants' surveyor; and that the indictment should lie in the office as security for the performance of the agreement; and that when the terms were fulfilled a verdict of "not guilty" should be entered. The judge approved of the terms of this agreement and ordered the indictment to lie in the office. A deed was subsequently executed by the parties embodying the terms agreed to. The defendants having failed to carry out the agreement, this action was brought to compel them to specifically perform it, and was dismissed by Stirling, J., on the ground that the agreement was founded on an illegal consideration; because, as the indictment was for a public injury, the agreement to consent to a verdict of "not guilty" was