CIHM Microfiche Series (Monographs)

ICMH Collection de microfiches (monographies)



Canadian Institute for Historical Microreproductions / Institut canadian de microreproductions historiques



Technical and Bibliographic Notes / Notes technique et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below. L'Institut a microfilmé le meilleur examplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modifications dans la méthode normale de filmage sont indiqués ci-dessous.

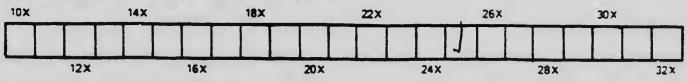
	Coloured covers /	_	Onlawed and an (Description)
	Couverture de couleur		Coloured pages / Pages de couleur
_	Onume demond /		Pages damaged / Pages endommagées
	Covers damaged /		
	Couverture endommagée		Pages restored and/or laminated /
_			Pages restaurées et/ou pelliculées
	Covers restored and/or laminated /		
	Couverture restaurée et/ou pelliculée		Pages discolcured, stained or foxed /
_		Ľ	Pages décolorées, tachetées ou piquées
	Cover title missing / Le titre de couverture manque		
			Pages detached / Pages détachées
	Coloured maps / Cartes géographiques en couleur		
			Showthrough / Transparence
	Coloured ink (i.e. other than blue or black) /	$\mathbf{\nabla}$	
	Encre de couleur (i.e. autre que bleue ou noire)		Quality of print varies /
			Qualité inégale de l'impression
	Coloured plates and/or illustrations /		addine megale de impression
	Planches et/ou illustrations en couleur		Includes supplementary material /
			Comprend du matériel supplémentaire
	Bound with other material /		comprend du materiel supplementaire
	Relié avec d'autres documents		Pages wholly or partially absoured by errore
			Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to
	Only edition available /		
	Seule édition disponible		ensure the best possible image / Les pages
			totalement ou partiellement obscurcies par un
	Tight binding may cause shadows or distortion		feuillet d'errata, une pelure, etc., ont été filmées
	along interior margin / La reliure serrée peut		à nouveau de façon à obtenir la meilleure
	causer de l'ombre ou de la distorsion le long de		image possible.
	la marge intérieure.		
	la marge inteneure.		Opposing pages with sarying colouration or
	Blank leaves added during restorations may appear		discolourations are filmed twice to ensure the
	within the text. Whenever possible, these have		best possible image / Les pages s'opposant
	been omitted from filming / II se peut que certaines		ayant des colorations variables ou des décol-
	pages blanches ajoutées lors d'une restauration		orations sont filmées deux fois afin d'obtenir la
	apparaissent dans le texte, mais, lorsque cela était		meilleur image possible.
	apparaissent dans le texte, mais, forsque cela etali		
	possible, ces pages n'ont pas été filmées.		
	Additional comments / Various pasings		
	Additional comments/ Various pagings.		

Commentaires supplementaires:

Various pagings. Page 194 is incorrectly numbered page 94.

This item is filmed at the reduction ratio checked below/

Ce document est filmé au taux de réduction indiqué ci-dessous.



The copy filmed here has been reproduced thanks to the generosity of:

National Library of Canada

The images eppearing here are the best quality possible considering the condition and legibility of the original copy and in kaeping with the filming contract specifications.

Originel copies in printed peper covers are filmed beginning with the front cover end ending on the last pege with a printed or illustrated imprassion, or the back cover when eppropriets. All othar original copies are filmed beginning on the first pege with a printed or illustrated impression, and ending on the last pege with a printed or illustrated impression.

The lest recorded frame on each microfiche shell contein the symbol \longrightarrow (meaning "CON-TINUED"), or the symbol ∇ (meening "END"), whichever epplies.

Maps, pletes, cherts, etc., mey be filmed et different reduction retios. Those too lerge to be antirely included in one exposure ere filmed beginning in the upper left hend corner, left to right end top to bottom, as meny fremes as required. The following diagrams illustrete the method: L'exempleire filmé fut reproduit grâce à le générosité de:

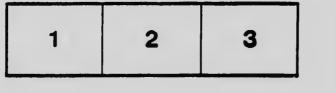
Bibliothèque nationale du Canada

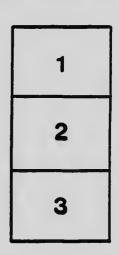
Les images suiventes ont été reproduites avec le plus grend soin, compte tenu de le condition et ds la netteté de l'exempleire filmé, et sn conformité evec les conditions du contret de filmege.

Les exempleires originaux dont la couverture en pepier est imprimée sont filmés en commençant par le premier plet et en terminent soit per la dernière pege qui comporte une empreinte d'impression ou d'illustration, soit per le second plet, selon le ces. Tous les autres axemplaires originaux sont filmés en commençent per le première page qui comporte une empreinte d'impression ou d'illustration et en terminant per le dernière pege qui comporte une telle empreinte.

Un des symboles suivents appereitre sur la dernière image de cheque microfiche, selon le cas: le symbole — signifie "A SUIVRE", le symbole V signifie "FIN".

Les certes, planches, tebleaux, etc., peuvent être filmés à des taux de réduction différents. Lorsqua le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angla supérieur geuche, de gauche à droits. et de heut en bes, an pranant le nombre d'Images nécessaire. Les diagrammes suivents Illustrent la méthode.

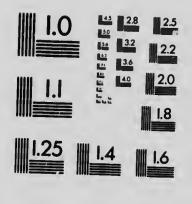




1	2	3
4	5	6

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)





APPLIED IMAGE Inc

1653 East Main Street Rochester, New York 14609 USA (716) 482 - 0300 - Phone (716) 288 - 5989 - Fax



COMPANY LAW.

TENTH EDITION.

ELEVENTH EDITION: 1912. 3 Parts. Cloth, **25**. PALMER'S COMPANY PRECEDENTS. For Use in Relation to Companies. Part 1.-General Forms. Part 11.-Winding-Up Forms and Practice. Cloth, 34/-Part 11.-Debentures and Debenture Stock. Cloth, 26/-TWENTY-NINTH EDITION. 1915. Net, 1/-PALMER'S PRIVATE COMPANIES: Their Formation and Advantages.

TWENTY-NINTH EDITION. 1915. Cloth, Net, 2/6. PALMER'S SHAREHOLDERS', DIRECTORS', AND VOLUNTARY LIQUIDATORS' LEGAL COMPANION.

COMPANY LAW:

A

PRACTICAL HANDBOOK

FOR

LAWYERS AND BUSINESS MEN.

With an Appendix

CONTAINING THE

COMPANIES (CONSOLIDATION) ACT, 1908; COMPANIES ACT, 1913. AND OTHER ACTS AND RULES.

BY

SIR FRANCIS BEAUFORT PALMER,

BENCHER OF THE INNER TEMPLE, Author of "Compuny Precedents," &c.

TENTH EDITION.

BY

ALFRED F. TOPHAM, LL.M.,

OF LINCOLN'S INN, BARRISTER-AT-LAW,

FORMERLY WHEWELL SCHOLAB AND CHANCELLOR'S MEDALLIST IN THE UNIVERSITY OF CAMBRIDGE.

LONDON:

STEVENS AND SONS, LIMITED, 119 & 120, CHANCERY LANE.

TORONTO : CANADA LAW BOOK COMPANY, LIMITED. 1916.

KD2077 P34 1910 \$ -C

PREFACE TO THE TENTH EDITION.

THE editing of this Work has now passed for the first time in its history into hands other than the Author's.

All the Author's arguments, expressions of opinion and criticisms of decided cases have been retained unaltered. The Editor's views on some of the subjects dealt with have been stated elsewhere, but have not been put before the reader in this edition. The additional matter consists mostly of short statements of the effect of recent decisions, and, in the few cases where the Editor has expressed an opinion or attempted to lay down a general principle, the passage in question 3 printed between square brackets.

Some re-arrangement and some substantial additions have been made as to subjects which have developed in importance during resent years, such as Re-organization of Capital (p. 100), Apportionment between Capital and Income (p. 220), Receivers (p. 324), and Set-off (p. 405).

PREFACE TO THE 'SENTH EDITION.

Emergency legislation, so far as it relates especially to companies, has been dealt with shortly in the Appendix (p. 633).

All references to the Act and to decided cases as well as the Index, f(mb) of Cases and cross references have been revised p corrected throughout, and the Editor hopes that errors and misprints have been reduced to a minimum.

In this respect the Editor has received most valuable assistance from his clerk, Mr. H. C. Mills.

A. F. TOPHAM.

NEW SQUARE, LINCOLN'S INN, February, 1916.

vi

AUTHOR'S PREFACE

TO THE NINTH EDITION.

The fact that eight large editions of this Work have been sold since its publication in 1898, that the Work is now in common use in the United Kingdom and has followed the Author's larger work to Canada, Australia, New Zealand, India and the United States, affords convincing evidence that it has be found serviceable.

The object of the Work is to set forth the leading provisions of the Companies (Consolidation) Act, 1908, which has now taken the place of the Companies Acts, 1862 to 1907, and at the same time to show, by reference to the principal decisions, how the Acts have been interpreted by the Courts, and how the provisions thereof have been supplemented by the application of the general rules of law and equity.

The Acts alone, as pointed out in the Preface to the first edition, afford a very inadequate view of the law regulating companies incorporated thereunder; but the Acts plus the decisions constitute a great and, for the most part, admirable system of Company Law built up with the assistance (at the Bar and on the Bench), and illuminated by the genius, of a host of great lawyers—a system which prevails not c_ly in the United Kingdom, where the paid-up capital of such c_loanies exceeds $\pounds 2,000,000,000$, but, with more or less variatica, in most of our colonies and dependencies.

The Author has laboured to make the Work practically useful not only to lawyers and to students of law, but generally to business men; for nowadays, looking to the vast number of persons interested as directors, shareholders, officials, customers, creditors and otherwise in companies, there are but few business men who can safely avoid the task of acquiring some knowledge of Company Law.

The Work in its inception was the outcome of the Author's series of lectures on Company Law delivered in 1897, at the Inner Temple Hall, upon the request of the Council of Legal Education.

The Author tenders his cordial thanks to his friend Mr. EDWARD MANSON, of the Chancery Bar, for his kind assistance in preparing the Work for, and passing it through, the press.

And he offers his sincere acknowledgments to the profession and the public for the encouraging reception accorded to the prior editions.

May, 1911.

F. B. P.

(ix)

CONTENTS.

OHAPTEE	
I. PRELIMINARY	PAGE
II. FORMATION: GENERAL SKETCH OF PROCEEDINGS	- 1
III. MEMORANDUM OF ASSOCIATION -	- 21
IV. ARTICLES OF ASSOCIATION	- 26
V. CERTIFICATE OF INCORPORATION -	- 37
VI. CORPORATE EXISTENCE AND POWERS	- 51
VII. CAPITAL	- 55
VIII. MEMBERSHIP	- 81
IX. REGISTER OF MEMBERS	- 101
X. TRANSFER AND TRANSMISSION OF SHARES	- 124
XI. CERTIFICATES OF SHARES -	- 130
XII. CALLS	- 142
XIII. FORFEITURE	- 146
XIV. LIEN ON SHARES	- 151
XV. GENERAL MEETINGS	- 154
XVI. DIRECTORS	- 161
XVII. DIVIDENDS AND PROFITS -	- 177
XVIII. Accounts	- 213
XIX. AUDIT	- 222
XX. NOTICES	- 225
	- 232
XXII. MAJORITY RIGHTS OF MEMBERS	- 236
XXIII. REGISTERED OFFICE	- 241
XXIV. MINUTES	243
	244
XXVI. CONTRACTS	248
	253
	257
A CONTRACT AND OTHER OFFICIALS	260

CONTENTS.

CHAPTER		
XXIX. BILLS OF EXCHANGE AND PROMISSORY NOTES	3 -	PAGE - 264
XXX. CONVEYANCES, ASSIGNMENTS, LEASES, Deeds of Covenant, etc	RELEAS	SES, - 267
XXXI. BORROWING POWERS		- 269
XXXII. DEBENTURES AND DEBENTURE STOCK -		- 283
XXXIII. PROMOTERS -	-	- 331
XXXIV. UNDERWRITING -	-	- 337
XXXV. PROSPECTUSES	-	
XXXVI. STATEMENT IN LIEU OF PROSPECTUS	-	- 343
XXXVII. PRIVATE COMPANIES	-	- 363
XXXVIII. COMPANIES LIMITED BY GUARANTEE	-	- 366
XXXIX. UNLIMITED COMPANIES	-	- 378
XL. Assurance Companies Act, 1909	-	- 381
XLI. REGISTRATION UNDER SUCTION AND	- EXISTI	- 382 NG
XLII. ILLEGAL ASSOCIATIONS -	-	- 385
XLIII. WINDING-UP	-	- 386
	-	- 388
	-	- 423
" ARRANGEMENTS	-	- 430
XLIV. PENSIONS AND GRATUITIES	-	- 433
XLV. POWERS OF ATTORNEY	-	- 435
XLVI. FOREIGN COMPANIES	-	- 437
XLVII. LEADING CASES	-	- 439

APPENDIX.

TABLE OF CORRESPONDING SECTIONS	-		-	-				_	447
COMPANIES (CONSOLIDATION) ACT, 19	908	_							
COMPANIES ACT, 1913 -			-		-		-	-	451
	+	-	•	~		-		-	550
Assurance Companies Act, 1909		-	-		-		-	-	552
RULES (REDUCTION OF CAPITAL)	-	-		-		_			588
RULES (WINDING-UP)						Ĩ		•	999
LIST OF FORMS		-	-		-		-		397
	-	-		-		-		- (630
SPECIAL PROVISIONS RELATING TO CO	MP.	ANIES	B DUI	ING	THE	W	R	- 1	633

х

A1-Afr Α. A1 PISCUIT Co., W. N. (1899) 115 PAGE A Company, R (1894) 2 Ch. 349 185 A Company, Re, (1915) 1 Ch. 520 397 _ Aaron's Reef v. Twiss, (1896) A. C. 273; 65 L. J. P. C. 54; 74 L. T. 393, 396 Abbot, Bristol United Breweries v., (1908) 1 Ch. 279; 77 L. J. Ch. -- 153, 346, 356, 359 Abbot (J. W.) & Co., Re, (1913) W. N. 284; 30 T. L. R. 30 - 281 Abercorris Co., Levy r. (1888), 37 C. D. 264; 57 L. J. Ch. 202; 58 - 326 L. T. 213; 36 W. R. 411 ---Aberdeen, &c. Co. v. Blackie, 1 Macq. 401 -283, 318 -Abrahams & Sons, (1902) 1 Ch. 695; 86 L. T. 290 -- 192 Abrahams, Rex v., (1904) 2 K. B. 859; 73 L. J. K. B. 972; 91 1. T. - 282 493 (Div. Ct.) Abrath v. G. E. Rail. Co., 11 App. Cas. 247 -- 18 Accles, Hodgson v., 51 W. R. 57; W. N. (1902) 164 - 74 Acroyd, Inman v., 82 L. T. 621; (1901) 1 K. B. 613 - 314 Adams v. Thrift, (1915) 2 Ch. 21 187, 188 Adamson's Case, 18 Eq. 670; 44 L. J. Ch. 125; 22 W. R. 820 - 358 Addinell's Case, 1 Eq. 225; 35 L. J. Ch. 75; 13 L. T. 456; 14 - 194 Addis v. Gramophone Co., (1909) A. C. 488 -- 104 Addlestone Linoleum Co., In re (1887), 37 C. D. 191; 57 L. J. Ch. - 263 249; 58 L. T. 428; 36 W. R. 227 -Adler, De Waal v., 12 A. C. 141 - 120 Ador, Ex parte, (1891) 2 Q. B. 574; 61 L. J. Q. B. 15; 63 L. T. 485; - 135 Aerators, Limited v. Tollit, (1902) 2 Ch. 319; 71 L. J. Ch. 727: 86 - 412 L. T. 651; 50 W. R. 584 -African Association v. Allen, (1910) 1 K. B. 396 27 African, &c. Co., Boord v., (1898) 1 Ch. 596; 77 L. T. 553; 46 W. R. - 263 African, &c. Co., Dawson v., (1898) 1 Ch. 6; 67 L. J. Ch. 47; 77 125, 223 L. T. 392; 46 W. R. 132; 14 T. L. R. 30 (C. A.) - 189, 191

(**x**i)

Afr-Ama

Afr-Ama	
African Tug Co., Towers v., (1904) 1 Ch. 558 ; 73 L. J. Ch. 395 ; 90	PAGE
Agency Land and Finance Co. of Australia, Re, 20 T. L. R 41 - 152, 3	219
Aggs v. Nicholson, 1 H. & N. 165	313
Agra & Bank Ball Ballucer L D a Cli and	199
Agra, &c. Bank, Re (1865), L. R. 2 Ch. 391; 30 L J. Ch. 222; 16	
14 1. 102; 10 W. R. 414	301
Agriculturist Uattle Co., Re. 4 Ch. D. 24 h	329
Alzlewood, Sheffield and South Yorkshire Sa Society and the D	
	0.1
Alabama, &c. Co., Re. (1891) 1 Ch. 218 (C A V. 60 T T C. 2001)	104
01 10 1. 121 , 2 MUE, 011 -	
Albion Co. r. Martin, 1 C. D. 580; 45 L. J. Ch. 173; 33 L. T. 660; 24 W. R. 134	31
Albion Steel Co., Re, 7 C. D. 547; 47 L. J. Ch. 229; 38 L. T. 207; 26 W. B. 348	92
26 W. R. 348	
	10
Albion Transvaal Gold Mines, Transvaal Exploring Co. v., (1899) 2 Ch. 370: 68 L. J. Ch. 670, 40 W. Frank, and S. (1899)	
	22
Liderson v. Maddison, 5 Ex. Div. 293; 8 App. Cas. 467; 29 W. R. 105; 43 L. T. 240; 40 L. T. 200 R.	
	i5
Alexander ", Automatic Telephono Co. (1900) 9 Ct. 30 do	
	MR.
mexander v. Simpson, 43 C. D. 139 · 59 L. J. Ch. 197. (1) T. m.	1
Alexandra Palace Co., 21 C. D. 149; 51 L. J. Ch. 655; 46 L. T. 730; 30 W. R. 771	8
Alexandria Water Co., Webb, Hale & Co. v., 21 T. L. R. 572 - 14:	
	1
Algoeiras (Gibraltar) Rail. Co., Greenwood v., (1894) 2 Ch. 205; 65	3
L. J. Ch. 670 : 71 L. T. 192, 1 M	
L. J. Ch. 670; 71 L. T. 133; 1 Manson, 455; 7 R. 620 (C. A.) - 327 Allon, African Association v., (1910) 1 K. B. 396	ĩ
	3
Allen v. Gold Reefs of W. Africa, (1900) 1 K. B. 596 48 W. R. 452; 82 L. T. 210 4 47 40 50 10 10 10 10 10 10 10 10 10 10 10 10 10	
48 W. R. 452; 82 L. T. 210 - 47, 49, 50, 91, 151, 154, 166, 171, 233 Allen v. Hyatt (1914), 30 T. L. R. 444	1
Allianco Marine, <i>Re</i> , (1892) 1 Ch. 300; 61 L. J. Ch. 176; 65 L. T. 554; 40 W. R. 329	
Allsopp & Sons, 51 W. R. 644 (C. A.)	1
Alma Spinning Co. P. 10 0 D. 200 96	
Alma Spinning Co., Re, 16 C. D. 681; 53 L. J. Ch. 167; 43 L. T. 620; 29 W. R. 133	
Proton trabber (0, Dritish A) Rubbor Smid (101a) at a	
Alat 0	
Analgamated Properties of Rhodesia, Re, 30 T. L. R. 405 - 242 Amalgamated Society of Conversion 403	
Butter Duciol V OI I Sinontone Unicipally /101a) a se	
Amalgamated Society of Railway Servants, Osborne v., W. N. (1908) 251 (C. A.); 77 L. J. Ch. 759: 24 T. L. P. Servants, N. (1908)	
251 (C. A.); 77 L. J. Ch. 759; 24 T. L. R. 827; 25 T. L. R. 107; W. N. (1911) 59 (C. A.)	
9	

xii

1

Ama-Ant

Annalgamated Society of Railway Servants, Taff Vale Rail. Co. P., (1901) A. C. 426; 70 L. J. O. B. 905, 50 W. D. M. B. 1997
(1901) A. C. 426; 70 L. J. Q. B. 905; 50 W. R. 44
L. T. 431; 4 Manson, 308 -
Ambergate Rail, Co. r. Noreliffe di IV
American Pastoral Co., Re, 62 L. T. 625
Amsterdamsch Trustees Kantoon De 1 - 262
Amsterdamsch Trustees Kantbor, Duder v., (1902) 2 Ch. 132 - 262 Anderson, Chida Mines Ltd. v., 22 T. L. R. 27 - 129 131 241
Anderson, Price c., 15 Sim. 473
Anderson, Smith v. 15 C D 217 270 220
Anderson, Smith v., 15 C. D. 247, 273; 50 L. J. Ch. 39; 43 L. T. 329; 29 W. R. 21; 16 C. D. 275
329; 29 W. R. 21; 16 C. D. 273 - 180 280, 39; 43 L. T.
Anderson's Case, 17 Ch. D. 373; 50 L. J. Ch. 2.3; 43 L. T. 723; 29
4. E. 5.2 Anderson 1. (7. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.
Anderson's Case (1877), 7 C. D. 79; 47 L. J. Ch. 273; 37 L. T. 560; 26 W. R. 442
26 W. R. 442
Andrew Knowles & Sons, Ltd., (1912) W. N. 300 - 31 Andrews c. Brown and C 99
Andrews v. Brown and Gregory, (1912) W. N. 300 - 99 770 (C. A.) - 99
770 (C. A.) - 770 (C. A.) - 780 (C. A.) - 78
Androws v. Gas Meter Co., (1897) 1 Ch. 361; 66 L. J. Ch. 246; 76 L. T. 132; 45 W. R. 321
L. T. 132; 45 W. R. 321
Andrews v. Mockford, (1896) 1 O. B 372 - 48, 50, 83, 88, 90, 215, 439
Andrews v. Mockford, (1896) 1 Q. B. 372
Anglo-American Co., Viola v., (1912) 2 Ch. 305 - 357 Anglo-American Lond A
Ch. 112; 75 L. T. 482; 45 W. R. 171
= geo-minericali Tolograph Co St.
Q. B. 392; 42 L. T. 37; 28 W. R. 290; 44 J. P. 280 - 136, 144
Auglo-Austrian Printing Union (1001) or
1 Ch. 327; 67 L. J. Ch. 179; 78 L. T. 157
Anglo-Danubian Co., Re (1875) 20 E. 200
L. T. 118; 23 W. B 783
Anglo-French Co-operative Society 21 C I (20) 190, 270, 317
W. R. 177 = $ -$
Anglo-French Exploration, (1902) 2 Ch. 845; 71 L. J. Ch. 800; 51 W. R. 8
W. R. 8
Anglo-Italian Bank v. Davies, 9 C. D. 275; 27 W. R. 3; 39 L. T.
244 - 244 -
Anglo-Italian Bank Moon a to d T
Anglo-Italian Hemp Co., Lyndo r. (1896) 1 (7) 273, 328, 392
Anglo-Italian Hemp Co., Lyndo v., (1896) 1 Ch. 178 ; 65 L. J. Ch. 96; 73 L. T. 502
Anglo-Oriental Carpet Co. (1992) 1 Cl. and - 346
L. T. 391: 51 W. B. 621 (1903) 1 Ch. 914; 72 L. J. Ch. 458. ev
Ansell, Boston Deep Sea Co. v. 30 C. D. page - 252
Ansell, Boston Deep Sea Co. v., 39 C. D. 339; 59 L. T. 345 - 193, 206, 262 Anthony v. Segor, 1 Hagg. Cas. Con. 9
172

xiij

J OF CASES.

٦.

Ant-Atk Antrobus, Dawkins v., 17 C. D. 634; 29 W. R. 511; 44 L. T. 557 - 151 PAOR Appleton, French & Scrafton, Limited, (1905) 1 Ch. 749; 74 L. J. Ch. 749; 93 L. T. 8; 53 W. R. 601 Appleyard v. New London and Suburban Co., (1908) 1 Ch. 621; 77 -- 409 L. J. Ch. 358; 98 L. T. 663 Archer's Case, (1892) 1 Ch. 322; 61 L. J. Ch. 129; 65 L. T. 800; 40 . - 280 W. R. 212 -Archibald D. Dawnay, Limited, W. N. (1900) 152 - 182, 184, 185, 206 Argus Co., Re, 39 C. D. 571; 58 L. J. Ch. 166; 59 L. T. 689; 37 W. . - 122 R. 215 - -Argyle, &c. Co., In re, 54 L. T. 237 -- 43, 44, 49 . Argylls, Ltd. v. Coxeter, (1913) 29 T. L. R. 355 - 102 Ariel Motors, Bissell v., 27 T. L. R. 14 - 409 -Arkwright v. Newbold, 17 C. D. 301; 50 L. J. Ch. 372; 44 L. T. 393; - 296 29 W. R. 455 - -. -Armitage v. Garnet, (1893) 3 Ch. 337 355, 360 Armorduct Co. r. General Incandescent Co., (1911) 2 K. B. 143 - 414, 421 - 220 Army and Navy Hotel, 31 C. D. 644 -Army, &c. Society v. Craig, 8 T. L. R. 227 --- 397 -Arnaud, Reg. v., 9 Q. B. 806 -- 360 - -Arnison v. Smith (prospectus), 40 Ch. D. 567; 4! Cn. D. 348; 61 . 56 L. T. 63 · 37 W. R. 739; 1 Meg. 388 - -Arnot r. United African Lands, W. N. (1901) 28; (1901) 1 Ch. 353, 354, 355 . Arnot's Case, 36 C. D. 702; 57 L. J. Ch. 195; 57 L. T. 353 -170, 240 Arnott, Shaw v., 2 Stark. 256 - 111 Artisans' Land and Mortgage Corporation, (1904) 1 Ch. 796 -- 262 Artistic Colour Co., Re, 14 C. D. 502; 49 L. J. Ch. 526; 42 L. T. 713; 94, 220 23 W. R. 939 Ashenti Development, Ltd., (1911) W. N. 144 - 413 Ashbury Railway Carriage and Iron Co. v. Riche (1874), L. R. 7 H. L. - 100 671; 44 L. J. Ex. 185; 33 L. T. 451 - 3, 38, 50, 61, 63, 66, 69, 70. Ashbury v. Watson, 30 C. D. 376, 54 L. J. Ch. 985; 33 W. R. 882 - 34, 72, 73, 77, 167, 180, 439 38, 48, 81, 88, 90, 214, 439 Ashford, Landowners r., J. D. 411 - -Ashley v. Ashley, 4 C. D. 57 - 319 Ashley's Case, 9 Eq. 269; 39 L. J. Ch. 354; 22 L. T. 83; 18 W. R. - 330 Ashurst v. Mason, 20 Eq. 225; 44 L. J. Ch. 337; 23 W. R. 506 - 212, 244 Ashworth, Dermatine Co. v., 21 T. L. R. 510 - 177, 199, 248, 266 Asphaltic Wood Co. (1878), 49 L. T. 159 er — Astley v. New Tivoli Co., (1899) 1 Ch. 151; 68 L. J. Ch. 90; 79 L. T. - 315 541; 47 W. R. 326; 6 Manson, 64 Athenæum, &c. Society v. Pooley (1858), 3 De G. & J. 294 -- 189 Atkin v. Wardle (1889), 61 L. T. 23; 58 L. J. Q. B. 377 -- 292 Atkinson v. Newcastle, &c. Waterworks Co., 2 Ex. D 441 -248, 265 - 351

xiv

					XV
Atl-Bag					
Atlanta, Sc. Co. N. H. Go					
Atlanta, &c. Co., Nell v. (18 AttGen. v. Davy, 2 At., 2)	96), 11 T . J	. R. 407	(C. A.)		AOK
AttGen # G W h in G	12 -	-		• •	185
AttGen. v. G. E. Rail. Co., L. T. 810; 28 W. R. 769	5 App. Cas	473: 49) L 3 (241
L. T. 810; 28 W. R. 769				u. 045; 42	
AttGen. v. Gt. Northern R. AttGen. v. Jameson 2 In 1	il. Co., 1 E	r. & Sin		• •	63
AttGen. v. Jameson, 2 Ir. 1 AttGen. Las.	R. 644 _	ar te tom,		• •	68
LOBION LOBION CONSTRAINED	**	011 4 /1	-	3	71
77; 83 L. T. 605; 49 W. F	. 686	м)д. С.	26: 70	L. J. K. B.	
All-UPIL London Co. (-	-	-	63
AttGen. v. Manchester Corp 330; 54 W. I. 307; 22 T. 1	Oration (1	902) A. (165	1	18
330; 54 W. K 307; 22 T. 1 AttGon "New Y	D Day	06) 1 Ch.	643; 75	L. J. Ch.	~
AttGen, P. Now York D.		-	•	-	8
AttGen. v. Now York Brew A. C. 62; 67 L. J. Q. B. 86 AttGen. v. North Eastern R.	eries Co.,	(1898) 1	Q. B. 20)5: (1899)	K.1
AttGen. v. North Eastern D.	; 78 L. T. (81; 46 W	. R. 193	- (1000)	~
AttGen. v. North Eastern Ra 5; 93 L. T. 512	ul. Co., (19	06) 2 Ch.	675: 76	13 L. T. Ch	12
AttGen " Smith (1000)	-				
AttGen. v. Smith, (1909) 2 (Attwood v. Munaci	h. 524	-		68	
Attwood v. Munnings, 7 B. & (Atwool v. Morrings, 7 B. & (C. 278 -	-	Ē	- 58	
		_	-	- 436	5
		1 Ch 60		- 50, 171	t i
Austin's Case (1871), 24 L. T. &	032 _	т од. 09	1	410	•
Australian Co. v. Mounsey, 4 J W. R. 734	K. & J. 799		-	- 147	
W. R. 734 -		5 01 Li	T. (O. S.) 246; 6	
Australian Estates & C. (10		-		190, 270	
				95, 99, 100	
Australian Mutual, Campbell ". Automatic, &c. Co. Franklin.	N. (1897) 4	8 -			
Automatic, &c. Co. Evonett	, 99 L. T. 3	-		67, 71	
Automatic, &c. Co., Everett v., (67 L. T. 349	1892) 3 Ch	506; 62	L. J. C	h 241.	
Automatic Self-Clausian G			•		
Automatic Self-Cleaning Co. v. L. J. Ch. 437; 94 L. T. 651 (C	Cuninghan	ne, (1906	1 2 Ch	- 139	
L. J. Ch. 437; 94 L. T. 651 (C Automatic Telephone	. A.)	-	, а од.	01; 75	
Automatic Telephone Co., Alexan Ch. 428; 48 W. R. 546; 82 L.	nder v., (190	0) 2 Ch		- 190	
Ch. 428; 48 W. R. 546; 82 L. Avery v. Wood (1991) a. c.	T. 400	- 109 14	0,03;6	9 L. J.	
		- 104, 14	0, 148, 1	49, 171, 206	
and the CHIRPE Milmond .		-	_	- 18	
	nt Co. ao m		-	- 327	
Ayres, Levi v., 3 A. C. 852 -	10 001, 20 1	. L. R. 5	87 -	- 92	
	•	• •	-	137, 140	
				-911 110	

В.

Back, Cairney r., (1906) 2 K. B. 746; 75 L. J. K. B. 1014; 22 T. L. Baglan Hall Co., 5 Ch. 346; 39 L. J. Ch. 591; 23 L. T. 60; 18 W. R. - 411 Bagnall v. Carlton, 6 Ch. D. 371; 47 L. J. Ch. 30; 37 L. T. 481; 26 - 72, 116, 117 - 331, 332 -

Bag-Ban

Bagot, &c. Co. v. Clipper Pneumatic, &c. Co., (1902) 1 Ch. 146; 71 PAGE L. J. Ch. 158; 85 L. T. 652; 50 W. R. 177 Bahia Co., Re, L. R. 3 Q. B. 584; 37 L. J. Q. B. 176; 18 L. T. 467; - 25:1 Bahia and San Francisco Railway Co. (1868), L. R. 3 Q. B. 595 - 130, 435 -Bailey v. Birkenhead Co., 12 Beav. 433; 19 L. J. Ch. 377 Bailey v. Sweeting, 9 C. B. N. S. 843 -- 147 Baillie v. Oriental Telephone Co., (1915) 1 Ch. 503 -- 256 Baillie's Case, International Society of Auctioneers, In re, (1898) 167, 173, 242 1 Ch. 110; 67 L. J. Ch. 81; 77 L. T. 523; 46 W. R. 18/ -Baii, v. British Equitable Assurance Co., (1906) A. C. 35; (1904) - 127 1 Ch. 374; 73 L. J. Ch. 240; 90 L. T. 335; 52 W. R. 549; 20 T. L. R. 242 (C. A.); 75 L. J. Ch. 73; 94 L. T. 1 - 43, 49, 50, 440 Bainbridge v. Smith, 41 C. D. 462; 60 L. T. 879; 37 W. R. 594 - 40, 198 Baines, Omnium Electric Palaces c., (1914) 1 Ch. 332 Baird's Case, 5 Ch. 725; 23 L. T. 424; 18 W. R. 1094 -- 334 Baker, Glyn v., 13 East, 509 -- 2, 7, 116, 139 Balaghat Co., (1901) 2 K. B. 665; 17 T. L. R. 660; 70 L. J. K. B. 307 -866; 85 L. T. 8; 49 W. R 325 (C. A.) Balfour, Johns r., 5 T. L. R. 389; 1 Meg. 191 --125, 223 Balkis Co., 36 W. R. 392; 58 L. T. 300; W. N. (1888) 3 - 67 Balkis, &c. Co., Bishop v., 25 Q. B. D. 512; 59 L. J. Q. B. 563; 63 134 L. T. 601; 39 W. R. 99 Balkis Co., Tomkinson v., (1893) A. C. 396; 63 L. J. Q. B. 134; 69 138, 139 L. T. 598; 42 W. R. 20 - - -Bamford, Re, (1910) 1 Ir. R. 390 . 136, 144, 440 Bangor, &c. Co., Re, 20 Eq. 59; 32 L. T. 389; 23 W. R. 785 396, 400 Banham, Reddaway v., (1896) A. C. 199; 74 L. T. 289; 44 W. R. -85 Bank of Africa v. Salisbury Gold Mining Co., (1892) A. C. 281; 61 - 249 L. J. P. C. 34; 66 L. T. 237; 41 W. R. 47 Bank of Australasia, Henderson v., 40 C. D. 170; (1890), 45 C. D. - 154 330; 59 L. J. Ch. 794; 63 L. T. 597; 2 Meg. 501 - 67, 167, 175, 176 Bank of Egypt, I.td., Re, (1913) 1 Ir. B. 502 -Bank of England, Davis v., 2 Bing. 393 - 149 Bank of England, Mayor of the Staple v., 21 Q. B. D. 160 -135, 440 Bank of England, Oliver v., (1901) 1 Ch. 652; 70 L. J. Ch. 377; 84 - 258 L. T. 253; 49 W. R. 391; 65 J. P. 294; (1902) 1 Ch. 610 -Bank of England, Sloman v., 14 Sim. 475 136, 190 Bank of England, Starkey v., (1903) A. C. 114; 72 L. J. Ch. 402; 88 136 Bank of England v. Vagliano, (1891) A. C. 144; GO L. J. Q. B. 145; - 136 64 L. T. 353; 39 W. R. 657 Bank of Gibraltar, L. R. 1 Ch. 74 17 Bank of Ireland v. Evans' Trustees, 5 H. L. C. 389 -395 • Bank of South Australia, (1895) 1 Ch. 578; 64 L. J. Ch. 397; 72 258 L. T. 273; 43 W. R. 359 --- 390

xvi

d.

CASES.	xvii
Ban-Bar	
Bank of Syria, (1900) 2 Ch. 272; 60 L. J. Ch. 412; 83 L. T. affirmed, 83 L. T. 547; 49 W. R. 100 (C. A.)	
affirmed, 83 L. T. 547; 49 W. R. 100 (C. A.)	165 -
Bank of Syria, Re, Owen and Ashworth's claim, Whitworth's c (1901) 1 Ch. 115; 70 L. J. Ch. 82: 83 L. T. 847. 10 Whitworth's c	191, 195
(1901) 1 Ch 115, 50 T Ashworth's claim, Whitworth's c	laim
(1901) 1 Ch. 115; 70 L. J. Ch. 82; 83 L. T. 547; 49 W. R. 8 Manson, 105 (C. A.)	100.
Bank of Wales Oral	
Bank of Wales, Croskey v., 4 Giff. 314	182, 194
Bannatyne v. Direct Spanish Telegraph Co., 34 Ch. D. 287; 56 I Ch. 107; 58 L. T. 716; 35 W. R. 125	- 146
Ch. 107; 58 L. T. 716; 35 W. R. 125 Banner, Halbert at 16: 35 W. R. 125	- 95
Banner, Helbert v., L. R. 5 H. I. 28 Barclay, Corporation of Sheffiell v., (1903) 2 K. B. 580; 89 I. 227; 52 W. R. 54; reversed by House of Lords B 180; 89 I.	- 90
227: 52 W D 54	- 404
227; 52 W. R. 54; reversed by House of Lords, 3rd July, 19 (1995) A. C. 392; 54 W. R. 49; 93 L. T. 82, 714	н ж. 005
	4 60
The Killer, Showing and FTT T	136 197
Baring Brothers Venables	423 45
67 L. T. 110 · 40 W D. con () · 0 · · · · · · · · · · · · · · · · ·	02 •
Baring Gould v. Sharpington Co., (1899) 2 Ch. 50; 68 L. J. Ch. 4 80 L. T. 739; 47 W. R. 364	306, 307
80 L. T. 739; 47 W. R. 564	29.
Barned's Banking ('o Ba 2 Ct the	124, 430
14 W. R 700, 10 m 7, 10 10, 01 11, J. Uh. 81 : 17 L. T. 9.	69 .
Barnes, Ex parte, (1896) A. C. 146 . 65 I. J. Cl	257 499
44 W. R. 433	53 -
Barnes, Gluckstein r., (1900) A. C. 240; 69 L. J. Ch. 385; 82 L. 393; 7 Manson, 321 (H. L.)	08, 439
393; 7 Manson, 321 (H. L.)	Τ.
Barnett, Brandao a tu cu a an	22 201
Barnett v. South London Tramways Co., 18 Q. B. D. 815; 56 L. Q. B. 452; 57 L. T. 436; 35 W. R. 640	03, 306
Q. B. 452; 57 L. T. 436; 35 W. R. 640	J.
Baroness Wenlock v. River Dee Co., 36 C. D. 685; 10 App. Cas. 35 Baroness Wenlock v. River Dee Co., 36 C. D. 685; 10 App. Cas. 35	60, 261
. River Dee Co., 36 C. D. 685; 10 App. Cas. 35	i0
Barras, John Morley Building Co. v., (1891) 2 Ch. 536; 60 L. J. Ch. 536; 39 W. R. 619	- 275
496; 64 L. T. 856; 39 W. R. 619	h
Durrett's Caso, 4 De G T & G	- 166
Barron v. Potter, (1914) 1 Ch. 895	- 103
Barrow's Case, 14 C. D. 432: 49 L. L CL and	- 181
Barrow's Case, 14 C. D. 432; 49 L. J. Ch. 253; 28 W. R. 341; 4 L. T. 12	2
Darrow Hematite Co. Bond a (1999) - 12	2, 261
86 L. T. 10; 50 W. R. 295	;
Darrow Hematite Steel Co. (No. 1) - 213, 218	3, 219
Ch. 148; 59 L. T 500; 37 W. R. 249	
Darrow Hematite Steel Co (No 2) up 7 - 44, 4	9, 95
. (1900) 2 Ch. 846; (1901) 2 Ch. 746	;
Darrow v. Paringe Mines (100 at	. 0.0
Bartlett v. Mayfeir Property Co., W N (1901)	- 341
Bartlett v. Mayfc ir Property Co., W. N. (1897) 175; (1898) 2 Ch. 28- Barton, Gibson v., L. R. 10 Q. B. 329; 44 L. J. M. C. 81; 32 L. T. 396; 33 W. R. 858	271
970: 33 W P 939	
Barton v. L. & N. W. Reil Co. at o 5 - 123, 163.	245
62 L. T. 164; 38 W. R. 197	
P 112, 133, 136,	139
Ь	

Barton v. L. & N. W. Rail. Co., 38 Ch D. 144; 37 L.	PAHD
50 L. T. 122; 36 W. R. 452	J. Ch. 676;
Barton a North Martin D '1 Change a	- 136, 143
Barton v. North Stafford Rail. Co., 38 C. D. 458; 57 L.	J. Ch. 800;
38 L. T. 549; 36 W. R. 754	139
Barton's Trust, & Eq. 238	
Barton-upon-Humber Water, 42 C. 1), 585 -	
Barwick v. English Joint Stock Bank, f., R. 2 Ex. 259; 3	8 L. J. Ex
11/ • • • • •	
Bassford, Jackson v., (1906) 2 Ch. 167; 75 L. J. Ch. 697	04 T 1
292	
Baster v. London and County Printing Works, (1899) 1 Q.	
Bateman v. Mid-Wales Rail. Co. (1865), L. R. 1 C. P. 499	B. 901 - 262
C. P. 205; 14 W. R. 672	; 35 L. J.
Bath Electric Trammons, Tanana (1997)	204
Bath Electric Tramways, Longman v., (1905) 1 Ch. 646; 2 373; 53 W. R. 480	1 T. L. R.
010,00 11.11.200	
Bath v. Standard Land Co., (1910) 2 Ch. 408; reversed (W. N. (1911) 101	on appeal.
Bath's Case, 8 Ch. D. 334; 47 L. J. Ch. 601; 38 L. T. 267; 441	26 W. R
Batten v. Dartmouth Harbour Commissioners, 45 C. D. 61:)
L. Aver, Keiner V., L. R. 2 C. P. 174: 36 L. J C D ot.	15 L. T
013, 10 W, B, 2/8	
Bayer, West End Hotels Synd. v. (1912), 29 T. L. P. 92	- 233, 441
Dean, Quartz Hill Gold Mining Co. " 20 C D A01. St	242
Beattie . Ebury, 7 Ch. 777; 41 L. J. Ch. 777; 27 L. T.	174
W. R. 994 -	
Beatty, North West Transportation O	2.55
Beatty, North West Transportation Co. v., 12 A. C. 589; P. C. 102; 57 L. T. 426; 36 W. R. 647	50 L. J.
Resuchemin Language (1000) 1. 1. 420; 50 W. R. 647	- 57, 170
Beauchemin, Larocque v., (1897) A. C. 358 -	
Bechuanaland Exploration Co. v. London Trading Bank (1 1898) (1898) 2 O B ess	2th July.
	304, 306, 307
Becke, Cobb v., 6 Q. B. 936	
Beckwith's Case, In re New British Iron Co., (1898) 1 Ch. L. J. Ch. 164 - 78 L. T. 188	394 - 117
Beer v. London and Paris Hotel Co. 20 Fo. 419, 20 T.	- 43, 185
Bellios, Hardoon v., (1901) A. C. 118	411
Bell v. Bell, 65 L. T. 245; 7 T. L. R. 689	137, 211, 253
Bell, Gee v., 35 C. D. 160	131
Bell, Hodgson v., 24 Q. B. D. 528	- 327
Bellairs v. Tucker, 13 Q. B. D. 562	18
Bellamy Porries (1900)	- 355
Bellamy, Perrins v., (1°99) 1 Ch. 797 Bellarburg, Paral	
Bellerby v. Rowland and Marwood's S.S. Co., (1901) 2 Ch. T. L. R. 510: 70 L. J. Ch. 610, 817 (7)	265: 17
	. (1902)
Benjamin Cope & Sons, (1914) 1 Ch. 800	93, 128
	290, 320

xviii

9

Ben-Bla Bennett, Cornwall Mining Co. c., 5 H. & N. 423; 29 L. J. Ex. 157; PAGE Bonnett Brothers, East c., (1911) 1 Ch. 163 -147 Hennett v. Cooper (1845), 9 Beav. 252 Benson, Shaw c., 11 Q. B. D. 563 169 . Bentham Mills Spinning Co., Re, 11 C. D. 100 ; 48 L. J. Ch. 671 ; 41 308 387 Bentinck c. London Joint Stock Bank, (1893) 2 Ch. 120; 62 L. J. Ch. 458; 68 L. T. 315; 42 W. R. 140 -140 Bentley & Co. (Henry), 69 L. T. 204 Bentley's Yorkshire Breweries, (1909) 2 Ch. 609 - 307 104, 335 Rethell v. Trench Tubeless Co., (1900) 1 Ch. 408; 69 L. J. Ch. 213; 32 L. T. 247; 48 W. R. 310 (C. A.) - 315 i -ta v. Macnaghten, (1910) 1 Ch. 430; 25 T. L. R. 552 - 167, 175, 244 M . Wobb, (1901) 2 Ch. 59; 70 L. J. Ch. 59; 84 L. T. 609; 49 Beva Burton r., (1903) 2 Ch. 240; 77 L. J. Ch. 591 - 60, 107, 108, 244 Bidw Brothers, In re, (1893) 1 Ch. 603; 62 L. J. Ch. 549; 68 L. T. - 125 laggerst II r. R. watt's Wharf, (1896) 2 Ch. 93; 65 L. J. Ch. 536; 74 - 172 Rargs' 4 'aser 1 Eq. 309; 33 L. J. Ch. 216; 13 L. T. 627 Binney 1 e Hall Coal Co., 35 L. J. Ch. 363 45, 309 Bird r. Bird's Patent Sewage, L. R. 9 Ch. 358; 43 L. J. Ch. 399; 30 - 152 159, 291 I. Lydney and Wigpool Co. v., 33 C. D. 85; 55 L. J. Ch. 875; - 424 Bin abeeck Huilding Society, Le, (1913) 1 Ch. 400 67, 331, 332 Birker wad Co., Bailey v., 12 Beav. 433; 19 L. J. Ch. 377 -Birmagham Rail, Co., Reg. r., C Q. B. 223 -- 67 Birmagham Small Arms Co., Newton v., (1906) 2 Ch. 378; 75 L. J. - 147 Ch. 378; 95 L. T. 135; 54 W. R. 621 74 armir cham Tramways Co., Neale v., (1910) 2 Ch. 464 Hisgocaj v. Henderson's Transvaal Estates Co., (1908) 1 Ch. 743: 77 - 231 I. J. Ch. 486; 98 L. T. 809 (C. A.) 93 Bishop v. Balkis, &c. Co., 25 Q. B. D. 512; 59 L. J. Q. B. 563; 63 66, 427 et sey. hop & Cans, Limited, Re, (1900) 2 Ch. 254 . 138, 139 limbop of Sodor and Man, Laughton v., 4 P. C. 495 -393, 398, 422 Bissell / Ariel Motors, 27 T. L. R. 14 Black & t o.'s Case, L. R. 8 Ch. 262 -- 174 Black and White Publishing Co., Fisher v., (1901) 1 Ch. 174; 70 - 296 L. J. Ch. 175; 84 L. T. 305; 49 W. R. 310 (C. A.) 410 Black, Cnesterfield and Boythorpe Colliery v., 26 W. R. 207 Black v. Homersham, 4 Ex. D. 24; 48 L. J. Ex. 79; 39 L. T. 671; - 213 - 193 Blackburn v. Vigers, 12 A. C. 531 -- 220 - 234 62

xix

Bla-Bou PAGE Blackburn & Co., (1899) 2 Ch. 725; 68 L. J. Ch. 764; 81 L. T. 520; 48 W. R. 186; 7 Manson, 47 - 415 Blackburn Building Society c. Cunliffe, Brooks, 22 Ch. D. 61; 9 App. Cos. 857; 54 L. J. Ch. 376; 52 L. T. 225; 33 W. R. 309 -. 275 Blackie, Aberdeen, &c. Co. c., 1 Mucq. 401 -192 Blackpool Motor Ca- Co., Re, (1901) 1 Ch. 77; 70 L. J. Ch. 61; 49 W. R. 124; 8 Manson, 193 - 415 Blair Open Hearth Furnace, 108 L. T. 665; (1914) 1 Ch. 390 - 181, 364 Blakeley Ordnance Co., In re (1868), L. R. 3 Ch. 154; 37 L. J. Ch. 418; 18 L. T. 132; 16 W. R. 533 -293, 298 Blaker v. Herts, &c. Waterworks Co. (1889), 41 Ch. D. 399; 58 I. J. Ch. 497 · 40 L. T. 776 ; 37 W. R. 601 - 296 Bloomen. e. Ford, (1897) A. C. 156; 66 L. J. Ch. 253; 76 L. T. 205; 45 W. R. 449 -75, 136, 144, 440 Blow, Hand r., (1901) 2 Ch. 721; 79 L. J. Ch. 687; 85 L. T. 1561; 50 W. R. 5 -. - 326 -Bloxam, Ex parte, 33 Beav. 529a - 103 Blunt, Iron Ship, &c. Co. r., L. R. C. P. 484; 37 J., J. C. P. 273; 16 W. R. 868 147, 189 Bodega Co., I.d., (1904) 1 Ch. 276; 73 L. J. Ch. 198; 89 L. T. 694; 52 W. R. 249 - 189 Bolivia (Republic of) Exploration Synd., Ltd., (1914) 1 Ch. 139 - 227 Bolognesi's Case, L. R. 5 Ch. 567 - 399 Bomore Road (No. 9), (1906) 1 Ch. 359; 75 L. J. Ch. 157; 94 L. T. 403; 54 W. R. 312 - 418 Bond r. Barrow Hematite Co., (1902) 1 Ch. 353; 71 L. J. Ch. 246; 86 L. T. 10; 50 W. R. 295 -213, 218, 219 Boord v. African, &c. Co., (1898) 1 Ch. 596; 77 L. T. 553; 46 W. R. 150 -125. 223 Booth v. New Afrikander Gold Mining, (1903) 1 Ch. 295; 87 L. T. 509; 51 W. R. 593 (C. A.) -. 341, 342 Booth v. Walkden Spinning Co., (1909) 2 K. B. 368 -- 432 "rax Co., Foster v., (1901) 1 Ch. 326; W. N. (1899) 34; 83 L. T. 638; 49 W. R. 212 - 66, 309, 310, 325 Borland's Trustee v. Steel Brothers & Co., (1901) 1 Ch. 279 - 131, 140, 155, 156, 158, 291, 375 Borough of Portsmeuth Tramways, (1892) 2 Ch. 362; 61 L. J. Ch. 462; 66 L. T. 671; 40 W. R. 553 --273, 328, 386 Bos, Princess of Reuss v. (1871), L. R. 5 H. L. 176; 40 L. J. Ch. 665; 24 I. T. 641 - _ -- 35, 52, 53, 113, 382, 388 Bosanquet, &c. v. St. John del Rey (1897), 77 L. T. 207 -- 217 Boschoek Proprietary Co. v. Fuke, (1906) 1 Ch. 148; 75 L. J. Ch. 261; 94 L. T. 398; 54 W. R. 359 ---164, 184, 186 Boston Deep Sea Co. v. Ansell, 39 C. D. 339; 59 L. T. 345 - 193, 206, 262 Bouch v. Sproule, 12 App. Cas. 385; 56 L. J. Ch. 1037; 57 L. T. 345; 36 W. R. 193 --- 220 Boudard, Everard & Co. (1896), 74 L. T. 712; 65 L. J. Ch. 735; 45 W. R. 152 ---_ --- 345

XX

Bou-Bri Boultbee, Cherry v., 4 My. & Cr. 442 PAGE Boulter, Tibbatts v. (1895), 7.1 L. T. 534 - 289 Bowen v. Brecon Rail, Co., L. R. 3 Eq. 541 -- 353 Bowen v. Defries & Co., (1904) 1 Ch. 37; 73 L. J. Ch. 1; 52 W. R. 253 - 282 - '319 Bower, Cargill v. (1878), 10 C. D. 502; 47 L. J. Ch. 649; 38 L. T. Bower e. Foreign Gas Co., W. N. (1877) 222 -. . - 260 Bowes c. Hope Mntual Life Insurance Society (1865), 11 H. L. C. - 390 Howes, Saunderson c., 14 East, 508 -. . . 393, 440 Boyd, Ilritish Asbestos Co. c., (1903) 2 Ch. 439; 73 L. J. Ch. 31: - 297 88 L. T. 763; 51 W. R. 667 Boyle's Case, 33 W. R. 40; 54 L. J. Ch. 550; 52 L. T. 501 -164, 182, 192 Boynton, Limited, In re, (1910) 1 Ch. 519 -- 112 Boynton, Hoffman c., (1910) 1 Ch. 519; 26 T. L. R. 294 - 824 Boythorpe Colliery Co., James v. (1891), 2 Meg. C. R. 55; W. N. - 317 Bradford Banking Co. v. Brigges (1886), 12 App. Cas. 29; 56 L. J. Ch. - 320 364; 56 L. T. 62; 35 W. R. 321 - 39, 154, 155, 157, 158, 159, 160, 291, 440 Bradford Navigation Company, 10 Eq. 531 -Bradford Tramways and Omnibus Co., 68 J. P. 362 -- 389 Brailey v. Rhodesia Cons., (1910) 2 Ch. 95 -- 410 Braine's Tadcaster Breweries Co., Dawson v., (1907) 2 Ch. 359; 76 - 424 L. J. Ch. 588; 97 L. T. 83 Bramah v. Roberts, 3 Bing. N. C. 963; 1 Scott, 350; 3 D. P. C. 392- 264 Brandao v. Barnett, 12 Cl. & Fin. 787 Braunstein and Marjolaine, Ltd., (1914) W. N. 335; 58 S. J. 755 - 325 Bray v. Ford, (1896) A. C. 44; 65 L. J. Q. B. 213; 73 L. T. 609 192. Bray, Shepheard e., (1907) 2 Ch. 571; 76 L. J. Ch. 692; 24 T. L. R. 193, 436 Brazilian Rail. Co., Cleary v., (1915) W. N. 178 -- 358 Brazilian Rubber Plantations, (1911) 1 Ch. 425; 27 T. L. R. 109 - 326 201, Brecon Rail, Co., Howen v., L. R. 3 Eq. 541 -204, 211 Brennan, Warner Engineering Co. v., 30 T. L. R. 191 - 319 Brentford Tramways Co., 26 C. D. 527 - J3N Brett's Case, 6 Ch. 800; 8 Ch. 800 -- 389 Brett, Wilson e., 11 M. & W. 115 -- 104 Brick and Stone Co., W. N. (1878) 140; 22 S. J. 625 - 202 Bridger's and Neill's Cases (1869), 4 Ch. 266; 38 L. J. Ch. 201; 19 165 L. T. 624; 17 W. R. 216 -Bridger's Case (1870), L. R. 5 Ch. 305; 39 L. J. Ch. 478; 22 L. T. - 153 Bridges, Fordyce v., 11 II. L. C. 4 - -- 113 Bridgwater Navigation Co., Rr (1889). 14 App. Cas. 525; 59 L. J. Ch. - 272 122; 61 L. T. 621; 38 W. R. 401; 1 Meg. 372 - 85, 214, 416, 440

xxi

Bri-Bri PAGE Bridport Old Brewery Co., Re, L. R. 2 Ch. 194; 15 L. T. 643; 15 W. R. 291 -- - -Briggs, Ex parte, 1 Eq. 483 -- 237 _ - 352 Briggs, Bradford Banking Co. v. (1886), 12 A. C. 29; 56 L. J. Ch. 364; 56 I., T. 62; 35 W. R. 521 - 39, 154, 155, 157, 158, 159, 160, 291, 440 Briggs, Grundy r., (1910) 1 Ch. 444; W. N. (1910) 17 - 131, 139, 184 Briggs, Oriental Inland Steam Co. v. (1861), 31 L. J. Ch. 241; 2 J. & H. 625; 4 De G. F. & J. 191; 10 W. R. 125 - - - 115 Brighton Alhambra, Securities Investment Corporation v. (1893), 68 L. T. 249; 62 L. J. Ch. 566; W. N. (1893) 15 Brighton Grand Concert Hall, Ltd., London and Counties Assets Co. v., (1915) 2 K. B. 493 -_ . Brigstocke, Dominion of Canada Syndicate e., (1911) 2 K. B. 648 -- 189 342, 377 Brinsmead (T. E.) & Sons, (1897) 1 Ch. 45, 406; 76 L. T. 100; 66 L. J. Ch. 290 - -391, 394, 398 Bristol United Breweries v. Abbot, (1908) 1 Ch. 279; 77 L. J. Ch. 136; 98 L. T. 22 - ----- 281 -Bristow v. Needham, 2 R. 629 British and American Shoe Co., Randall, Limited r., (1902) 2 Ch. - 326 354; 74 L. J. Ch. 683; 87 L. T. 442; 50 W. R. 697 British Asbestos Co. v. Boyd, (1903) 2 Ch. 439; 73 L. J. Ch. 31; 88 27 L. T. 763; 51 W. R. 067 ---164, 182, 192 British, &c. Association, Rogers & Co. c., 68 L. J. Q. B. 11; 79 L. T. 494 -British Bank of S. A., Lubbock v., (1892) 2 Ch. 198; 61 L. J. Ch. - 324 498; 67 L. T. 74; 41 W. R. 103 British Building Stone Co., (1908) 2 Ch. 450; 77 L. J. Ch. 752; 99 - 217 L. T. 608 -British Burmah Lead Co., In re, 56 L. T. 815; W. N. (1887) 101; - 424 4 T. L. R. 631 -British Columbia Association, Hoare v., (1912) W. N. 235; 107 L. T. - 355 602 ----..... - 281 British Columbian Exploitation Gold Estates, W. N. (1899) 32 - 129 British, &c. Corporation v. Couper, (1894) A. C. 399; 63 L. J. Ch. 425; 70 L. T. 882; 42 W. R. 652 - 48, 68, 83, 93, 95, 96, 97, 440 British Electromobile Co., Electromobile Co. v., 97 L. T. 196; 23 T. L. R. 192 -- -27, 249 British Equitable Assurance Co. v. Baily, (1906) A. C. 35; 75 L. J. Ch. 73; 94 L. T. 1 (H. L. E.) British Equitablo Bond, &c. Co., (1910) 1 Ch. 574 49, 440 -British India, &c. Co. v. Commissioners, 7 Q. B. D. 165 - 283, 288 British Murac Rubber Synd. r. The Alperton Rubber Co., (1915) W. N. 176; (1915) 2 Ch. 186 - -- 43, 50, 181 British Mutual, &c., Southall v., 6 Ch. 614; 40 L. J. Ch. 698; 19 - - - 168, 194, 381. 418, 425

xxii

Bri-Bro

DIT-DIO			
British Mutual Bank v. Charnwood Fo. 35 W. R. 590; 55 L. J. O. B. 300, 56	Post Dall	10.0 0	PAGE
35 W. R. 590; 55 L. J. Q. B. 399; 56 British Nation, & Association I	T T O T	18 Q. B.	D. 714;
British Nation, &c. Association, Exparte British Power Traction Co. (1010) 9	8 Ch D	5.449 -	- 261
British Power Traction Co., (1910) 2 Ch L. J. Ch. 248; 94 L. T. 479: 54 W P	470. /10/	104 -	65, 68
L. J. Ch. 248; 94 L. T. 479; 54 W. R. British Seamless Paper Box (1881), 17 C.	387 . 00 /	$(0) I Ch_{i}$	497; 75
British Seamless Paper Box (1881), 17 C. 44 L. T. 498; 29 W. R. 690	D 487. z	L. L. R. 2	68 - 326, 327
44 L. T. 498; 29 W. R. 690	19: 101; 0	0 L. J. C	
British South Africa Co The D	- 		333, 367
	() 2 Ch. a	02 -	- 274
			- 167
Dittisti vacuiim Cleaner Co " Nom M	uum Cloa		- 326
Ch. 312; 76 L. J. Ch. 511; 97 L. T. 201 Briton Medical Co., 37 W. B. 52	· 93 T 1	uer Co., ()	1907) 2
Briton Medical Co., 37 W. R. 52		. n. 981	
Driton Medical Co # Jones Ci I m as		-	- 123
Broad, Driver c., (1893) 1 Q. B. 744; 63 169	LJO	• • 10.10.44	- 191
169		D. 12; 0;	
Broad's Patent Co., W. N. (1892) 5		-	- 316
Droad Street Co., W. N (1997) 140		-	- 397
Liouu's Latents, &C. Co., Fowlor , (1900) 1 Ch 79	4 . 69 7	- 121
373; 68 L. T. 576; 41 W. R. 247 -		x ; 02 14 (J. Ch.
Droadwood, Shipway r. (1899) 1 0 D 200	: 68 L J	0 P 20	- 273
L. T. 11 (C. A.)		06 10, 36	
Brocklebank, Stocker v., 3 M. & G. 250 Broderin , Salaria			193, 194
51 ottomp 0, Satomon, (1895) 9 Ch 202, 01	L. J. Ch.	689 - 79	- 262
755; 43 W. R. 612 -			14 1. Kr. 1884
Brookes v. Hansen, (1906) 2 Ch. 129; 75 I 728; 54 W. R. 502; 22 T L. P. 475	. J. Ch.	450 · 04 1	55, 371
728; 54 W. R. 502; 22 T. L. R. 475			
Broome, Shephoard v., (1904) A. C. 342; 73 178; 53 W. R. 111; 20 T. L. R. 540 (H J	I., J. Ch.	608 • 91	- 351 F m
178; 53 W. R. 111; 20 T. L. R. 540 (H. 1 Bryome r. Speek (1002) 4. C. 542; 73	LE.) -		14 I .
	Ch. 251 :	88 L.T	- 360
51 W. R. 258 (C. A.) Brougham 55 (C. A.)			
Broughan, Sinclair c., (1914) A. C. 398		-	- 359
Brong won, bennings P., 17 Boar 924 . : D	M. & G. 1	26 : 22 T	- 275 . J
Ch. 585; 1 W. R. 441 Brown Joint St. 1 D:	-		- 346
Brown, Joint Stock Discount Co. r., 3 Eq. 13 844; 17 W. R. 1037 65 68	9; 8 Eq. 3	381 : 20 T	- 010 T
Brown, Leroux r. (1852), 12 C. B. 801	, 72, 179,	204, 209,	262, 407
Brown, Ortigosa r., 38 L. T. 145; 47 L. J. C. Brown, Smith r. (1896) A. C. 211	-	-	- 256
Brown, Smith r. (1896) A. C. Clin. J. C.	h. 168 -	-	- 134
Brown, Smith r., (1896) A. C. 614; 65 L. J. 45 W. R. 132	P. C. 89;	75 L. T. 2	13;
Brown, Tyne Steamship Co. H. 75 T. m. 100	-	-	- 121
Brown and Gregory, Androws v., (1904) 2 Ch. (C. A.)	-	46, 1	92, 276
(C. A.)	448; 73]	. J. Ch.	770
Brown and Gregory, Ltd., Re, (1904) 1 Ch. 62 Brown's Case 9 Ch. 100	7 -	-	- 293
Brown's Case, 9 Ch. 102; 43 L. J. Ch. 153; 171-	29 T. T 50	* 9 . 00 11 *	- 289
Brownow To Tel 11	-		K. 199
Browno v. La Trinidad, 37 C. D. 1; 57 L. J. (36 W. R. 289	Ch. 292 : 5	8 L. T 19	- 183
	40, 42, 1	64, 176, 1	95 108

40, 42, 164, 176, 195, 198

Bro-Bur

Bro-Bur	
Browne aud Wingrove, Re, (1891) 2 Q. B. 574 (C. A.); 61 L. J. Q. 1 15; 65 L. T. 485 40 W. P. 71	PAGE
15; 65 L. T. 485; 40 W. R. 71	3.
	- 329
Browning r. Great Central Mining Co., 5 H. & N. 856	- 255
LISTICA LISTICO CHADIOO P., D O. R D 115, DO W D	1
and the stand th	9, 276
Brunton, English and Sectch, &c. Trust v., (1892) 2 Q. B. 700 (C. A.); 62 L. J. O. B. 136, 69 J. T. 400	, 320
(C. A.); 62 L. J. Q. B. 136; 69 L. T. 406; 41 W. R. 133 - 290 Brussels Palace of Variation 7, B. 136; 69 L. T. 406; 41 W. R. 133 - 290)
Brussels Palace of Varieties v. Prockter, 10 T. L. R. 72	, 312
Brutton v. Burney W. N. (1991) and (1991) and (1991)	339
-5 white is the Daugue of Pennie (1893) A C 1=0, (0) T T is -5	
	436
Bryden, Sadgrove v., (1907) 1 Ch. 318; 76 L. J. Ch. 184; 96 L. T. 361	400
	174
Buchan's Case, 4 App. Cas. 549 269,	270
Buck v. Robson, L. B. 10 Eq. 629	139
Bucknall, Watty v. (1002) 1 (2)	405
Bucknall, Watts v., (1903) 1 Ch. 766; 72 L. J. Ch. 447; 88 L. T. 845	
	361
	151
and the source area that Re 11 C I) to	
Bulawayo Market Co., (1907) 2 Ch. 458; 76 L. J. Ch. 673; 23 T. L. R. 714	396
I. L. R. 714	
(N, S) = (N, S) + (N, S)	177
Bull, Burt v., (1895) 1 Q. B. 276; 64 L. J. Q. B. 232; 71 L. T. 810; 43 W. R. 180	174
43 W. R. 180	
	326
Buller, Expter and Creditor, D. 1, 72 L. T. 514 (C. A.)	327
Buller, Exeter and Crediton Rail. Co. v., 5 Ry. Cas. 211; 11 Jur. 527	
Bultfontein Sun Diemond Mine (1999) 40 m	42
$\mathbf{T} = \mathbf{T} = $	19
L. T. 29; 48 W. R. 1; 7 Manson, 85 (C. A.)	
Turuch C. Standard Exploration C. to m r -	
Burgess' Case. 15 C. D. 507; 49 L. J. Ch. 541; 43 L. T. 45; 28 W. R. 792	42
W. R. 792	
Burkinsh: - v. Nicolls (1878), 3 App. Cas. 1004; 48 L. J. Ch. 179; 39 L. T. 308; 26 W. R. 819	53
L. T. 308; 26 W. R. 819	
Burland c. Earle, (1902) A. C. 83; 85 L. T. (P. C.) 553; 71 L. J. P. C. 1; 50 W. R. 241	0
P. C. 1; 50 W. R. 241 - 40, 50, 57, 170, 171, 190, 197	
P. C. 1; 50 W. R. 241 - 40, 50, 57, 170, 171, 180, 185, 213, 24 Burn v. London and South Wales Coal Co. W. N. 180, 185, 213, 24	.,
Burn v. London and South Wales Coal Co., W. N. (1890) 209; 7 T. L. R. 118	-
Burnard, Hambro n (1904) $2 K$ p q	.2
Burney, Brutton v. W. (1984), 2 H. L. C. 497; 13 Jur. 897 - 7, 210, 21	
107, 346	;

X

xxiv

Bur-Cap	AAV
Dur-vap	
Burrows v. Matabele Co., W. N. (1901) 68; (1901) 2 Ch. 23 - Burt v. Bull, (1895) 1 O. B. 276; 84 J. 7 (1901) 2 Ch. 23 -	PAGE
Burt v. Bull, (1895) 1 O B 276, 047 (1901) 2 Ch. 23 -	- 341
43 W. R. 180	;
B. U. R. T. Co., Ltd. Continue on the	396
Burton r. Bevan, (1908) 2 Ch. 240; 77 L. R. 585 Bury v. Famatina Development Co. (1910) A. C. 400	. 120
Burry , Equat. (1908) 2 Ch. 240; 77 L. J. Ch. 591 - 60 107 100	104
Bury v. Famatina Development Co., (1910) A. C. 439 - 69, 107, 108 Bush, Murray v. L. B. 64 J 69	, 244
Bush, Murray v., L. R. 6 H. L. 77, 10 J. L. 69	, 317
Bush, Mnrray e., L. R. 6 H. L. 77; 42 L. J. Ch. 586; 29 L. T. 217; 22 W. R. 280	
	192
317 : 40 W D THE ASC, (1892) 2 Ch. 100; 61 L. J. Ch. 357 : 66 T M	10.
317; 40 W. R. 538; 13 E. R. 566 -	
Dutter l', Manchestor Doit O or a	205
Butler v. Northern Territorion Mi	74
T. L. R. 179 T. L. R. 179	•••
Byrne v. Leon Van Tienhamen v. C.	71
Byrne v. Leon Van Ticnhoven, 5 C. P. D. 344	
· · ·	103

С.

Cachar Co., Re, L. R. 2 Ch. 417					
Cackett v. Keswick, (1902) 2 Ch. 45 51 W. R. 69				- 352	,
51 W R 60	6;71 L.,	J. Ch. 6	41 · 87 T.	- 002 T 11.	-
Cairnor a la trans			AL 10 (***	1, 11; 1. 010, 0.0	
Cairney r. Bask, (1906) 2 K. B. 746; 776	75 L. J.	K. B. 10	00 11.1 - 00 17	51, 359, 361	
Calman 1 Tr		· · · · · · · · · · · · · · · · · · ·	14; 22.1	5 I. R.	
Calgary and Edmonton Land Co., (19 94 L. T. 132; 13 Manson, 55	906) 1 Ch	141 . **	- 	- 411	
94 L. T. 132; 13 Manson, 55	/1 СП.	141;70) 1. J. Cł	1. 138 ;	
Calthorpe, Nash v., W. N (1905) 10		-	-	- 99	
Cambrian Co., 23 W P 105, pt T	-	-	-	- 361	
Cambrian Co., 23 W. R. 405; 31 L. Campbell v. Australian Mutual, 99 L.	T. 773; J	W. N. (1	875) 6-	169, 239	
Campbell v. Maund, 5 Ad. & El. 865	.T.3 -	-	-	67, 71	
Campbell's Case (1970) o C		-		- 172	
Campbell's Case (1873), 9 Ch. 1; 43 W. R. 113	L. J. Ch.	1: 29	L T 51	- 172 0. no	
Campbell's Constants	-	44.	86 87 6	9, 22 9, 92, 168	
Campbell's Case (1876), 4 C. D. 470; 2 Canada N. W. Co., W. N. (1885) 61	5 W. R. 2	99 · 35 T	. T 000	5, 92, 168	
Canada N. W. Co., W. N. (1885) 61	-		1.1.900	- 192, 317	
Cunadian Agricultural fool Co. M.		81170700	· ·	- 99	
2 Ch. 377 : 70 L. J. Ch. 684 ; 84 L.	T. 861	amance	Co. v., (1901)	
Canadian . duce Corporation, Fina	nce and	T	-	- 329	
Canadian _ duce Corporation, Fina 37; 53 W. R. 170 -	nce anu .	issue v.	, (1905) 1	Ch.	
Canning Jarrah Timber Co. (1000) :	C1. =00	-	-	- 108	
Canning Jarrah Timber Co., (1900) 1 L. T. 409; 7 Manson, 439 (C. A.) -	сц. 108;	69 L. J.	. Ch. 416	; 82	
Cape Breton Co., In re 29 C D tor	-	-	-	- 431	
33 W. R. 788; 12 App. Cas. 652	4 17 J Cl	h. 822;	53 L. T.	181 :	
Capel r. Sims Composition Co., 36 W. I Ch. 713	-	-	193.	206, 407	
Ch. 713 -	R. 689 ; 58	8 L. T. 8	07: 57 T		
Capital and Counting D. 1	-	-		354, 360	
Capital and Counties Bank, Esberger 366	& Son, 1	Itd. e.,	(1913) 9	('h	
	-		(
			-	- 280	

xxv

ST'R

Cap-Cen PAGE Capital Fire Insurance Association, Re (No. 2) (1883), 24 C. D. 408; 53 L. J. Ch. 71; 49 L. T. 697; 32 W. R. 260 - -223, 322 Capper's Case, 3 Ch. 458; 16 W. R. 1002 113, 115 Caratal (New) Mines, Re, (1902) 2 Ch. 498; 71 L. J. Ch. 883; 87 L. T. 437; 50 W. R. 572 -. -170, 240 Carbolic Smoke Ball Co., Carlill v., (1893) 1 Q. B. 256; 62 L. J. Q. B. 257; 67 L. T. 837; 41 W. R. 210 - -- - 109, 301 Cardiff Workmen's Cottage Co., (1906) 2 Ch. 627; 75 L. J. Ch. 769; 95 L. T. 669; 22 T. L. R. 799 --- 282 Cargill c. Bower (1878), 10 C. D. 502; 47 L. J. Ch. 649; 38 L. T. 779: 26 W. R. 716 -- 200 Caridad Copper Co. v. Swallow, (1902) 2 K. B. 44; 71 L. J. K. B. 601; 86 L. T. 699; 50 W. R. 565 -- 188 Carlill v. Carbolic Smoke Ball Co., (1893) 1 Q. B. 256; 62 L. J. Q. B. 257; 67 L. T. 837; 41 W. R. 210 - --109, 301 Carling's Case, 1 C. D. 115; 45 L. J. Ch. 5; 33 L. T. 645; 24 W. R. 165 --Carlton, Bagnall v., 6 C. D. 371; 47 L. J. Ch. 30; 37 L. T. 481; 26 405, 407 W. R. 243 -331, 332 Carlton Bank, Cornford v., (1899) 1 Q. B. 392; 68 L. J. Q. B. 196; and affirmed, (1900) 1 Q. B. 22; 68 L. J. Q. B. 1020; 82 L. T. 415 (C. A.) Carlton Co., Premier Industrial Bank v., (1909) 1 K. B. 106 - 45, 197 -74 Carlyle Press, Strong v., (1893) 1 Ch. 268; 62 L. J. Ch. 541; 68 L. T. 396; 41 W. R. 404 - - --- 328 Carriage Co-operative Association, 27 C. D. 322; 53 L. J. Ch. 1154; 51 L. T. 286; 33 W. R. 411 - - - - 185, 206 Carrick v. Wigan Tramways Co., W. N. (1893) 98 -- 329 Carshalton Park Estate, (1908) 2 Ch. 62; 77 L. J. Ch. 550; 99 L. T. 12; 24 T. L. R. 547 -------- 325 Carter v. White, 25 Ch. D. 666 Cartmeil's Case, 9 Ch. 691; 43 L. J. Ch. 588; 31 L. T. 52; 22 W. R. - 338 697 --- - -115, 255 Cash, Limited v. Cash, (1902) W. N. 32 Castell & Brown, I.d., Re, (1898) 1 Ch. 315; 67 L. J. Ch. 169; 78 27 L. T. 109 ; 46 W. R. 248 - - - - 290, 309, 312, 320 Castle Steel, &c. Co., Mowatt r., 34 C. D. 58; 55 L. T. 645 -- 259 Cathcart, Re, 5 Ch. 703 -Cavanagh, Whitechurch (George) Ltd. v., (1902) A. C. 117; 8. L. T. 18 349; 50 W. R. 218 - --139, 261 Cave v. Cave, 15 C. D. 639 -- 234 Cawley & Co., In re, 42 C. D. 209; 58 L. J. Ch. 633; 61 L. T. 601; 37 W. R. 692; 1 Meg. 251 - - --130, 147, 247 Central De Kaap Gold Mines, 69 L. J. Ch. 18; 7 Manson, 82 - 187 Central Railway of Venezuela v. Kisch, L. R. 2 H. L. 123; 36 L. J. Ch. 849; 16 L. T. 500; 15 W. R. 821 - -127, 345, 353

xxvi

TABLE OF CASES.	
Oen-Cit	XXVII
Central Ruil Constant	
Central Rail. Co. of Venezuela, Scholey v., 9 Eq. 266, n	PAGE
Centrifugal Button C	- 352 - 430
Centrifugal Butter Co., Re. (1913) 1 Ch. 425 - Chadwick, Smith at 20 (1913) 1 Ch. 188 -	- 402
	- 402
W. R. 687 48 T D at Children 50 L. P. 697	20
Chamberlain Wharf r. Smith (1000) - 354.	355, 356
83 L. T. 238; 49 W. R. 91 (C. A.) - Chambers & Muscle Manhers & Muscle Man	83 :
Chambers (, Manohouton & Maria	- 0
Chambers r. Manchester & Milford Railway, 5 B. & S. 588 Chapel House Colliery Co., Re 24 (1) D. 200	- 428
L. T. 575; 31 W D 000, 11, 27 C. D. 259; 52 L. J. Ch. 934.	49
Chapleo r. Brunswick Estate a contract - 328, 393, 398, 3	99, 414
W. P. 449; 50 L. J. Q. B. 372	44
Unapman's Case 1 Provide	00 070
Cuapman & Harker's Case 1 T	- 263
Chapman, Civil Service Society v., (1914) W. N. 369 Chapman, Evans v., 86 L. (7, 291	- 118
Chapillan, Fivang a port in the start of a start of a	100
	- 50
Charitable Corporation v. Sutton, 2 Atk. 400- Charlesworth v. Miller (1909) 15, reversing (1909) 1 K. B. 73 Charlesworth v. Miller (1909) 17, 2 Atk. 400- 178, 200	- 266
-178 00	0 00*
Charnwood Forest Rail., British Mutual Bank v., 18 Q. B. D. 425 35 W. R. 590; 35 L. J. Q. B. 399; 56 L. J. O. B. 400	- 281
35 W. R. 590; 55 L. J. Q. B. 399; 56 L. J. Q. B. 449 Cherry v. Boultbee, 4 My & Cr. 449	
Cherry v. Boultbee, 4 My. & Cr. 442	- 261
	- 289
Chester, Reg. v., 1 Ad. & El. 342 Chesterfield and Bound	- 397
Chesterfield and Boythorpe Colliery v. Black, 26 W. R. 207 Chestergate Hat Co., Johnston v. (1915) W. N. 207	- 173
Chestergate Hat Co., Johnston v., (1915) W. N. 277 Chie, Limited, Robinson Pariate Co.	193 221
Chi2, Limited, Robinson Printing Co. v., (1915) W. N. 277 Ch. 399; 93 L. T. 262; 53 W. R. 681 Chida Mines Ltd., 44, 681	221
Unida Mines I td	327
Chillington Iron Co., 29 C. D. 159; 54 L. J. Ch. 624; 52 L. T. 504; 33 W. R. 442	
33 W. R. 442	-01
Unina Steamship Co. 7	172
Chinese Corporation, Spitzel # (1000) 00 J	316
Christineville Rubber Fotote (1300), 80 L. T. 347; 6 Manson 355	112
Chuy and County Rank T m	352
City and County, &c. Investment Co., Re, 13 C. D. 475; 42 L. T.	
303; 28 W. R. 933	
City and Suburban Permanent Building Speint	425
City and Suburban Permanent Building Society, Pepe r., (1893) City Benk 4:	
919 - 919 - 10 mile, L. R. 3 Ch. 758; 18 L. T 457, 16 m .	49
City of Chicago & G and a g and a g	0.5
Ch. 28; 65 L. T. 704; 40 W. R. 153 Ch. 28; 65 L. T. 704; 40 W. R. 153	00
City of Glasgow Bank, Houldsworth	94
20 W. R. 677	
	16
437; 53 L. T. 191; 33 W. R. 628	
- 13	35

Cit-Col PAGE City Property, Ltd., Palace Billiard Rooms, Ltd. r., (1912) S. C. 5 -99 City Rice Mills, Thorn v. (1889), 40 C. D. 357; 58 L. J. Ch. 297; 60 L. T. 359; 37 W. R. 398 -..... - 297 Civil, Naval & Military Outfitters, (1899) 1 Ch. 215 -- 408 Civil Service Brewery Co., W. N. (1893) 5; 37 S. J. 194 - 423 Civil Service Society v. Chapman, (1914) W. N. 369 -- 199 Clandown Colliery Co., Re, (1913) 1 Ch. 369; W. N. 75 393, 398 Claridge, Seal r., 7 Q. B. D. 516 . . . Clark, France c., 26 C. D. 263; 53 L. J. Ch. 585; 50 L. T. 1; 32 -21 W. R. 466 -_ 134, 145 Clark, Saunderson & Co. v. (1912), 29 T. L. R. 579 - 281 Clark v. Imperial Gas, &c. Co., 4 B. & Ad. 315 -- 258 Clarke v. Hart, 6 H. L. C. 633 - 151 Clarke, Huth v., 25 Q. B. D. 391; 63 L. T. 348; 59 L. J. M. C. 120; 59 W. R. 655 Clarke, London Founders' Association r., 20 Q. B. D. 576; 57 L. J. 197 Q. B. 291; 59 L. T. 93; 36 W. R. 489 -Clayton, Peate., (1906) 1 Ch. 659; 75 L. J. Ch. 344; 94 L. T. 465; - 135 54 W. R. 416 32 Clayton Engineering Co., W. N. (1962) 28; 90 L. T. 293 329 10 Cleary v. Brazil Rail. Co., (1915) W. N. 178 --Cleveland Co., Orton v., 3 11. & C. 868; 13 W. R. 869; 11 Jur. N. S. - 326 531 -. -- 185 Clews, Grindey r., (1898) 2 Ch. 593 -- 207 Clifford (Lord de), Re, (1900) 2 Ch. 707; 69 L. J. Ch. 828; 83 L. T. 160 - 207 Clinch v. Financial Corporation, 5 Eq. 461; 4 Ch. 117; 18 L. T. 197; 37 L. J. Ch. 281 167, 175 Clinton's Case, (1908) 2 Ch. 515 60, 253 Clipper Pneumatic, &c. Co., Bagot, &c. Co. v., (1902) 1 Ch. 146; 71 I., J. Ch. 158; 85 L. T. 652; 50 W. R. 177 -. - 253 Clyne Tin Plate Co. (1882), 47 L. T. 439 . - 322 Coal Consumers' Association, Re, 4 C. D. 629 Coalport China Co., Re, (1895) 2 Ch. 404; 64 L. J. Ch. 710; 73 L. T. - 411 46; 41 W. R. 38 - 131 Coasters, Ltd., W. N. (1910) 235; (1911) 1 Ch. 86 -144, 203, 235 Coates v. L. & S. W. Rail. Co., 41 L. T. 553; 44 J. P. 154 -- 144 Coats (J. & P.), Ltd. v. Crossland, 20 T. L. R. 800 -204, 206, 407 Cobb v. Becke, 6 Q. B. 936 -Coleman, Imperial Association v., 6 Ch. 558; 40 L. J. Ch. 262; 24 - 197 L. T. 290; on app., 6 H. L. 190 - -192, 193, 194 Coleridge, West Yorkshire Darracq Agency v., (1911) 2 K. B. 326 - 186 Coles, Foster r., 22 T. L. R. 555 Collen r. Wright (1857), 7 El. & Bl. 301; 8 El. & Bl. 647 - 84 Collin r. Thompson's Trustees, 4 Macq. 424, 432 190, 199 . - 200 Colman v. Eastern Counties Rail. Co., 10 Beav. 1 5, 68 Cohner, Limited, Re James, (1897) 1 Ch. 524 Colonial Bank v. Whinney, 11 App. Cas. 426; 56 J., J. Ch. 43; 55 -50 L. T. 362; 36 W. R. 705; 30 C. D. 251 19, 140

XXVIII

	XX1X
Col-Coo	
Colonial Bank, Williams v., 38 C. D. 388; 57 L. J. Ch. 826; 59 643; 36 W. R. 625 -	PAGE
643; 36 W. R. 625	LT
Colonial Call D. A. T.	
Colonial Gold Reef, I.td., (1914) 1 Ch. 382	- 143
The second	- 173
Colonial Life Assurance Co. v. Home and Colonial Assurance Co Beav. 548; 12 W. R. 783; 10 L. T. 448; 33 L. J. Ch. 741 Colonial Mutual Soc. 21 C. D. 827	., 33
Colonial Mutual Soc. 21 C. D. 807	- 249
COLUMN TIME CONTRACT F	- 383
Columbian Fire-Proofing Co., (1910) 2 Ch. 120; 79 L. J. Ch. 583; L. T. 835; 1 Manson, 237 -	311, 329
L. T. 835; 1 Manson, 237	100
Combined Income	- 310
Combined Incandescent Mantles Syndicate, Shewoll r., 23 T. I 481	- 510 D
Combined Weighing Machine Co., 43 C. D. 99 Commercial Bank of Nature 1	- 341
THE REAL PROPERTY OF THE REAL	- 392
43 L. J. C. P. 31; 30 L. T. 180; 22 W. R. 473	194 ;
Commissioners British Talia & G	- 74
Commissioners, British India, &c. Co. v., 7 Q. B. D. 165 Common Petroleum Co., (1895) 2 Ch. 759; 65 L. J. Ch. 76; 73 L	283, 288
338	m
Concessions Acquisit: a	121, 122
	CO.
5 Manson, 348; W. N. (1898) 162 -	00;
Concessions Trust, Re, (1896) 2 Ch. 757; 65 L. J. Ch. 909; 75 L. 298 -	- 123
Connolly Bros., Ltd., (1912) 2 Ch. 25	- 138
Consett from Co. (1001) 1 CL and	~ 312
Consonated Diesel Engine (101+) + C	- 79
	- 403
Consolidated Goldfields v. Simmer and Jack East, (1913) W. N. 4 108 L. T. 488	- 400
108 J T 100	1.
Consolited 1 Tr	1 ;
Consolidated Kent Collieries Corporation, Currie v., (1906) 1 K. 134	- 294
134	В.
Consolidated Kent Colliories Corporation, Maynard r., (1903) 2 K. 121; 72 L. J. K. B. 681; 88 L. T. 676; 50 W. D. (1903) 2 K.	- 420
121; 72 L. J. K. B. 681; 88 L. T. 676; 52 W. R. 117 (C. A.) Consolidated Niekel Mines (1914) 1 Ch. 200	B.
Consolidated Niekel Mines, (1914) 1 Ch. 883 - Consolidated South Basel 1 (2014) 1 Ch. 883 -	~ 135
Consolidated South Dec 1 15:	- 188
Consolidated South Rand Mines, W. N. (1909) 66	- 100
	- 400
122; 76 L. T. 300; 45 W. R. 227	n.
Consumers' Gas Co. of Toronto Tala 4	28, 338
L. J. P. C. 33; 78 L. T. 270 (P. C.)	37
Continental, &e. Co., Elias a (1907) 1 Cl	- 351
Continental, &e. Co., Elias v., (1897) 1 Ch. 511; 66 L. J. Ch. 273 76 L. T. 229; 45 W. R. 313	1
Continental Two Company	- 328
Continental Tyre Co. v. Daimler Co., (1915) 1 K. B. 893 2 Continental Union Gas Co. (1902) - m - m - 2 (1902) - 2 (1902) - m - 2 (1902) - 2 (1902) - m - 2 (1902)	
Continental Union Gas Co. (1893), 7 T. L. R. 496 - 2 Contract Corporation <i>B</i> : L D <i>i i i i i i i i i i</i>	9, 243
	- 50
conjudate, New Drunswick Co O H T O	- 404
Conybeare, New Brunswick Co. v., 9 II. J. C. 711, 724; 31 L. J. C. 297; 6 L. T. 109; 10 W. R. 305	l.
Cook v. Fowler (1874). L. B. 7 H. J. or	- 355
Cooke, Freeman v., 2 Ex. 654	- 286
Cooleardia Gold Mines at a	- 143
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
	- 415

1

xxix

Coo-Cov

Coo-Cov
Cooper's Case, (1908) 1 Ch. 141; 77 L. J. Ch. 36; 97 L. T. 757; appeal from compromised (1908) 1 Cl. and Ch. 36; 97 L. T. 757;
appeal from compromised, (1908) 1 Ch. 334; 77 L. J. Ch. 288 - 130 Cooper Baunette (1915) 0 D
Cooper, Bennett :: (1845), 9 Beav. 252
Cooper a Griffin (1990) 1 0 10
Cooper F. Griffin, (1892) 1 Q. B. 740; 61 L. J. Q. B. 363; 66 L. T. 660 · 40 W. P. 190
Copiapo Mining Co., Ju re. 6 Manson 200
Cork and Youghal Rail. Co., In re, L. R. 4 Ch. 748 ; 30 L. J. Ch. 277 ;
Cork Co., Payne v., (1900) 1 Ch. 308; 69 L. J. Ch. 156; 82 L. T. 44: 48 W. R. 2011, 7 March 2016, 69 L. J. Ch. 156; 82 L. T.
44; 48 W. R. 325; 7 Manson, 225 39 30 421 420
The second of the second of the second secon
Cornehus, Hermer E. 3 (' R N Stope
Cornell e. Hay, L. R. 8 C. P. 328: 49 L. J. C. D. 196, no. 6 m. 202
Cornford v Carlton Bank, (1899) 1 Q. B. 392; 68 L. J. Q. B. 196; and affirmed (1960) 1 Q. R. 39, 68 L. J. Q. B. 196;
and affirmed (1960) 1 (), P. 39, 40 J. 7, 392; 68 L. J. Q. B. 196;
and affirmed, (1960) 1 Q. B. 22; 68 L. J. Q. B. 1020; 82 L. T. 415 (C. A.)
1 + 1 + 1 + 1 + 1 + 1 + 1 + 1 + 1 + 1 +
Corporation of Liverpool, Scott e., 3 De G. & J. 360 - 49
Corporation of Segiord, Crook p & Ch 331
Corporation of Sheffield P. Barday (1002) o K. D. too
52 W. R. 54, reversed by House of Lords, 3rd July, 1905, (1905) A. C. 392
A. C. 392 -
Cory, Dovey v., (1901) A. C. 477; 70 L. J. Ch. 753; 85 L. T. 257; 30 W. R. 65
Costello's Case, 2 D. F. & J. 302
Cotterell v. Stratton (1872), L. R. 8 (h. 200) 133
Cotton v. Imperial, &c. Co., (1892) 3 Ch. 454; 61 L. J. Ch. 684; 67
L. T. 342
T_{μ} and T_{μ} and T_{μ} T_{μ
425; 70 L. T. 882; 42 W. R. 652 - 48, 68, 83, 93, 95, 96, 97, 440 ('ourtown (Earl), Logan e, 13 Boar, the boar, 18, 19, 19, 19, 19, 19, 19, 19, 19, 19, 19
Courtown (Earl), Logan v., 13 Beav. 22; 20 L. J. Ch. 347 146
Coutts, Danby v., 29 C. D. 500 - 146
Coveney a Poisso (1010) 1.7 D $= -435$
Jo Case, Lit IP DELIADBIO KING Account: (August
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
775 R.
- 184, 191, 192, 204

XXX

	CARES,		XXXI
	Cow-Cul		
	Cowley r. Newmarket Local Board, (1892) A. C. 345 Cox, Johnstone r. (1881) 10 (J. D. J. 1992) A. C. 345		PAGE
	Cox, Johnstone v. (1881), 19 C. D. 17 Coxoter Arculus 14, (1881), 19 C. D. 17		- 351
		-	124354
	Coxoter, Argylls Ltd. v. (1913), 29 T. L. R. 355 Cox-Moore v. Peruvia (2003)	-	- 409
	Cox-Moore v. Peruvian Corporation, (1908) 1 Ch. 604 387: 98 L. T. 611	: 77 L	J. Ch
	Craig, Army, &c. Society v., 8 T. L. R. 227 - Cranstown & Johnston		- 321
	Cranstown e. Johnston, 3 Ves. jun. 170	-	- 360
		-	
	Credit Assurance and G	110. 11	- 274 2, 114, 352
	Credit Assurance and Guarantee Corporation, (1902) 2 L. J. Ch. 775; 87 L. T. 216; 51 W. R. 20 (G. A.)	Ch a	m: 114, 602 01 - mi
	L. J. Ch. 775; 87 L. T. 216; 51 W. R. 20 (C. A.) - Crédit Foncier, Crouch v., L. R. 8 Q. B. 374; 42 L. J. (L. T. 259; 21 W. R. 943 - 293 200 200 and		01 11
	T. T. 130, 31 11, 14, 16, 8 Q. B. 374: 42 T. J.) R 1	95, 96
	Cree, Somervail v., 4 A. C. 648 293, 299, 300, 302,	304 20	50;29
	Cree, Somervail v., 4 A. C. 648 293, 299, 300, 302, Crewke's Creeke's Creek	oor, oo	0, 006, 307
	Creyke's Case, L. R. 5 Ch. 63; 39 L. J. Ch. 124; 21 I W. R. 22	- 	- 118
	Crichton's Case, (1901) 2 Ch. 184; 18 T. L. R. 556; 70 I 84 L. T. 864; 49 W. R. 556; and on app. (1900) 5 C	" L. 01	2; 18
	84 L. T. 864: 10 W D. 556; 70 I	L.J. Ch	~ 153
	84 L. T. 864; 49 W. R. 556; and on app., (1902) 2 Ch. 531; 86 L. T. 787	.86.71	T T
	Crickmer's Case 10 CD		
	Crickmer's Case, 10 Ch. 614; 46 L. J. Ch. 870; 24 W. R. Crigglestono Coal Co., Re. (1906) 2 (1) 2017	910	, 416, 417
	Crigglestono Coal Co., Re, (1906) 2 Ch. 327; 75 L. J. L. T. 510	Ch an	- 145
	Croft v. Day, 7 Beav. 84	CH: 00;	
	Chompton 6 41	•	393, 398
	Crompton & Co., Ltd., (1914) 1 Ch. 954 Cronck, Owen (1906)		27, 249
		-	- 310
		-	- 326
		-	- 75
		-	- 146
	Crossley (John) & Sons, W. N. (1892) 55	204,	206, 407
		-	- 87
	L. T. 259; 21 W. R. 946 - 293, 299, 300, 302, 3 Crown Bank, 44 C. D. 634; 59 L. J. Ch. 739, 69 J	B. 183;	29
	Crown Bank, 44 C. D. 634; 59 L. J. Ch. 739; 62 L. W. R. 666	04, 305,	306, 307
	W. It. 066	r. 823	; 38
	Town Lease Proprietary Co., 14 T. L. R. 47	-	- 71
	Towther v. Thorley, 50 L. T. 43	-	- 338
. (Toyuon Tramways Co. Kayo n (1000)	-	- 387
,	 'roydon Tramways Co., Kaye v., (1898) 1 Ch. 358; 67 L. 78 L. T. 239; 46 W. R. 405 	J. Ch. 2	22;
U	Toystill, Ernest a D To care - 166	1 189	100
C	rum v. Oakbank Oil Co., 8 A. C. 65; 48 L. T. 537; L. 1 775	-	- 180
0	575	R. 6 11.	L.
C	rumlin Viaduct Works Co. (1879), 11 C. D. 755; 48 537; 27 W. R. 722	, 168, 1	214, 441
e	007; 21 W. R. 722 = (0007) 11 C. D. (00; 48)	L. J. (Ch.
~	* J Star 1 41400 U. 130 T. T. M. 400	-	- 315
		-	- 324
		-	- 395
U	allen, Ex parte, (1891) 2 Q. B. 151; 60 L. J. Q. B. 567; 801; 39 W. R. 543; 8 M. B. R. 174	-	- 23 i
~	801; 39 W. R. 543; 8 M. B. R. 151; 60 L. J. Q. B. 567;	64 L.	т.
C	Herne v. London & Start	-	- 173
	525; 63 L. T. 511; 39 W. R. 88	J. Q.	B.
	•	205, 2(08, 407

xxxi

Cum-Dav

Cumberland Load Co., Eales v., 6 H. & N. 481	PAGE
Cunard Steamship Co. " Hopmond (1000)	- 189
Cunard Steamship Co. v. Hopwood, (1908) 2 Ch. 564; 77 L. J. (785; 99 L. T. 549 -	Ch.
Cundy e. Lindsay 3 Ann Con 120	279, 281
Cunnine, Brooks & Co. r. Bluckhum, D. C	104, 113
865; 54 L. J. Ch. 376; 52 L. T. 225; 33 W. R. 309	85.
Cuninghame, Automatic Solf-Cleaning Co. r., (1906) 2 Ch. 34 : 1. J. Ch. 437; 94 L. T. 651 (C. A.)	- 275 75
Cunningham, R. N., 36 C. D. 532; 57 L. J. Ch. 169; 58 L.	- 190 T
Currie r. Consolidated Kent Collieries Corporation, (1906) 1 K. 1	- 194 B
Curtis r. B. U. R. T. Co., L 28 T. L. R. 585 Cyclists' Toming Co.	- 420
-1 -1 -1 -1 -1 -1 -1 -1	- 432
Cyclists Touring Club r. Hopkinson, (1910) 1 Ch. 179 - 67, 25	- 79
- 67, 23	2, 434

D,

Daimler Co., Continental Terra (1				
Daimler Co., Continental Tyro Co. v., (19 Dale's Case, 6 Q. B. D. 453	915) 1 K.	B. 893	_	29, 243
Dale and Plant / m (1980)	-	-	-	- 18
Dale and Plant, In re (1889), 61 L. T. 2 255-	06; 1 Me	g. 338 ;	43 Ch	. D.
Dalton Co. et Daltas mi	-	-	-	
Dalton Co. r. Dalton Timelock Co., 66 L. Danby r. Coutts 20 C. D. 100	T. 704			185, 253
			-	121, 122
Dandeson, Hague r., 2 Ex. 741; 17 L. J. Dangerfield, Shacklaford, Nucl. 8	Ex 260	-	-	- 435
Dangerfield, Shackleford, Ford & Co.	I D vo	-	-	- 159
Dangerfield, Shackleford, Ford & Co. v., C. P. 157; 18 L. T. 289; 16 W. R. 675 Darlaston Steel Co. 2019	u. n. a C	. P. 407	37 L	. J.
Darlaston Steel Co., Slater W. M.	-	-	-	. 250
		•	-	- 430
Dartmouth Harbour Commi		-	166. 5	232, 233
Dartmouth Harbour Commissioners, Batte Davey & Co. c. Williamson & Song (199	n v., 45 (C. D. 612		- 329
Davey & Co. c. Williamson & Sons, (189 Q. B. 699; 46 W. R. 571	8) 2 Q.	B. 104 -	47 T	* 020 *
Q. B. 699; 46 W. R. 571 -		,	01 14	J.
David Lloyd & Co., Lloyd v., 6 C. D. 339;	37 L. T.	89.000	-	- 309
Th -13 -	01 IA I.	03 ; 23 1	V. R. 8	572
David Payno & Co., Young v., (1904) 9 C	IL and		3	28, 414
David Payno & Co., Young v., (1904) 2 C L. J. Ch. 849; 20 T. L. R. 590 (C. A.) Davies, Anglo, Italia, D. R. 590 (C. A.)	д. 609;	92 L. T.	777;	73
Davies, Anglo, Italian Dash	-	-		73, 235
Davies, Anglo-Italian Bank v., 9 C. D. 275; Davies v. Gas Light and Coke Co., (1909) 1 Davis v. Bank of England 2 Big. (1909) 1	27 W. R.	3; 39 L.	T. 244	411
Davis v. Bank of England, 2 Bing. 393	Ch. 248			- 125
Davis, Loring v., 32 C. D. 625	-		18	35, 440
Davison v. Dupage 5 11	-			
Davison v. Duncan, 7 E. & B. 229	-		10	5, 137
Davison v. Gillies, 16 C. D. 347, n. ; 50 L. 92, n.	J. Ch. 10			- 174
		·•, n.; 4	4 L. J	г.
Davy, AttGen. v., 2 Atk. 212				- 217
		-		- 241

xxxii

Daimt

1

?

Daw-Dey Dawes' Case, 6 Eq. 232; 37 L. J. Ch. 901; 16 W. R. 995 PAGE Dawes, Sharp r., 2 Q. B. D. 26 116, 153 Dawkins c. Antrobus, 17 C. D. 634; 20 W. R. 511; 41 L. T. 557 147, 169 Dawson v. African. &c. Co., (3898) 1 Ch. 6; 67 L. J. Ch. 47; 77 L. T. 392; 46 W. R. 132; 14 T. L. R. 30 (C. A.) 189, - 151 Dawson c. Bra 1e's Tadeaster Breweries Co., (1907) 2 Ch. 359; 76 189, 191 L. J. Ch. 588; 97 L. T. 83 -Dawson v. Isle, (1906) 1 Ch. 633; 75 L. J. Ch. 338; 95 L. T. 385; - 315 Dawson, Row v. (1749), 1 Ves. 331 --- 280 Day, Rr, 3 C. D. 609 -- 308 -Day, Croft c., 7 Beav. 84 - 387 De Beers, British South Africa Co. e., (1930) 2 h. 502 27, 249 Debenture Holders of Anglo-Australian, &c. Co., Newton c., (1895) - 274 A. C. 244; 64 L. J. P. C. 57; 72 L. T. 305; 43 W. R. 401 - 271, 273 De Bouchont v. Goldsmid, 5 Ves. 213 Defries and Sons, (1909) 2 Ch. 423 --. - 436 Defries & Co., Bowen e., (1904) 1 Ch. 37; 73 f., J. Ch. 1; 52 W. R. 287, 295 De la Rue (Thomas) & Co., (1913) 2 Ch. 361 -- 282 Delta Syndicate, 30 C. D. 153; 54 L. J. Ch. 724; 53 L. T. 559; 33 98 De Mattos v. Gibson, 4 De G. & J. 276 -- 122 Demerara Rubber Co., Re, (1933) 1 Ch. 331 -156, 291 Denham & Co., In re, 25 C. D. 752; 50 L. T. 523; 32 W. R. - 424 Dennison, Simpson v., 10 Hare, 51 -- 200, 203, 205, 206, 210 Denton Colliery Co., 18 Eq. 16 --- 66 Denton v. Macneil, 2 Eq. 352; 14 L. T. 721; 14 W. R. 813 -- 121 De Pass's Case, 4 De G. & J. 544 -- 355 Derby Canai Co. v. Wilmot, 9 East, 359 --130, 133 Dermatine Co. r. Ashwerth, 21 T. L. R. 510 -- 259 De Rosaz's Case, 21 L. T. 10 -- 177, 199, 248, 266 Derry v. Peek, 14 App. Cas. 337; 58 L. J. Ch. 864; 61 L. T. 265; - 109 De Ruvigne's Case, 5 C. D. 306; 46 L. J. Ch. 360; 36 L. T. 329 345, 359, 442 Descours, Parry & Co., W. N. (1909) 50 - 206 De- in Provident Gold Mining Co., In re, 22 Ch. D. 593 -- 397 Pulent Co. of Central and West Africa, (1902) 1 Ch. 547; 50 - 355 W. R. 456; 86 L. T. 323 -Dovenish, Pulsford v., (1903) 2 Ch. 625; 73 L. J. Ch. 35; 52 W. R. 97 De Verges v. Sandeman, Clark & Co., (1902) 1 Ch. 579 402, 409, 423 De Waal v. Adler, 12 App. Cas. 141 -- 145 Dexino Patent Packing and Rubber Co., 88 L. T. 791 135 Dexter, Hilder v., (1902) A. C. 474; 71 L. J. Ch. 783; 87 L. T. 313; 7 Com. Cas. 258 Deyes v. Wood, W. N (1911) 51; (3911) 1 K. B. 806 305, 335, 342 - 296

C

xxxiii

	Dia Dun	PAGE
	Diamond Fuel Co., 13 C. D. 400	-141 5
	Dicido Pier Co., In re, (1891) 2 Ch. 354; 64 L. T. 695; 39 W.	R.
	4700	95, 97
	Dickinson c, Valpy, 10 B, & C, 128; 5 M, & R, 126	- 264
	Dickon, Swaby v., 5 Sim, 629	- 326
	Dickson, Holland e., 37 C. D. 669	date
	Direct Spanish Cable Co., 34 C. D. 307; 56 L. J. Ch. 353; 55 16	r.
	nor; oo w. K. 209	44.2
	Direct Spanish Telegraph Co., llannatyne c., 34 C. D. 287; 56 L.	I.
	Ch. 107; 55 17, 1, 716; 35 W. R. 125	- 95
	Discoverers Finance Corporation, Lindlar's Case (1010) 1 (h. 210)	1
	Discoverers Finance Corporation, Cooper's Case, (1910) 1 Ch. 312	7
	Dixon F. Kennaway & Co., (1900) 1 Ch. 833; 69 L. J. Ch. 501; 8	0
	11. 1. 041, / ALGINON, 440	- - 144
	Dixon, Mangles e., 3 H. L. C. 702 -	- 292
	Dodd, Sovereign Life Assurance Co. r. (1899) 2 (1 B 379	- 403
	Doechani Gloves, Ltd., Rr. (1913) 1 (th. 200 -	
	Doman's Case, 3 C. D. 21	- 100
	Dominion of Canada Freehold Estato Co. De 35.1 / 247	13, 49
	Dominion of Canada Syndicato v. Brigstocke, (1911) 2 K. B. 648	, 431
		-
	Doncaster Building Society 'I V. 150	1, 377
	Doré Gallery Co., W. N. (1891) 98: 62 L. T. 738: 38 W. D. 101	- 390
	Dover Coalifierds Extension, Limited, Ly (1908) 1 (% as, we to t	- 395
	$Cut v_T, v_T \mu_1, I, of (U, A)$	4.00
	Dovey v. Cory, (1901) A. C. 477; 70 L. J. Ch. 753; 85 L. T. 257; 50 W P. 65	185
	50 W. R. 65 - 200, 202, 204, 217, 218, 227	
	Downes v. Ship, L. R. 3 H. L. 343; 37 L. J. Ch. 642; 19 L. T. 741-	, 440
	Dowson Re W N (1990) and	122
	Drew, National Exchange Back of Mr.	123
	Drinett Gas Light Co. In re (1808) 1 (the 1st, worth man	346
]	Drincqbier v. Wood, (1899) 1 Ch. 393; 68 L. J. Ch. 181; 79 L. T.	416
	010, 11 W. D. 402; 0 Minison, 76	
]	Driver v. Broad, (1893) 1 Q. B. 744; 63 L. J. Q. B. 12; 69 L. T. 169 -	358
]		
1	Ju Boulay v. Du Boulay I. D 9 D C 441, 1977 D and	220
1	Duck v. Tower Galvanizing Co., (1901) 2 K. B. 314; 70 L. J. K. B. 625 84 L. T. 847	249
I	Juckett v. Gover. 6 (' I) 89, 93 W D 514 19 T 7 01	
L	Augur C. Allisterdamsch Trustoog Kontoon (toon) o ot too	242
л.	Julin V. Mexican Gold Co., W. N. (1800) 110	274
Ľ	Duke of Manchester, Smith v., 24 C. D. 611; 53 L. J. Ch. 96; 49	123
	L. T. 96; 32 W. R. 53	
D	uncan & Co., $R \in [1^{\prime}, 5]$ 1 Ch. 307; 74 L. J. Ch. 188; 92 L. T. 108; 53 W P. 296	211
	108; 53 W. R. 299-	
	409,	412

xxxiv

Dun-Ebb				
Duncan, Davison e., 7 E. & B. 229				PAGE
Funderland For Co. (1000) 1 (1)	-	-		- 174
Dunlop r. Dunlon, 21 (1 11 300, 416		-	-	323, 393
Dunlop c. Dunlop, 21 C. D. 383; 48 L. T. Dunlop c. Higgins, 1 H. L. C. 381; 12 Jun Dunlop Truffault Cycle Co. 2	897 31	W. R.	231 -	151, 160
Danlop Truffault Cyclo Co., R., Shearman Dunn, Parker c., 8 Beav, 497	. 205	-	**	- 393
Dunn, Parker c., 8 Benv, 497	n's Cas	e, 66 L.	J. Ch.	25 - 352
Dunstan r. Imperial & the way	•	-	-	- 326
Dunster's Case, (1891) 3 Ch. 479, 69 7	125	-	-	- 185
Dunster's Case, (1891) 3 Ch. 473; 63 L. J. 43 W. R. 164	Ch. 8	85; 71	L. T. J	28
Duranty's Case (1858), 98 Burn ado	-	-	-	- 102
Dutton e. Marsh, L. R. 6 Q. B. 361 -	-	-	-	- 357
	-	-	-	- 266

12.

Eade, Ireland c., 7 Beav, 55 - -Eaglesfield v. Marquis of Londonderry, 4 C. D. 693; 25 W. R. 190; - 326 -- -Eales e. Cumberton - Lood Co., 6 H. & N. 483 -- 353 Eales, Watso - 359 . 294 - - * Earl of Ches. ... I'm 21 Beav. 426 - 151 Earl of Jersey (many Soft Poor of Neaf", 22 Q. B. D. 548 - 329 - 71 - 354 Earle, Burland v., (190-) A. C. 83; 85 L. T. 553; 71 L. J. - 187 P. C. 1: 50 W. R. 241 - 40, 50, 57, 170, 171, 180, 185, 213, 242 Eacle, Webb v., 20 Eq. 557; 44 L. J. Ch. 608; 24 W. R. 46 - 84, 214 East c. Bennett Brothers, (1911) 1 Ch. 163 - - -East Anglian Rail, Co., Russell v., 3 M. & G. 125 - 169 East Higham Rail, Co. c. Eastern Counties Rail, Co., 11 C. B. 775 - 5 East Holyford Rail. Co., Mahoney v., L. R. 7 H. L. 869 - 44, 45, 46, East Lancashire Rail, Co., Vance e., 3 K. & J. 50 -191, 197, 258 East Pant Mining Co. v. Merryweather, 2 H. & M. 254; 13 W. R. - 66 216; 10 Jur. N. S. 1231 --Eastern and Australia: steamship Co., 68 L. T. 321; 43 W. R. 373-122 -Eastern, &c. Co., Mutter v., 38 C. D. 92 - - -Eastern Counties Rail. Co., Colman r., 10 Beav. 1 -- 229 Eastern Counties Rail. Co., East Higham Rail. Co. r., 11 C. B. 775 - 5 Eastern Counties Rail. Co., Hawkes v., 5 H. L. C. 331 -Eastman Photographic Materials Co., Staples v., (1896) 2 Ch. 303; 5, 73 65 L. J. Ch. 682; 74 L. T. 479 Eobett's Case, 5 Ch. 302; 39 L. J. Ch. 679; 22 L. T. 424, 18 W. R. . 84 Ebbw Vale Co., In re (1877), 4 C. D. 827; 46 L. J. Ch. 241; 36 - 115 - - - 95, 96, 217 -02

XXXV

Ebe-Emm

1'AGB Ebenezer Timmins & Son, Limited, 50 W. R. 134; 18 T. L. R. 29 - 122 Eberle's Hotel Co. ». Jonas, 18 Q. B. D. 459 _ _ - 410 Ebury, Beettie v., 7 Ch. 777; 41 L. J. Ch. 777; 27 L. T. 398; 20 W. R. 994 --· 355 Eddystono Granite Quarries Co., Follit v., 1892) 3 Ch. 75: 61 L. J. Ch. 567; 40 W. R. 667 -- 321 Eddystone Marine Insurance Co., In re. (1893) 3 Ch. 9; 62 L. J. Ch. 742; 69 L. T. 363; 41 W. R. 462 _ 68. 117 Edelstein r. Schuler & Co., 50 W. R. 498; 17 T. L. R. 597; (1902) 2 K. B. 144 - 306 Eden v. Ridsdale, &c. Co., 23 Q. B. D. 368; 58 L. J. Q. B. 579; 61 L. T. 444; 38 W. R. 55 - - -Edgington v. Fitzmanrice, 29 C. D. 483; 55 L. J. Ch. 650; 53 L. T. - 193 369; 33 W. R. 911 -_ _ -- - 230, 355 Edinburgh and District Aerated Water Manufacturers' Defence Association v. Jenkinson, 5 Ct. of Sess. Cas. 1159 - -Edinburgh Northern Trams Co., Manu r., (1893) A. C. 69; 62 L. J. 9 P. C. 74; 68 L. T. 96; 57 J. P. 245 --• 5, 332 Edmonds v. Foster, 45 L. J. M. C. 41 - 123 Edwards, v. Edwards, 2 C. D. 291; 24 W. R. 713; 34 L. T. 472; 45 L. J. Ch. 391 - 325 Edwards r. Midland Rail, Co., 6 Q. B. D. 287 Edwards, Ramskill v., 31 C. D. 100; 55 L. J. Ch. 81; 53 L. T. 949; 74 34 W. R. 96 - 212 Edwards r. Standard Rolling Stock Syndicate, (1893) 1 Ch. 574; 62 L. J. Ch. 605; 68 L. T. 193, 633; 41 W. R. 343 -- 325 Egmont (Lord), Ware v., 4 D. M. & G. 460 -- 235 Ehrmann Bros., (1906) 2 Ch. 697; 75 L. J. Ch. 817; 22 T. L. R. 734 (C. A.), reversing Joyce, J., in 54 W. R. 555 - 282 Eichbann c. City of Chicago, &c. Co., (1891) 3 Ch. 459; 61 L. J. Ch. 28; 65 L. T. 704; 40 W. R. 153 --94 Electrical Engineering Co., Brunton v., (1892) 1 Ch. 434: 61 L. J. Ch. 256; 65 L. T. 745 - -290, 312, 320 Electromobile Co., v. British Electromobile Co., 97 L. T. 196; 23 T. L. R. 192 --Eley r. Positive, &c. Co., 1 Ex. Div. 88; 45 L. J. Ex. 451; 34 L. T. -27, 249 190; 26 W. R. 338 -- 40, 42, 262 Elias r. Continental, &c. Co., (1897) 1 Ch. 511; 66 L. J. Ch. 273; 76 L. T. 229; 45 W. R. 313 - - -Elkington's Case, L. R. 2 Ch. 511; 36 L. J. Ch. 593; 16 L. T. 301; - 328 15 W. R. 665 ~ -- 113 Elmore's German Metal Co., 85 L. T. 767 (C. A.) -- 321 Emma Co. e. Lewis, 4 C. P. D. 396 ; 40 L. T. 168 ; 48 L. J. C. P. 257; 27 W. R. 836--_ Emma Silver Mining Co. v. Grant, 11 C. D. 918 (secret profit); 17 - 331 C. D. 122 (bankruptey) - - -- 332, 336 Emma Silver Mining Co. Rr. (production of books), L. R. 10 Ch. 194 - 398

Emm-Eva

Emmerson's Constitution of the
Emmerson's Case (1866), L. R. 1 Ch. 433; L. R. (1866) 2 Eq. 236 - 137, 409 Empire Co. (1890), 41 C. D. 402; 59 L. J. Ch. 315, 69 J. 59
Empire Co. (1890), 41 C. D. 402; 59 L. J. Ch. 345; 62 L. T. 493; 38 W. R. 747; 2 Meg. 191 -
38 W. R. 747; 2 Meg. 191 - Ennire Trust, J. et al. J. Ch. 345; 62 L. T. 493;
Empress Engineering Co., Re (1878), 16 C. D. 125; 43 L. T. 742; 29 W. R. 342
20 W. R. 342
Engel v. South Metropolitan Co., (1892) 1 Ch. 442; 61 L. J. Ch. 369; 66 L. T. 155; 40 W. R. 282
66 L. T. 155; 40 W. R. 282
Engleneld Colliant C. a constant and a second
English and Colonial Prodnee Co., (1906) 2 Ch. (1, 112 - 206, 212, 335
95 L. T. 580. 00 m + 1. 1990 (1990) 2 (H. 450; 75 L. J. Ch. 891.
= 253, 293
L. J. Ch. 685; 87 L. T. 438; 50 W. R. 571 - 131, 134, 140, 181
$z_{\rm angusu} = 151, 134, 140, 184$
62 L. J. Q. B. 136; 69 L. T. 406; 41 W. R. 133 - $290, 312$ English Joint Stock Bank, Barwick and W. R. 133 - $290, 312$
English Joint Stock Bank, Barwick c. L. B. 2 K. 2290, 312
Ex. 147 Ex. 259 \cdot 36 \cdot 1
Enthoyen, Kellock c., L. R. 9 O. B. 241, 19 1 74, 139
W. R. 322
L. T. 269 - 27 W. D. av. D. av. D. av. D. av. J. Ch. 73 - 20
Ernest v. Croystill, 2 De G. F. & J. 175
Ernest c. Croystill, 2 De G. F. & J. 175 Ernest c. Lorna Co. (1997)
Ernest v. Loma Co., (1897) 1 Ch. 1; 66 L. J. Ch. 17; 75 L. T. 317; 45 W. R. 86
Ernest e Nide porteres
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jun N. S. and 172, 174, 239
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 - 44, 56, Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 (7)
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 – 44, 56, Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 Ch. Esdaile, Reg. c. (1859), 4 Markov
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 – 44, 56, Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 Ch. Esdaile, Reg. c. (1859), 4 Markov
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 - 44, 56, Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 Ch. Esdaile, Reg. v. (1858), 1 F. & F. 213 Esparto Trading Co., Rv, 12 C. D. 191; 48 L. J. Ch. 573; 28 W P.
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 – 44, 56, Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 Ch. Esdaile, Reg. v. (1858), 1 F. & F. 213 – 280 Esparto Trading Co., Re, 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. Espuela Land and Counties Counter and Counties Counter and Counter an
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 – 44, 56, Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 Ch. Esdaile, Reg. v. (1858), 1 F. & F. 213 – 280 Esparto Trading Co., Re, 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. Espuela Land and Counties Counter and Counties Counter and Counter an
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 $-$ 44, 56, 65, 68, 425, 441 366 $-$ 280 Esberger & Son, Ltd. c. Capital and Counties Bank, (1913) 2 Ch. Esdaile, Reg. c. (1858), 1 F. & F. 213 $-$ 280 Esparto Trading Co., Re, 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. Espuela Land and Cattle Co., 48 W. R. 684; (1909) 2 Ch. 187 85, 168 Estates Investment Co., Ross v., 3 Ch. 682; 37 L. J. Ch. 873, 10
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 Ch. Esbaile, Reg. v. (1858), 1 F. & F. 213 Esparto Trading Co., Rv , 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. Espared Land and Cattle Co., 48 W. R. 684; (1909) 2 Ch. 187 Estates Investment Co., Ross v., 3 Ch. 682; 37 L. J. Ch. 873; 19 L. T. 61; 16 W. R. 1151 Etheridge v. Control University of the state o
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 Esberger & Son, Ltd. c. Capital and Counties Bank, (1913) 2 Ch. Esbaile, Reg. c. (1858), 1 F. & F. 213 Esparto Trading Co., Rc , 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. Espuela Land and Cattle Co., 48 W. R. 684; (1909) 2 Ch. 187 Estates Investment Co., Ross c., 3 Ch. 682; 37 L. J. Ch. 873; 19 L. T. 61; 16 W. R. 1151 Etheridge c. Central Uruguay Railway, (1913) 1 Ch. 425 Eaphrates and Tigris Steam Network (1913) 1 Ch. 425 Esparate Conductor (1900) 10 Estates and Tigris Steam Network (1913) 1 Ch. 425 Esparate Conductor (1900) 10 Estates and Tigris Steam Network (1913) 1 Ch. 425 Estates and Tigris Steam Network (1913) 1 Ch. 425 Estates Conductor (1900) 10 Estates and Tigris Steam Network (1913) 1 Ch. 425 Estates (1900) 10 Estates (1900) 10 Es
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 Esberger & Son, Ltd. c. Capital and Counties Bank, (1913) 2 Ch. Esbaile, Reg. c. (1858), 1 F. & F. 213 Esparto Trading Co., Rc , 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. Espuela Land and Cattle Co., 48 W. R. 684; (1909) 2 Ch. 187 Estates Investment Co., Ross c., 3 Ch. 682; 37 L. J. Ch. 873; 19 L. T. 61; 16 W. R. 1151 Etheridge c. Central Uruguay Railway, (1913) 1 Ch. 425 Eaphrates and Tigris Steam Navigation Co., (1904) 1 Ch. 360; 73
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 Esberger & Son, Ltd. c. Capital and Counties Bank, (1913) 2 Ch. Esbaile, Reg. c. (1858), 1 F. & F. 213 Esparto Trading Co., Re, 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. Espuela Land and Cattle Co., 48 W. R. 684; (1909) 2 Ch. 187 Estates Investment Co., Ross e., 3 Ch. 682; 37 L. J. Ch. 873; 19 L. T. 61; 16 W. R. 1151 Etheridge v. Central Uruguay Railway, (1913) 1 Ch. 425 Eaphrates and Tigris Steam Navigation Co., (1904) 1 Ch. 360; 73 L. J. Ch. 175; 90 L. T. 56 Eupion Fuel and Gas Co. 9 W Mark
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 - 44, 56, 65, 68, 425, 441 - 366 E-sberger & Son, Ltd. c. Capital and Counties Bank, (1913) 2 Ch. E-sdaile, Reg. c. (1858), 1 F. & F. 213 - 280 E-sparto Trading Co., Rc , 12 C. D. 191; 48 L. J. Ch. 573; 28 W. R. - 102, 151 - 146- E-spuela Land and Cattle Co., 48 W. R. 684; (1909) 2 Ch. 187 - 85, 168 L. T. 61; 16 W. R. 1151 - 346, 353, 351 E-theridge c. Central Uruguay Railway, (1913) 1 Ch. 425 - 430 L. J. Ch. 175; 90 L. T. 56- E-upion Fuel and Gas Co., Rc , W. N. (1875) 10 - 80
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 191 175, 192, 174, 239 102, 151 102, 151 102, 151 102, 151 102, 151 102, 151 102, 151 102, 151 102, 151 104, 155, 105 104, 175, 105 105 106 107 107 107 107 107 107 107 107
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 153 Esberger & Son, Ltd. c. Capital and Counties Bank, (1913) 2 (h. Esdaile, Reg. c. (1858), 1 F. & F. 213 210, 215 210, 215 146-
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 175, 175, 12 175, 175, 195 175, 187 195, 195 195, 195 195 195 195 195 195 195 195
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 175, 175, 175, 175, 175, 175, 175,
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 175, 175, 175, 175, 175, 175, 175,
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 175, 175, 175, 175, 175, 175, 175,
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 175, 175, 175, 195 175, 195
Ernest c. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 175, 191 175, 191 175, 191 175, 191 191, 175, 192 192, 151 192, 151 192, 151 192, 151 192, 151 194, 157 194, 157 195, 154 195, 154
Ernest v. Nicholls (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 172, 174, 239 175, 193, 175, 194, 275 175, 195, 175, 195, 175, 175, 195 175, 175, 195, 175, 195 175, 175, 195 175, 175, 195 175, 195

xxxviii

Eva-Far

1

					PAGE
Evans, Jones v., (1913) 1 Ch. 23	-	_	_	_	- 220
Evans v. Rival Granite Quarries, (19)10) 2 K	B 97	a	-	
Evans, Ro, W. N. (1892) 126 -	-	1 201 101	.,	-	- 310
Evans, Spackman v., L. R. 3 H. L.	-	- T 1 /	-		397, 398
1 * 1	111: 91	11.9.1	Cn. 152;	: 19 L	. T.
151	-	•	-	149.1	51, 227
Evans' Trustees, Bank of Ireland v.,	5 H. L.	C. 389	1 -	_	050
Everett c. Automatic, &c. Co., (1892	2) 3 Ch	506 . 6	кэт т	CL 0	- 200
67 L. T. 349	, o om	000, 1	um th U.	Ch. 2	HI:
		•	-	-	- 159
Evershed, Wallace v., (1899) 1 Ch. 89	91 -	-	-	-	- 328
Exchange Bank v. Reg., 11 App. Cas	. 157 -	-	-	-	- +10
Exchange Drapery Co., In re, 38 C.	D. 171	· 57 I	J. Ch	01.6	
L. T. 544; 36 W. R. 444 -				514,	
Exchange Trust, Limited, Larkworth	unda Car	- /100	-	-	- 150
L. J. Ch. 387; 88 L. T. 56 -	iy's cas	c, (190	3) I Ch.	711;	72
Part 10 1: 501. 1. 30 -		•	-	-	- 152
Exeter and Crediton Rail. Co. v. Bulle	r. 5 Rv.	Cas. 21	11 · 11 J	ur 52	1 0 10
Exhall Coal Co., Wyley r., 33 Beav.	538				
Exploring Land and Minerals Co. v. 1			т из	-	- +14
Explosives Co. Manager and T. T.	voienma	um, 94	L. T. 23	34 - 20	90, 205
Explosives Co., Moore v., 56 L. J. Q.	B. 235			-	- 355
Explosives Co., Reid r. (1887), 56 L.	J. Q. B.	388: 1	19 Q. B.	1) 96	1.
57 L. T. 439; 35 W. R. 509					
	-		-	20	53, 327

F.

Faber, Nelson & Co. v., (19	903) 2 K	B 267	. 70 T	TRA			
L. T. 21	-		1 1 - 14.	J. R. I			
Fairbairn, &c. Co., Re. (189		170.0	-	-	-	309, 3	310
415; 42 W. R. 155 -	b) o Ch	- 400 ; E	3 L.J.	Ch. 8;	69 L	. Т.	
Fuilio Frommer P.M.	-	-	-	-	-	148, 1	52
Fairlie, Freeman c., 3 Nev.	40	-	-	-	-	- 2	22
Famatina Co. v. Bury, (191	0) A. C	439	-	-	_	69, 3	17
Famatina Development Cor	poration,	(1914)	2 Ch. 27	1	_	- 2	
Family Endowment Society	5 Ch. 1	18	_				
Fareham Brick Co., Totterd	lell a 1	R 10	1) 0=1		-	- 3	54
35 L. J. C. P. 278; 12 Ju	N N Q (- AL I C	. r. 0/4	; 14 W	. R. 9	19;	
Farmer London and Mad	6 M O C	901	-	-	-	- 1	97
Farmer, London and North L. T. 204 -	iern S. S	6. Co. v.	, (1914)	W. N.	200;	111	
	•	-	•	-	-	- 1/	50
Farmer v. Goy & Co., (1900)	2 Ch. 1	49; 69	L. J. C	h. 481 :	83 L	т	
0001 40 W. K. 420 -	-	-	-			00	
Farmers' United, Limited, ((1900) 2	Ch. 449	· 69 T.	T Ch		92, 29	10
L. T. 406 -		CIII I I II I	, 00 11	. о . сп.	. 084;		
	North				-	- 12	23
Farnham United Breweries 2 Ch. 125	, worthe	rn Ass	urance,	Ltd. 1	4., (19)	12)	
	-	-	•	•	-	- 32	21
Farnol, Eades, Irvine & Co.,	Re, (191	ð) 1 Ch.	22 .	•	-	- 32	25
currar v. Farrars, 40 C. D.	395-409	; 58 L	J. Ch.	185 : 6	50 L.	т	-
121; 37 W. R. 196		_			_		-
					-	+ J	4

Fau-For

- au -r or	
Faure Electric Accumulator Ce. v. Phillipart, 58 L. T. R. 525	PAGE
Fauro Electric Co., 40 C. D. 141, 59 J. J. (7) 148, 151, 15	- 147,
 Faure Electric Co., 40 C. D. 141; 58 L. J. Ch. 48; 59 L. T. 9 W. R. 116; 1 Meg. 99 	0, 192, 195 18: 37
Fearon Amor n 0 A 6 m	9, 204, 340
Fearon, Amor v., 9 A. & E. 548	
Fe ⁽¹⁾ Ion, Westmoreland Slate Co. v., (1891) 3 Ch. 15 - Fenwick, Stobart & Co. (1000) 1 (7)	- 262
	- 405 - 235, 260
	- 233, 260
+ OLIGHUEZ S EVOCUTOR: 7 (L. D.)	8, 179, 199
 Fernie, Hallows r., 3 Ch. 467; 36 L. J. Ch. 267; 18 L. T. 34 W. R. 873 	- 139
W. R. 873	0;16
Fewings, Ex parte (1884), 25 C. D. 338; 53 L. J. Ch. 545; 20 109; 32 W. R. 352	- 355 L. T.
Finance and Issue r. Canadian Produce Corporation, (1905) 1 CF 53 W. R. 176	- 286
53 W. B. 172	1. 37 :
Financial Company	- 108
Financial Corporation, Re. 28 W. R. 760	
Financial Corporation, Clinch r., 5 Eq. 461; 4 Ch. 117; 18 1 197; 37 L. J. Ch. 281	- 211 TP
197; 37 L. J. Ch. 281	167, 175
Findlay v. Waddell (1910), S. C. 670, Ct. of Sess. Firbank's Excentors and the second	107, 170
	227, 420
57; 56 L. T. 36; 35 W. R. 92	4. 13.
Fisher v. Black and White Publishing Co. (1991) 1 ct.	190, 276
Ch. 175; 84 L. T. 305; 49 W. R. 310 (C. A.)	L. J.
- Case (1000), 31 (1, 1) 190, 55 T T COL 105	- 215
832; 34 W. R. 49, 335	L. T.
Fitzgerald v. Persse (1908) 1 L. D. ero	- 113
A Communice, Edgington P., 99 (° D. 150, 27 T. J. co.	- 319
369; 33 W. R. 911	л. Т.
Fleetwood and District Sy dicate (1013) 1 (1	230, 355
	- 402
Fliteroft's Case, 21 ('h Div 525 - 10 T T C	- 78
Flitcroft's Case, 21 Ch. Div. 535; 52 L. J. Ch. 217; 48 L. T. 86; W. R. 174	31
W. R. 174 - 55, 52 L. J. Ch. 217; 48 L. T. 86; Floating Dock of St. Thomas, (1891) 1 Ch. 691	221, 407
Florence Land Co. 10 (1 D. 500) 1 Ch. 691	- 96
Florence Land Co., 10 C. D. 537; 48 L. J. Ch. 137; 39 L. T. 589; W. R. 236	97
Florence Land Co., Norton r. (1877), 7 C. D. 332; 38 L. T. 377; W. R. 123 -	310. 311
W. B. 193 -	26
Follit v. Eddystone Granite Oneni a	- 285
Ch. 567; 40 W. R. 667	
Forbes' Case, 8 Ch. 775	- 321
Ford, Bloomenthal v., (1897) A. C. 156; 66 L. J. Ch. 253; 76 L. 205; 45 W. R. 449	- 189
205 : 45 W. R. 449	т.
Ford, Bray v., (1896) A. C. 44 · 65 T. T. O. D. S. 75, 136, 1	44, 440
Ford, Bray v., (1896) A. C. 44; 65 L. J. Q. B. 213; 73 L. T. 609	-
Ford v. Earl of Chesterfield 21 Boom 404 192, 19	93. 436
	- 329
Foreign and Colonial Trust Re (1801) o Cl. no.	272. n.
Foreign and Colonial Trust, Re, (1891) 2 Ch. 395; 65 L. T. 78; W. R. 699	39
	- 78

- 78

Then Paul						
For - Ful					P	AGE
Foreign Gas Co., Bower e., W. N.	(1877) 2	222	-	-		320
Foro Street, &c. Co., 59 L. T. 214;	I Meg.	67	-	-	-	94
Forest of Dean, &c. Co., 10 C. D	. 450;	40 L. J				
394	-	-	- 17	9, 201,	204, 2	:05
Forrest v. Manchester Rail. Co., 30	Beav. 4	0 -	-	-	-	67
Forwood, Costa Rica Co. v., (1900)	1 Ch. 73	56; on s	pp., W	. N. (1	901) -	
44; (1901) 1 Ch. 746 -	-	-	-	192,	193, 1	94
Forwood, Rhodes v., 1 A. C. 256	-	-	-	-	- 2	63
Foss v. Ilarbottle, 2 Hare, 461	-	-	- 44), 176,	191, 4	41
Foster, Edmonds v., 45 L. J. M. C.	41	-	-	-	- 1	23
Foster, Pearce ., 17 Q. B. D. 536;	55 I. J	J. Q. B. :	306; 54	L. T.	664 2	62
Foster v. Borax Co., (1901) 1 Ch. 326	; W. N	. (1899)	34;83	L. T. (538 ;	
49 W. R. 212	-	-		5, 309,		25
Foster c. Coles, 22 T. L. R. 555	-	-	-	-	- 8	84
Foster v. Now Trinidad Co., (1901)	1 Ch. 20	08; 70 1	L. J. CI	1. 123 :	49	
W. R. 119; 8 Manson, 47 -		-			215, 21	17
Fothorgill, Hardy r. (1888), 13 A. C.				: 59 L	. Т.	
273; 37 W. R. 177 -	-	-	~		410, 44	11
Foucar & Co., Re, (1913) W. N. 83	_	-	-	-	- 16	
Foweraker, Simultaneous Colour P	rinting	Synd. /	. (1901	N I K	B	/()
771; 70 L. J. K. B. 453; 8 Manso	n. 307	-	-		309.31	8
Fowler v. Broads Patents, &c. Co.,	(1893)	1 (4) 7:	01 · 40	1.1	(1. (1.	11.9
373; 68 L. T. 576; 41 W. R. 247	-				- 27	•••
Fowler, Cook r. (1874), L. R. 7 H. I.			_	-	- 24	
Fox, Ex parte, L. R. 6 Ch. 176	_	-			- 42	
France v. Clark, 26 C. D. 263; 53		- 1. 585.	50 1	- T. 1.	- 12	÷±
W. R. 466	-		00 14			
Francke, Re, 57 L. J. Ch. 437	-	-	•	- 1	34, 14	
Francklyn, Halifax Sugar Co. r., 5	- 0 T 1	Ch 30	-	- T m -	- 32	4
2 Meg. 129	0 11, 0,	сц. оз	1; 02			
Frankenburg r. Great Horseless Ca	-	-	-	- 1	.95, 23	3
L. J. Q. B. 147; 81 L. T. 684	rriage,	(1900) 1	Q. D.	504;		
Fraser, Henthorn v., (1892) 2 Ch. 27	- . (1) T	- T/11.0*	- 1)	-	- 35	8
40 W. R. 433	; 01 1	J. Ch. 34	3:661			
Freehold Land Co., Kent r., 3 Ch. 49	-	-	-	- 1	03, 10	Ð
Freeman v. Cooke, 2 Ex. 654 -	3	-	-	-	- 35	
	-		-	-	- 143	3
Freeman v. Fairlio, 3 Nev. 40	-		-	-	- 22:	2
Frost (S.) & Co., (1898) 2 Ch. 556; (i	1899) 2	Ch. 207		-	- 121	l
Fruit and Vegetable Association v. Ke	ekewich	, (1912)	2 Ch. 3	2	- 161	5
Fuke, Boschock Proprietary Co. v., (Ch. 14	8; 75 1	J. C	h.	
	-		-	164, 18	84, 186	5
Fuller v. Glyn, Mills, Currie & Co., (1	1914) 2	K. B. 16	18		- 145	;

 $\mathbf{x}\mathbf{l}$

G. Gab-Gen Gaboriau, Rex r., 11 East, 77 PAGE - 176 Gadd r. Houghton, 1 Ex. D. 357 Gallagher, Slater and Mason's Case, 46 L. T. 54; 30 W. R. 378 199, 255 Gallard, Ex parts, (1896) 1 Q. B. 68; 65 L. J. Q. B. 199; 73 L. T. - 415 457; 44 W. R. 121; 2 Manson, 515 (C. A.) Galloway v. Hallé Concerts Soc., (1915) 2 Ch. 233 -- 403 Galloway r. Schill & Co., (1912) 2 K. B. 354 -148, 149 -Gallsworthy v. Selby Dam Commissioners, (1892) 1 Q. B. 348; 61 - 123 L. J. Q. B. 372; 66 L. T. 17; 8 T. L. R. 60 - -Gaudy v. Gaudy (1885), 30 C. D. 57; 54 L. J. Ch. 1154; 53 L. T. - 75 306; 33 W. R. 803 -_ Garden Gully, &c. Co. v. McLister, 1 App. Cas. 39; 33 L. T. 408; 24 - 323 W. R. 744 ---Gardiner, Macdougall v. (1875), L. R. 10 Ch. 606; 1 C. D. 13; 45 -147, 151, 152L. J. Ch. 27; 24 W. R. 118 - - 40, 50, 164, 165, 176, 242 Gardner v. Iredale, (1912) 1 Ch. 700 -- -Gardner v. London, Chatham and Dover Railway, 2 Ch. 201 -117, 163, 368Garnet, Armitago v., (1893) 3 Ch. 337 - 283 - -Garrard v. Hardey, 5 Man. & Gr. 471 - 220 Gartside v. Silkstone, &c. Co. (1882), 21 C. D. 762; 51 L. J. Ch. 6 828; 47 L. T. 76; 31 W. R. 36 -Gas Light and Coko Co., Davies r., (1909) 1 Ch. 248 - 320 Gas Meter Co., Andrews v., (1897) 1 Ch. 361; 66 L. J. Ch. 246; 76 - 125 L. T. 132; 45 W. R. 321 - - - 48, 50, 83, 88, 90, 215, 439 Gaskell, Gosling v., (1897) A. C. 575 - - - - - - - - - - - 296, 326, 328 - -Gee v. Bell, 35 C. D. 160 - -Geisse v. Taylor, (1905) 2 K. B. 658; 74 L. J. K. B. 912; 93 L. T. - 327 534 (Div. Ct.) Geldert, Municipality of Pieton v., (1893) A. C. 524 -- 319 General Accident Co., (1904) 1 Ch. 147; 73 L. J. Ch. 84; 89 L. T. - 351 699; 52 W. R. 332 --General Auction, &c. Co. r. Smith, (1891) 3 Ch. 432; 60 L. J. Ch. - 418 723; 65 L. T. 188; 40 W. R. 106 - - -General, &c. Co., Grill e., L. R. 1 C. P. 603; affd., L. R. 3 C. P. 68, 269 476; 35 L. J. C. P. 324 - -General Commercial Trust, Verner v., (1894) 2 Ch. 239; 63 L. J. Ch. - 202 456; 70 L. T. 516 -• - -General Exchange Bank, Ex parte Lewis (1871), L. R. 6 Ch. 818; 40 216, 217, 218 L. J. Ch. 429; 24 L. T. 787; 19 W. R. 791 -General Finance Co., National Trustce Co. of Australasia v., (1905) - 159 A. C. 373 -General Incandescent Co., Armorduct Co. r., (1911) 2 K. B. 143 - 207 General Industrial Development Syndicate, Limited, W. N. (1907) 23 - 100 General Motor Cab Co., 56 S. J. 573; (1913) 1 Ch. 377 - 294, 431

xli

Gen-Gol General Phosphate Corporation, W. N. (1893) 142 -PAGE - 398 General Rolling Stock Co., Rr, 20 W. R. 762; L. R. 7 Ch. 646 409, 402 General Service Co., Re, (1891) 1 Ch. 496; 60 L. J. Ch. 586; 64 L. T. 272 --. General South American Co., Re, 2 C. D. 337; 34 L. T. 706; 24 - 413 W. R. 891 - -- 277, 510 -George Newman & Co., (1895) 1 Ch. 674; 64 L. J. Ch. 407; 72 L. T. 697; 43 W. R. 483 - - -- 56, 186, 206, 367, 371 George Whitechurch & Co., (1902) A. C. 117; 85 L. T. 349; 50 W. R. 218-H. L. (E.) -German Dute Co., R., 20 C. D. 169; 51 L. J. Ch. 564; 46 L. T. 327; - - 139, 261 30 W. R. 717 -- -71, 391, 394 German Mining Co., Re, 4 De G. M. & G. 19; 23 L. T. (O. S.) 200; 2 W. R. 543 - --Gerson v. Simpson, (1903) 2 K. B. 197; 72 L. J. K. B. 603; 89 L. T. 211, 275 117; 51 W. R. 610 --- -- -- 358 Gibb, Mersey Dock Trustees v., L. R. 1 H. L. 93 -Gibb, Overend, Gurney & Co. e., L. R. 5 H. L. 480; 42 L. J. Ch. 67 -74 201, 202, 204 Gibson, De Mattos v., 4 De G. & J. 276 - 156, 291 Gibson v. Barton, L. R. 10 Q. B. 329; 44 L. J. M. C. 81; 32 L. T. 396; 23 W. R. 858 -Gibson c. Holland, L. R. 1 C. P. 1 396; 23 W. R. 858 -123, 163, 245 -Gilbert's Case, 5 Ch. 559; 39 L. J. Ch. 837; 23 L. T. 341; 18 W. R. - 256 938 -Gill's Case, 12 C. D. 755 Gillies, Davison v., 16 C. D. 347 n.; 50 L. J. Ch. 192 n.; 44 L. T. 92 n. 217 Gilpin, McCollin v., 5 Q. B. D. 390 - - - - 177, 199 Glamorgan Iron & Coal Co., Marshall e., 7 Eq. 129; 38 L. Ch. J. 69; 19 L. T. 632; 17 W. R. 435 - - - -Glasdir Copper Mines, English Electro-Metallurgical Co. v. Glasdir -44 Copper Mines, (1904) 1 C. D. 819; 73 L. J. Ch. 461; 90 L. T. 412 - 327 Glasdir Copper Mines, Re, W. N. (1905) 57; (1906) 1 Ch. 365 Glasgow and Transvaal Options, Sleigh v., G. F. 420 (Ct. of Sess.) - 341 Glasier v. Rolls (1889), 42 C. D. 436; 58 L. J. Ch. 820; 62 L. T. 133; 38 W. R. 113; 1 Meg. 196, 418 -- 333 Glen, Hong Kong & China Co. v., (1914) 1 Ch. 527 -- 117 - 393 Glossop v. Glossop, (1907) 2 Ch. 370; 76 L. J. Ch. 610; 97 L. T. 372 - 188 - 184 Glover and Giles (1881), 18 C. D. 180 - -- - 54 Gluckstein v. Barnes, (1900) A. C. 240; 69 L. J. Ch. 385; 82 L. T. 393; 7 Manson, 321 (H. I.) - - - 331, 332, 333, 334 Glyn e. Baker, 13 East, 509 -Glyn, Mills, Currie & Co., Fuller v., (1914) 2 K. B. 168 --- 307 Gold Co., Re, 11 C. D. 719; 48 L. J. Ch. 281; 40 L. T. 5; 27 W. R. -- 145 ---170, 239, 393

xlii-

Galijanje	XIIII
Gol-Gra	
Gold Exploration Syndicate, Gra. * v., (1900) 1 Q. B. 233; 69 1 Q. B. 150; 82 L. T. 5; 48 W. R. 2 O (C. A.)	PAGM
Q. B. 150 : so T $\frac{10}{10}$ (Fra. * v_{ee} (1900) 1 Q. B. 233 : 69 1	L. I.
Q. B. 150; 82 L. T. 5; 48 W. R. 2.0 (C. A.)	- 193
	201 20=
Gold Reefs of W. Africa, Allen v., (1900) 1 Ch. 656; 31 W. R. 853 - 48 W. R. 452; 82 L. T. 210 - 77 40 Ch. 656; 69 L. J. Ch.	391, 397
48 W. R. 452; 82 L. T. 210 - 47, 49, 50, 91, 151, 154, 166, Goldsborough Co., North Australian Co. a. 61 J. J. Ch. 5	200;
Goldsborough Co., North Australian Co. v., 61 J., 151, 154, 166, Goldsmid, De Bouchast & V. (1997) Goldsmid, De Bouchast & V. (1997) Goldsmid, De Bouchast & V. (1997) Goldsmid, Co. (1997) Goldsmid,	
	- 390
Goldsmin, Jurner e. (1801) 1 O. D. ***	- 436
Concerne of Koperts (1880) 11 (1 1) to	- 263
Coording ow P. Nelson Line I to (1010) . at	- 286
Goodwin, Ferraira & Co., Ladenberg v. (1912) 2 Ch. 234 Goodwin v. Robarts, 10 Fz, 237, (1912) 3 K. B. 275 -	- 321
Goodwin v. Robarts, 10 Ex. 337; 44 L. J. Ex. 157; on app., 1 A Cas. 476; 45 L. J. Ex. 748; 35 L. T. 170; 21 W. D. en app., 1 A	- 281
Cas. 476: 45 I. J. 12. 740 as 7 1. J. Ex. 157; on app., 1 A	.00.
	02, 304,
	305, 307
Gordillo v. Weguelin, 5 C. D. 303	000, 001
Gorringe v. Irwell, &e. Works (1886), 34 (°, 1), 128; 53 L. J. Ch. (55 L. T. 572; 35 W. R. 86 -	- 286
55 L. T. 572; 35 W. R. 86-	50; 215 900
Gorrissen's Case, L. R. 8 Ch. 507; 42 L. J. Ch. 864; 28 L. T. 61 21 W. R. 536	315, 399
Gosling a (1. 1. 9)	- 339
Gosling v. (laskell, (1897) A. C. 575 - 206 - 206 - 2	26, 328
Gover's Case, 1 C. D. 182; 45 L. J. Ch. 83; 33 L. T. 619; 24 W. 125 -	10, 028 D
Gover, Duckett c., 6 C. D. 82 : 25 W. R. 544 : 46 L. J. Ch. 407 Government Stock, &c. Co. v. Maxie, D. 5, 6	59, 361
Government Stoek, &c. Co. v. Manila Rail. Co., (1897) A. C. 81; L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353	- 242
L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353 Government Stock Line T. 553; 45 W. R. 353	00 09, 310
	87, 010 L
381; 66 L. T. 608; 40 W. R. 387 Goy & Co. Emerged V. R. 387	ц. - 78
Goy & Co., Farmer v., (1900) 2 Ch. 149; 69 L. J. Ch. 481; 83 L. 309; 48 W. R. 425	- 115 P
Graham 7)	
Graham, Reg. c., 9 W. R. 738	P2, 293
Graham v. Van Diemen's Land Co., 26 L. J. Ex. 73- Grain's Case, 1 C. D. 2007	- 173
	1. 166
	- 7
24 T. L. R. 480 (C. A.)	:
Granophone Co., Addis (1990) A. C	~ 190
a starting silver all inter (a 11 (b)	- 263
Grant, Emma Silver Mining Co. r., 11 C. D. 918 (secret profit); 1 C. D. 122 (bankruptey)	7
Grant, Household Fire Insurance Court and The 33:	2.336
Grant, Household Fire Insurance Co. c., 4 Ex. D. 216; 48 L. J. Ex. 577; 41 L. T. 298; 27 W. R. 858	
Grant, Moxham r. (1900) 10. B. D. G.	- 109
65 (C. A.) - 65 (C	
Grant, Twyeross v., 2 (C. P. D. 160, 16 J. J. C. P. 180, 211	. 407
Grant, Twyeross v., 2 C. P. D. 469; 46 L. J. C. P. 636; 36 L. T. 812; 25 W. R. 701	
Grant v. Gold Exploration Syndicate, (1900) 1 Q. B. 233; 69 L. J. Q. B. 150; 82 L. T. 5: 48 W. P. 280 (G. A.)	. 443
Q. B. 150: 82 L. T. 5. (S. W. D. 1900) 1 Q. B. 233; 69 L. J.	
Q. B. 150; 82 L. T. 5; 48 W. R. 280 (C. A.) Grant v. United Switchish & W. R. 280 (C. A.)	193
Grant v. United Switchback Co., 40 C. D. 135; 58 L. J. Ch. 211; 60 L. T. 525; 37 W. R. 312	
- 66, 75, 167, 168, 178,	184
193, 241.	100,
195, 241,	203

xliii

Gra-Gre			
Grave, Nant-y-glo, &c. Co. c., 12 C. D			PAGE
Gray v. Lewis, L. R. 8 Ch. 1035; 43 L. 21 W. R. 923	I the max	-	- 209
21 W. R. 923	o. (n. 281)	29 1. 1	Ľ. 12;
Gray e. Pearson, 6 H. L. C. 106		•	- 50
Gray r. Stone & Faunell, 69 L. T. 282; 692 -		-	69, 273
692	F. N. (18	93) 133;	3 R.
Great Britain Mutual, Re, 16 C. D. 246; 1 Great Central Mining Co. Browning .			- 160
Great Central Mining Co., Browning r., 5 Great Cohar Ltd. B. (1977)	9 C. D. 39;	20 C. D.	35 - 390
Great Cobar, Ltd., Re, (1915) 1 Ch. 682	11. & N. 850	5 -	- 255
Great Eastern Rail, Co., Abrath e., 11 App Great Eastern Pail Co., Abrath e., 11 App		-	- 326
Great Eastern Rail, Co., AttGen. r., 5 A. 42 L. T. 810: 28 W R 750	5. Cas. 247	-	- 74
42 L. T. 810; 28 W. R. 769	Col13 (49]	J. Ch.	545 ;
Great Eastern Rail, Co. v. Turmon & cu.		-	- 63
Great Eastern Rail, Co. v. Turner, 8 Ch. 1 L. T. 697: 21 W. R. 163	49; 42 L. J	. Ch. 83	; 27
Great Fingall Consolidated Data		- 55	179, 180
Great Fingall Consolidated, Ruben v., (190	6) A. C. 439	-	46, 136,
Great Horseless Carriage Prostant		143, 258,	261, 443
Great Horseless Carriage, Frankenburg - L. J. Q. B. 147; 81 L. T. 684	$\sim (1, 0) \pm 0$	I. B. 504	: 69
Great Northern Co., Henry e., 1 De G. & J. L. T. O. S. 141; 3 Jur. N. S. 1133	606; 27 L.	J. Ch. 1	; 30
			- 84
Great Northern Rail, Co., AttGen. c., 11) Great Northern Rail, Co., m	r. & Sm. 283	\$ -	- 68
Great Northern Rail. Co., Thairwall &., (19) Great Northern Salt Co., Thairwall &., (191	0) 2 K. B. 5	09 -	- 221
191 a Mr. Call Co., 44 C. D. 472; of) L. J. Ch. 2	88; 62 L	. T.
Great Western (Kanada Fallanda)		181,	244, 245
Great Western (Forest of Dean) Consumer- L. J. Ch. 743: 46 L. T. 855, 20 W. D. 90	s' Co., 21 C.	D. 769	51
Great Western Rail, Co., Hoole r., 3 Ch. W. R. 260 -	262; 17 L.	T. 453;	16
		-	- 220
Great Western Rail. Co., Ranger r., 5 H. L. Greaves v. Tofield, 14 C. D. 571	C, 86 =	-	- 74
Green Poarso a 1 J C M AG		-	- 18
Green, Pearse c., 1 J. & W. 135 - Green, Whaley Prills		-	
Green, Whaley Bridge Co. c., 5 Q. B. D. 109 28 W. R. 351 ; 41 L. T. 674	; 49 L. J.	Q. B. 32	26 :
	· _	193, 3	31, 332
Green's Case, 19 W. R. 1057 -		_ `	- 133
Green v. Wright, 1 C. P. D. 592	· _	-	- 262
Greene, Robb r., (1895) 2 Q. B. 315 -	-	-	
Greenwell v. Porter, (1902) 1 Ch. 530; 71 L. J. Greenwich Ferry, Lathon v. 72 L. 7. 700	. Ch. 243; 86	L. T. 22	0- 170
	-	-	- 327
Greekwood, AC, [1900] 9 (1 12 902			- 393
Greenwood v. Algeçiras (Gibraltar) Rail. Co. L. J. Ch. 670; 71 L. T. 133 : 1 Margare	, (1894) 2 Cl	5. 205 ·)	- <i>000</i>
L. J. Ch. 670; 71 L. T. 133; 1 Manson, 455 Greenwood c. Humber & Co. W. M. Green	; 7 R. 620 (C. A.)	- 327
		91. J. CI	- 000 h
Queene 11 (1	- 346	, 351, 35	4 2411
Grenter, Prefontaine v. (1907) A. C. IOL. OF T	L. T. 623		- 8
Grasham Life, L. R. 8 Ch. 449	-	. 10	- 200
		- 190	0.498

xliv

		AIV
Gre-Ham		
Greymouth Point Plant at the		PAGE
Greymouth Point Elizabeth Rail, Co., Re, Yu 32; 73 L. J. Ch. 92 Griffin, Cooper c., (1892) 1 O. B. 740; et J.	üll v. Same, (1901) 1 Ch.
Griffin, Cooper & (1809) 1 () The		189, 195
660; 40 W. R 490	J. Q. B. 363; 6(L. T.
Griffith ", Papet (1877) 542 D	· · ·	160, 184
Griffith e, Paget (1877), 5 C. D. 854 · S C. D. 25 W. R. 523, 821 : 37 L. T. 141	515; 46 L. J. Ch	493 -
25 W. R. 523, 821 : 37 L. T. 141 - Grill r. General, &c. Co. L. R. 1 C. P. 603 .	- 44 0	0 .195 1.11
Grill v. General, &e. Co., L. R. 1 C. P. 603; a 35 L. J. C. P. 324	ffd., L. R. 3 C. P	. 478 -
Grinwade e Motual Sada		- 202
Grinwade c. Mutual Society, 52 L. T. 409		201
		- 204
La J. Ch. 752	90) La R. 1 Ch. 59	8 - 35
Grosvenor, Studdorf a 22 (1.4)	* -	405, 441
53 L. J. Ch. gao	R. 754: 55 L. T.	171:
Grundy r. Briggs. (1910) 1 (b. 111 Br		173, 442
Grundy r. Briggs, (1910) 1 Ch. 444 ; W. N. (1 Guardians of Poor of Neath, Earl of Jarson	910) 17 131	139 191
Guardians of Poor of Neath, Earl of Jersey c., Gninness c. Land Corporation of Trehand 22 (22 Q. B. D. 549	1104 1011
Gnianess c. Land Corporation of Ireland, 22 (117; 47 L. T. 517; 31 W. R. 341	'. D. 349 - 59 T - T	
117; 47 L. T. 517; 31 W. R. 341 -	;	. Ch.
Guillis Case, L. R. 3 Ch. 10, 99 T m to		31, 38, 83
Gurney, Peek c., L. R. 6 H. L. 377 . 19 T .	· ·	- 109
Gurney, Peek c., L. R. 6 H. L. 377 : 43 L. J.	Ch. 19; 22 W. R.	29 -
Gurney, Queen v., Finlayson, 254		357, 359
Gutta Daroha Comercia	· · ·	- 210
Gutta Percha Corporation, Re, (1900) 2 Ch. 665 Guy c. Waterlan Bart		
Guy r. Waterlow Bros., 25 T. L. R. 515		- 393
		132, 145

Н.

Hadleigh Castle Gold Minor (1999) a co			
Hadleigh Castle Gold Mines, (1900) 2 Ch. 83 L. T. 400	419; 69 L.	J. Ch.	631 ;
Hafna Mining Co., 84 L. T. N. M. 100		59	, 170, 239
Trague C. Dandeson 9 Ry 111, 15 T		-	- 491
Haley, Lee r., L. R. 5 Ch. 155; 39 L. J. Ch. W. R. 242	. 269 _	-	- 159
W. R. 242	. 284; 22 I	4 T . 251	; 18
Halifax Sugar Co. v. Francklyn, 59 L. J. C 2 Meg. 129		-	- 249
2 Meg. 129 -	h. 591; 6;	I. T.	563 ;
Hall & Co., In re, 37 Ch. D. 712; 57 L. J. C.	• -		195, 233
······································	n. 288 ; 58	L. T. 1.	56 -
Hall & Co. (W. J.), (1909) 1 Ch. 521 -			145, 235
Trane Concerts Society Galloman (Toral	Ch 000	-	- 84
		-	148, 149
Hallows v. Fernie, 3 Ch. 467; 36 L. J. Ch. 2 W. R. 873 -	- 967. 10 T	-	- 140
W. R. 873 -	207; 18 1.	T. 340	: 16
Hambro v. Burnand, (1904) 2 K. B. 14	-	-	- 322
Transition's Case (Lord Clundo) T D o m			- 436
465; 28 L. T. 652; 21 W. R. 518	1 010; 42	1. J.	Ch.
	-	-	- 163

xlv

Ham -Har Hamilton's Windsor Ironworks, Re, 12 C. D. 712; 39 L. T. 358; PAON 27 W. R. 827 - -- - -- 309 Hamlyn v. Wood, (1891) 2 Q. B. 188 -- 264 Hammond, Jennings v. (1882), 9 Q. B. D. 229; 2: W. R. 40; 51 L. J. Q. B. 493 -- 387 Hampshire Land Co., (1896) 2 Ch. 743; 65 L. J. Ch. 860; 75 L. T. 181; 45 W. R. 186 -- 166, 235, 317, 318 Hampson, Imperial Hydropathic Co. c., 23 C. D. 1; 49 L. T. 147; 3I W. R. 330 Hampson c. Price's Patent Candle Co., 24 W. R. 754; 34 L. T. . 40, 198 711; 45 L. J. Ch. 437 - --67, 190, 241, 443 Hand v. Blow, (1901) 2 Ch. 721; 79 L. J. Ch. 687; 85 L. T. 156; 50 W. R. 5 - -. - 326 Hannan's Empress, &c. Co., (1896) 2 Ch. 643; 65 L. J. Ch. 902; 75 L. T. 45 Hansen, Brookes r., (1906) 2 Ch. 129; 75 L. J. Ch. 450; 94 L. T. 103, 338 728; 54 W. R. 502; 22 T. L. R. 475 -. . Harben v. Phillips, 23 C. D. 14; 48 L. T. 334, 741; 31 W. R. 173 - 40, - 351 164, 173, 198, 242 Harbottle, Foss v., 2 Hare, 461 - 40, 176, 191, 441 Hardey, Garrard ., 5 Man. & Gr. 471 -- - 6 Hardman, Whitwood Chemical Co. r., (1891) 2 Ch. 416 -- 262 Hardy v. Fothergill (1888), 13 App. Cas. 351; 58 L. J. Q. B. 44; 59 L. T. 273; 37 W. R. 177 -- --410, 441 Hardy v. Metropolitan / 1 Co., L. R. 7 Ch. 427 -Hargreaves, Ltd. (Joseph), (1900) 1 Ch. 347 -Hargrove, *Ex parte*, L. R. 10 Ch. 542 -Harmer, Steel v., 14 M. & W. 831 -- 407 _ - 399 -- 387 . Harper's Ticket Issuing Machine, Ltd., (1912) W. N. 263; 29 T. L. R. - 264 63 ---- - -Harrington v. Victoria Dock Co., 3 Q. B. D. 549 -- 189 - 193 Harris, Mason v., 11 C. D. 97; 48 L. J. Ch. 589; 40 L. T. 644; 27 W. R. 699 --- --50, 171 Harris's Calculating Machine Co., (1914) 1 Ch. 920 -- 275 Harris' Case, 7 Ch. 587; 41 L. J. Ch. 621; 26 L. T. 781; 20 W. R. --- 109 Harrison, Ex parte, 69 L. T. 204 -- 339 Harrison, Ex parte, 26 C. D. 522 --Harrison v. Heathorn, 6 Man. & Gr. 81 - 140 . Harrison r. Mexican Rail, Co., 19 Eq. 358; 44 L. J. Ch. 403, 32 6 L. T. 82; 23 W. R. 403 . Harrogate Estates, Limited, (1903) 1 Ch. 498; 72 L. J. Ch. 313; 88 47, 82 J., T. 82; 51 W. R. 334 Hart, Clarke v., 6 H. L. C. 633 -Hart, Ireland v., (1902) 1 Ch. 522; 86 L. T. 385 - - 131, 135 Hart, Rolland v., 6 Ch. 681; 40 L. J. Ch. 701; 25 L. T. 191; 19 W. R. 962 (C. A.) - - -- -- 234

xlvi.

Har-Hen Hartley's Case, 10 Ch. 157; 44 L. J. Ch. 240; 32 L. T. 106; 23 W. R. PAGE. Hathorn, Salisbury Gold Mining Co. v., (1897) A. C. 268 - 169, 176 Hanxwell, Ex parte, 23 C. D. 627 - - -Havana Exploration Co., Rr. (1915) W. N. 266 - 318 Haven Gold Co., Re, 20 C. D. 151; 51 L. J. Ch. 242; 46 L. T. 322; - 411 - - - 71, 391, 394, 398 ffawkes Ackerman c. Lockhart, (1898) 2 Ch. I; 67 L. J. Ch. 284; 78 L. T. 336; 46 W. R. 445 (C. A.) - -Hawkes e. Eastern Counties Rail. Co., 5 H. L. C. 331 -- 223 Hay, Cornell e., L. R. 8 C. P. 328; 42 L. J. C. P. 136; 28 L. T. 5, 73 475; 21 W. R. 580 -Huy's Case, 10 Ch. 604; 44 L. J. Ch. 721; 33 L. T. 466 - 360 Hayeraft Gold Reduction Co., (1900) 2 Ch. 230 - 164, 194, 393, 419 Haycraft, Herbert Gold Co. r., C. A. 28 March, 1901 Heathorn, Harrison e., 6 Man. & Gr. 81 - - 132 Hebb's Case, 4 Eq. 9; 36 L. J. Ch. 748; 16 L. T. 308; 15 W. R. . . 6 . . . Heiron, Metropolitan Bank c., 5 Ex. D. 319 ; 43 L. T. 676 ; 29 W. R. 103, 115 Helbert v. Banner, L. R. 5 H. L. 28 - -. - 335 Helby's Case, 2 Eq. 175; 14 L. T. 47; 14 W. R. 417 - 404 Helms, Hubboek e., 56 L. T. 232; 56 L. J. Ch. 536; 35 W. R. 574-- 217 Hemans c. Hotchkiss Co., (1899) I Ch. 115; 68 L. J. Ch. 99; 79 309, 325 L. T. 681; 47 W. R. 276; 6 Manson, 52 - -Hemp Cordage, &c. Co., (1896) 2 Ch. (C. A.) 121; 65 L. J. Ch. 591; - 169 74 L. T. 627; 44 W. R. 630 Henderson v. Bank of Australasia, 40 C. D. 170; (1890), 45 C. D. 330; - 338 59 L. J. Ch. 794; 63 L. T. 597; 2 Meg. 301 - 67, 167, 175, 176 Henderson v. Lacon, 5 Eq. 249; 17 L. T. 527; 16 W. R. 328 - 345, 346, 353 Henderson, Tiessen v., (1899) 1 Ch. 861; 68 L. J. Ch. 353; 80 L. T. 483; 47 W. R. 459; 6 Manson, 340 Henderson's Nigel, Ltd., (1911) W. N. 159 ------168, 425 -Henderson's Transvaal Estates Co., Bisgood v., (1908) 1 Ch. 743; 77 - 418 L. J. Ch. 486; 98 L. T. 809 (C. A.) - -Henderson's Transvaal Estates Co., Thomson v., (1908) 1 Ch. 765; 66, 427 et sey. 77 L. J. Ch. 501; 98 L. T. 815; 15 Mans. 220; 24 T. L. R. 539 -Hendricks v. Montague, 17 C. D. 638; 50 L. J. Ch. 456; 44 L. T. 167, 419 879; 30 W. R. 160 -Ifenry Bentley & Co., 69 L. T. 204 -- -27, 249 Henry Lister & Co. Ltd., (1892) 2 Ch. 417 -104, 339 Henry Lister, Lister v., 41 W. R. 330; 62 L. J. Ch. 568; 68 L. T. - 401 Henry Pound, Son and Hutchings (1882), 42 Ch. D. 402 (C. A.); - 320 58 L. J. Ch. 792; 62 L. T. 137; 38 W. R. 18; 1 Meg. 363 - 296

xlvii

Hen-Hod

xlviii

men~ Hod	
Henry v. The Great Northern Co. 1 15 Great	PAGE
Henry c. The Great Northern Co., 1 De G. & J. 606; 27 L. J. Ch. 30 L. T. (O. S.) 131; 3 Jur. N. S. 1133	1;
incitenti p, friser, (1892) 9 (5, 10*, ct 3 + co	- 81
40 W. R. 433	9;
Herbert Gobl Vo. c. Daycraft, C. A. 28 March, 1901 - 10 Heritage's Come. 9 Ed. 5 - 10 F.	03, 109
Heritage's Case, 9 Eq. 5; 39 L. J. Ch. 238; 22 L. T. 179; 18 W. 1 270 -	- 132
270	R.
Hermer c. Cornelms, 5 C. H. N. S. 236	5, 116
THE THE THE PART P	- 262
54 W. R. 350 (C. A.)	;
Herts, &c. Waterworks Co., Blaker v. (1889), 41 C. D. 399; 58 L. J Ch. 497; 60 L. T. 776; 37 W. R. 601	- 134
Ch. 497; 60 L. T. 776; 37 W. R. 601	
TICHT HILL LANCE WILLIPWORKS W IN A COURSE	- 206
	282
	1, 319
neward c. Wheatley, 3 Do G M c. c. and	- 424
(O, S.) 121; 1 W. R. 216	
Heydon's Clase, 3 Co Day -	116
Department P. European Control D trace	273
Hibblewhite v. McMorine, 6 M. & W. 200	346
TOTAL CONTRACT A TANK A TANKA TANK	516
Hickman r. Kent or Ronney Marsh Association. (1915) 1 Ch. 881–30 Hicks r. May, 13 C. D. 236	1, 11
Hicks e. Powell, L. R. J. Cu 11	412
THEF STREET HIS & M RET. IN T OF ANY	274
Higgins, Dunlop c., 141, L. C. 381; 12 Jur. 295	424
	103
Higginson, Re, (1899) 1 Q. B. 329; 68 L. J. Q. H. 198; 79 L. T. 673; 47 W. R. 285; 5 Manson, 289	253
673; 47 W. R. 285; 5 Manson, 289	
- TRING PLANDTHOPH A WITTEN IP (A A.	418
233; 21 L. T. 336; 17 W. R. 1125-	
Hilder v. Dexter, (1902) A. C. 474; 71 L. J. Ch. 781; 87 L. T. 311; 7 Com. Cas. 258	2143
Hill v. Manchester, &c., Co. 5 R. 6 44 con. 105, 335, ;	{ } .)
Hill v. Manchester, &c., Co. 5 B. & Ad. 866 Hilo Manufacturing Co. c. William Ad. 866	
Himalaya Tea Ca. M. i. Contamison (1912), 28 T. L. R. 164	
Hindley's Case, (1896) 2 Ch 121	
44 W. R. 630	02
Hiram Maxim Lamp Co., Re. (1903) 1 Ch. 70; 72 L. J. Ch. 18; 87	03
L. T. 729; 51 W. R. 74	
Hitchens, Malam v., (1894) 3 Ch. 578; 63 L. J. Ch. 797; 71 L. T. 655	3.5
Hoare & Co., Re. (1904) 2 Ch. 208; 73 L. J. Ch. 601; 91 L. T. 115; 53 W. R. 51 (C. A.)	269
53 W. R. 51 (C. A.)	
Hnare & Co., W. N. (1910) 87 95, 98, 21	9
Hoare v. British Columbia Association, (1912) W. N. 235; 107 L. T.	õ
Hodgson r. Accles 51 W D 28	1
Hodgson v. Accles, 51 W. R. 57; W. N. (1902) 164 - 28 Hodgson v. Bell, 24 Q. B. D. 528 - 31	
	-
11	,

Hod -Hor Hodson v. Tea Co. (1880), 14 Ch. D. 859; 49 L. J. Ch. 234; 28 W. R. Hoffman v. Boynton, (1910) 1 Ch. 519; 26 T. L. R. 294 Holborn District Board of Works, Saunders v., (1895) 1 Q. H. 64; 64 L. J. Q. B. 101; 71 L. T. 519; 43 W. R. 26 Holland, Gibson v., L. R. 1 C. P. 1 --Holland, Ideal Bedding Co. v., (1907) 2 Ch. 157, vo I. J. Ch. 441; 96 L. T. 774; 23 T. L. R. 467 -Holland, Shaw v., (1900) 2 Ch. 305 -. Holland c. Dickson, 37 C. D. 669 -Holroyd v. Marshall (1862), 10 H. L. C. 191 -Holthausen, Er parte, L. R. 9 Ch. 722 Homan, Ex parte, re Broadbent, 12 Eq. 598 --Home Assurance Association, Richards v., L. R. 6 C. P. 591 Home and Colonial Assurance Co., Colonial Life Assurance Ce. v., 33 Beav, 548; 42 W. R. 783; 10 L. T. 448; 33 L. J. Ch. 741 - 249 Home and Foreign Investment Co., Re. (1912) 1 Ch. 72 Homer District (lold Mines, In rr, 39 C. D. 546; 58 L. J. Ch. 134; Homersham, Illack e., 4 Ex. D, 24; 48 L. J. Ex. 79; 39 L. T. 671; - - 104 128 Hong Kong and China Co. v. Glen, (1914) 1 Ch. 527 Hoole v. Great Western Rail, Co., 3 Ch. 262; 17 L. T. 453; 16 W. R. Hoole v. Speak, (1904) 2 Ch. 732; 73 L. J. Ch. 719; 91 L. T. 183; 20 T. L. R. 649 -- -Hooley, Rr. (1899) 2 Q. B. 579 -Hooper v. Herts, (1906) 1 Ch. 549; 75 L. J. Ch. 253; 94 L. T. 324; 54 W. R. 350 (C. A.) Hooper v. Kerr, Stnart & Co., 17 T. L. R. 162; 45 S. J. 139; 83 Hooper's Telegraph Co., Menier c., 9 Ch. 350; 43 L. J. Ch. 330; 30 L. T. 209; 22 W. R. 396 - - - 50, 91 171, 242 Hope v. International Co., 4 C. D. 327; 46 L. J. Ch. 200; 35 L. T. - -Hope Mutual Life Insurance Society, Bostos v. (1865), 11 H. L. C. - -- -

Hopkins' Trusts, 18 Eq. 696 -393, 440 Hopkins, Williams v., 18 C. D. 370 -- 220 Hopkinson, Cyclists Touring Club r., (1910) 1 Ch. 179 - 67, 252, 434 Hopkinson v. Rolt, 9 H. L. C. 314 ; 34 L. J. Ch. 468 ; 5 L. T. 90 ; 9 - -Hopwood, Cunard Steamship Co. v., (1908) 2 Ch. 564: 77 L. J. Ch. - 157, 158 Horbury Bridge Co. Re, 11 C. D. 109; 48 L. J. Ch. 341 40 L. T. - 279, 281 Horne (W. C.) and Sons, Ltd., Re, (1906) 1 Ch. 271 -172, 176, 239 - 330

xlix PAGE

294, 324

- 317

- 351

- 256

- 160

- 105

- 223

- 308

- 274

- 318

- 110

- 89

- 220

- 117

- 220

- 360

- 140

- 134

164, 195

94, 153

d

-

Hor-Hyd	
Horner & Co., 5 Munson 25: PAGE	ç
Horton, Wright r. (1887), 12 A. C. 371; 56 L. J. Ch. 873; 56 L. T. 782; 36 W. R. 17; 52 J. P. 179	3
782; 36 W. R. 17; 52 J. P. 179	
Hotchkiss Co., Hemans r., (1889) 1 Ch. 115; 68 L. J. Ch. 99; 79 L. T. 681; 47 W. R. 276; 6 Manson 52	
681; 47 W. R. 276; 6 Manson, 52	
Houghton, Gudd e 1 E- D 1977	
Houldsworth v. City of Glasser D. 1	
Houldsworth v. City of Glasgow Bank, 5 App. Cas. 317; 42 L. T. 194; 28 W. R. 677 -	
Houldsworth " Vorkshing W 1 - 74, 346	
Ch. 739; 91 L. T. 602; 53 W. R. 113	
Household Fire Insurance Co. C. C 281, 310	
577; 41 L. T. 298; 27 W. R. 858	
Howard r. Patent Ivory Co., 38 Ch. D. 156; 57 L. J. Ch. 878; 58 L. T. 395; 36 W. R. 801	
Howard v. Sadler, (1893) 1 O. B. 1: 69 T. T. 100, 111, 97, Ch. 878; 58	
46, 253, 256, 271, 276 Howbeach Coal Co. r. Tongray 5, 168 L. T. 120; 41 W. R. 126 - 160, 184	
Howbeach Coal Co. v. Teague, 5 H. & N. 151 - 160, 184 Howden v. Vorkshin, W.	
Howden v. Yorkshire Miners' Association, (1903) 1 K. B. 308; 72 L. J. K. B. 176; 88 L. T. 134 (C. A.): affirmed by H.	
(Fill April, 1905), 91 T T D (a), and med by House of Lords	
110y1ake Rail, Co., 9 Ch. 937	
Hoyle v. Hoyle, (1893) 1 Cb st $ 132$	
- 256	
Hubbard v. Hubbard, 68 L. J. Ch. 54; 79 L. T. 665; 5 Manson,	
360 - , , , , , , , , , , , , , , , , , ,	
Hubbuck v. Helms, 56 L. T. 232; 56 L. J. Ch. 536; 35 W. R. 574 -	
Hudson (The 200 not	
Hudson, Thompson v. (1869), L. R. 4 H. L. 1 Hudson, York, & Deil, G. 1914	
Hughes' Case, 13 Eq. 623	
Humber & Co., Greenwood r., W. N. (1898) 162; 6 Manson, 42 - 412 Humber Ironworks Co., L. R. 2 Fo. 151, 37 D	
Humber Ironworks Co., L. R. 2 Eq. 15; 35 Beav. 346 - 399	
Humber Ironworks Co. r. Warrant Finance Co., L. R. 4 Ch. 647 - 412	
Hume v. Record Reign Jubilee Syndicato, 80 L. T. 404	
57; 56 L. T. 86; 35 W. R. 92	
Hund's Claim, W. N. (1372) 53	
Hurd, Redgrave v., 20 C. D. 1; 51 L. J. Ch. 113; 45 L. T. 485; 30	
Huth a Clowbo of 0 D a	
Huth v. Clarke, 25 Q. B. 17, 391; 63 L. T. 348; 59 L. J. M. C. 120;	
Hullou v. Scarboroush Cutan a	
87; 13 W. R. 1059; ou app., 34 L. J. Ch. 643; 11 Jur. N. S. 551; 4 De G. J. & S. 672	
1 10 0, 0, 0, 8, 679	
Hutton v. West Cork Rail. Co., 23 Ch. D. 672; 52 L. J. Ch. 689; 31	
W. R. 827 67. 185 433 434	
Hyatt, Allen v. (1914), 30 T. L. R. 444 - 133	
= 180	
- 354 - 354	
99	

1

. *

Ι. Ibo -- Ire Ibo Investment Trust, Ltd., (1903) 2 Ch. 373; (1904) 1 Ch. 26 Ideal Belding Co. c. Holland, (1907) 2 Ch. 157; 76 L. J. Ch. 441; PAGE - 400 Ilfracombe Building Society, (1901) 1 Ch. 102; 70 L. J. Ch. 66; 84 - 160 Imperial Association ». Coleman, 6 Ch. 558; 40 L. J. Ch. 262; 24 L. T. 387, 390 Imperial, &c. Co., Cotton r., (1892) 3 Ch. 454; 61 L. J. Ch. 684; 67 192, 193, 194 Imperial, &c. Co., Dunstan c., 3 Bar. & Ad. 125 66, 426, 427, 429, 430 Imperial Gas, &c. Co., Clark r., 4 B. & Ad. 315 Imperial Bank of China, L. R. 1 Ch. 339 - 185 :-- 258 Imperial Hydropathic Co. v. Hampson, 23 Ch. D. 1; 49 L. T. 147; - 395 Imperial Land Co. of Marseilles, L. R. 10 Eq. 298 --40, 198 Ince IIall Coal Co., Binney v., 35 L. J. Ch. 363 - 407 Inchiquin's (Lord) Case, (1891) 3 Ch. 28; 60 L. J. Ch. 556; 64 L. T. 159, 291 Ind Coopo & Co., (1911) 2 Ch. 223 -Ind Coope & Co., Normandy c., (1908) 1 Ch. 84; 77 L. J. Ch. 82; 97 - 183 311 L. T. 872; 15 Mans. 65; 24 T. L. R. 57 - 50, 168, 185, 188, 242 Inderwick v. Snell, 2 M. & G. 216 Indian Mechanical, &c. Co., (1891) 3 Ch. 538; 61 L. J. Ch. 33; 40 - 198 Indian Zoedono Co., 26 Ch. D. 70; 53 L. J. Ch. 468; 50 L. T. 547 32 W. R. 481 169 78 Indiarubber Co., Panama and South Pacific Co. c., L. R. 10 Ch. 515 - 191 Ingilby, Walburn v., 1 M. & K. 61 -Imman v. Acroyd, 82 L. T. 621; (1901) 1 K. B. 613 -Innes & Co., Re, (1903) 2 Ch. 254; 72 L. J. Ch. 643; 89 L. T. 142; 51 W. R. 514 (C. A.) - 6 187, 188 International Cable Co., Re, 66 L. T. 254; W. N. (1892) 34 -International Co., Hope v., 4 C. D. 327; 46 L. J. Ch. 200; 35 L. T. 117, 405 43, 188 International, &c. Co., Page v., 68 L. T. 433; 62 L. J. Ch. 610 International Co. of Mexico, Morcantile Co. P., (1893) 1 Ch. 481 n.; 94, 153 - 271 International Life Assurance Society, 10 Eq. 312 International Pulp Co., Re, 3 Ch. D. 594; 45 L. J. Ch. 446; 35 L. T. - 321 - 207 International Society of Auctionoers, In re, Baillio's Case, (1898) 1 Ch. 110; 67 L. J. Ch. 81; 77 L. T. 523; 46 W. R. 187 - 413 Iredale, Gardner v., (1912) 1 Ch. 700 Ir-land v. Eade, 7 Beav. 55 - -- 113 -- 117, 163, 368 Iroland e. Hart, (1992) 1 Ch. 522; 86 L. T. 385 -- 326 131, 135 d 2

li

Iri-Jeg	
T.1 2 34	

Irish Mercantile Loan Society, (1907) 1 I. Iron Ship & Co. v. Burnet J. D.	D (m		PAOE
Iron Ship, &c. Co. a Blunt T. D. a. C.	r. R. 98		- 390
Iron Ship, &c. Co. v. Blunt, L. R. 3 C. 1 16 W. R. 868	? . 484; 37	L. J. C.	P. 273 ;
Irvine c. Union Ronk of Ander W	-		147, 189
87; 37 L. T. 176: 25 W. R 699	b. Cas. 360	6;46 L.J	J. P. C.
87; 37 L. T. 176; 25 W. R. 682 - Irving and Fullarton Building Society. S	-	- 46, 2	1, 275, 276
(Ct. of Sess.)	miths' Tru	istees v., (5 F. 99
Irwell, &c. Works, Gorringe P. (1886), 34 85; 55 L. T. 572: 35 W. B. 86	-		- 390
85; 55 L. T. 572; 35 W. R. 86 - Isaac's Case, (1802) 9 Ch. 139	C. D. 12	8; 53 L.	J. Ch.
Isaac's Case, (1892) 2 Ch. 158: 61 L. J. (W. R. 518			315, 399
W. R. 518 -	'h. 481; 6	6 L. T. 59	3; 40
Isle, Dawson r. (1906) 1 (1, con	-	4	3, 184, 186
Isle, Dawson v., (1906) 1 Ch. 633: 75 L. J. W. R. 452	Ch. 338 ; -	95 L. T. 38	5; 54
			- 280
Isle of Wight Rail. Co. c. Tahourdin, 25 C. Islington Electric Supella G.	D. 320 .		- 165
and and the subbly to us I in ot	W. N. (18	s92) 81 -	80, 97
Izard, Ex parte (1883), 23 Ch. D. 75 -			
		-	- 327

J.

Jackson v. Bassford, (1906) 2 Ch. 467; 75 L. J. Ch. 697; 292-	95 L. T.
Jackson v. Rainford, (1896) 2 Ch. 340; 65 L. J. Ch. 757; 4- 554 -	- 415 4 W. R.
Jackson r. Turguand I D the	- 271
Jackson v. Turquand, L. R. 4 H. L. 305; 39 L. J. Ch. 11 Jackson & Co., (1899) 1 Ch. 348, 60 J. J. Ch. 11	104, 355
Jackson & Co., (1899) 1 Ch. 348; 68 L. J. Ch. 190; 79 L. 6 Manson, 125	T. 662 :
Jacobs v. Morris, (1902) 1 Ch. 816 - 121, 1	22, 123, 282
Jaegen &c Co X-11	- 436
Jaegen, &c. Co. c. Vallen 77 L. T. R. 180	
James r. Boythorpe Colliery Co. (1891), 2 Meg. C. R. 55; (1890) 28	W N
Jamos u Duran W	- 320
James v. Buena Ventura, (1896) 1 Ch. 456	
James v. May, L. R. 6 H. L. 328; 42 L. J. Ch. 586; 29 L. T James v. Rockwood Colliery Co., 106 L. T. 108	916 011
James v. Rockwood Colliery Co., 106 L. T. 128	
and the second s	- 189
James Keith and Blackman Co. (No. 1), Rainford v., (1905) 296 -	- 50
296 - (1908)	I Ch.
James Keith and Blackman (No. 2), Rainford v., (1905) 2 Ch 74 L. J. Ch. 531; 92 L. T. 786 (C. A.)	- 145
74 L. J. Ch. 531; 92 L. T. 786 (C. A.)	147;
values delson & Sons Ltd Notcon (toat) and	- 67
	- 43
Jarvis Conklin Mortgage 11 T T D	- 371
Jarvis (F. W.) & Co., (1899) 1 Ch. 193; 68 L. J. Ch. 145; 79 427	- 390
421 Inch. 0	
Jeeks, Coote v., 13 Eq. 597; 41 L. J. Ch. 599	- 122
Jegon, Ex parte, 12 C. D. 503	274, 325
	- 219

lii

Too Too		hi
Jen-Jub		
Jenkinson, Edinburgh and District Aerated We Defence Association c., 5 Ct. of Sees. Cov. 1160	A	PAGI
Defence Association c., 5 Ct. of Sess. Cas. 1159 Jenner's Case, 7 C 1, 120	ter Manufacture	rs
Jenner's Case, 7 C. D. 132; 47 L. J. Ch. 201; 37 I. 291 -		- 5
291	. 1. 349; 26 W. I	2.
Jennings v. Broughton, 17 Beav. 234; 5 D. M. & (h. 585; 1 W. R. 441	18 : G. 126 ; 22 L. J	4, 191 r.
Jennings v. Hammond (1882), 9 Q. B. D. 229; 31 v Q. B. 493	W. R. 40 - 51 T - T	- 346
www.sn Colonial (Frank / T at a	Timited (1000)	- 387
Channespure Hotal Co. (1001) 1 or		2 - 78
61, 39 W. R. 260; 2 Meg. 409	СЬ, 391; 64 Г. Т.	
(h. 496; 64 L. T. Ster 20 W. Barras, (1891) 2 CI	h. 386; 60 L. J.	79
Cond Rowell & Sons Ltd Durall March		166
Johns v. Balfour, 5 T. L. R. 389; 1 Meg. 191 Johnson & Co. 50 W. D. W. D. Meg. 191	⁰⁹	94
		67
		282
786; 36 L. T. 528; 25 W. R. 548	87; 46 L. J. Ch.	
Johnson v. Russian Spratts (1808) 9 (7)	11, 147, 151, 152,	245
		287
ounsion Foreign Patents (1001) o ou		274
		276
L. J. P. C. 33; 78 L. T. 270 (D. C.) (1898)	A. C. 447; 67	221
Johnstone v. Cor (1881) 10 CL D in		351
Joint Stock Discount Co " Brown " It the	3	
Joint Stock Discount Co v. Brown, 3 Eq. 139; 8 Eq. 844; 17 W. R. 1037	381 ; 20 L. T.	
Joint Stock Trust, Re (1919) Se S T 05, 12, 119	, 204, 209, 262, 4	07
Jonas, Eberle's Hotel Co. 4, 18 O. D. 19	2	
, as a contraction of the second	41	10
	19	91
Jolles P. North Vancourses I 1 a	22	20
Jones v. Pacaya Rubber Co., W. N. (1910) A. C. 317	15	i2
Jones v. Pacaya Rubber Co., W. N. (1910) A. C. 317 Jones v. Pacaya Rubber Co., W. N. (1910) 257; (1911)) 1 K. B. 455 -	
Jones v. Scottish Accident Co. 17 O. D. T.	149, 151, 15	2
	2	9
Jones v. Victoria Graving Dock (1877), 2 Q. B. D. 314; 219; 36 L. T. 144; 25 W. R. 348	23. 46 L. J. O. R	5
Johnenjoy ", Watson Q A C rat	- 245 954	6
Joplin Brewery Co., Re. (1902) 1 Ch. 79; 50 W. R. 75; 21	436 71 L T Ch	
Joseph Hargreaves Limited (1980) -	090	
Joseph Hargreaves, Limited, (1900) 1 Ch. 347 Joshua Stubbs, Limited, (1900) 1 Ch. 347	- 482	
	407 Ch. 190 - 64	
L. T. 306; 39 W. R. 617 (C. A.)		
Jubilee Sites Syndicate, Re. (1899) 2 Ch. 204	- 328	
	395	

liii

К

K.

Kar-Kir

Karberg's Case, (1892) 3 Ch. 1; 61 L. J. Ch. 741; 66 L. T. 700 - 342, 546 Kasintoe Rubber Estates, Llewellyn v., (1914) 2 Ch. 670 -Kaslo-Slocan Co., W. N. (1910) 13 -- 424 Kaye v. Croydon Tramways Co., (1898) 1 Ch. 358: 67 L. J. Ch. 222: - 395 78 L. T. 239; 46 W. R. 405 - - 166, 168, 193, 425 Kckewich, Fruit and Vegotable Association e., (1912) 2 Ch. 52 Kelk, London Financial Association r., 26 C. D. 107; 53 L. J. Ch. - 165 Kelland, Wilson v., (1910) 2 Ch. 306 --204, 209 Kellock v. Enthoven, L. R. 9 Q. B. 241; 43 L. J. Q. B. 90; 22 W. R. - 312 Kellock's Case (1867), L. R. 3 Ch. 769; 16 W. R. 919 - 137 Kelner v. Baxter, L. R. 2 C. P. 174; 36 L. J. C. P. 94; 15 L. T. 313; - 329 Kennaway & Co., Dixon v., (1900) 1 Ch. 833; 69 L. J. Ch. 501; 82 - 253, 441 L. T. 527: 7 Manson, 446 -Kent's Case, 39 C. D. 266; 57 L. J. Ch. 977; 36 W. R. 818; 59 L. T. - 144 Kent Coalfields Syndicate, (1898) 1 Q. B. 754; 46 W. R. 453; 67 - 415 L. J. Ch. 500; 78 L. T. 443 -Kent Collieries, 23 T. L. R. 559 (C. A.) -. -125, 223 Kent County Gas Co., 95 L. T. 756 -Kent County Gas Co., (1913) 1 Ch. 92 - 321 -- 354 Kent Outcrop Coal Co., Rr, (1912) W. N. 26 -- 336 Kent or Romney Marsh Association, Hickman e., (1915) 1 Ch. 881 -- 163 Kent e. Freehold Land Co., 3 Ch. 493 40, 41 Kepitigalla Rubber Estates v. National Bank of India, 25 T. L. R. 402 - 261 - 353 Kerr, Stuart & Co., Hooper r., 17 T. L. R. 162; 45 S. J. 139; 83 Kershaw, In re, Whittaker v. Kershaw, 45 Ch. D. 320; 60 L. J. Ch. 164. 195 9; 63 L. T. 203; 39 W. R. 23 Keswick, Cackett v., (1902) 2 Ch. 456; 71 L. J. Ch. 641; 87 L. T. - 146 • • Kettle's Case, 9 Eq. 306 351, 359, 361 Key & Son, Limited, (1902) 1 Ch. 467; 71 L. J. Ch. 254; 50 W. R. - 384 Kharaskhoma Syndicate, (1897) 2 Ch. 451; 66 L. J. Ch. 675; 77 L. T. - 124, 140 Kingsbury Collieries, (1907) 2 Ch. 259; 76 L. J. Ch. 469; 96 L. T. - 121 Kingston Cotton Co. (No. 2), (1896) 2 Ch. 284; 65 L. J. Ch. 673; 74 66, 67 Kirby, Wright c., 23 Beav, 863 - 225, 226, 227, 407 -- 329

liv

VI8	-	Lan

Alsch, Central Dollars	
 Knisch, Central Railway of Venezuela r., L. R. 2 H. L. 123; 36 L. J. Ch. 849; 16 L. T. 500; 15 W. R. 821 Knight, Re(1867) I. D. 100 	PAGE
Knicht D. 10 1. 1. 500; 15 W. R. 801	
15 W D (1867), L. R. 2 Ch. 321; 36 L J Ch. 917 127, 345,	333
	000
Knight r. Bulkeley, 3 Jur. (N. S.) 817; 33 L. T. 7; Storey on Agency, s. 475	
A. Duikeley, 3 Jur. (N. S.) 817 - 22 T (D	245
Agency, s. 475	
Koffyfontein Mines Tel (n. 717	174
Koffyfontein Mines, Lt.!. (directors' resignation), Mosely v., (1910) Koffyfontein Mi	421
K-6	
Nonyfontein Mines. Ltd (increa	100
10; (1911) A C 100	188
(1901) 2 Ch. 108; 73 L. J. Ch. 569; 91 L. T. 266; 53 W. R. 140 Kolchmann Exploring J.	87
(C. A.) (C. A.) (C. A.) (C. A.) (C. A.) (C. A.)	
Kol 1. T. 266; 53 W. R. 140	
	1 7
Krasnapolsky Co. P. (1000) and Minerals Co. r. 94 L. T. 221 and	11
Krasnapolsky Co., Re, (1892) 3 Ch. 174 Kuala Pahi Fetter 200, 200, 200, 200, 200, 200, 200, 200	05
Knala Pahi Estate v. Mowbray, (1914) W. N. 321	
· · · · · · · · · · · · · · · · · · ·	29

L.

La Banque du Peuple, Bryant r., (1893) A. C. 170; 62 L. J. P. C. 68; 68 L. T. 681; 41 W. R. 239; 57 J. P. 89 - 276, La Compagnie de Mayville v. Whitley, (1896) 1 Ch. 788 ; 65 L. J. Ch. 276, 436 La Trinidad, Browne v., 37 C. D. 1; 57 L. J. Ch. 292; 58 L. T. 137; - 195 Lacon, Henderson v., 5 Eq. 249; 17 L. T. 527; 16 W. R. 328 40, 42, 164, 176, 195, 198 Ladenberg & Co. v. Goodwin Ferreira & Co., (1912) 3 K. B. 275 - 345, Ladies' Dress Association v. Pulbrook, (1900) 2 Q. B. 376, 381; 69 L. J. Q. B. 705; 49 W. R 6; 7 Manson, 465 (C. A.) - 52, 99, 153, 405 346, 353 Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate, (1899) 2 Ch. 392; 68 L. J. Ch. 699; 81 L. T. 334; 48 W. R. 74 - 74, 201, 202, 331, 333, 224 254 Laing, Salomans r., 12 Beav. 339 334, 354 Lake George Mines, Limited, (1904) 1 Ch. 803 Lamb v. Sambas Rubber, (1908) 1 Ch. 845; 77 L. J. Ch. 386; 98 ð - 401 Lambeth, Reg. v., 8 Ad. & El. 356 149, 151, 353 Lancaster Banking Co., W. N. (1897) 3; 75 L. T. 647 Lancaster Canal, Parnaby v., 11 Ad. & El. 223 - 173 Land Co., Thames Plate Glass Co. v. (1870), 11 Eq. 248; 24 L. T. 227; 19 W. R. 303; 6 Ch. 643; 25 L. T. 236; 19 W. R. 764 60 74 Land, &c. Co., White v., W. N. (1883) 174 Land Corporation of Ireland, Guinness r., 22 C. D. 349; 52 L. J. Ch. - 414 - 234 Land Credit Co., 4 Ch. 460; 20 L. T. 641; 17 W. R. 689 - 31, 38, 83 -45, 195, 255

lv

Lanт

Lan-Leg
Land Credit Company of Ireland e. Lord Fermoy (1870), L. R. 5 (2)
Ch. 183; 78 L. T. 138; 49 W. D. and (1898) 1 Ch. 444; 67 L. J.
Land Securities Co., Somerset . W M. 4333 417
Land Securities Co., Somerset e., W. N. (1897) 29 - 417 Landowners r. Ashford, 16 C. D. 411 - 223
Lands Allotment (°o., Re, (1894) 1 Ch. 616; 63 L. J. Ch. 291; 70 L. T. 286: 42 W. R. 404-
Lane's Case, 1 1) T & g top65, 179, 244
Langham Skating Rink, 5 C. D. 683: 46 L. J. Ch. 345; 36 L. T.
Langlaagto Proprietary Co. (1012) as (n. r. n 394, 414
Langlaagto Proprietary Co. (1912). 28 T. L. R. 529 - 394, 414 Larocque v. Beauchemin. (1897) A. C. 279 - 54
Lathom v. Greenwich Ferry, 72 L. T. 790
Laughton v. Bishop of Sodor and Man, 4 P. C. 495
103; (1912) 1 Ch. 405
Law Debenture Corporation, Combrook v., (1904) 1 Ch. 103; 73 L. J. Ch. 121; 89 L. T. 680; 52 W. R. 242
Law Guarantee Society us m T T
Law Guarantee and Trust Society 11, 18, 565
830
L. J. Ch. 733, 91 L. T. Society, Smith c., (1904) 2 Ch. 560.
Law Union, de Co Mart, 11 - $(15, 200)$
Lawes Case, 1 De G. M. & G. 101 , 101 -156
Lawrence v. Wynn, 5 M. & W. 355 - 166
222 148 (1867), L. R. 2 Ch. 412; 36 L. J. Ch. 490: 16 L. T.
mawton, Park r. (1011) 1 17 D ro
85:40 W, B (201 (1892) 3 Ch. 555; 61 L, J, Ch. 667 + 67 J, m
Astracher Shod Wheel O o
Ch. 131; S1 L. T. 595; 7 Mauson, 210 (C. A.) 346, 351, 354, 361 Lee v. Haley, L. R. 5 Ch. 155; 39 L. J. Ch. 284; 22 L. T. 251; 18
W. R. 242 Lee v. Neuchatel Co., 41 C. D. 1; 58 L. J. Ch. 408; 61 L. T. 11; 37 W. R. 321
W. R. 321 . W. D. 1; 38 L. J. Ch. 408; 61 L. T. 11; 37
75 L. T. 641 : 45 W P 201 (0 (1897) 1 (h. 373; 66 L. J. Ch. 199
488; 51 W. R. 5 (C. A.); (1904) 2 Ch. 809; 72 L. J. Ch. 1; 87 L. T. Leeds Banking Co. 8. 2 D. (1904) 2 Ch. 45
15 W. R. 146; 2 Dr. & Sm. 415
Locus Estate, &c. Co. v. Shaphard as a province in 104, 113
. L. T. 684: 36 W D 200
Lees Brook Spinning Co. Ro (1000) a 110, 100, 197, 204, 215, 226 997
90 14. T. 54 · 54 W D zon
Leggott r. Western, 12 Q. B. D. 287 - 94, 100
- 160

lvi

,

Lei-Lly	
Leicoster Club Co. Comparis the	PAGE
Leicoster Club Co., Cannon's Case, 30 C. D. 629; 55 L. 34 W. R. 14	J. Ch. 206 ;
Lenconid's Case 1 Eq. 921	185
Leinster Contract Corporation D. (1992)	67
Le Phenix, In re, 58 L. T. 512	410
Le Roi Mining Co., McMillan e., (1906) 1 Ch. 331; 75 L. (94 L. T. 160; 54 W. R. 281	383
94 L. T. 160; 54 W. R. 281	J. Ch. 174;
Theorem Van Tienhoven Rumpon to the	- 173
Leroux v. Brown (1852), 12 C. B. 801	103
	- 236
Lotheby and Christophor, Limited, Jones's Case, (1904) 1 C. L. J. Ch. 509; 90 L. T. 774; 52 W. R. 460	h. 815; 73
Lever, Mayor of Salford v., (1891) 1 Q. B. 168; 60 L. J. 63 L. T. 658; 39 W. R. 85	133
Lovi r. Avere 2 A	Q. B. 39;
Lovi r. Ayers, 3 App. Cas. 852 Levita's Case J. B. a. Cl.	193
Levita's Cuso, L. R. 3 Ch. 36; 17 L. T. 337; 16 W. R. 95 Levita's (G. H.) Case, L. R. 5 Ch. 190	- 137, 140
Levita's (G. H.) Case, L. R. 5 Ch. 489 Levy r. Aborence, G. K. 5 Ch. 489	103
Levy v. Abercorris Co. (1888), 37 Ch. D. 264; 57 L. J. Ch L. T. 218; 36 W. R. 411	- 104, 109
	- 989 910
Lewis, Ex parte, 6 Ch. 818; 40 L. J. Ch. 429; 24 L. T. W. R. 791	250
W. R. 791	787 - 19
Lowis, Emina Co. C. J. C. P. D. 200 to T.	- 154, 159
Lowis, Emma Co. c., ³ C. P. D. 396; 40 L. T. 168; 48 L. 257; 27 W. R. 836	J. C. P.
Lewis, Gray c., L. R. 8 Ch. 1035; 43 L. J. Ch. 281; 29 L. 21 W. R. 923	- 331
21 W. R. 923	. T. 12;
Lewis, Parker c., 8 Ch. 1035; 21 W. R. 928; 29 L. T. 199 - Lewis's (Harvey) Case, 26 L. T. 672	- 50
Lewis's (Harvey) Case, 26 L. T. 673 -	- 193
	185
Liberator Building Society, 71 L. T. 406	- 400
	- 407
Lichtenstein, Re, 23 T. L. R. 424	- 354
and Health Assurance A	393, 422
Lincoln, White v. (1803), 8 Vos. 363 - Lindlar's Case (1803), 8 Vos. 363 -	- 383
	- 222
$r_{\text{anduer & Co., Re. (1011) W M M}}$	23, 130, 133
	- 99
AMARTIN C. MOLTONO 9 TT C NT AND	104, 113
Laster v. Henry Lister, 41 W. R. 330 . 69 J. J. C.	- 177
Lister v. Henry Lister, 41 W. R. 330; 62 L. J. Ch. 568; 68 Livermond H.	L. T.
Liverpool Household Stores Association, In re (1890), 59 L. J.	- 320
Livernool Hon at 11 0	J. Ch.
Liverpool Household Stores v. Smith (1887), 37 C. D. 197, 204 Ch. 85; 57 L. T. 770; 58 L. T. 204 - 36 W. D. 197, 57	, 245, 407
Ch. 85; 57 L. T. 770; 58 L. T. 204; 36 W. R. 485 Liverpool Sorvice Association D. 70	
Liverpool Sorvice Association, Re, L. R. 9 Ch. 311 -	- 174
Liverpool Waterworks Co., Sparks v., 13 Ves. 428 -	- 399
Llewelly a v. Kasintoe Rubber Estates, (1914) 2 Ch. 670	- 152
Lloyd v. David Lloyd & Co., 6 C. D. 339; 37 L. T. 83; 25 W. R. 8	- 424
Llynvi Co., 26 W. R. 55	200
	328, 414
	95, 97

lvii

Loc -Lon Loch, Waller v., 7 Q. B. D. 619 Lock e. Queensland Mortgage Co., (1896) A. C. 461; 65 L. J. Ch. PAGE 174 Locke & Smith, Ltd., Re, (1914) 1 Ch. 687 64, 150 Lockhart, Hawkes Ackerman c., (1898) 2 Ch. 1; 67 L. J. Ch. 284; - 314 Lodwich v. Earl of Porth, 1 T. L. R. 76 Logan r. Courtown (Earl), 13 Beav. 22; 20 L. J. Ch. 347 223 Loma ('o., Ernest v., (1897) 1 Ch. 1; 66 L. J. Ch. 17; 75 L. T. 317; 354 . - 146 London and Colonial Fin. Corp., 77 L. T. 146; 13 T. L. R. 576 (C. A.) 172, 174, 239 London and Counties Assets Co. v. Brighton Grand Concert Hall, Ltd., 105, 192 London and County Banking Co., Picker v. (1887), 18 Q. B. D. 515-- 189 London and County Coal Co., 3 Eq. 355 303, 306 London and County Land Co., Cuff v., (1912) 1 Ch. 440 London and County Printing Works, Baster v. (1899), 1 Q. B. 901 - 262 London and General Bank, In re (No. 1), (1895) 2 Ch. 166 ; 63 L. J. Ch. 853; 43 W. R. 481; 72 L. T. 611 London and General Bank (No. 2), (1895) 2 Ch. 673; 64 L. J. Ch. 206, 227, 407 866; 73 L. T. 304; 44 W. R. 80 -London and Globe Finance Co., Re, (1903) 1 Ch. 728; 72 L. J. Ch. 206, 225, 230 368; 88 L. T. 194; 51 W. R. 651; 50 W. R. 253 -London and Mercantile Discount Co., L. R. 1 Eq. 277 210, 409, 416 London and New York Co., (1895) 2 Ch. 860-L. & N. W. Rail. Co., Barton r., 24 Q. B. D. 77; 59 L. J. Q. B. 33: - 395 96 L. & N. W. Rail. Co., Barton v., 38 C. D. 144; 57 L. J. Ch. 676; 59 - 112, 133, 136, 139 L. & N. W. Rail. Co., Peel r., (1907) 1 Ch. 5; 76 L. J. Ch. 152; 95 136, 143 London and Northern Assets Corporation (No. 1), Wall v., 14 T. L. R. -67, 173, 442 ondon and Northern Assets Corporation (No. 2), Wall v., (1899) 1 Ch. 169, 170, 175, 239 London and Northern Bank, Re, Ex parts Archer, 85 L. T. 698; 50 - 171 London and Northorn Bank, Ex parte Jones, (1900) 1 Ch. 220; 66 L. J. Ch. 24; 81 L. T. 512; 7 Manson, 60 408 London and Northern Bank, Haddock's Case, W. N. (1902) 84; (1902) 109 London and Northern S. S. Co. v. Farmer, (1914) W. N. 200; 111 L. T. 360, 408 London and Paris Hotel Co., Beer v., 20 Eq. 412; 32 L. T. 715 London and Provincial Bank, Powell v., (1893) 2 Ch. 555; 62 L. J. - 150 Ch. 795; 69 L. T. 421: 41 W. R. 545 - 255 -131, 134

lviii

Lon-Lon

London and Provincial Co., Re, 5 C. D. 525; 46 L. J. Ch. 842; 3d PAGE London and Provincial Law Assurance Society r. London and Provincial Joint Stock Life Assurance Co., 17 L. J. Ch. 37 102 London and Provincial Pure Ice, W. N. (1904) 136 -London, &c. Society, Cullerne c., 25 Q. B. D. 485; 59 L. J. Q. B. 525; 63 L. T. 511; 39 W. R. 88 205, 208, 205, 208, - 249 - 397 London and South Wales Coal Co., Ilurn c., W. N. (1890) 209; 7 T. 205, 208, 407 London and S. W. Canal Co., (1911) 1 Ch. 346; (1911) W. N. 29 - 223 London and S. W. Rail, Co., Coates v., 41 L. T. 553; 44 J. P. 154 - 144 London and Southern, &c. Co., 11 C. D. 223; 55 L. J. Ch. 224; 54 London and Staffordshire Bank, 24 C. D. 149 London and Staffordshire Fire Co., Re, 24 C. D. 149; 53 L. J. Ch. 78; 48 L. T. 955; 31 W. R. 781 - 181 - 354 London Assurance Corporation r. London and Westminster Ass. 332 London, Birmingham and Manchester Insurance Co., Molineaux r. (1902) 2 K. B. 589; 71 L. J. K. B. 848; 87 L. T. 324; 51 W. R. - 249 36 (C. A.) London, Bombay and Mediterranean Bank, McEwen v., 15 W. R. 248- 414 London Celluloid Co., 39 Ch. D. 190; 57 L. J. Ch. 843; 59 L. T. Londe > Celluloid, Willmott e., 34 C. D. 147; 52 L. T. 642; W. N. 119 London, Chatham and Dover Railway, Gardner r., 2 Ch. 201 London County Council v. Att.-Gen., (1901) A. C. 26; 70 L. J. K. B. 77; 83 L. T. 605; 49 W. R. 686 - 415 - 283 London County Council v. Att.-Gon., (1902) A. C. 165 London Financial Association v. Kelk, 26 C. D. 107; 53 L. J. Ch. 63 68 London Fish Market Co., 27 S. J. 600 London Founders' Association v. Clarke, 20 Q. B. D. 576; 57 L. J. Q. B. 291; 59 L. T. 93; 36 W. R. 489 204, 209 -- 398 London Freehold Land Co. v. Suffield, (1897) 2 Ch. 608; 66 L. J. Ch. 790; 77 L. T. 445; 46 W. R. 102 - 135 London Indiarubber Co., 5 Eq. 519; 37 L. J. Ch. 235; 17 L. T. 530: 14 W. R. 594; 16 W. R. 334 - 85, 396, 258, 259 London Joint Stock Bank, Bentinek c., (1893) 2 Ch. 120; 62 L. J. Ch. 458; 68 L. T. 315; 42 W. R. 140 - 85, 396, 416 London Joint Stock Bank, Sheffield v., 13 A. C. 333; 57 L. J. Ch. 986; 58 L. T. 535; 37 W. R. 33 - 307 London Joint Stock Bank v. Simmons, (1892) A. C. 201; 61 I. J. Ch. 723; 66 I. T. 625; 41 W. R. 108 - 145, 145, 436 London Marine Association, Re, 8 Eq. 176; 20 L. T. 943; 17 W. R. 145, 306 London Music Hall, Limited, Underwood v., (1901) 2 Ch. 309 - 82, 88, 90 London Pressed Hinge Co., 53 W. R. 407; 92 L. T. 109; 21 T. L. R.

- 309

lix

Ι.,

J.on-Lyt

London Steamboat Co., 31 W. R. 781; W. N. (1883) 123	PAGE
London Trading Bank, Bechnanaland Exploration Co., (1898) 2 Q 658-	- 95
658	. B.
and the manual frameway of the second s	100
London Tramways Co. Walk	- 74
London Tramways Co., Rapier v., 69 L. T. 361 23; 28 W. R. 163	(1).
London United Damest	
London United Broweries, (1907) 2 Ch. 511; 76 L. J. Ch. 612; L. T. 541	47, 443
Longman a Bat man -	97
Longman v. Bath Electric Tramways, (1905) 1 Ch. 646; 21 T. L. 373; 53 W. R. 480	- 327
Longlab V. 1	R.
Lonsdalo Vale Ironstone Co., 16 W. R. 601	- 139
Lorant, Scadding v., 3 H. L. C. 418	- 422
Lord Baltimore, Penn v., 1 Ves. sen. 444; Wh. & Tu. L. Cas. 7th ev 755	- 176
155	d.
Toru Chanmorris Thomas	- 274
82 L. T. 277; 48 W. R. 488 (C. A.)	
TRIG Permoy, Land Credit C	13 8 45
Lord Fernoy, Land Credit Company of Ireland v. (1870), L. R. 3 (1 763; 23 L. T. 439; 18 W. R. 1089	- 338
Lord Westhury Tool, 18 W. R. 1089	1.
Lord Westbury, Torbock v., (1902) 2 Ch. 871; 71 L. J. Ch. 845; 8 L. T. 165; 51 W. R. 133	- 200
L. T. 165 ; 51 W. R. 133	
Loring v. Davis, 32 C. D. 625	3, 239
Louisiana, &c. Mortgage Co., (1909) 2 Ch. 552 135 Louth, &c. Co., Sharalan (1909) 2 Ch. 552	, 137
Louth, &c. Co., Sharpley r., 2 C. D. 663; 46 L. J. Ch. 259; 35 L. T.	5, 96
71	
AN WILLINS P. FIGHT Streep and a second seco	352
Lubbock v. British Bank of S. A., (1892) 2 Ch. 198; 61 L. J. Ch. 498; 67 L. T. 74; 41 W. R. 103 Luce, Newth Build.	187
498; 67 L. T. 74; 41 W. R. 103 Luce, Newth Builds	
Luce, Neath Building Society e., 43 C. D. 158; 61 L. T. 611: 38 W. R. 122	217
W. R. 122	
Thicky Guss, Limited 70 T m and	273
Lush & Co. (1012) 11 at at at 101, 11 W. R. 65	262
Lush & Co., (1913) W. N. 39; 108 L. T. 437; 17 W. R. 65 Lushington, Pender v., 6 C. D. 70; 46 L. J. Ch. 317 - 40, 170, 171, 1 Lydney and Wigpool Co. v. Bird, 33 Ch. D. 85; 55 L. J. Ch. 377	115
Lydney and Wiger 10, 6 C. D. 70; 46 L. J. Ch. 317 . 40 180	282
Lydney and Wigpool Co. v. Bird, 33 Ch. D. 85; 55 L. J. Ch. 817, 1 L. T. 358; 34 W. R. 749	173
Lynde v. Anglo-Italian Hemp Co., (1896) / Ch. 178; 65 L. J. Ch. 96; 73 L. T. 502 Lyop's Came J. D.	32
Juni- ()	
	46
Lyster's Case (1867), 4 Eq. 233; 36 J. J. Ch. etc 3.	55
W. R. 1007	
- 10e to	7
786; 36 L. T. 528; 25 W. R. 548 - 41, 147, 11, 06, 15	
41, 147, 151, 152, 24	*
	0

lx

McC Mai

M.

McCollin c. Gilpin, 5 Q. B. D. 390
McConnell c. Wright (1000)
431; 51 W B (91) (1903) 1 Ch. 546; 72 L J (1, 2)
McConnell's Case, (1901) 1 Ch. 728; 70 L. J. Ch. 251; 84 L. T. 557 Macdenald a Lagrantic State of the State o
557 358
Markault
Macdonald e. Law Union, &c. Co. (1873). L. R. 9 Q. B. 328; 22 W. R. 539; 30 L. T. 545; 43 L. J. Q. B. 131 Macdougall e. Gardinae (Lordinae Co. 1873).
Lind, Ch. 97, the way and the set of Ch. DOB' I file 1, to
McEwen c. London, Bombay and Mediterranean B. 164, 165, 176, 242
Macfarlane's Claim, 17 C. D. 337; 50 L. J. Ch. 273; 44 L. T. 299 - 410 Mackay & Case, W. N. (1900) 114
Mack's Case, W. N (1000) 11. 001; 00 L. J. Ch. 273; 44 L. T. 200
ALACKAY F CONSIST FEED .
43 L. J. C. P. 21, 20 T Bank of New Brunswick T. D. T. D 318
43 L. J. C. P. 31; 30 L. T. 180; 22 W. R. 473 McKay's Case, 2 Ch. D. 1 74
McKamp, D. 74
McKenna, Parker c., 10 Ch. 118; 44 L. J. Ch. 425; 31 L. T. 739; 23 W. R. 271 McKeown c. Boudest, B. 192 193 200
Makaman D
McKeown c. Boudard, Everard & Co. (1896), 74 L. T. 712; 65 L. J. Mackley's Case 1 Ch. D.
Machinet () W. R. 152
W P ou - 345
Mackley's Case, 1 Ch. D. 247; 45 L. J. Ch. 158; 33 L. T. 460; 24 W. R. 92 Macleuy & Tait (1999) 1 C
Macleny c. Tait, (1906) A. C. 24 McLister Guelle C. 102
McLister, Garden Gully, &c. Co. v., 1 A. C. 39; 33 L. T. 408; 24 W. R. McMahou, Re. Explored M. 2007
May 144 T. 408; 24 W. R.
142: 81 L. T. 715. McMahon, (1900) 1 Ch. 171. 00 147, 151, 152
McMahou, Re, Fuller v. McMahon, (1900) 1 Ch. 173; 69 L. J. Ch. 142; 81 L. T. 715; 7 Manson, 38 (1900) 1 Ch. 173; 69 L. J. Ch.
372 . 44 L. Worth Kent Iron Works (1801) a ci
McMillan v. Le Roi Mining Co., (1906) 1 Ch. 331; 75 L. J. Ch. 324 94 L. T. 160; 54 W. R. 281
94 L. T. 160; 54 W. B. 201 (1900) 1 Ch. 331; 75 L. J. Ch. 174.
McMorine, Hibblewhite n., 6 M. & W. 200 - 173 McMullen r. "Sir Alfred Hickman" Steamship Co., Limited, 71 Magnaghum, B. S.
L. J. Ch. 755 Isr Alfred Hickman" Steamshin Co. 14, 316
Machaghten Date
Macnamara, Wilmer v., (1910) 1 Ch. 430; 25 T. L. R. 552 - 167, 175, 244 552; 43 W. R. 519 Macneil Douten and W.
Magnet J. M. R. 519
Macneil, Denton v., 2 Eq. 352; 14 L. T. 721; 14 W. R. 813 - 216 Maddison, Alderson v., 5 Ex. Div. 203 - 8 4 (2000) - 355
Maldison, Alderson v., 5 Ex. Div. 293; 8 A. C. 467; 29 W. R. 105; 43 L. T. 249; 49 L. T. 303; 52 L. J. Q. B. 737
TO 14 1. 240 + 40 F /B 400 + 0 A. L. 487 + 00 MF
Mahoney c. East Holyford Rail Co. T. B. 737
Mahoney c. East Holyford Rail. Co., L. R. 7 H. L. 869 - 44, 45, 46, 191, Main Colliers C. D.
Main Colliery Co. Down!
Main Colliery Co., Powell v., (1900) A. C. 366; 69 L. J. Q. B. 758; Mair v. Himalaya Top Co. (1911) L.)
Mair v. Himalaya Ten Co., 1 Eq. 411 - 272
Mair v. Rio Grand 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1,
Mair v. Rio Grande Rubber Estates, (1913) A. C. 853 - 262
- 355

lxi

12: 18 TY.

Mai-Mar	
Maison Louis Pinet, Ltd. Finet & Co. v., (1898) 1 Ch. 179 - Malam v. Hitchens, (1894, 3 Ch. 75)	PAUN
Malam v. Hitchens, (1894) 3 Ch. 578; 63 L. J. Ch. 797; 71 L.	- 27 r.
Malleson r. Natural Isan	- 220
Malleson r. National Insurance Co., (1894) 1 Ch. 200; 63 L. J. Cl 286; 70 L. T. 157; 42 W. R. 249	h.
ananchester and London Life Assure	- 47
Manchester, &c. C., Hill r., 5 B. & Ad. 866	- 384
42 L. T. 714	- 258 ;
Manchester and Milford Buitman On	- 326
(1899) A. C. 83 : 68 L. J. Ch. and Manchester Browery r.	- 428
Manchester Corporation, AttGen. c., (1906) 1 Ch. 643; 75 L. J. Ch. 330; 54 W. R. 307 - 29 T. Ch. 643; 75 L. J. Ch.	. 249
Manchester Rail, Co., Butler v., 21 Q. B. D. 207 Manchester Rail Co. V.	68
Manchester Rail. Co., Forrest v., 30 Beay, 40	74
Manchester Rail Co. North Co. Beav. 40	67
Manchester Rail. Co., North Central Waggon Co. v., 13 A. C. 554 - Mangles v. Dixon, 3 H. L. C. 702	281
	292
L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353	
Mann e. Edinburgh Northern Trams Co., (1893) Λ. C. 69; 62 L. J. P. C. 74; 68 L. T. 96; 57 J. P. 243	310
P. C. 74; 68 L. T. 96; 57 J P 243	
N	332
Marine Investment Co., Re, 17 L. T. 535	281
Marine Mansions Co. (10, 17 1. 1. 305 -	414
Marine Mansions Co. (1867), + Eq. 601 : 37 L. J. Ch. 113 - 273, Marino's Case, 2 Ch. 596	
	133
Mariquita, &c. Co., Rog. v., 1 E. & E. 289	200
L. J. Ch. 215; 80 L. T. 282; 47 R. 509, 6 Manson, 84 - 121, 1 Marks v. Samuel, (1004) 2 K 1 202	
Marks v. S. sinuel, (1904) 2 K. B. 287; 73 L. J. K. B. 587; 90 L. T. 590; 53 W. R. 88 (C. A.)	1.8.8
590; 53 W. R. 88 (C. A.) - Marmon Line L. J. K. B. 587; 90 L. T.	
Marmer, Limited v. Alexander, (1908) S. C. 75 'Ct. of Sess.) - 2 Marguis of Londonderry England Ltd.	
Marquis of Londonderry, Eaglesfield v., 4 (', 1) 693; 25 W. R. 190;	11
Marquis of North unpton Sale a diama - 3	33
Marquis of Northampton, Salt v., (1892) A. C. 1; 61 L. J. Ch. 49; 65 J. T. 761; 'O W. R. 529	00
Marrs v. Thomas 17 T L P and the second states	da
Marrs v. Thompson 17 T. L. R. 365 (C. A.) -	
858; 20 W. R. 254 -	1
Marsh, Dutton v. L. P. G (), D. and - 73, 25	35
Marshall v. Glamorgan Iron and Cod Co., 7 Eq. 129; 38 L. J. Ch. 69; 19 L. T. 632; 17 W. R. 435	
69; 19 L. T. 632; 17 W. R. 435	
Marshall, Holroyd v. (1862), 10 H. L 191	4
Marshall, Shipley v , 14 C. B. N. S. 566	-
Marshall, Turouand n. 4 (b. 277, 2007	
17 W. E. 935	
Marshalf - Valve Gear Co. r. Mannana W. alt and - 201, 20.	1
Marshalf - Valve Gear Co. v. Mannang, Wardle & Co., (1909) 1 Ch.	
- 190, 242	2

lxii

	FX11
Mar Men	
Martin, Albion Co. e., 1 C. D. 580; 45 L. J. Ch. 173; 24 W. R. 134	33 L. T. 660 ;
Martyn, Penrome r (1958) E 11 8 11	192
Marzetti's Case, 28 W. R. 541 - 49 1 'T 1000	246
Marzetti's Case, 28 W. R. 541; 42 L. T. 206; W. N. (1	1880) 30 - 201, 204,
125; 77 L. T. 579; 48 W. D. 10, (1898) 1 Ch. 133;	67 L. J. Ch
Mason, Asharst c., 20 Ec. 223 - 444 T ch.	
Mason, Ashurst c., 20 Eq. 225; 44 L. J. Ch. 337; 23	W. R. 506 _
Mason v. Harris, 11 Ch. D. 97; 48 L. J. Ch. 589; 40 W. R. 699	212, 244 L. T. 644 · 97
Mason's Case, In re Liverpool Insurance Co., 30 W. R. 54: W. N. (1882) 18	- 50, 171 378 - 48 F - 75
Masonic and Gammal Lie	- 150
Masonic and General Life Assurance Co., 32 C. D. 373 Masonic and General Life for the Co., 32 C. D. 373	
L. J. Ch. 193: 65 L. T. son Co., he Sharpe, (1892) 1	Ch. 154 · #1
Millabele ('o., Rorrows, Mr. St. Co.	 179, 396
Maude's Case, 6 (b. 51: 40 F F (a) 68; (1901) 2 Cl	h. 23 - 341
113 110 12. 0. (h. 21; 23 14. T. 74	9:10 W D
Mandsley r. Mandsley, S., 1 to	- 150, 416
Ch. 347; 82 L. T. 378; 48 W. R. 568 Maund Complete Maund Complete	602; 69 L. J.
Maund, Campbell v. 5 Ad. e. 131 and	r = 274
and the stolenouthships funal for the	172
	- 74
May, Jumes P., L. R. 6 H. L. 328; 42 L. J. Ch. 586; 24 Mayfair Property Co., Bartlett P. W. N (1897) 175	412
Mayfair Property Co., Bartlett v., W. N. (1897) 175; (189 Mayhew, Schweitzer v., 31 Boay, 37	9 1. 1. 216 - 211
Mayhew, Schweitzer v., 31 Boav. 37 -	⁷⁸) ² Ch. 28 - 271
ANALY LIBERT P. L'ODING LIGHTAN TYP I CONTRACT TO THE	328
	W. R 117
Mayor of Salford r. Lover (1801) 1 O. T.	135
63 L. T. 658; 39 W. R. 85-	J. Q. B. 39;
Mayor of the Staple v. Bank of England at on a	193
Mayor of Wigan, Reg. v., 14 Q. B. D. 908	
The separating Syndicute W M AT the	- 188
46; 79 L. T. 63; 5 Mans. 342	8 L. J. Ch.
Mears v. Western of Canada, (1905) 2 Ch. 353; 74 L. J 93 L. T. 150	- 121, 123
Measures Dauth	- Ca. 581;
Measures Brothers, Ltd. v. Measures, (1910) 2 Ch. 248 R. 251 (1910)	107 - 96 71 T
Medical Battery Co. Po (1994) a m	
Medical Battery Co., Re, (1894) 1 Ch. 444	- 5/3 12
Melbourne Brewery Co., Re, (1994) 1 Ch. 444 Melhado v. Port Alegre Co., L. R. 9 C. P. 503; 43 L. J. 31 L. T. 57; 23 W. R. 37	250 - 328, 299
31 L. T. 57; 23 W. R. 37	C. P. 253;
Melrose, Lindus v., 3 H & N 17-	
Melson & Co., (1906) 1 Ch. 841; 75 L. J. Ch. 509; 94 L. 5 W. R. 468	177 F 641: 54
Mendel, Odessa Trammana (1	- 393, 398
Mendel, Odossa Tramways Co. v. (1878), 8 C L 235; 23 V 38 L. T. 731; 47 L. J. Cb. 503	W. R
Menell et Cie., Re. (1913) 1 Ch. 759	- 115, 147
	219

27

A

Deal

lxiii

Men-Min

Men-Min	
Menier v. Hooper's Telegraph Co., 9 Ch. 350; 43 L. J. Ch. L. T. 209; 22 W. R. 396	FAGE 330; 30
Mercantile Bank of Australia, (1892) 2 Ch. 204	91, 171, 242
Mercantile Co. e. International Co. of Mexico, (1893) 1 Ch. 68 L. T. 603, n.	484. n. ·
Mercantile & Con Dime Di	- 321
Mercantile, &e. Co. r. River Plate, &c. Co., (1892) 2 Ch. 303- Mercantile Trust Co. r. Bing Plate, &c. Co., (1892) 2 Ch. 303-	- 274
Ch. 366; 70 L. T. 131; 42 W. R. 365	53 L. J.
Merenants' Fire Office, (1899) 1 Ch. 429	- 321
merry weather, Atwool v 5 Eg 461 -	- 408
216; 10 Jur. N. S. 1231	50, 171 3 W. R.
Merryweather v. Moore, (1892) 2 Ch. 518	- 171
Mersey Dock Case, 11 H. L. C. 443	- 263
Mersey Dock Trustees v. Gibb, L. R. 1 H. L. 93	- 18
Mersey Steel Co. v. Naylor, 9 App. Cas. 434 -	- 74
Metal Constituents Constituents Constituents	- 410
Metal Constituents Co., (1902) 1 Ch. 707; 50 W. R. 492	
Metcalf's Case, 13 C. D. 169; 49 L. J. Ch. 347; 42 L. T. 1 W. R. 435	78 - 28
Metropolitan & Co. D.	- 206
Metropolitan, &c. Co., Bryon v., 3 De G. & J. 123	269, 270
Children WC. U.O. Tolleho & C.C. des	- 334
Metropolitan Amalgumated Estates, Ltd., Re, (1912) 2 Ch. 497 Metropolitan Bank " Heiror & D.	
Metropolitan Bank v. Heiron, 5 Ex. Div. 319; 43 L. T. 67 W. R. 370	6 : 29
Metropolitan Bank Co. Dumball (1000)	- 335
Q. B. 346; 36 I. T. 240; 25 W. R. 366	1. J. 1 305 30=
anonopolitali (oal (onsumore' Associati	l, 305, 307
Q. B. 604; 65 L. J. Q. B. 22; 73 L. T. 137; 44 W. R. 35-67 Metrepolitan Land Co., Hardy r. L. B. 7 Ch. 407	90) Z
Metrepolitan Land Co., Hardy v., L. R. 7 Ch. 427 -	
VICTOR COLUCE, DUMPN & W N (1900) 110	- 407
moritan Rall. Co., Harrison # 19 Eg 250, 44 T T	- 123
L. T. 82; 23 W. R. 403	3; 32
Mid-Kent Fruit Factory (1806) 1 Ch	47, 82
Midland Counties District Bank (1005) 1 Ct. 30/	- 410
Midland Counties District Bank, (1905) 1 Ch. 357; 92 L. T. 360 Midland Express, Ltd., (1914) 1 Ch. 41	- 263
Midland Rail. Co., Edwards v., 6 Q. B. D. 287	- 289
Midland Rail Co. Taylor 9., 6 Q. B. D. 287	- 74
Midland Rail Co., Taylor v., 8 W. R. 401	
Mid-Wales Rail. Co., Bateman v. (1865), L. R. 1 C. P. 499; 35] C. P. 205 : 14 W. R. 672	L. J.
Migotti's Court 17	- 961
Migotti's Case, 4 Eq. 238; 36 L. J. Ch. 531; 16 L. T. 271; 15 W. R. Milan Tramways Co., Re (1884), 25 (Ph. 1) 587	791 101
Milan Tramways Co., Re (1884), 25 Ch. D. 587; 53 L. J. Ch. 16 50 L. T. 545; 32 W. R. 601	101- 10 <u>2</u>
50 L. T. 545; 32 W. R. 601	/00;
Miles v. New Zealand Estate Co. (1886), 32 C. D. 266; 55 L. J. 801; 54 L. T. 582; 34 W. R. 660	- 329
801; 54 L. T. 582; 34 W. R. 669	
Mills, Charlesworth v. (1892) A (1921, 95 O D -	155, 158
	- 281
Allward V. Thatcher, 2 T. R 81	- 327
Minera Co., Re (1876), W. N. 234	- 189
	- 397

lxiv

CASES,	Ixv
Min-Mou	
Mining Shares Co., (1893) 2 Ch. 660; 62 L. J. Ch. 434; 68 L. T. 41 W. R. 376	PAGE
41 W. R. 376	. 378 :
Mitcalfe, Sullivan v., 5 C. P. D. 465; 49 L. J. C. P. 815; 44 L. 29 W. R. 181	- 80
29 W. R. 181	T. 8 ·
Mitchell Norman to the	21.0,
Mitchell, Norman e., 19 Beav. 278; 5 De G. M. & G. 648; 2 W 247, 685	- 359
Modefault 1	
Mockford, Andrews v., (1896) 1 Q. B. 372 Molineaux v. London D. 1	- 146
Molineaux r. London, Birmingham and Manchester Insurance (1902) 2 K. B. 589; 71 L. J. K. B. 848; 87 L. T. 324; 51 W 36 (C. A.)	- 357 Co., 7 P
Monmouthshire Cupel Co	184, 189
Monmouthshire Canal Co., Maund r., 4 M. & G. 452 Monolithic Co., (1915) 1 Ch. 643	- 74
Montague Hen 1:1	990 000
Montague, Hendricks v., 17 C. D. 638; 50 L. J. Ch. 456; 44 L 879; 30 W. R. 160	280, 282
Montaignac r. Shitta, 15 A. C. 357	27, 249
Montefioro Demonder VI	-1, 249
Montefiore, Ramsgate Hotel v., L. R. 1 Ex. 109; 35 L. J. Ex. 90 Montgomery Moore Ship Collision Doors Smills 4 Montgomery Montgomery Montgomery Montgomery Moore Ship Collision Doors Smills 4 Montgomery	- 436
Montgomery Moore Ship Collision Doors Syndicate, W. N. (1903) 1 72 L. J. Ch. 624; 89 L. T. 126	- 112
72 L. J. Ch. 624 ; 89 L. T. 126	21:
Montgomervshire Browning C	- 392
L. J. Ch. 915; 3 Manson, 279	65
Autonitreal Lithooraphing C (1.1.	- 75
C. P. 121; 81 L. T. 135 (H. L.)	J.
Moor v. Auglo-Italian Bank 10 (D and	- 27
	28, 392
	- 355
Moore v. N. W. Bank, (1892) 2 Ch. 518 456; 40 W. R. 93	- 263
456; 40 W. R. 93 - (1001) 2 (h. 599; 60 L. J. Ch. 627; 64 L.	Т.
Morren P. Oxford Portland Come + Q	- 132
Morris, Jacobs v., (1902) 1 Ch. 816	- 185
Morrison (G H) & G	4100
Morrison, Now Zealand Loan and Mercantile Agency Co. v., (1894) A. C. 349 (P. C.); 67 L. J. P. C. 10; 77 L. T. 603 46 W. P. 1000	411
A. C. 349 (P. C.). 67 I Joan and Mercantile Agency Co (100	- 411
A. C. 349 (P. C.); 67 L. J. P. C. 10; 77 L. T. 603; 46 W. R. 239 Morrison r. Skerne Ironworks Co., 60 L. T. 588	5)
Morrison r. Skerne Ironworks Co., 60 L. T. 503; 46 W. R. 239 Morrison r. Truston J. J. J. J. 603; 46 W. R. 239	~ 432
Morrison r. Trustees' Executors Co. (1899), 68 L. J. Ch. 11; 79 L. J.	- 325
Morris's Case I D F C	
Morris's Case, L. R. 7 Ch. 200; L. R. 8 Ch. 810	- 152
Mortgage Insurance Co. v. Canadian Agricultural Coal Co., (1901 2 Ch. 377; 70 L. J. Ch. 684; 84 L. T. 861	- 404
2 Ch. 377; 70 L. J. Ch. 684; 84 L. T. 861 - Morton, Queen "L. B. 9. 0. 0. 100 - 100)
Morton, Queen v., L. R. 2 C. C. R. 22	- 329
Mosely v. Koffyfontein Mines, Limited (shares for bonus certificates) (1904) 2 Ch. 108; 73 L. J. Ch. 569; 91 L. T. 266, 53 W. D. (C. A.)	, 239
Mosely v. Koffulantain M. 40	
Z Un. 382	317
Mosely v. Koffufontain Mr.	100
I Ch. 73: (1911) A C 400, Innited (increase of capital) (1011)	188
Moss Steamshin Co un	
Moss Steamship Co. v. Whinney, (1912) A. C. 254	87
Mounsey, Australian Co. v., 4 K. & J. 733; 31 L. T. (O. S.) 246; 6 W. R. 734	326
P	0.00
	270
. е	

lxv

Mou	-Nat

lxvi

1

Mount Morgan West Gold Mine Co.	In me 1	4 T m	(1)))		PAGE
Mowatt v. Castle Steel, &c. Co., 34 (1 T) 80.	0 1. T.	022 -	353, 3,	54, 356
Mowbray, Kuala Pahi Estate v., (19	- D. 00 ;	100	T. 645	-	- 239
Moxham ", Grant (1000) 1 () D an	14) W. N	. 321	-	-	- 322
Moxham v. Grant, (1900) 1 Q. B. 88 65 (C. A.)	; 68 T'	J. Q. B	. 97; 7	Manso	n,
Moxhay, Tulk v. (1848), 2 Ch. 774	•	•	-	180, 21	1, 407
Mozley v. Alston, 1 Ph. 790 -		•	-	-	- 156
Muggeridge, Re, L. R. 10 Eq. 443		•	-	-	- 242
Muggeridge, New Brunswick Co	• •		-	-	- 403
Muggeridge, New Brunswick Co. r., 242; 3 L. T. 651; 9 W. R. 193	I Dr. &	Sm. 36	3; 30 1	. J. Cl	h.
Municipal Freehold Land Co. " Poll	- Incton (10001 4	-	- 11	5, 343
			з L. Т.	238; 3	9
Municipality of Picton v. Geldert, (18		1 201	-	- 18	8, 262
Munnings, Attwood v., 7 B. & C. 278	$\frac{1}{2}$. 024	-	-	- 331
Munster and Leinster Bank, In re, (1	007\T_ 1	D		-	- 436
Munt v. Shrewsbury Rail. Co., 13 Be	(007) Ir.	R. 237 -	•	-	- 80
Murray P. Bush, L. R. 6 H T. 77.	uv. 1 -	~	•		66, 68
Murray v. Bush, L. R. 6 H. L. 77; 4 22 W. R. 280	12 1. J. (Ch. 586	; 29 L.	T. 217	:
Murray, Wills r., 4 Ex. 843; 19 L. J	-	•	•	-	- 192
Mutoscope and Biograph San 1:	. Ex. 20	9 -	-	- 163	7, 176
Mutoscope and Biograph Syndicate, A 417: 81 L. T. 22: 47 W. D. 500	le, (1899)	1 Ch. 8	96; 68]	Г. <mark>Ј.</mark> СЪ	
	-	-			- 416
Mutter r. Eastern, &e. Co., 38 C. D. 9	92 -	-			- 222
Mutual Society, Grimwade v., 52 L. J	C. 409 -	-	-		
Mutual Society, Wallingford v. (1875 49: 43 L. T. 258 · 20 W. D. 21), 5 A. (. 685 ;	50 L.	J. Q. B	
	-	_			- 294
Mysore Gold Co., 42 C. D. 535	-	-			
Mysore Reefs Kangundy Mining Co., 86 L. T. 221 (1902) 1 Ch47	Stephen	s c., 71	LJC	h 905	
86 L. T. 221; (1902) 1 Ch. 745				4. 200	
		~		•	- 71 -

N.

Nant-y-glo, &c. Co. v. Grave, 12 C. D. 738 -
Nash v. Calthorpe, W. N. (1905) 100
Nassau Steam Co. v. Tyler (1894), 70 L. T. 376
Notel Invostment ()
Natal Investment Co., In re (1863), L. R. 3 Ch. 355 - 293, 298, 299, 300 Natal Land Co. v. Paulia Colling South State St
National Bank of India, Kepitigalla Rubber Estates v., 25 T. L. R. 402
• • •
Rational Bank of Wales, Re, (1897) 1 Ch. 298 (C. A.); (1899) 2 Ch.
National Co. for Distribution of Electricity, (1902) 2 Ch. 34, 357; 87
- 394, 422

,

	17 11
Nat-New	
National Debenture Corporation, Re. (1891) 2 Ch. 505; 60 L. 533; 64 L. T. 512; 30 W D Let.	PAGE
533; 64 L. T. 512; 30 W. R. 'C' -	J. Ch.
National Dwellings Co. 78 . P. 1.1	- 52
National Dwellings (o, c, Sykes (1804) 2 (2) 170 and 7	91, 96
42 W. R. 696	
National Exchange Bank : Drew, 2 Macq. 124; 25 L. T. 223 National Funds Assurance in C. D. G. D. G. D. T. 223	170, 176
	- 346
39 L. T. 420; 27 W. R. 320	163;
286; 70 L. T. 157 : 49 W P. 210, (1894) 1 Ch. 200; 63 L. J	, 215, 407 Г. СЪ.
National Investment ('orporation (1001) to a	- 47
796; 99 L. T. 334 -	- 411 . Ch.
National Motor Mail Coach Co. (1909) a Ch	, 108, 353
The state of the s	- 335
- actorial Stures, (1899) 9 (h 779	- 414
National Telephone Co. (1914) 1 Ch. ***	- 48
National Trustee Co. of Australasia v. General Finance Co., (1 A. C. 373	84, 85
A. C. 373	903)
Naval and Military Co-operative Society, Young v., (1995) 1 K 687; W. N. (1905) 41; 92 L. T. 458 53 W P. 11	- 207
687; W. N. (1905) 41; 92 L. T. 458; 53 W. R. 447	188, 211
	- 410
Neale r. Birmingham Tramways Co., (1910) 2 Ch. 464 Neath Building Specific real and the second secon	
W. R. 122 - W. R. 122 - Luce, 43 C. D. 158; 61 L. T. 611	; 38
Neath District, &c. Co., Pegge v., (1898) 1 Ch. 183; 67 L. J. Ch. 77 L. T. 550; 46 W. R. 243	- 275 17:
Neath Harbour Works, Re, 35 W. R. 827; 36 L. T. 727; W. (1887) 87, 121	- 318 N.
Needham, Bristow v., 2 P. 690	207, 399
Nell v. Atlanta, &c. Co. (1896) 17 T. D. 10-10-10	- 326
The second state of the se	- 185
Ch. 112; 75 L. T. 482; 45 W. R. 171	. J.
Averson P. James Nelson V Song THJ (1014) a Tr	- 222
Nelson, Ex parte, 14 (° 1), 45	- 43
Nelson & Co. r. Faber, (1903) 2 K. B. 367; 72 L. J. K. B. 771; L. T. 21	- 411
L. T. 21	
Nelson, Ogdens v., (1905) A. C. 109 - 3	09, 310
Treson, Usgood v., L. R 5 H T eng	- 263
Nelson Line, Ltd., Goodfellow a. (1010) p. Or. co.	- 198
	- 321
Neuchatel Co., Lee v., 41 C. D. 1; 58 L. J. Ch. 408; 61 L. T. 1 37 W. R. 321	- 339
New Afrikander Gold Mining Booth r. (1000) 01 11. 1. 1	1;
New Afrikander Gold Mining, Booth v., (1903) 1 Ch. 295; 87 L.	.8, 219 n
509; 51 W. R. 593 (C. A.) -	
New Asbestos Co., Ilyde v., 8 T. L. R. 121 - 34	1, 342
	- 354
(C. A.); (1904) A. C. 165; 72 L. J. K. B. 143; 88 L. T. 189; 5 W. R. 391 (C. A.)	1
· · · · · ·	- 132
e 2	

lxvii

2

New-New

lxviii

New-New	
	AOR
(H. L. E.); (1904) 2 Ch 468 191, 92 W. R. 301; 20 T. L. R. 396	
New Beeston Cycle Co. Selton a (1996) 1 Cl. 755	153
370; 80 L. T. 521; 47 W. R. 462 New Belgium (b) Transmooth 1, (1899) 1 Ch. 775; 68 L. J. Ch. 187,	100
	193
29 W. R. 455	
New Brunswick Co. v. Conybeare, 9 H. L. C. 711, 724; 31 L. J. Ch. 297; 6 L. T. 109; 10 W. R. 305	360
New Brunswick Co. c. Muggeridge, 1 Dr. & Sm. 202, no. 1	355
Newcastle Co., W. N. (1888) 246	
Newcastle, &c. Waterworks Co. Atkingon and H. D.	
	51
-	
New Clydach Co., 6 Eq. 514	
New de Kaap, (1908) 1 Ch. 589 : 77 L. J. Ch. 374 : 08 T. W. 497	89
Newdigate Colliery, Re. (1912) 1 Ch. 468	
New Durham Salt Co., In re (1891) 9 Mag. C. D. 1000 (1001)	26
New Eberhardt Co., In re (1889) 43 (C I) 118 100, ro I - 287, 31	18
Newnaven Local Board " Newhouse Cal. 1 The second	21
New London and Brazilian Bank and Brocklebank (1882), 21 C. D. 302: 51 L. J. Ch. 711; 47 L. T. 3: 30 W. D(1882), 21 C. D.	91
302 : 51 L. J. Ch. 711 : 47 L. T. 3 ; 30 W. R. 737 - 154, 155, 156	~
New London and Suburban Co. Appl. 47 1. 1. 5; 30 W. R. 737 - 154, 155, 150 159, 29	
New London and Suburban Co., Appleyard v., (1908) 1 Ch. 621: 77 L. J. Ch. 358; 98 L. T. 663	1
Newman (Gourge) & Cr. (1007)	0
Newman (George) & Co., (1895) 1 Ch. 674; 64 L. J. Ch. 407; 72 L. T. 697; 43 W. R. 483	
Newmarket Local Board, Cowley & (1802) A C and	
	1
	ı
Tow Oriental Dank Corporation, (1892) 3 Ch. 349	-
146W 1 ar (Onsols, (1898) 1 (), R 673	
and a sometere co. g. Erlanger 3 Ann (log 1010)	
578; 83 L. T. 341	
New Tivoli Co., Astley v., (1899) 1 Ch. 151; 68 L. J. Ch. 90; 79 L. T. 541; 47 W. R. 326; 6 Manson, 64	1
Newton, Re, (1896) 2 Q. B. 403; 65 L. J. Q. B. 686; 75 L. T. 144; 45 W. R. 63	•
Newton v. Birmingham Small Arma G. (1000) - 401	
Newton v. The Debanture Holden of the control	
 Newton v. The Debenture Holders of Anglo-Australian, &c. Co., (1895) A. C. 244; 64 L. J. P. C. 57; 72 L. T. 305; 43 W. R. 401 - 	
New Transvaal Co., Re, (1896)2 Ch. 750; 65 L. J. Ch. 868: 75 L. T. 970, 140	\$

New Transvaal Co., Re, (1896)2 Ch. 750; 65 L. J. Ch. 868; 75 L. T. 272- 416

New-Nor

New Trinidad Co., Foster c., (1901) 1 Ch. 208; 70 L. J. Ch. 123; 49 PAGE New Vacuum Cleaner Co., British Vacuum Cleaner Co. r., (1907) 215, 217 2 Ch. 312; 76 L. J. Ch. 511; 97 L. T. 201; 23 T. L. R. 587 New Weighing Machine Co., W. N. (1896) 48 - 27, 249 New Westminster Brewery, (1911) W. N. 247 - -- 397 New York Breweries Co., Att.-Gen. c., (1898) 1 Q. B. 205; (1899) A. C. 62; 67 L. J. Q. B. 86; 78 L. T. 61; 46 W. R. 193 -79 New York Exchange Co., Re, 39 C. D. 415; 58 L. J. Ch. 111; 58 - 139 New York Taxicab Co., (1913) 1 Ch. 1 - -- 421 New Zealand, &e. Co. r. Peaeock, (1894) 1 Q. B. 622, 632; 63 L. J. 321, 325 - -New Zealand Estate Co., Miles r. (1886), 32 C. D. 266; 55 L. J. Ch. 801; 54 L. T. 582; 54 W. R. 669 - 155, - 66, 148, 427, 429, - - - 155, 158 New Zealand Joint Stock, &c. Corporation, 23 T. L. R. 238 - 402, 421 New Zealand Kapanga Co., 18 Eq. 17, n.; 42 L. J. Ch. 781; 21 New Zealand Loan and Mercantile Agency Co. e. Morrison, (1898) - 121, 128 A. C. 349 (P. C.); 67 L. J. P. C. 10; 77 L. T. 603; 46 W. R. 239 New Zealand Midland Railway, Re, Smith v. Lubbock, (1901) 2 Ch. 432 357; 70 L. J. Ch. 684; 84 L. T. 861 Nicholls, Ernest v. (1857), 6 H. L. C. 401; 3 Jur. N. S. 919 - 329 44, 56, Nicholson, Aggs r., 1 11. & N. 165 -65, 68, 425, 441 Nicol's Case (misrepresentation), 3 De G. & J. 387; 28 L. J. Ch. 257; - 199 33 L. T. (O. S.) 14; 7 W. R. 217; 29 C. D. 429 Nicol's Case (membership), 29 (', 1), 421; 52 L. T. 933 - 355, 357 - 74. Nicolls, Burkinshaw v. (1878), 3 A. C. 1004; 48 L. J. Ch. 179; 39 102, 103, 111, 116 L. T. 308; 26 W. R. 819 - - - 75, 143, 144, 440 Noakes v. Noakes, (1907) 1 Ch. 64; 76 L. J. Ch. 151; 95 L. T. 606; Norcliffe, Ambergate Rail. Co. v., 6 Ex. 629; 20 L. J. Ex. 234 - 315 Norman v. Mitchell, 19 Beav. 278; 5 De G. M. & G. 648; 2 W. R. - 148 Normandy v. Ind Coope & Co., (1908) 1 Ch. 84: 77 L. J. Ch. 82; 97 - 146 L. T. 872; 15 Mans. 65; 24 T. L. R. 57 - 50, 168, 185, 188, 242 North Australian Co. v. Goldsborough Co., 61 L. T. 717 North Australian Territory ('o., 45 Ch. 1). 87 -- 390 North Brazilian Sugar, 37 C. D. 83; 56 L. T. 229 -- 408 North Central Waggon Co. r. Manchester Rail. Co., 13 App. Cas. - 223 North Charterland Co. (1896), 13 T. L. R. 80 -. -- 281 North Cheshire and Manchester Brewery c. Manchester Brewery, - 338 (1899) A. C. 83; 68 L. J. Ch. 74; 79 L. T. 645-H. L. (E.) - 27, 249 North Eastern Insurance ('o., (1915) W. N. 210 - - 402, 403 North Eastern Rail. Co., Att.-Gen. r., (1906) 2 Ch. 675; 76 L. J. Ch. - - - --

lxix

- 68

Nor-Ode

North Kent Iron Works, MeMal Ch. 372; 64 L. T. 317; 39 W. I	1011 v., (18	891) 2 Ch. 1	148;60	PAGR L. J.
Nuch Ct. m 1 7 11 11 011; 00 W. 1	1. 349			- 324
North Stafford Rail. Co., Barton # 58 L. T. 549; 36 W. R. 754	., 38 C. I). 438 ; 57 I	. J. Ch.	800;
North Vancouver Land Co. T	-		-	- 139
North Vancouver Land Co., Jones	r., (1910)	A. C. 317	-	- 152
TYOT METH ASSUM TEA Co., In re (15	10 10 10	- 180		
Northern Assam Tea Co., Higgs 233; 21 L. T. 336; 17 W. R. 11	/10001	4 Ex. 387;	38 L. J.	- 295 Ex.
Northern Assurance TAL T	20 mm .		-	- 293
Northern Assurance, Ltd. r. Farnh 125 -		l Breweries,	, (1912) 2	
Northern Counties Bank, Re, 31 W	D Sto	-	-	- 321
Northern Territories Mines 4	. n. 940	•		- 210
Northern Territories Mines of Au T. L. R. 179	stralia, B	utler v., 96	L. T. 41	; 23
North of England Steamshin ()	10011 1 0	-	-	- 71
North of England Steamship Co., (in W. N. (1995) 77 - 21 T L P	1905) I CI	1. 609, rover	sed by C.	A.,
in W. N. (1905) 77: 21 T. L. R.	481; 53 /	V. R. 499;	(1905) 2	Ch.
North of England Iron Steamship L. J. Ch. 211; 82 L. T. 598; 48	Insee, Co	., (1900) 1	Ch. 481;	69
North Sydney Tuyestment C.	W. I. 004	-	-	- 78
North Sydney Investment Co. v. Hi	ggins, (18)	899) A. C. 2	63 - 1	22, 253
The second of tally Danking I'n Re		T OFF		
Northumberland Building Society,	Rowonhow			- 53
and octory,	mocuber	5 m, 22 Q. 1	5. D. 373	-
Northumberland Sec. (1. 1)				18, 49
Northumberland, &e. Co., Re, 33 C. 123 -	D. 16; a	38 L. T. 377	; 26 W.	R.
N. W. Bank, Moore v., (1891) 2 Ch. 456; 40 W. R. 93	599 ; 60	L. J. Ch. 62	7; 64 L.	Т.
North-West Transmont		-	-	- 132
North-West Transportation Co. v. Be P. C. 102; 57 L. T. 426; 36 W. R				
Norton v. Florence Land Co. (1977)	- (11 -	•	-	57, 170
Norton v. Florence Land Co. (1877), W. R. 123	7 Ch. D.	332; 38 L.	T. 377 :	26
		-	-	- 285
Norton v. Yates, (1905) W. N. 175				
Norwich Yarn Co., Re, 22 Beav. 143	-		-	- 310
, , south 110	-	-	-	- 211

О,

Oak Pitts Colliery Co., Re, 21 C. D. 322; 51 L. J. Ch. 768; 47 J. T. 7; 30 W. R. 759 ----. - 410, 413 Oakbank Oil Co. v. Crum (1883), 8 App. Cas. 65; 48 L. T. 537; (1867), L. R. 6 H. L. 375 - - 41, 44, 168, 214, 41, 44, 168, 214, 441 Oakes v. Turquand, L. R. 2 H. L. 325; 36 L. J. Ch. 949; 16 L. T. 808 --_ 7, 52, 56, 126, 353, 409, 442 Oceana Development Co., (1912) W. N. 121, 138 - - - 99 Odessa Tramways Co. v. Mendel (1878), 8 Ch. D. 235; 26 W. R. 887; 38 L. T. 731; 47 L. J. Ch. 505 - - - 115, 147 . Odessa Waterworks Co., Rr, W. N. (1897) 166 --Odessa, Wood v., 42 C. D. 636; 58 L. J. Ch. 628; 37 W. R. 733; - 416 ---. 40, 41, 220

lxx

TABLE OF CASES,	lxxi
0ffl-0we	
	PAGE
Official Receiver, Tailby c., 13 A. C. 523; 58 L. J. Q. B. L. T. 162; 27 W. R. 513	73, 60 '
Ogdens v. Nelson, (1903) A. C. 109	280, 308, 318
O'Hagan, Viditz v., (1899) 2 Ch. 569	- '263
Olathe Silver Co., Re (1884) 07 Ch. The owner	- 113
	328, 392
L. T. 253; 49 W. R. 391; 65 J. P. 294; (1902) 1 Ch. 610- Oliver, Pittard c. 39 W. P. 214; (1902) 1 Ch. 610-	377;84
Olympia, Limited, (1898) 2 Ch. 181; 78 L. T. 159; 14 T. 236 -	- 174
236 Chi, 181; 78 L. T. 159; 14 T.	
Omnium Electric Palaces r. Baines. (1914) 1 Ch. 332	331, 333
The sale brightens Association 95 Th T The	- 334
Sometry in reg (1801) o () to the second	- 387
Ooreguin ('o, r, Roper, (1892) A (' 195, ct T T C, and	- 137
427; 41 W. R. 90	5 L. T.
Opera, Re (No. 3), (1891) 3 Ch. 260, C. A.; 60 L. J. Ch. 83 L. T. 371; 39 W. R. 705	7, 340, 442
L. T. 371; 39 W. R. 705	19; 65
Oppenheimer, Re. (1907) 1 Cb 300, 70 T T Cb	309, 313
Oregon Mortgage ('o. (1910), S. C. 964, Ct. of Sess. ; Mews, 56 Oriental Bank Corporation 28 C. D. 64, Ct. of Sess. ; Mews, 56	631 - 220
	0, 399, 410
Criencal Telephone Co., Baillion /1015) 1 (1 ton	- 115 7, 173, 242
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
Ormerod's Case, (1894) 2 (h 474, 49 T T Co and a second	- 310
	5, 327, 339
Orton v. Cleveland Co., 3 H. & C. 868; 13 W. R. 869; 11 Jur. 531 -	N.S.
Osborne r. Amalgamated Society of Railway Servants, W. N. (251 (C. A.): 77 L. J. Ch. 750, 24 T. J. Servants, W. N. (1908)
251 (C. A.); 77 L. J. Ch. 759; 24 T. L. R. 827; 25 T. L. R. Osborne r. Same, W. N. (1911) 50 (2) A.	107 - 9
Osborne r. Same, W. N. (1911) 59 (C. A.) Osgood r. Nelson, L. R. 5 H. L. 636 -	- 9
Osmondthorne Hell Society (1010) are an	- 198
Osmondthorpe Hall Society, (1913) W. N. 243; 58 S. J. 13 - Otto Electrical Manufacturin	- 390
Otto Electrical Manufacturing Co., Jenkin's Claim, 75 L. J. Ch. (1906) 2 Ch. 390: 95 L. T. 141; 54 W. R. 601	682 ;
Ottoman, Re, W. N. (1867) 164	60, 254
Ottos Konie Diamond Mines (1900) 1 (1	- 408
Ottos Kopje Diamond Mines, (1893) 1 Ch. 618; 62 L. J. Ch. 166 L. T. 138; 41 W. R. 258; Seton, 1918	; 68
Outlay Assurance Society, <i>In rr</i> , 34 Ch. D. 479; 56 L. J. Ch. 56 L. T. 477; 35 W B 242	135, 143
56 L. T. 477; 35 W. R. 343	148 ;
Overend, Gurney & Co. r. Gibb, L. R. J H. L. 480; 42 L. J. 67	- 54
67	Ch.
	202, 204
L. T. 547; 49 W. R. 100 (C. A.)	; 83
	44, 104

lxxi

٩,

Owe-Pas

Owen	v. Cronck.	(1895) 1 Q.	R 9as				PAGE
Oxenfo	rd Shann	ard v., 1 K.	A T 100 -	-	-	-	- 326
Orland	Donoft.	aru o., I K.	& J. 491	-			- 0
598 :	35 W. R.	tc. Society,	35 C. D. 502;	56 L	J. Ch. 8	8 : 55 L	T
d) whom!	De-Ale: 1	110 -		-	- 1	79, 186.	215, 217
OXION	Fortland	Cement Co.,	Morrell v., 2	6 T. L.	12. 689		
						-	- 185

P.

Dana Data a			
Pacaya Rubber Co., Re, (1913) 1 Ch. 218; (191 Pacaya Rubber Co., Jones v. W. N. (1910) and	4) 1 (h.	549 -	955 414
Pacaya Rubber Co., Jones v., W. N. (1910) 257	; (1911)	IK.B	435.
Parife Cont St. 11	,	14	9, 151, 152
Pacific ('oast Syndicate, Rr, (1913) 2 Ch. 26 -	-		
Padstow Association, Re (1813) 2 Ch. 26 - L. T. 774 : 30 W. B. 300	51 L. J	Ch. 34	4 - 15
			- 387
Page v. International, &c. Co., 68 L. T. 4:13; 6: Paget, Griffith v. (1875), S.C. D. C. D.	2 L. J. (h. 610	
	15:46 I	J. J. Ch	- 211
Falace Billiard Rooms, Ltd. " City Decounter T	td. (19	1918 0	\$ 420, 441
		a) 0. U.	
Fance Restaurants, Ltd Re (1014) 1 CL 100		-	- 100
Taluer's Decoration and Furnishing Co. (10	- 	- 	- 413
Panama, &c. Co., Re (1870). L. R. 5 Ch. 218.	- -	-	- 293
Panama and South Pacific Co. " Indiambhan G.			311, 442
Panhard Levassor Co., Société Panhard v., (1901 Panna Ural Gold Fishka	., L. R.	10 Ch. a	515 - 194
Pappa, Ural Gold Fields v., 15 T. L. R. 330	1) 2 Ch.	513	- 27
Paraguay Central, Heslop v., 54 S. J. 234 -	-	-	- 131
Parbury's Cuse (1896) 1 Ch 100, 017 7	-	-	286, 319
Parbury's Case, (1896) 1 Ch. 100; 65 L. J. Ch. 44 W. R. 107	104; 73	L. T. :	506 ;
Paringa Mines, Barrow & (1000) o Ch. and	-	-	- 145
Paringa Mines, Smith v., (1906) 2 Ch. 658 - L. T. 371 -		•	- 341
L. T. 371	L. J. (h. 702;	94
Paris Skating Rink Co., 5 Ch. D. 959	-	-	- 176
Park v. Lawton, (1911) 1 K. B. 588 -	-	-	- 392
Park c. Royalties Syndicate, Ltd., (1912) 1 K. B.	-	-	123, 163
Parker, Ex parte, 2 Ch. 685; 15 W. R. 1217 -	130	-	- 369
Parker v. Dunn, 8 Beav. 497 -	-	-	- 128
Parker v. Lewis 8 (h 1025, or W. D. av	-	-	- 326
Parker v. Lewis, 8 Ch. 1035; 21 W. R. 928; 29 I. Parker v. McKanne 10 (1)	4 T. 199	-	- 193
Parker v. McKenna, 10 Ch. 118; 44 L. J. (h. 4 23 W. R. 271	25; 31	L. T. 7:	39;
	192, 19.	1, 206, 4	36, 442
Parnaby v. Lancaster Canal, 11 Ad. & El. 223	-	-	- 74
Parrott, Re, 63 L. T. 777	-	-	- 401
Parsons v. Surgey, 4 Fost. & Fin. N. P. Cas. 247	-	-	- 174
Lartruge v. Knodesta Goldfields. (1910) 1 Ch. 220	-	_	- 316
Passburg Grains, Stirling r., 8 T. L. R. 71 -	-	-	- 318
			- 104

Ixxii

Pat-Pan

۰,

TABLE OF CASES.

ret-ren	
Patent File Co., Re, 6 Ch. 83; 40 L. J. Ch. 190; 19 W. R. 193	PAGE
10 17 0 17 0. CH. 190; 19 W. R. 193	- 66,
Patent Invert Sugar Co., 31 C. D. 166; 55 L. J. Ch. 924; 53 L 698, 737; 34 W. R. 169	190, 270 . T.
Patent Ivory Co., Howard e., 38 C. D. 156; 57 L. J. Ch. 878 L. T. 395; 36 W. R. 801	90, 92 : 58
Patent Lionite Co., Thomas v., 17 C. D. 257 - 46, 253, 256, Pathé Frires & March (1997)	271, 276
Pathé Frères, Ex parte, (1934) 2 K. B. 299	- 411
Pauline Colliery Syndicate N 4 1 7	- 338
Pauline Colliery Syndicate, Natal Land Co. r., (1904) A. C. 120 Payne r. The Cork Co., (1900) 1 Ch. 308; 69 L. J. Ch. 156; 82 L 44; 48 W. R. 325; 7 Manson, 225	- 253 T
Peacock, New Zealand & Contraction - 39, 50, -	424, 430
Q. B. 227 : 70 L. T. 110 Pearce v. Foster, 17 Q. B. 0 590, 114 J. C. B. 622, 632 ; 63 L. 66, 148, 4	197 190
Pearce v. Foster, 17 Q. B. D. 536; 55 L. J. Q. B. 306; 54 L. T. 66 Pearks v. Richardson, (1902) 1 K. B. 91 - 71 L. J. W. 54 L. T. 66	4 - 989
Pearks v. Richardson, (1902) 1 K. B. 91; 71 L. J. K. B. 18; 85 L. 616; 50 W. R. 286	T.
Penrse v. Green, 1 J. & W. 135	- 234
Pearson, Gray r., 6 H. L. C. 106	- 222
Pearson's Case 5 (1 1) and 10 -	69, 273
Pearson's Case, 5 C. D. 336; 46 L. J. Ch. 339; 25 W. R. 618	- 185,
Peat v. Clayton, (1906) 1 (2 030, 777 7 (2	06, 407
Peat v. Clayton, (1906) 1 Ch. 659; 75 L. J. Ch. 344; 94 L. T. 46 54 W. R. 416	5;
Peckham Trams, 57 L. J. Ch. 100	- 132
rediar r. Road Block, (1905) 9 Ch. (07, on m. r.	- 399
Pedlar c. Road Block, (1905) 2 Ch. 427; 22 T. L. R. (1906) 17: 74 L. J. Ch. 753; 54 W. R. 44	9;
Peek v. Derry, 37 (h. D. 541 + 57 J. J. 10	- 71
W. R. 899; on app., 14 App. ('as, 337; 58 L. J. Ch. 864; 61 L. ' 265; 38 W. R. 33; 1 Mag 299	36
265; 38 W. R. 33; 1 Meg. 292	Т.
Peek v. Gurney, L. R. 6 H. L. 377; 43 L. J. (h. 19; 22 W. 1 29	18, 442
29	R.
Peel's Case, 2 Ch. 674; 36 L. J. Ch. 757; 16 L. T. 780; 15 W. H 1100	7, 359
Peel v. L. & N. W. Rail, Co. (No. 1) (1007) 1 (35, 51, 52, 35	5. 9 419
Peel v. L. & N. W. Rail. Co. (No. 1), (1907) 1 Ch. 5; 76 L. J.	a, 112
Pegge v. Neath District &c (10 (1909) 1 (1) 67, 17	3. 449
Pegge v. Neath District, &c. Co., (1898) 1 Ch. 183; 67 L. J. Ch. 17 77 L. T. 550; 46 W. R. 243	:
Pell's Case & Ch. 11, 20 T. T. CT.	- 318
y o chi 11, 35 12, 5, 0h. 120; 21 L. T. 412; 18 W. R. 31	-
Pellatt's Case, L. R. 2 Ch. 527; 36 L. J. Ch. 613; 16 L. T. 442; 14 W. R. 726	7, 442
W. R. 726 -	5
Pelly's Case, 21 C. Div. 492; 47 L. T. 638; 31 W. R. 177), 117
	- 179
	, 238
	, 173
Pennell, Burnes v. (1849), 2 H. L. C. 497; 13 Jur. 897 - 7, 210, Penney, Ex parts 8 Ch. 449, 10 L. C. 497; 13 Jur. 897 - 7, 210,	274
Penney, Ex parte, 8 Ch. 446: 42 L. J. Ch. 187	, 215
	131
Pen-y-Van Colliery Co., 6 C. D. 477	266
	392

Pep-Poo

1 mp-100	
Pepe v. City and Suburban Permanent Building Society, (18 311 -	PAGE (93) 9 (%
Percival r. Wright, (1902) 2 Ch. 421; 71 L. J. Ch. 846; 31 V	49
Porking P. 04 () 7. 1.	V. R. 31- 105,
Perkins, Re. 24 Q. B. D. 613; 59 L. J. Q. B. 226; 38 W. 2 Meg. 197 -	180, 190 R. 710 :
Perrins v. Bellamy. (1899) 1 Ch. 797 -	156
TUTY & Case, 34 Lo T. 718	207
Persse, Coveney #. (1910) In D 101	- 205
" CIERC, FILZPERALE P. (1008) 1 L. T. Man.	- 312
- CITAL PRECURE TRAINWAYS, (1908) 9 CL DIG TO T	- 319
L. T. 815; 54 W. R. 335	
A HAVIAL AMAZON CO 90 T T D DO	288, 319 - 391
Pernvian Corporation, Cox-Moore v., (1908) 1 Ch. 604; 77 L. 387; 98 L. T. 611	J. Ch.
Perivian Guano Co. (1804) 2 Ch. 200 -	- 321
Peruvian Rail. 'o., Re (1866), L. R. 2 Ch. 617; 16 L. T. 6 W. R. 1002	R. 170 - 186
W. R. 1002	44; 15
Peruviau Rail. Co., (1915) 2 Ch. 144	65, 72, 264
= 0.00000000000000000000000000000000000	289, 406
Peveril Mines, Re. (1898) 1 Ch. 122; 67 L. J. Ch. 77; 77 L. 7 46 W. R. 198	- 411 F 303 -
Phillipart Fuure Electric A 38, 3	0, 392, 430
10 10 10 10 Co. F., 38 L. T. R. 323	- 147
Phillips, Harben v., 23 C. D. 34; 48 L. T. 334, 741; 31 W. R.	3, 192, 195
Phoneir D 184 1	173 - 40, 3, 198, 242
Phoenix Bessemer Co., Re, 44 1., J. Ch. 683; 32 L. T. 854 - Piccadilly Hotel, Ltd., Re, (1011) 6 (2016) 63; 32 L. T. 854 -	
Pickard v. Sears, 6 Ad. & El. 469	- 271 - 334
Pickburn, Popham c., 7 II. & N. 891	- 143
Picker v. London and County Darking	- 174
Picker v. London and County Banking Co. (1887), 18 Q. B. D.	515 -
Picksley, Reuss v. L. D. 1 E. 240	303, 306
* 1010 Y 117, (1907) 1 (16 100), #0 T + out	- 256
Pinet & Co., F. v. Maison Louis Pinet, Limited, (1898) 1 Ch. 17 Pinkett v. Wright, 2 Ha, 120 : 12 Cl. & Eine Ed. (1898) 1 Ch. 17	94, 220
Pinkett v. Wright, 2 Ha, 120; 12 Cl. & Fin. 764; 12 L. J. Ch. 17 6 Jur. 1102	19 - 27 119 ·
Pirie r. Stewart, 6 F. 847 (Ct. Sess.) -	- 154
Pittard v. Oliver, 39 W. R. 311; (1891) 1 Q. B. 474 - Pollard, Expurts 1000, 100 Pollard, 100 Po	- 394
Pollard, Exparte, Deac. & Chit. 27	- 174
Tomington, Municipal Freehold Land Co. (1000)	274, 325
L. J. Ch. 734; 2 Meg. 307	; 39
Poole, Jackson and White's Case (1979) O. (1. The second	188, 262
48; 35 L. T. 659; 26 W. R. 823	(ћ.
roote r. National Bank of China (1007) A C and	- 150
96 L. T. 889, H. L. E. Poole Finhaid G	, 98, 440
Poole Firebrick Co., L. R. 17 Eq. 268 95, 97 Pooley Athenese 95	- 420
Pooley, Athenseum, &c. Society v. (1858), 3 De G. & J. 294 -	- 292

lxxiv

	IXXV
Pop-Pri	
Popham v. Pickburn, 7 H. & N. 891 -	PAGE
Popple e. Sylvester (1999) and the	- 174
Popple e. Sylvester (1883), 22 C. D. 98; 52 L. J. Ch. 54; 47 329; 31 W. R. 116	I. T.
	287, 329
Popular Life Assurance Co., W. N. (1908) 222	
Porto Alegro Co., Melhado e., L. R. 9 C. P. 503; 43 L. J. C. 31 L. T. 57: 23 W P 5.	P. 253 ·
	- 41
Port Darwin Co., Swabey v., 1 Meg. 385	
62 L. T. 60; 38 W. R. 246 - 9 Mag 10	h. 201 ;
Port Philip, &c. Co., Shaw e., 13 Q. B. D. 103; 53 L. J. Q. 1 50 L. T. 685; 32 W. R. 771	- 425 3, 369 ;
Porter, Greenwoll v., (1902) 1 Ch. 530; 71 L. J. Ch. 243; 86 220	- 136 L. T
Partsmanth / Parts 1 as m	- 170
Portsmonth (Borough of) Trumways, (1892) 2 Ch. 362 : 61 L. 462 : 66 L. T. 671 : 40 W. R. 552	J. ('h.
Portuguese Consolidated, &c. Mines, 42 C. D. 160; 45 C. D. : L. J. Ch. 813 69 L. T. S. I. M.	26 - 58
	105, 128
Portuguese Copper Co., 45 (', I), 26	
Positive, &c. Co Elor a t En Di and the second	- 195 I m
190 ; 26 W. R. 338	40, 42, 262
	L.T.
Postlethwaite v. Port Phillip Co., 43 C. D. 452; 59 L. J. Ch. 20 L. T. 60: 38 W. R. 246, 9 Mar. 10, 10, 452; 59 L. J. Ch. 20	1 - 69
	- 425
Potter, Barron c., (1914) 1 Ch. 895	- 181
Potter, Wigfield r. (1881), 45 L. T. 612	
Found (Henry), Son and Hutchings to C. D. too (C.).	- 387
The state of the s	- 295
Fowell c. Evan Jones (1905) 1 K D 11	- 274
Towell v. London and Provincial Bunk (1800) a Ct	- 436
Ch. 795; 69 L. T. 421; 41 W. R. 545	L. J.
Powerl e. Main Colliery Co., (1900) A 42 200, co. t. T. C. S.	131, 134
	; 83
Powell & Sons, W. W. N (1899) of	- 272
Prefontance e. Grenier, (1907) A. C. 101, ort.	- 392
Premier Industrial Bank v. Carlton Co., (1909) 1 K. B. 106 - Premier Oil Co., Robust, (1919) 1 K. B. 106 -	- 200
Premier Oil Co., Robson e., (1915) 2 Ch. 124	45, 197
Premier Underwriting Association (1913) 2 Ch. 124	- 171
Premier Underwriting Association (No. 1), Re, (1913) 2 Ch. 29 Premier Underwriting Association (No. 1), Re, (1913) 2 Ch. 29	- 380
	- 380
Preservation Syndicate, (1895) 2 (h. 768; 64 L. J. Ch. 723; L. T. 393	: 73
Price v. Anderson, 15 Sim, 473	- 121
Price's Patent Candle (1-11	
Price's Patent Candle Co., Hampson c., 24 W. R. 754 : 34 L. T. 7 45 L. J. Ch. 437	11:
Princess of Reuss r. Bos (1871) L. D. : IT T	241, 433
24 L. T. 641 100 (1011), 1. R. 5 R. L. 176; 40 L. J. Ch. 6	65 ;
 Printing and Numerical Rogist. Co., Re. 8 C. D. 535; 47 L. J. 580; 38 L. T. 676; 26 W. R. 627 	Ch.
	410, 411

lxxv

Pri-Qui

Pritchard's Commercial (73), L. R. 8 Ch. 956 ; 42 L. J. Ch. 768 ; 29 363	PAGE L. T.
Pritchard, Offor & Co., W. N. (1893) 153	43, 121
Prockter, Brussels Polose, AV, N. (1893) 153	- 423
Prockter, Brussels Palace of Varieties r., 10 T. L. R. 72	- 339
Professional Benefit Huilding Society, Re. 6 Ch. 862 - Propert, Weeks v. (1873), L. R. 8 C. 1', 427; 42 L. J. C. P. 129 W. R. 676 -	
Property Insurance Co., Re, (1914) 1 Ch. 775	190, 276
Prigh and Shorman's Case, 13 Eq. 566; 41 L. J. Ch. 580; 26 1 274 -	- 408
274 2742774277427427427427	- T.
Pulbrook, Ladies' Draw Anna Lat	104, 113
L. J. Q. B. 705 : 49 W. R. 6 ; 7 Manson, 465 (C. A.) - 52, 99, Pulbrook r. Richmond Co., 9 C. D. 610 ; 48 L. J. Ch. 65 ; 27 W	153, 405 R.
$ \begin{array}{cccc} P_{0} \partial_{c} \sigma_{0} & d_{0}, \\ W = \partial_{c}, 73 & & \\ \end{array} \begin{array}{ccccc} 40, & & & \\ 40, & & & \\ W = \partial_{c}, 73 & & \\ \end{array} \begin{array}{ccccccccccccccccccccccccccccccccccc$	184, 198 52
	109, 121
Funtz, Symons & Co., (1903) 2 Ch. 506; 72 L. J. Ch. 768; 89 L. 525; 52 W. R. 41	
Fyle Works, Re (No. 1), 44 (b 1) 524, 507 - 43,	47, 190
887; 38 W. R. 674; 2 Meg. 83	T.
Pyle Works, Re (No. 2), (1891) 1 Ch. 572. T. T. Ch. 4	30, 271
190, 2	11, 244

Our to the second secon			
Quartermaine's Claim, (189			
Quartermaine's Claim, (189), 1993 - 1	P. 27	3; 66	L. T.
Quartz Hill Gold Mining Co. e. 1	10 . 1	1 1	Y (1)
			J. ('h.
Queen /. Gurney Finlance ard	-		- 174
Queen a Monten T The G	-	-	- 210
Glieen, Shropshire IInian C. T. T.		-	145, 259
Queen, Shropshire Union Co. v., L. R. 7 H. L. 31; 32 L. T. 283; 23 W. R. 709	. 496 ; 45	L. J.	Q. B.
Queen e, Sir Charles Reed, 5 Q. B. D. 483 - Queen's Building Society 6 (h. etc.	-	-	131, 143
Owned to the Charles Reed, 5 Q. B. D. 483 -	-		100
Queen's Building Society, 6 (h. 815 -		-	- 269
Queensland Land and Coal Co. D. Manut	-	-	- 390
Queensland Land and Coal Co., Re. (1894) 3 (1 810; 71 L. T. 115: 42 W. P. 600	h. 181; 6	3 L. J	. Ch.
	-		
Gueensland Mercantile Agency 39 T In one			256, 318
Queensland Mortgage Co. T. 1. 018	-	-	- 390
Queensland Mortgage Co., Lock v., (1896) A. (798; 75 L. T. 3: 45 W. R. 65	C. 461 : 6	5 L. J	Ch
		·	
Quin & Axtens v. Salmon, (1909) A. C. 442 -	-	-	64, 150
(1008) A. C. 442 -	-	171.	190, 242

 ε

lxxvi

lxxvii

R.

Rad-Reg

and-weg		
Radford and Bright, Limited (No. 1), Re. (1901) 1 Ch. 27: Ch. 78; 84 L. T. 150: 49 W. R. 270.	- 70 I	PAGE
Radford and Bright (No. 2). Re. (1901) 1 Ch. 735; 70 L Railway and Electric Co. 38 (1901) 1 Ch. 735;	J. Ch. 3	152 - 403
Railway Sleepers Co. (1885), 29 C. D. 204 ; 54 L. J. Ch. 720 731 ; 33 W. R. 595		
Railway Time Tables, &c. Co., <i>In</i> , 42 C. D. 98; 58 L. J. (L. T. 94; 37 W. R. 531; 1 Meg. 208	'h. 304	- 238 ; 61
Railway Time Tables, &c. Co., 68 L. T. 649 -	•	114, 127
Rainford, Jackson e., (1896) 2 Ch. 340; 65 L. J. Ch. 737; 554	•	- 69
Rainford c. James Keith and Blackman Co. (No. 1), (1903) Rainford c. James Keith and Illack	1 (1) 10	- 271
Rainford c. James Keith and Blackman Co. (No. 1), (1903) 74 L. J. Ch. 5:11; B2 L. T. 786 (C. A.)	2 Ch. 1	96 - 143 47;
Ramel Syndicate, Ltd., (1911) 1 Ch. 749	-	- 67
Ramsay c. Margrett, (1894) 2 Q. B. 18	-	- 417
Ramsgate Hotel c. Montefiore, L. R. 1 Ex. 109; 35 L. J. 1 Ramskill - Edwards (C. D. R. 1 Ex. 109; 35 L. J. 1	-	- 281
Ramskill c, Edwards, 31 C, D, 100; 55 L, J, Ch, 81; 53 34 W, R 96	Ex. 90	- 112
34 W. R. 96	L. T. 9.	49;
Rance's Case, L. R. 6 (% 104, 10,1, 7, 10)	-	- 212
Rance's Case, L. R. 6 Ch. 104; 40 L. J. Ch. 277; 23 L. 7 W. R. 291	č. 828 ;	19
Randall, Limited c. Hritish and American Shoe Co., (19	02) 2 (Ъ.
354; 71 L. J. Ch. 683; 87 L. T. 442; 50 W. R. 697 Bandt Gold Mining Co. (199	-	- 27
Randt Gold Mining Co., (1904) 2 Ch. 468; 73 L. J. Ch.	. 598 ;	91
L. T. 174; 33 W. R. 90; 20 T. L. R. 619 -	- 1	52, 153
Randt Gold Mining Co. v. New Balkis Eersteling, (1903) 1 (C. A.): (1904) A C. 185, 70	12 15 .	
(C. A.); (1904) A. C. 165; 72 L. J. K. B. 143; 88 L. T W. R. 391 (C. A.)	. 189 ;	51
······································	-	- 332
Randt Gold Mining Co. v. Wainwright, (1901) 1 Ch. 184	- 1	32, 152
Ranger e. G. W. Rail. Co., 5 H. L. C. 86	-	- 74
Rapid Road Transit Co., (1909) 1 Ch. 96	-	- 223
Rapier v. London Tramways Co., 69 L. T. 361	_	- 74
Rawlins r. Wickham, 3 De G. & J. 304	_	- :135
Record Reign Jubilee Syndicate, Hume v., 80 L. T. 404	-	
requaway c. Dannam, (1896) A. (' 100, 74 T. m. and	R. 638	-
Redgrave v. Hurd, 20 C. D. 1; 51 L. J. Ch. 113; 45 L. T. W. R. 251	485; ;	30
Red Rock Mining Co. (1889), 61 L. T. 785 -	-	- 356
Reese River, &c. v. Smith (register prima facie evidence), H. L. 64 : 39 L. J. (h. sto		- 391
Reese River Silver Mining (o., In re(reports in prospectus, c remedies), L. R. 2 (b. cat. 20 L. J. (l. and construction)	352, 35	3, 354
remedies), L. R. 2 Ch. 604; 36 L. J. Ch. 618; 16 L. T.	reditor	*
Reeves & Son, (1899) 1 Ch. 184	335, 40	
Regent's Canal, W. N. (1867) 79	- 12	2.123
	-	- 197

lxxviii Reg_Ric

Reg-Ric			
Regent's Canal Ironworks Co., Re (1876), 620; 35 L. T. 288; 24 W. R. 687			PAGE
620; 35 L. T. 288; 24 W. R. 687	3 C. D. 4:	3 : 45 L.	J. Ch.
Regent's Canal Ironworks Co., Ex parte Gi		-	317, 319
grand a mai Honworks Co., Ex pairte Gi	rissell, (18	76) 3 C. 1	D. 411
Row a Amoud a com			327, 421
Reg. v. Arnaud, 9 Q. B. 806 -			
Reg. v. Birmingham Rail. Co., 3 Q. B. 223 Reg. v. Chester 1 Alia Co., 3 Q. B. 223	_	-	- 56
The state of the s	-	-	- 74
neg. r. Esdaile (1858) 1 E. c. D. m.		-	- 173
neg, Exchange Bank (11 A C 175		-	210, 215
and the Grandam, 9 W. R 790		-	- 410
Reg. r. Lambeth, 8 A.J. S. I. D.G.		-	- 173
Reg. r. Mariquita, &e. Co., 1 E. & E. 289		-	- 173
Reg. r. Mayor of William 14 6 E. & E. 289		_	- 222
Reg. r. Mayor of Wigan, 14 Q. B. D. 908			
Reg. r. Saddlers, 10 H. L. C. 404			- 188
Reg. r. St. Paneras, 11 Ad. & El. 15 -		-	- 189
$mog = r + 10V_{1} \ge 0$, R, 170		-	- 173
Reg. v. Tyler & Co., (1891) 2 Q. B. 588; 61 I. 662; 56 J. P. 118	T 35		- 263
662; 56 J. P. 118 -	. J. M. C.	-38;65 1	л Т.
Reg. v. Webb, 14 East 100	-	- 74,	123, 210
Reg. r. Wimbledon S O E D tro	-	-	- 6
Reg. r. Winhledon, 8 Q. B. D. 459; 51 L. J. 47; 30 W. R. 400	. Q. B. 21	19: 46 L	. T.
Registrar of Comment	-		172, 173
Registrar of Companies, Rex r., (1912) 3 K. B Reid & Sous, (1900) 2 O B (224, 102)	. 23 -	_	97. 950
Reid & Sons, (1900) 2 Q. B. 634 ; 69 L. J. Q. 49 W. R. 15	B. 736 · >	83 T. T. 1	27, 250
13 W. K. 15		··· ·· · · ·	50;
Reid v. Explosives Co. (1887), 56 L. J. Q. B. 3 57 L. T. 439; 35 W. R. 509	188 - 10 0	B D	- 400
37 L. T. 439; 35 W. R. 509	10 Q	· B. D. 2	64;
Reidpath's Case, 11 Ea. 86	-		263, <u>32</u> 7
Rehance Taxi-Cab Re (1019) on m I T	-	-	- 110
The state of the s	-	-	- 408
	-	-	- 340
Reuss v. Picksley, L. R. 1 Ex. 342	-	-	- 207
Reuse (Princes of) , D	-	-	- 256
Reurs (Princess of) v. Bos, 5 H. L. 176 Reversionery Internet 6	- 35.	52, 53, 1	12 990
stonally interest Sometry (1900) + (1	5: 61 L	J. Ch. 127	10, 382
66 L. T. 460; 40 W. R. 389		o. en. 07	9; 1)
Rex v. Abrahams, (1904) 2 K. B. 859; 73 L. J. 493 (Div. Ct.)	K L OF	-	78, 270
493 (Div. Ct.)	n. n. 9/3	2; 91 L.	Т.
Rex v. Gaborian, 11 East, 77 -	-	-	- 18
Rex r. Registrar of Companies (1010) or re-	-	-	- 176
Rex v. Webb, 14 East, 406 -	3 -	- 2	7. 230
Rex v. Wilts and Berke Canal Co. 3 Ad. & El. 477 Rhodes v. Forwood, 1 App. Cas. 256	-	-	- 6
Rhodes v. Forwood, 1 App. Cas. 256 -	; 8 Ad. & 1	El. 901	- 125
Rhodesia Cons. Denti	-		- 263
Rhodesia Cons., Brailey v., (1910) 2 Ch. 95 - Rhodesia Goldfelda, (1910) 12 Ch. 95 -	_		-
		•	- 424
THOUGH UDINAINA Dustandan (100 m)	80	- 293	3, 329
Rica Gold Co., Re, 11 C. D. 36; 40 L. T. 531; 2: Richard Mills & Co., Ltd. Smith a Th. C.	W D -	-	- 316
Richard Mills & Co., Ltd., Smith v. The Co., (190 Richards v. Home Assurance Association J. 7	W. R. 7	15 .	- 394
Richards r. Home Assurance Association, L. R. 6	(o) W. N.	36 .	- 418
L. R. 6	C. P. 591		- 110

		IAAIA
Ric-Roc		
Richards, Pulsford c., 17 Beav. 97 -		PAGE
Richards, Southampton Dock Co. r., 1 Man. & G 4	· ·	- 346
215; 1 Scott, N. R. 219	48; 2 Rail.	Cas.
Richardson, Pearks v. (1902) 1 K D. ot		244, 247
Richardson, Pearks v., (1902) 1 K. B. 91; 71 L. J L. T. 616; 50 W. R. 286		
Richardson's ('ase, 19 Eq. 588; 44 L. J. ('h. 252; 'W. R. 683	• •	- 234
Riche r. Ashbury Rail, Co. L. R. 0 E. out. I. D.		- 104
Riche, Ashbury Railway Carriago Co. v. (1874), L. 1 44 L. J. Ex. 185, 33 L. T. 431	11. 1. 653 -	3, 69, 70
44 L. J. Ex. 185; 33 L. T. 451 - 38, 50, 6	R. / H. L. 6	71;
	1, 63, 66, 72	
Richmond Co., Pulbrook r., 9 C. D. 610; 48 L. J. Cl 377	107, b 45, 0= 37	180, 439
	- 40	- K. 184 105
Richmond's Case, 4 K. & J. 325	30,	184, 198
Ricketts v. Ricketts, W. N. (1891) 29		- 190
Ridsdale, &c. Co., Eden v. 93 () R D 200, to T T	0 R 5-0.	- 160
	·	- 193
Rimington's Case, 2 Ch. 714 -	_	- 89
Rio Grande Rubber Estates, Mair e., (1913) A. C. 853	3 _	- 355
$101180 \pm 0.000 (1877), 4 (1, 1), 782$	_	- 103
Rival Granite Quarries, Evans v., (1910) 2 K. B. 979	_	
niver Dee (0, (No, 1), Baroness Wombook , up (1),	. 685 · 10 A	- 510
River Dee Co. (No. 2), Baroness Wenlock v., 19 G. L. J. Q. B. 589: 57 L. T. 320: 35 W. D. Song G.	B. D. 155;	56
River Plato Co., Mercantile Trust Co. v., (1892) 2 (1 Ch. 578; 63 L. J. Ch. 366; 70 L. T. 131; 42 W. Road Block, Pedlar v. (1998) Ch. 67 and 70 Ch.	Ch. 303; (18	94)
Road Block, Pedlar v., (1905) 2 Ch 197, ap m T 1	R. 365 - 2	74, 321
	. 179; 74 L.	
Robb v. Greenc, (1895) 2 Q. B. 315	-	- 71
Gobarts, Goodwin + 10 Fr 227, 44 T T 1	-	- 263
	- 309 304 9	C
Roberts r. Security Co., (1897) 1 O. P. 111, and T. T.	0 8 110.	- 312
L. T. 531; 45 W. R. 214		- 259
Roberts, Bramah v., 3 Bing N. C. 963; 1 Scott, 350; 3 Roberts, Goodchap v. (1880) 14 C. D. 40	3 D. P. C. 39	08) - 964
Robertson, South-Western Loan and Discount Co. v., 1 Robertson and Woodcock Ltd. Vinger 50 St.	8 Q. B. D. 1:	- 140
Robertson and Woodcock, Ltd., Ving v., 56 S. J. 412	-	- 242
Moomson 8 (ase, 4 (h. 330; 20 L, T 06, 17 W D);	4 _	_
reconsoli c. Mourgomeryshile Brewery ('a (1900) a	Ch RIL	- 109
Robinson Printing Co. v. Chic, Limited, (1905) 2 Ch. Ch. 399; 93 L. T. 262 : 53 W. P. cett	192. ** *	- 75 T
	120 ; 14 14 0	
Robson, Buck c., L. R. 10 Eq. 629	-	- 327
Robson v. Premier Oil Co., (1915) 2 Ch. 191	-	- 405
Rooson e. Smith, (1895) 2 Ch. 118; 64 L. J. Ch. 457.		- 171
Rockwood Colliery Co., James c., 106 L. T. 128	283, 31:	
· · · · · · · · · · · · · · · · · · ·	-	- 189

lxxix

160

Rog-Rub

 l_{XXX}

Roman Coment
Rogers' Case, Harrison's Case (1868), L. R. 3 (h. 633; 18 L. T. 779; 16 W. R. 881; 25 L. T. 406
494 - 112, 133
Rolland v. Hart, 6 Ch. 681: 40 L. J. Ch. 701; 25 L. T. 191; 19 W. R. 962 (C. A.)
Rolls, Glasier v. (1889), 42 C. D. 436, 50 J. 421, 7, 191; 19
133; 38 W. B 112, 1 W. 130; 38 L. J. Ch. 820; 62 L. T
Rolt, Hopkinson v., 9 H. L. C. 514; 34 L. J. Ch. 468; 5 L. T. 90; 9 W. R. 900
-157 150
Roots v. Williamson, 38 C. D. 485; 57 L. J. Ch. 729; 49 L. T. 118 - 169 36 W. R. 758
L. T. 427 : 41 W. D. 66 (1892) A. C. 125 : 61 L. J. Ch. 207 . 42
Mosenberg C. Northumborland D. 117, 340
Rosenberg v. Northumberland Building Society, 22 Q. B. D. 373 - 18, 49 Ross v. Estates Investment Co., 3 Ch. 682; 37 L. J. Ch. 873; 19 Rotherberg A.
Retherham Alum, &c. Co., 25 C. D. 103; 53 L. J. Ch. 290; 50 L. T. 219; 32 W. R. 131 -
Koundwood Collient C. D. G
Roundwood Colliery Co., Re, (1897) 1 Ch. 373 75 L. T. 641; 45 W. R. 324 (C. A.)
75 L. T. 641; 45 W. R. 324 (C. A.)
Roussell v. Burnham, (1909) 1 Ch. 127 Routledge & Song (Grand and Ch. 127
Routledge & Sons (George), (1904) 2 Ch. 474; 73 L. J. Ch. 843; 91 L. T. 288; 53 W. R. 44
Row v. Dawson (1740) 1 37
74 L. T. 473 · 44 W. D. 500 (1896) 2 Ch. 93; 65 L. J. Ch. 590
Towell C. John Rowell & Song TAL (Annual - 40, 304)
Rowland's Case, 42 L. T. 785; W. N. (1912) 2 Ch. 609 - 94 Rowland and Marrier W. G. (1912) 80 - 94
Rowland and Marwood's S. S. Co., Bellerby v., (1901) 2 Ch. 265 : 17 T. L. R. 510; 70 L. J. Ch. 616; 84 L. T. 651; on appeal, (1902) Rowles, Party (1904)
Rowles, Ryall a (1749) 1 W
Roxburghe Press, (1899) 1 Ch. 210; 68 L. J. Ch. 111; 80 L. T. 280;
47 W. R. 281 47 W. R. 210; 68 L. J. Ch. 111; 80 L. T. 280;
Royal Aquarium Society, Stroud v., 89 L. T. 243; (1903) W. N. 146 - 175, Royal British Bast
Royal British Baule
Royal British Bank v. Turquand, 6 E. & B. 327; 24 L. J. Q. B. 327; 1 Jur. N. S. 1086
239 Royal Exchange Shipping Co., Ward r., 58 L. T. 174 : 6 Am J. Co.
10 L. T. 156; 12 W. R. 549
Royalties Syndicato, Ltd., Park v., (1912) 1 K. B. 330 72 Royce, Ltd., Shaw v., (1910) W. N. 2017 11 K. B. 330 369
Rubber and Produce Luncet, w. N. 201; (1911) 1 Ch. 138 -
Rubber and Produce Investment Trust, (1915) 1 Ch. 388 - - - - - - 321 Ruben v. Great Fingall Consolidated, (1906) A. C. 439 - - 403
143, 258, 261, 443

Rud-Sal	
Rudry, &e. Co., County of Gloucester Bank v., (1895) 1 Ch. 629; L. J. Ch. 451; 72 L. T. 375; 43 W. B. 486	PACE
14 J. Ch. 451; 72 L. T. 375; 43 W B 486 (1895) 1 Ch. 629;	64
Rutho, Er parte, L. R. 8 Ch. 1001 - 44, 45, 194, 2	58, 259
Rugeley Gas Co., W. N. (1899) 127	- 401
Rumball .: Motore 114 (1809) 127 -	- 80
Rumball r. Metropolitan Bank. Co. (1877), 2 Q. B. D. 194; 46 L. Q. B. 346; 36 L. T. 240; 25 W. B. 366	- 0U
Q. B. 346; 36 L. T. 240; 25 W. R. 366	J.
1001, 001, 001, 001, 001, 001, 001, 001)5, 307
Russell, Cordner & Co., (1891) 3 Ch. 171; 60 L. J. Ch. 805; 65 L. 740; 39 W. R. 635 -	Г.
Russell Hunting Record Co., Re, (1910) 2 Ch. 78	- 421
Russell c. Amalagmet 1 (1, Re, (1910) 2 Ch. 78 39	9, 415
	o, 410
Russell r. East Anglian Rail. Co., 3 M. & G. 125	- 9
The second waterworks on E. And	- 67
Russell v. Wakefield Waterworks, 20 Eq. 474; 44 L. J. Ch. 496; 3 L. T. 685; 23 W. R. 887	2
	- 180
564 · 23 T J D Train Co., (1907) 2 Ch. 540; 77 L. J. Ch. 21: 97 L T	100
564; 23 T. L. R. 746 (C. A.)	•
Russian Spratts, Limited, In re, 67 L. J. Ch. 381; 78 L. T. 480; 46 W. R. 514	3, 319
W. R. 514 W. R. 514 W. R. 514	3
Russian Spratts, Johnson r., (1898) 2 Ch. 149	, 271
Lyall v. Rowles (1748), 1 Ves. 348	287
(1110), 1 Yes, 348	
	292

S.

Sabiston, Montreal Lithographing Co. v., (1899) A. C. 610; 68 C. P. 121; 81 L. T. 135 (H. I.)	L. J.
Sadgrove v. Bryden, (1907) 1 Ch. 318; 76 L. J. Ch. 184; 96 361 -	- 27 L. T.
Saddlers, Reg. c., 10 H. L. C. 404	- 174
Sadlar # West (1997)	- 111
Sadler v. Worley, (1894) 2 Ch. 170; 70 L. T. 494; 42 W. R. 476 Sadler, Howard v., (1893) 1 O. R. 1, 69 L. 70, 494; 42 W. R. 476	- 189
(110) 1 4. D. 1; 08 1. 1. 120; 41 W. R. 19	26
Safety Explosives Limited B. (1001)	160, 184
Safety Explosives, Limited, Re, (1904) 1 Ch. 226; 73 L. J. Ch. 90 L. T. 331; 52 W. R. 470 (C. A.)	184 -
Saffory Welton (1000)	411, 412
Saffory, Welton v., (1897) A. C. 299; 66 L. J. Ch. 362; 76 L 505; 45 W. R. 508	TI, 412
505; 45 W. R. 508 Sailing Ship Kentmere, W. N. (1897) 58 Sailing Ship Kentmere, W. N. (1897) 58	6 II.
Sailing Ship Kentmere, W. N. (1897) 58 38, 39, 40, 69, 123, 416, St. Hilda's Incorrect I C. N. (1897) 58 165.	429, 443
Theorem of the start in the sta	198, 391
St. Hilda's Incorporated College, Cheltenham, (1901) 1 Ch. 556; L. J. Ch. 266; 49 W. R. 279	70
St. John del Rey, Bosunquet, &c. v. (1897), 77 L. T. 207 St. Neot's Water (No. 2), 200 M. C. (1897), 77 L. T. 207	80, 252
St. Neat's Water (N	- 217
a concerne, hope, P., 11 Ad & Di 1s	- 390
*261C, ne, (1913) 2 ('h 607	- 173
Sale Hotel and Botanical Gardens Co. Land H. L. Co.	- 220
Sale Hotel and Botanical Gardens Co In re, Hesketh's Case, 78 L. 368 -	Т.
Salisbury Gold Mining Co. Bank these	31, 334
L. J. P. C. 34; 66 L. T. 237; 4, W. R. 47	61
P	- 154
f	

lxxxi

Sal-Sco							
Salisbury (fold Mining Co.	c. Hathe	nn /180		1 000		PAGE
Salisbury-	lones's Case, (18	94) 3 6%	250. 0	1) A. C	. 208	- 10	69, 176
284 -			. 000; 0	H LL J	. Ch. 27		
Salmon v. (Quin & Axtens,	/1000\ 4	0.110	-	-	43, 1	15, 184
Salomans r	Laing, 12 Bear	(1909) A.	0. 442	-	-	171, 19	90, 242
Salomon, B	rodorin (100	8) 4) CD	-	-	-	•	- 5
735; 43	roderip c., (189. W. R. 612	o) 2 On. 1	323;64	L. J.	Ch. 689	72 L.	т.
L. T. 426	Salomon & Co. ; 45 W. R. 193	· (1091)	A. C. 2	2; 66	L. J. C	h. 35; 1	75
	, 10 11. 11. 199	-	52, 53, 6	55, 56,	57, 163,	272, 27;	3, 333,
Salt r. Mar	unia of Manth						
L. T. 765	uis of Northam ; 40 W. R. 529	pton, (18	92) A. C	1; 61	L. J. C	h. 49; 6	35
Salton v. Ne	W Beeston Creat	- ()- ()T	-	-	-	•	- 160
Ch. 370:	w Beeston Cycl 80 L. T. 521; 4	TU D	p. 1), (18	899) 1 (Ch. 775;	68 L.	J.
L. T. 633	bber, Lamb v.,	(1908) 1	Ch. 843	; 77 L	J. Ch.	386; 9	8
Samuel, Ma	rks = (190.1) +	- L' D	-	-	-	149, 15	1, 353
590; 53 V	rks v., (1904) 2 V. R. 88 (C. A.)	A. D. 28	(; 73 L	J. K.	B. 387;	90 L. J	ſ.
Sandeman, (lark & Co., De	Vormon	- (1000	-	-	-	- 174
Sanders, Re,	13 Q. B. D. 476	t crges t	., (1902) I Ch.	579	-	- 145
Sandwell Pa	rk Colliery Co.,	/10112		-	-	-	- 405
Sangster ». N	ietter, 9 T. L. F	(1914) 1	Ch. 589		-	-	- 431
Sanitary Bur	ial Association,	(100 -) -)	•	-	-		- 339
Sanitary Car	bon Co., W. N.	(1900) 2	Ch. 289		-		- 423
Saramosea an	d M. 34	(1877) 22	.3	•	-		- 169
Ch 568	d Mediterranea 2 W. R. 609 - 9	n Rail. (°o., (190	4) A. (C. 159 ; 1	73 L. J	
							- 330
Construction and	Mar 10, 14 1.11. 74	S + 1 - 2 - 1		1.5		815 -	
				. J. Ch	. 289 ; ;	98 L. T	191
T T () D	Iolborn District	Board o	f Works	, (1895) 1 Q. B	. 6.I + 6.I	100
			W, R. 26	3			
Saunderson v	Bowes, 14 Eas	1 508			_		351
Saunderson &	Co. v. Clark (1	912), 29	T. L. R.	579	_		297
Containing to 1.	orant. 3 II. I.	C					281
Scarborough	Cliff & Co	11.44	v., 2 D			-	176
1_{0} 1_{1} 8_{7} ; 1_{351} ; 1_{10}	3 W. R. 1059; G. J. & S. 672	on app.,	34 L. J.	Ch. 64	11. 014, 3 · 11. Ju	921; 13 ir N S	
Sabill (1.1)	G. J. & S. 672		-	4	7, 48, 50	. 82 83	130
Schulz Gallow	ay r., (1912) 2	K. B. 35.	£ _				123
Scholey r. Cel	tral Rail. Co. o	f Venezu	ela, 9 E	q. 266.	n		352
Schuler & Co	., Edelstein <i>v.</i> ,	50 W. R.	498:1	7 T. L.	R 307	- /10000	192
2 R. D. 144					10.001;		2010
Schweitzer v.	Mayhew, 31 Ber	iv. 37 -	-	_			306
Schwoppes, Li	d., In re. (1914)	1 (5 9	22 -				328
Scott v. Corpo	ration of Livern	ool 3 Da	G. & J	. 360 -	-	-	100
The second and and and and and and and and and a	5 Via (1091) ['h	717			•	-	69
Scottish Accide	ent Co. Jours	17 () 1	B. D. 49	1	•		421
~ cornand Licom	HILLC LATO A MARKED		**	rta AE	0. 1.	-	29
w. 10. 684;	60 L. J. Ch. 14	· 62 L. 1	. 926	, 10	C. D. 2	20; 38	
					•	-	383

lxxxii

Sco-She	
Scottish National Insurance Co., Scottish Union and National In- surance Co. r., (1909) S. C. 318 (Ct. of Sess.)	
scottish "scrolenni Co., 23 C. D. 413; 49 L. T. 348; 31 W. R. 846	- 27 - 103,
Scottish Union and National Insurance Co. c. Scottish National Insurance Co. (1999) st. C. at the State of the Scottish Stational	, 354
Another Con (1909) S. C. 318 (F4 of Sourt)	
Seringeour, Metropolitan Coal Consumers' Association v., (1895) 2 Q. B. 604; 65 L. J. Q. B. 22; 73 L. T. 137; 44 W. R. 35	
Seal r. Charidge, 7 Q. B. D. 516	, 342
Sears, Pickard r., 6 Ad. & El. 469	21
Second East Dulwich 745th Starr-Bowkett Building Society, 68 L. J. Ch. 196	143
	207
Securities Investment Corporation v. Brighton Alhambra, (1893) 68 L. T. 249 · 69 L. J. (h. 500)	
$-1 = 10$ $0 = 11$ 0 $U_{\rm H}$ 000 $W = N (1802) 13$	327
Security Co., Roberts r., (1897) 1 Q. B. 111; 66 L. J. Q. B. 119; 75 L. T. 531; 45 W. R. 214	
Seger, Anthony c., 1 Hagg. Cas. Con. 9	259
Selby Dam Commissioners, Gallsworthy c., (1892) 1 Q. B. 348; 61 1. J. Q. B. 372; 66 J. T. 17, a m. 49	172
1. J. Q. B. 372; 66 L. T. 17; 8 T. L. R. 60	
Severn Rail, Co., In re, (1896) 1 (h. 559; 65 L. J. Ch. 400; 74 L. T. 219: 44 W R 347	75
Sewell's Case, L. R. 3 Ch. 131, 640 : 18 L. T. 9. 16 W. D. ec.	
	44, 126
" micklefold, Ford & Co, P. Dangerfield T. D 2 C D tow ow T.	120
	230
10 10 10 10 10 10 10 10 10 10 10 10 10 1	-00
	407
Sharpington Co., Baring Gould e., (1899) 2 Ch. 80; 68 L. J. Ch. 429; 80 L. T. 739; 47 W. R. 564	
	130
	352
Shaw, Ex parte, 2 Q. B. D. 463; 46 L. J. Q. B. 394; 36 L. T. 71 - ; 25 W. R. 569	
Shaw's Case, 34 L. T. 715	28
Shaw r. Arnott, 2 Stark. 256 1	12
Shaw v. Benson, 11 Q. B. D. 563	62
Shaw c. Holland, (1900) 2 Ch. 305	87
Shaw r. Royce, Limited (1910) W M and the start	05
Shaw c. Royce, Limited, (1910) W. N. 251; (1911) 1 Ch. 138 - 3 Shaw c. Tati Concessions, (1913) 1 Ch. 292	21
Shaw v. The Port Philip, &c. Co., 13 Q. B. D. 103; 53 L. J. Q. B. 369; 50 L. T. 685; 39 W. D. 77	74
Shaws, Bryant & Co., W N (1901) 194	36
Shemeld and South Yorkshire & Society At 1	38
412; 59 L. J. Ch. 34; 62 L. T. 768	
Sheffield (Corporation of) v. Barolay (1002) of T. T	н
12 13	6

12

She-Sim

Sheffield, &c. Society, Re, 22 Q. B. D. 470; 58 L. J. Q. B. 265; 60 PAGE I., T. 186; 53 J. P. 375 - -Sheffield r. London Joint Stock Bank, 13 App. Cas. 333; 57 L. J. Ch. - 55 986; 58 L. T. 735; 37 W. R. 33 Shepheard v. Bray, (1907) 2 Ch. 573; 76 L. J. Ch. 692; 24 T. L. R. 145, 436 Shepheard v. Broome, (1904) A. C. 342; 73 L. J. Ch. 608; 91 L. T. - 358 178; 53 W. R. 111; 20 T. L. R. 540 (H. L.-E.) -Shepherd, Leeds Estate, &c. Co. v., 36 C. D. 787; 57 L. J. Ch. 46; - 360 57 L. T. 684; 36 W. R. 322 - 379, 186, 397, 204, 215, 226, 227 Shewell v. Combined Incandescent Mantles Syndicate, 23 T. L. R. Sheriff of Warwiekshire, Taunton c., (1895) 2 Ch. 319; 64 L. J. Ch. - 341 497; 72 L. T. 712 -- -- - - 309, 315 Sheppard c. Oxenford, 1 K. & J. 491 -Ship, Downes v., L. R. 3 H. L. 343; 37 L. J. Ch. 642; 19 L. T. 741 - 109 Shipley r. Marshall, 34 C. B. N. S. 566 Shipway c. Broadwood, (1899) 1 Q. B. 369; 68 L. J. Q. B. 369; 80 - 280 L. T. 11 (C. A.) Shitta, Montaignac r., 15 A. C. 357 193, 194 Shortridge, Bargate v., 5 H. L. C. 318; 24 L. J. Ch. 457; 3 W. R. - 436 Shrewsbury Rail. Co., Munt v., 13 Beav. 1 --45 Shropshire Union Co. v. The Queen, L. R. 7 H. L. 496; 45 L. J. Q. B. 66, 68 31; 32 L. T. 283; 23 W. R. 709 - -Siddall, Rr, 29 C. D. 1; 54 L. J. Ch. 682; 52 L. T. 314; 33 W. R. 131, 143 Silberhütte Supply Co., (1910) W. N. 81 - -- 387 Silkstone, &c. Co., Gartside v. (1882), 21 C. D. 762; 51 L. J. Ch. - 399 828; 47 L. T. 76; 31 W. R. 36 Silkstone Coal Co., Wheatley r. (1885), 29 C. D. 735; 54 L. J. Ch. _ - 320 778; 52 L. T. 798; 33 W. R. 797 Simm c. Anglo-American Telegraph Co., 5 Q. B. D. 188; 49 L. J. 309, 313 Q. B. 392; 42 L. T. 37; 28 W. R. 290; 44 J. P. 280 Simmer and Jack East, Consolidated Goldfields r., (1913) W. N. 43; - 336, 144 Simmons, London Joint Stock Bank v., (1892) A. C. 201; 61 L. J. - 294 Ch. 723; 66 L. T. 625; 41 W. R. 108 -Simpson, Alexander c., 43 C. D. 139; 59 L. J. Ch. 137; 61 L. T. 145, 306 708; 38 W. R. 161; 1 Meg. 457 -Simpson, Gerson v., (1903) 2 K. B. 197; 72 L. J. K. B. 603; 89 167, 168 L. T. 117; 51 W. R. 610 --- - -Simpson v. Dennison, 10 Hare, 51 -- 358 Simpson v. Westminster Palace Hotel Co., 8 H. L. C. 712; 6 Jur. - 66 N. S. 985 - - -Sims Composition Co., Capel v., 36 W. R. 689; 58 L. T. 807; 57 60, 66, 67, 69 - - - -- 254, 360

lxxxiv

olmSmi	
Simultaneous Colour Printing Synd. v. Foweraker, (1901) 1 K 771; 70 L. J. K. B. 453; 8 Munson 207	PAGE
771; 70 L. J. K. B. 180, 1971. V. Foweraker, (1901) 1 K	. в.
771; 70 L. J. K. B. 453; 8 Munson, 307 -	309, 318
	- 275
"Sir Alfred Hickman" Steamship Co., Ltd., McMullen r., 71 1 Ch. 755	- 210
Sir Charles Reed, Queen r., 5 Q. B. D. 483 Sissons c. S. 54 S. L. 1999	- 174
	- 269
Skeisey's Adamant Comment C	- 189
Skelton's Case, 68 L. T. 210; 9 T. L. R. 213 - Skerne Irouworks Co. Market Skerne Irouworks Co. 2010	- 92
Skerne Ironworks Co., Morrison v., 60 L. T. 588	- 352
Skinner r. City of L. Morrison r., 60 L. T. 588	- 325
	12
437; 53 L. T. 191; 33 W. R. 628	
The Parasion Stool C. W. N. General	- 135
	- 430
Dieign C. Glasgow and Transaction	- 134
Slogger Automatic Co., Re. (1915) 1 Ch. 478- Slonan r. Bank of Karl	- 341
	- 325
	- 136
Small v. Smith, 10 App. Cas. 131	- 182
Smedley and Flotcher E	- 319
Smedley and Fletcher, Exparte, W. N. (1867) 259 Smeed, Dean & Co. Thomas division of the state o	- 110
Smeed, Dean & Co., Thames Conservators v., (1867) 259 - Smelting Corporation, Re. (1915) 1 Ch. (70)	
Smelting Corporation, Re, (1915) 1 Ch. 472 Smethurst, Chuman, W. W. Sterner, 1915 1 Ch. 472	- 18
Smethurst, Chapman r., W. N. (1909) 65; reversing (1909) 1 K.	- 289
Said 1 (1	Б.
Smith's Case, 2 Ch. 604; 36 L. J. Ch. 618; 16 L. T. 549; 15 W. 882	- 266
882- 15 W.	R.
Smith & Co., Re, (1901) 1 Ir. R. 73	- 352
State 7, Anderson, 15 (* 1) at and	- 329
329; 29 W. R. 21; 16 C. D. 275	Г.
Smith, Arnison r., 40 C D 367, 41 0 180, 38	6, 387
W. R. 739; 1 Meg. 388	37
Smith, AttGen. r., (1909) 2 Ch. 524 353, 35	4. 355
Smith, Bainbridge (1909) 2 Ch. 524	- 55
Smith, Bainbridge r., 41 C. D. 262; 60 I., T. 879; 37 W. R. 594	- 00
Smith & Brown (1900) +	0, 198
Smith e, Brown, (1896) A. C. 614; 65 L. J. P. C. 89; 75 L. T. 213 45 W. R. 132	1 100
Smith a Chat in a	1
Smith v. Chadwick, 20 C. D. 27; 51 L. J. Ch. 597; 46 L. T. 702 30 W. R. 661; 9 App. Cas. 187 53 L. J. Ch. 597; 46 L. T. 702	- 121
30 W. R. 661; 9 App. Cas. 187; 53 L. J. Ch. 597; 46 L. T. 702 32 W. R. 687; 48 J. P. 644	;
32 W. R. 687; 48 J. P. 644	;
Sunth, Chamberlain Wharf (1000) and 304, 355	, 356
83 L. T. 238; 49 W. R. 91 (C. A.) -	
	9
Smith v. Duke of Manchester, 21 (1 1)	233
96; 32 W. R. 83	
	211
723: 65 L. T. 189, 40 W. C. Co. v., (1891) 3 Ch. 432; 60 L. J. Ch.	-11
723: 65 L. T. 188; 40 W. R. 105	
	269
	235

Sim-Smi

5 S

S S

Smi-Sou 1408 Smith r. Law Guarantee and Trust Society, (1904) 2 Ch. 569; 73 L. J. Ch. 733; 91 L. T. 545; 20 T. L. R. 789 (C. A.) - 315, 329 Smith, Liverpool Household Stores v. (1887), 37 C. D. 170; 57 L. J. Ch. 85; 57 L. T. 770; 58 L. T. 204; 36 W. R. 485 -- 174 Smith c. Paringa Mines, (1906) 2 Ch. 193; 75 L. J. Ch. 702; 94 L. T. 371 -- 176 Smith, Reese River, &c. v. (register prima facie evidence), L. R. 4 H. L. 64; 39 L. J. Ch. 849 -125, 127, 129, 352, 353, 354 Smith, Richard Mills & Co., Limited c., (1905) W. N. 36 - 418 Smith, Robson E., (1895) 2 Ch. 118; 64 L. J. Ch. 457; 72 L. T. 559; 43 W. R. 632 . . . -283, 312, 315 Smith, Small c., 10 A. C. 131 - 319 Smith, Sweny r. (1867), 7 Eq. 324 · 38 L. J. Ch. 446 - 152 Smith v. Thompson, Smith, Re, 71 L. J. Ch. 411 -- 207 Smith's Trustees v. Irving and Fullarton Building Society, 6 F. 99 (Ct. of Sess.) -- - --- 390 Smyth v. Darley, 2 H. L. C. 789 166, 232, 233 Sneath v. Valley Gold Co., (1893) 1 Ch. 477; 68 L. T. 602; 9 T. L. R. 137 ----- 321 Snell, Inderwick v., 2 M. & G. 216 --198Sneyd, Rr (1884), 25 C. D. 338; 53 L. J. Ch. 545; 20 L. T. 109; 32 W. R. 352 -- 329 Société Générale c. Walker, 11 App. Cas. 20; 55 L. J. Ch. 169; 54 L. T. 389; 34 W. R. 662 - - 131, 135, 142, 145, 155, 291 Société Générale, Werderman v. (1881), 19 C. D. 246; 45 L. T. 514; 30 W. R. 33 291 Société Panhard v. Panhard Levassor Co., (1901) 2 Ch. 513 -- 27 Somerset c. Land Securities Co., W. N. (1897) 29 -- 223 Somervail c. Cree, 4 App. Cas. 648 - 118 Sorsbie v. Tea Cerporation, (1904) 1 Ch. 12; 73 L. J. Ch. 57; 89 L. T. 516; 72 W. R. 177; 20 T. L. R. 57 (C. A.) -- 439 South African Syndicate, Young r., (1896) 2 (th. 268; 65 L. J. Ch. 638; 74 L. T. 527; 44 W. R. 509 -~ 167, 170, 240 South African Territories, Limited v. Walling Sons (1897) * Q. B. 692 (C. A.); (1898) A. C. 309 --322, 339South African Trust Co., In re. Ex parts H.r. el. (1893), 74 L. T. 769- 335 South Durham Brewery Co., Re, 31 C. D. 261; 554. J. Ch. 179; 53 L. T. 928; 34 W. R. 126 - - --82 S. E. R., Tomkinson e., 35 C. D. 675; 56 i. J. Ch. 932 Section T. 812: 35 W. R. 788-88, 434 S. E. Rail. Co., Whitfield r., E. B. & E. 122 -- 74 -South Essex Estuary Co. (1870), 11 Eq. 157 -- 293 South of England Natural Gas Co., (1911) 1 Ch. 573; (1911) W. N. 80 --42, 351, 356 South of Ireland Co. v. Waddell, L. R. 4 C. P. 617 -- 254 South London Fish Market, 39 C. D. 324 - -- 390 South London Tramways Co., Barnett r., 18 Q. B. D. 815; 36 1. C Q. B. 452; 57 L. T. 436; 35 W. R. 640 - - -260. 261

lxxxvi

TABLE OF CASES.	lxxxvii
Sou-Sta	
	PAOP
South Metropolitan Co., Engel v., (1892) 1 Ch. 442; 61 L. J. Ch. 66 L. T. 155; 40 W. R. 282	
South Wales Atlantic, &c. Co., Re (1875), 2 C. D. 763; 46 L. 177; 35 L. T. 294	J. Ch.
South-Western Loan and Discount Company	- 386
South-Western Loan and Discount Co. v. Robertson, 8 Q. B. L. South-Western of Venezuela Rail. Co., Re, (1902) 1 Ch. 70 L. J. Ch. 407 : 86 L. T. 2011, 50 W. B. C.	1.17 = 160 1 ± 71
Southall v. British Mutual, &c., 6 Ch. 614; 40 L. J. Ch. 69 W. R. 865	8; 19
Southampton Dock Co. r. Richards, 1 Man. & G. 448; 2 Rail 215: 1 Scott N. P. 210	, 418, 425 . Cas.
	244, 247
Southsea Garage, Limited, 55 S. J. 314	
Sovereign Life Assurance Co., 42 C. D. 540 ; 58 L. J. Ch. 81 L. T. 45; 38 W. R. 58	1; 61 - 384
Sovereign Life Assurance Co. v. Dodd, (1892) 2 Q. B. 573	
~partament e. Evans, E. K. 3 11, L. 171; 37 L. J. Ch. 759 · 10.	L. T
140	, 151, 227
W. N. 241 -	1910)
Spargo's Case, 8 Ch. 407; 42 L. J. Ch. 488; 28 L. T. 153; 21 V 306 -	217, 221 W. R.
Sparks v. Liverpool Waterworks Co., 13 Ves. 428	122, 443
Speak, iscome v., (1903) 1 Ch. 586; 72 L. J. Ch. 251; 88 L. T. 51 W. R. 258 (C. A.)	- 152 580;
Speak, Hoole v., (1904) 2 (2h, 732 - 73 L L (2h, 710 - 01 T m)	
20 T. L. R. 649 Spencer's Case, 6 Ch. 362	- 360
Spiers & Pond, W. N. (1895) 135	- 384
Spiral Globe Co. Re (1000) 1 Ct. 2001 05 -	- 78
Spiral Globe Co., Re, (1902) 1 Ch. 396; 85 L. T. 778; 50 W	7. R.
Spiral Globe Co., Watson & Co. v., (1902) 2 Ch. 209; 71 L. J 538; 86 L. T. 499	- 282 . Ch.
Spitzel r. Chinese Compandia (1000) on T	- 280
Spitzel r. Chinese Corporation (1900), 80 L. T. 347; 6 Manson, ;	
Spottiswoode, Dixon and Hunting, Limited, (1912) 1 Ch. 410	112, 127
Sproule, Bouch r., 12 A. C. 385; 56 L. J. Ch. 1037; 57 L. T. 36 W. R. 193	- 418
Stacey (F.) & Co. v. Wallis, 106 L. T. 541	- 220 - 199
Statfordshire Gas Co., 66 L. T. 414	
Standard Bank of South Africa r. Standard Bank, 25 L. T. R. 4: Standard Exploration Co. D. B. 41	= 192
a sublication to a sublication of the sublication o	
Standard Land Co., Bath v., (1910) 2 Ch. 408; reversed on ap W. N. (1911) 101	peal,
Standard Manufacturing Co., (1891) 1 Ch. 627; 60 L. J. Ch. 292 L. T. 487 : 39 W. P. 200, 524	- 194
Standard Rolling Stock Syndicate, Edwards (1902) 1 Ch	315, 443 ; 62
	- 325
Standard Rotary Machine Co., 95 L. T. 829 -	- 312

lxxxvii

Sta-Stu

XXXVIII

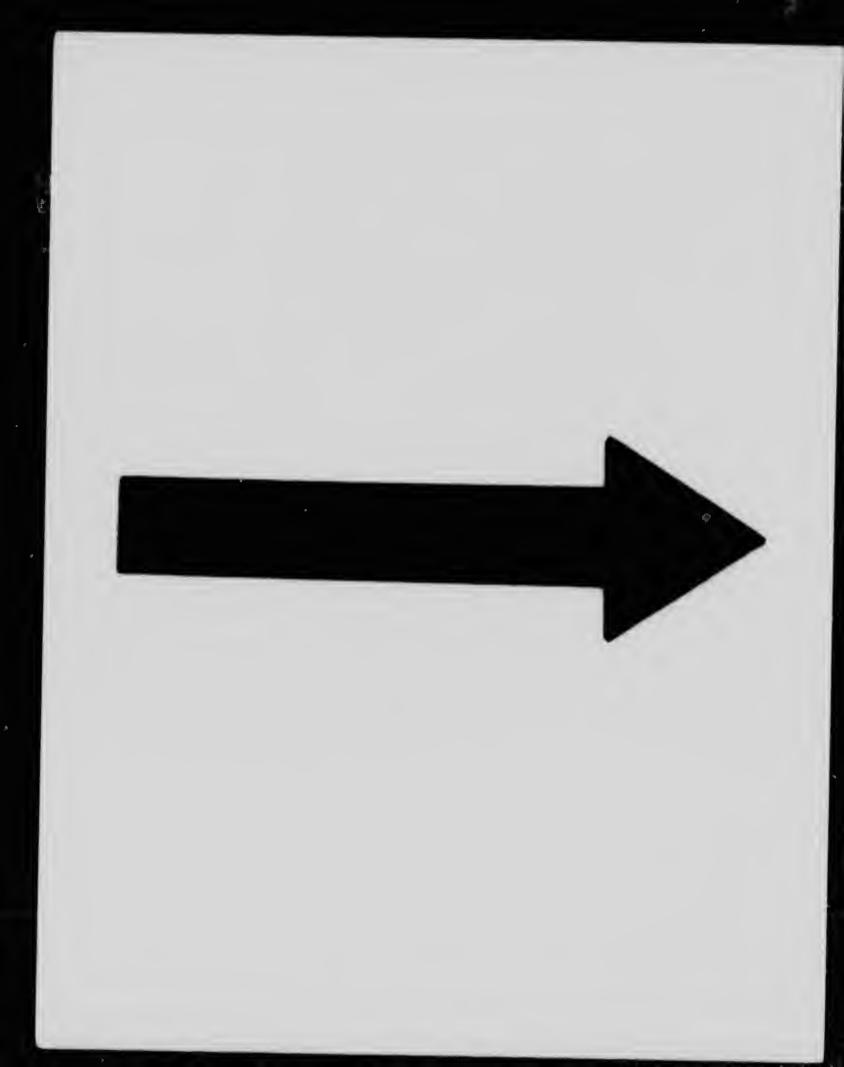
Stanhope's Case, L. R. 1 Ch. 161; 35 L. J. Ch. 296; 14 L. T. 468; 14 W. R. 266
14 W. R. 206
Stanhope Silkstone Collieries Co., Re, 11 C. D. 160
Stanley's Case, 4 De G. J. & S. 407; 33 L. J. Ch. 535; 10 L. T. 674; 12 W. R. 894
12 W. R. 894
Staplon r. Eastman Photometric St
Staples r. Eastman Photographic Materials ('o., (1896) 2 ('h. 303; 65 L. J. Ch. 682; 74 L. T. 479
Star Steam Lander (1010) ar ar
88 L. T. 244; 51 W. R. 513
State of Wyoming Syndicate, Rr, (1901) 2 Ch. 431; 17 T. L. R. 631; 70 L. J. Ch. 727; 84 L. T. 868; 49 W. D. 610
70 L. J. Ch. 727; 84 L. T. 868; 49 W. R. 650 - 164, 195, 419
a sectored, the state of the st
Steel v. Harmer, 14 M. & W. 831 - 421
Steel Brothens & Co., Borland's Trustee & (1001) 1 (11 - 264
Steel Brothers & Co., Borland's Trustee c., (1901) 1 Ch. 279 - 131, 140,
Stenotyper, Limited, Re, (1901) 1 Ch. 250; 70 L. J. Ch. 94; 84 L. T. 149; 8 Manson, 203
149; 8 Manson, 203
Stephens r. Mysore Reefs Kungundy Mining Co., 71 L. J. Ch. 295; 86 L. T. 221; (1902) 1 Ch. 745
86 L. T. 221; (1902) 1 Ch. 745
Stevenson r. Wilson, (1907) S. C. Ct. et S.
The cost Durollor. The (1919) W M Land Street and Street
Stewart's Case, 1 Ch. 374 + 35 T. T. (% ***** *****************************
Stirling v. Passburg Grains, S T. L. R. 71
Stocken's Case, 3 Ch. 415; 37 L. J. Ch. 230; 17 L. T. 554; 16 W. R. 322
322 - 322 - 324 113; 37 14 J. Ch. 230; 17 L. T. 554; 16 W. R.
Stocker v. Brocklebank 3 M & G and - 148, 153
Guerton Malleable from Co. 2 C D tot
Stone & Funnell, Gray v., 69 L. T. 282; W. N. (1893) 133; 3 R.
692 - 692 - 1. T. 282; W. N. (1893) 133; 3 R.
Strand Hotel to Re W N (1999)
Strand Music Hall Re 2 Do C 7 8 C +14
Strand Wood Co. (1001) 9 (2) . 2. & S. 147; 14 W. R. 6 - 287, 317, 318
W. R. 69
Stranton Iron Co., In re, 16 Eq. 559; 43 L. J. Ch. 215 - 407 Strapp r. Bull (1893) 2 Ch. 1 - 537; 43 L. J. Ch. 215 - 128, 171
Strapp r. Bull. (1895) 2 Ch. 1. 50 J. m. J. (h. 215 - 128, 171
Strapp v. Bull, (1895) 2 Ch. 1; 72 L. T. 514 (C. A.)
Streatham Estates Co. (1907) : (2
Streatham Estates Co., (1897) 1 (h. 15; 66 L. J. (h. 37; 75 L. T. 329 574; 45 W. R. 105 -
Stringer's Case L. R. 4 (h. 1997) - 271
Stringer's Case, L. R. 4 Ch. 475; 38 L. J. Ch. 698; 20 L. T. 591; 17 W. R. 694
Strong P. Carlyle Press (1893) 1 Ch. new 206, 217
Strong v. Carlyle Press, (1893) 1 Ch. 268; 62 L. J. Ch. 541; 68 L. T. 396; 41 W. R. 404
Stroud c. Royal Aquanium Statistics of a state of the sta
Stroud r. Royal Aquarium Society, 89 L. T. 243 : (1903) W. N. 146 -
Stubbs v. Slater, (1910) 1 Ch. 632
Studdert r. Grosvenor, 33 (1) 100, 104
Studdert v. Grosvenor, 33 C. D. 528; 34 W. R. 754; 55 L. T. 171; 53 L. J. Ch. 689
- 173, 442
****, 334

	TAAA IA
Sub-Tal	
Suburban Hotel Co., Re(1867), L. R. 2 Ch. App. 737; 36 L. J. Ch 17 L. T. 22; 15 W. R. 1096	PAGE
17 L. T. 22; 15 W. R. 1096	. 710:
Suffield London 11 1 1 1996	394, 414
 Suffield, London Freehold Land Co. c., (1897) 2 Ch. 608; 66 Ch. 790; 77 L. T. 445; 46 W. R. 102 	1 4
Ch. 790; 77 L. T. 445; 46 W. R. 102	11. 0.
Sullivan r. Mitcalfo, 5 C. P. D. 465; 49 L. J. C. P. 815; 44 L. 29 W. R. 181	258, 259
20 W. R. 181	
Sumatra Tobacco Co., W. N. (1898) 80	- 359
THERE'S TRENDER OF A LOUGH R ST. B.	- 99
Sussex Brick (o., (1904) 1 Ch 508, 70 Chs. 247	- 174
Sussex Brick Co., (1904) 1 Ch. 598; 78 L. J. Ch. 308; 90 L. T. 52 W. R. 371	426:
Sutton, Charitable Comments	-128, 137
	, 200, 205
Sutton v. English and Colonial Produce Co., (1902) 2 Ch. 50; L. J. Ch. 685; 87 L. T. 438; 50 W. R. 571 134 134	1: 71
Sutton's Hospital Case, 10 Rep. 30 b - 131, 134	140, 184
Swabey e. Port Darwin Co., 1 Meg. 385	3, 237
Swaby v. Dickon, 5 Sim. 629 43	186, 187
Swallow O 11 1 Sim. 629 -	100, 194
Swallow, Caridad Copper Co. r., (1902) 2 K. B. 44; 71 L. J. K 601; 86 L. T. 699; 50 W. R. 565	- 326
601; 86 L. T. 699; 50 W. R. 565	a B.
Sweeting, Bailey r., 9 C. B. N. S. 843	- 188
weny c. Smith (1867) 7 k. not out a	- 256
Sykes's Case, 13 Eq. 255; 41 L. J. Ch. 251; 26 L. T. 92	- 152
Sykes, National Dwellings to a (1994) a (1994)	- 150
Sykes, National Dwellings Co. r., (1894) 3 Ch. 159; 63 L. J. 906; 42 W. R. 696	Ch.
Sylvester, Popple c. (1883), 22 C. D. 98; 52 L. J. Ch. 54; 47 L 329; 31 W. R. 116	170, 176
329; 31 W. R. 116	. T.
Symington r. Symington's One	287, 329
 Symington v. Symington's Quarries, Limited, 8 F. 121 (Ct. of Ses Symons' Case, 5 Ch. 298; 39 L. J. Ch. 461; 22 L. T. 217; 18 W. 366 - 	H.) - 394
366	R.
Symons & Co., Pant (1000) o ch	- 115
Symons & Co., Punt c., (1903) 2 Ch. 506; 72 L. J. Ch. 768; 89 L 525; 52 W. R. 41	Т.
Syria Ottoman Duit (1	47, 190
Syria Ottoman Rail. Co., 20 T. L. R. 217 43.	
-	- 390

ΊГ.

Taff Vale Rail. Co. v. Amalgamated Society of Railway Servants, (1901) A. C. 426; 70 L. J. Q. B. 905; 50 W. R. 44 Tahiti Cotton Co., 17 Eq. 273; 43 L. J. Ch. 425; 22 W. R. 815 9 Tahourdin, Isle of Wight Rail, Co. c., 25 C. D. 320 -- 145 Tailby r. Official Receiver, 13 App. Cas. 523; 58 L. J. Q. B. 75; 60 - 165 L. T. 162; 37 W. R. 513 -Tait c. MacLeay, (1904) 2 (h. 631; 74 L. J. Ch. 43; 91 L. T. 474; -280, 308, 318 20 T. L. R. 710 (C. A.); (1906) A. C. 24 - -Taite's Case, 3 Eq. 795; 36 L. J. Ch. 475; 16 L. T. 343; 15 W. R. 351, 360, 361 Talbott, Re (1888), 39 (°, 1), 567; 58 L. J. Ch. 70; 60 L. T. 45; 37 - 352 ----. - 329

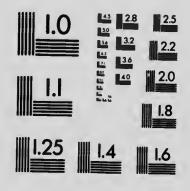
lxxxix

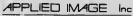


MICROCOPY RESOLUTION TEST CHART

.

(ANSI and ISO TEST CHART No. 2)





1653 East Main Street Rochester, New York 14609 USA (716) 482 – 0300 – Phone (716) 288 – 5989 – Fax

Tas	-Tho
-----	------

Tas-Tho	
Tasker & Sons (W.), (1905) 1 Ch. 283; 53 W. R. 247; 9:	PAGE DT TT 17
	288, 319
Tati Concessions, Shaw v., (1913) 1 Ch. 292 -	174
Taunton, Delmard, Lane & Co., Re, (1893) 2 Ch. 175 -	
10 L. T. 156; 12 W. R. 549	J. Ch. 406;
Taunton v. Sheriff of Warwickshire, (1895) 2 Ch. 319; 64 497; 72 L. T. 712	72 L. J. Ch.
Taurine Co., 25 C. D. 118; 53 L. J. Ch. 271 - 49 L. T. 514	- 309, 315
Taylor, Geisse v., (1905) 2 K. B. 658; 74 L. J. K. B. 919 534 (Div. Ct.)	2; 93 L. T. 319
Taylor, Phillips and Rickard's Case, (1897) 1 Ch. 298; 6 222; 76 L. T. 1; 45 W. R. 401	66 L. J. Ch.
Taylor v. Midland Rail. Co., 8 W. B. 101	- 129, 420
Taylor's Agreement Trusts, (1904) 2 Ch. 737; 73 L. J. C. W. R. 602	159 h. 557 · 52
Tea Co., Hodson v. (1890), 14 C. D. 859; 49 L. J. Ch. 234 458	
Tea Corporation, Sorsbie v., (1904) 1 Ch. 12; 73 L. J. (L. T. 516; 52 W. R. 177: 20 T. L. B. 57 (2)	- 294, 324
	⊃h. 57; 89 432
Toague, Howbeach Coal Co. r. 5 H. & N 151	- 147, 192
Lean Friendly Society (1914) 58 S. J. 22.	
reasonate's Case, 9 Ch. 54; 43 L. J. Ch. 578; 29 L. T. 707	: 22 W. R.
Teede & Bishop, Limited, W. N. (1901) 52; 84 L. T. 561; 7 409; 8 Mans. 217	0 L. J. Ch.
Tees Bottle Co., 33 L. T. 834; 38 L. T. 147	- 167, 175
Telescriptor Syndicate Re (1000) a Clark	134
Telescriptor Syndicate, <i>Re</i> , (1903) 2 Ch. 174; 72 L. J. C. L. T. 389; 51 W. R. 409	h. 480; 88
Thairwall r. Great Northern Poil Co. (1010)	417
Thairwall r. Great Northern Rail. Co., (1910) 2 K. B. 509 Thames Conservators r. Smood Days (1910) 2 K. B. 509	221
Thames Conservators v. Smeed, Dean & Co., (1910) 2 K. B. 309 Thames Ironworks, 28 T. L. R. 273; (1912) W. N. 66	. 346 - 18
Thames Plate Glass Co. n. Lond Co. (1972) W. N. 66	326
Thames Plate Glass Co. v. Land Co. (1872) W. N. 66 19 W. R. 303 : 6 Ch. 642, 25 J. 70 (1870), 11 Eq. 248; 24	L. T. 227 ;
19 W. R. 303; 6 Ch. 643; 25 L. T. 236; 19 W. R. 764 Thatcher, Milward v., 2 T. R. 81	+1+
Theatrical Trust. Re. (1895) 1 Ch. 771. C. T. T.	189
	72 L. T.
Thomas De la Rue & Co., Ltd., (1911) 2 Ch. 361	- 117, 414
inomas wone & Son, Ltd., (1912) W N 296	96
Inomas r. Patent Lionite Co., 17 C D 957	99
Inomas v. United Butter Cos. (1909) 2 Ch. 481	+11
Thomas, Re (1884), 14 Q. B. D. 379; 54 L. J. Q. B. 336; 51 33 W. R. 583	3, 19, 424, 4 3 8 L. T. 602 ;
Thompson v. Hudson (1869), L. R. 4 II. L. 1	387
Thompson, Marrs v., 17 T. L. R. 365 (C. A.)	294
Thompson's Trustees, Collin v., 4 Macq. 424, 432	387
Thomson's Case (1865) 4 De G J & S 740	200
Thomson's Case (1865), 4 De G. J. & S. 749; 34 L. J. Ch. 525; 717; 13 W. R. 958 -	12 L. T.
	113

.

xc

		A(1
Tho-Tra		
Thomson c. Henderson's Transvaal Estates Co., (1908 L. J. Ch. 501 - 08 J. T. 617 - 15 M	0 1 Ch 585.	PAOB
	T D 200 4	08 110
	T T CL 0	.07,419
2 44 4 44 5 40 W. K. 488 (C. A.)	14. 0. 01. 30	
Thorley, Crowther v., 50 L. T. 43	-	- 358
Thorn v. City Rice Mills (1889), 40 C. D. 357 . 58 T.	T (1) 007	- 387
1. 1. 505; 57 W. R. 398	J. Ch. 297;	
Thorne (H. E.) & Son, Ltd., (1914) 9 (h 438		- 297
Thorpe, Venner's Electrical Appliances v., (1915) W. 1	- +	05, 406
Thrift, Adams v., (1915) 2 Ch. 21	N. 304	- 413
Thurso New Gas Co., Re, 42 C. D. 436; 61 L. T. 351;	-	- 358
1 Meg. 330	; 38 W. R. 15	
Tibbatts r. Boulter (1895), 73 L. T. 534	-	- 414
Tidy, Reg. v., 2 Q. B. 179	-	- 353
Tiessen v. Henderson, (1899) 1 Ch. 861; 68 L. J. Ch. 483: 47 W P. 450. 6 M.	-	- 263
Tillott, (1892) 1 Ch. 86; 61 L. J. Ch. 38; 65 L. T. 781; Tilson v. Warwick Gas Co. 4 B. & Cl. 000	- 10	58, 425
Tilson v. Warwick Gas Co., 4 B. & C. 962	40 W. R. 204	
Tilt Cove Copper Co., Re, (1913) 2 Ch. 588	-	- 41
$1 \text{III}(an^{-1}) (SS) 26 \text{W} D 047$	-	- 325
Tofield. Greaves v., 14 C. D. 571	-	- 421
Tollit, Aerators Ltd n (1909) 9 CL 210, 74 T -	-	- 18
Tollit, Aerators I.td. v., (1902) 2 Ch. 319; 71 L. J. Ch. 651; 50 W. R. 584	727; 86 L.	
Tom Tit Cyclo Co. (Fisher's Case), 15 T. L. R. 132; W. I	-	- 27
(* 101 b Cubb), 10 1, 12, 11, 102; 11, 1		
Tomkinson v. Balkis Co., (1893) A. C. 396; 63 L. J.	12	22, 123
L. T. 598; 42 W. R. 204		
Tomkinson v. S. E. R., 35 C. D. 675; 56 L. J. Ch. 8	136, 14	4, 440
812; 35 W. R. 788-		
Tomlin's Case, In re Brinsmead & Sons, (1898) 1	- 6	8, 434
L. J. Ch. 11; 77 L. T. 521; 46 W. R. 171-	Сh. 104; (
Torbock v. Lord Westbury, (1902) 2 Ch. 871; 71 L. J	-	- 353
L. T. 165; 51 W. R. 133	. Ch. 845; 8	37
Tothill's Case, L. R. 1 Ch. 85	- 16	6. 239
Totteriell " Fareham Briels Co. T. D. t. C. D	-	- 244
Totterdell v. Fareham Brick Co., L. R. 1 C. P. 674; 35 L. J. C. P. 278; 12 Jur. N. S. 901):
Touche r. Metropolitan, &c. ('o., 6 Ch. 671 -	-	- 197
Tower Galvanizing Co. Dual. (1000) a 7	-	- 334
Tower Galvanizing Co., Duck v., (1901) 2 K. B. 314; 625; 84 L. T. 847		
Towers " African The (1004) 4 Ch	- 45, 4	6, 309
Towers r. African Tug Co., (1904) 1 Ch. 558; 73 L. J	J. Ch. 395; 9	0
L. T. 298; 52 W. R. 532; 20 T. L. R. 292 (C. A.)	-	- 219
Townshend v. Windham (1750), 2 Ves. 1	-	- 308
Trado Auxiliary Co. v. Vickers, 16 Eq. 298; 21 W. R. : Transport v. Schenberg, 21 W. R. :	336 -	- 166
Transport v. Schonberg, 21 T. L. R. 305	-	- 192
Transvaal Exploring Co. v. Albion Trensvaal Gold	Mines, (1899))
= 0.010, 00.11, 0.010, 0.00, 48 W, R 160	4.0.	1, 122
Transvaal Land Co. r. New Belgium Co., (1914) 2 Ch.	488 -	- 193

xei

Tre-Uni

Trench Tubeless Tyre Co., Bethell v., (1900) 1 Ch. Ch. 213; 82 L. T. 247; 48 W. R. 310 (C. A.)	PAGE
Ch. 213; 82 L. T. 247; 48 W. R. 310 (C. A.) Trevor c. Whitworth (1887) 12 Arc. (1900) 1 Ch.	408; 69 L. J.
Trevor c. Whitworth (1887) 12 Apr. (C. A.) -	167, 173, 419
Trevor v. Whitworth (1887), 12 App. Cas. 409; 57 L. L. T. 457; 36 W. R. 143 - 38, 66, 68, 99, 93	J. Ch. 28; 57
,,,,	5 79. LEG 198 013
LTHE BIDE Bundott CL	377, 443
L. T. 29; 48 W. R. 1; 7 Manson, 85 (C. A.)	J. Ch. 692; 81
Truman's Case, (1894) 3 Ch. 272; 63 L. J. Ch. 635; 71 W. R. 73	425 L. T. 328 - 43
Truman Hanham & G	103, 115, 234
Truman, Hanbury & Co., (1910) 2 Ch. 498 Trustees' Executor: Co.	- 100, 110, 204
605 (1899), 68 L. J. Ch	100 11:79 L T
Tucker, Bellairs r., 13 O B D too	152
- $ -$	355
Tunner Alining Co (Pools O) and	156
	121
	- 207
Turner, Great Eastern Rail. Co. v., 8 Ch. 149; 42 L. J L. T. 697; 21 W. R. 163	- 263
L. T. 697; 21 W. R. 163	. Ch. 83: 27
Turquand, Jackson / T. D. (TT. T	- 00, 179, 180
Turquand v. Marshall, 4 (h. 376, 20 J. J. Ch.	11 - 104, 355
Turquand v. Marshall, 4 Ch. 376; 38 L. J. Ch. 639; 20 17 W. R. 935	0 L. T. 765;
Turquand, Oakes c., L. R. 2 11. L. 325; 36 L. J. Ch. 9. 808	- 201, 204
808 808	49; 16 L. T.
Turquand, Royal British Bank r. 6 E & D 207	26, 353, 409, 442
1 Jur. N. S. 1086	
Tussaud v. Tussand, 44 (1 D. 070	58, 275, 276, 443
Tuticorin Cotton Press Co. (1804) 40 JUL	27
Tweddle & Co., (1910) 2 K. B. 697	C. 723 – 140
- "'KK, Wesbury " (1809) 1 () 1 =-	409
Twiss, Aaron's Reef v., (1896) A. C. 273; 65 L. J. P. C. 5 794 -	421
794	4; 74 L.T.
Twycross - Grant, 2 C D, D 460, 16 T L C D - 15	53, 346, 356, 359
25 W. R. 701 100, 40 L. J. C. P. 636; 36	L. T. 812;
Tyler, Nassau Steam Co. v (1904)	331, 360, 443
Tyler & Co., Reg. r., (1891) 2 Q. E. 588; 61 L. J. M. C. 38 662; 56 J. P. 118	266
662; 56 J. P. 118	8; 63 L.T.
Tyne Mutual P. Brown 71 T II and	-74, 123, 210
Tyne Steamship Co. v. Brown, 75 L. T. 483 -	- 46, 276
	192

U.

Underwood v. London Music Hall, Limited, (1901) 2 Ch. 309 - 82, 88, 90 Union Bank of Australia, Irvine v., 2 A. C. 366; 46 L. J. P. C. 87; 37 L. T. 176; 25 W. R. 682 Union Bank of Kingston-upon-Hull, 13 C. D. 808 - 424

xcii

4

.

U ni- V id				
Union Bank of Manchester, 12 Eq. 354				PAGE
Union Will St. G. Ster, 12 Eq. 354	-	-	-	- 19
Union Hill Silver Co., 22 L. T. 400 -	-	_		
United African Lands, Arnot r., W N /1001)	00./10	-	-	- 232
United African Lands, Arnot v., W. N. (1901) United Club, 60 L. T. 665	20;(19	01) 2 C	h. 518 -	-170, 240
United Lankat Plantationa Will	-	-	-	- 392
United Lankat Plantations, Will r., (1914) A	1.0.11	-	- 84	, 85, 443
- Child I lovident Assurance Co. (1010) 9 Cu		_	_	
Child Auboer Cos., Thomas r. (1900) 9 CL	LRL			- 432
O miled Service Co., L. R. 6 Ch 919				424, 438
United Switchhook Co. Comment in the start	-	-	-	- 75
L. T. 525; 37 W. R. 312 - 66, 75, 167, Universal, &c. Co., Wallace & (1894) 2 C.	5; 58	L. J. C	h. 211 :	60
Universal fre (1. W. W.	168, 1	78, 186	193.	241 959
Universal, &c. Co., Wallace v., (1894) 2 Ch. 70 L. T. 852 (C. A.)	547	3 L. J	Ch 3	08.
$H_{-1}(C, H, T; O) = -$	-			00;
Ural Gold Fields v. Pappa, 15 T. L. R. 330				294, 324
Uruguay Central Rail. Co., Re (1870) 11 0	The of	-	-	- 131
Uruguay Central Rail. Co., Re (1879), 11 C 540; 27 W. R. 571 -	D.37	2;48	L. J.	Ch.
		~		328, 39:,

V.

Voal

Vaghano Anthracite Co., (1910) W. N. 187
Testility, Dank of England (1004)
64 L. T. 353; 39 W. B. 657
Valentine Meat Juice Co. v. Valentine Extract Co., 83 L. T. 259 - 17 Vallen, Jaogen, &c. Co. v. 77 J. D. 101 and Co., 83 L. T. 259 - 27
Valletort Sanitary Sturm Landa (1999)
Valletort Sanitary Steam Laundry, (1903) 2 Ch. 654; 72 L. J. Ch. 674; 39 L. T. 60
Valley Gold Co. Speeth a (1802) 1 or
Valley Gold Co., Sneath v., (1893) 1 Ch. 477; 68 L. T. 602; 9 T. L. R. 137
Valpy, Dickinson v. 10 B & C 129. 5 M & D 1321
Van Diemen's Land Co., Guham v., 26 L. J. Ex. 73 - 264 Vance v. Fast Langevice D. 200 - 264
Vance v. East Lancashire Rail. Co., 3 K. & J. 50
Varieties, Re (1802) 9 Ch and Co., 3 K. & J. 50 66
Varieties, Re, (1893) 2 Ch. 235; 68 L. T. 214; 41 W. R. 296 - 395, 422
Venables v. Baring Crothers, (1892) 3 Cb. 527; 61 L. J. Ch. 602; 67 L. T. 110; 40 W. R. 699
Venner's Electrical Appliances a Theorem (1011) - 306, 307
Venner's Electrical Appliances v. Thorpe, (1915) W. N. 307 Verner v. General Commercial Transformed (1915) W. N. 307 413
Verner v. General Commercial Trust, (1894) 2 Ch. 239; 63 L. J. Ch. 456; 70 L. T. 516
Vickers, Trade Auxiliary Co. v. 16 E. 200 11 216, 217, 218
Vickers, Trade Auxiliary Co. v., 16 Eq. 298; 21 W. B. 336 - 166 Victoria Brick Works W. N. (1999) 100 - 166
, total unaving hook longe u /tonet
Q. B. 219; 36 L. T. 144; 25 W. R. 348
rictoria (Malaya) Rubber Estates (1014) W N and
Victoria Steamboats ('o /190") 1 CL 1
374; 45 W. R. 135
Viditz v. O'Hagan, (1899) 2 Ch. 569 324, 325

xciii

Vig-Wal

Vigers, Blackburn r., 12 A. C. 531	PAGE
Vine and General Rubbay Trust 100 T m	- 234
Ving Pobertson and Woodcock, Limited, 56 S. J. 412	- 100
Viola uglo America Olicock, Limited, 56 S. J. 412	- 242
	- 326
The something of the set to the set to	- 026
66; 80 L. T. 684	
Vivian & Co., (1900) 2 ('h. 654; 69 L. J. Ch. 659; 82 L. T. 674 Vivian & Co., 54 L. T. 384	- 137
Vivian & Co., 54 L. T. 384	- 68
Vron Colliery ('o., Re. 20 (' 1) (10)	95, 97
 Vron Colliery Co., Re, 20 C. D. 442; 51 L. J. Ch. 389; 30 W. R. 411 W. N. (1886) 32 	:
Vulcan Iron Works (1 11 11 1 1 1 39	2, 413
(1008) 120	- 1.1.1

W.

Waddell, Findlay v., (1910) S. C. 670, Ct. of Sess Waddell, South of Indexed G	
Waddell, South of Ireland Co. e., L. R. 4 C. P. 617 - Wagner, Lumlay r. 11 N. 65	- 227, 420
Wagner, Lumley v., 1 D. M. & G. 604	254
Wainwright's Case ou T m as	262
Wainwright's Case, 62 L. T. 30; 63 L. T. 429; 59 L. J. 1 Meg. 463 -	Ch. 281;
Weinwright, Randt Gold Mining G	354
Weinwright, Randt Gold Mining Co. v., (1901) 1 Ch. 184 Wakefield Rolling Stock Co., (1892) 3 Ch. 165	- 132, 152
L. T. 83; 40 W. R 700	670: 67
Wakefiold Waterworks, Russell v., 20 Eq. 474; 44 L. J. Ch. L. T. 685; 23 W. R. 867	150, 417, 420
L. T. 685; 23 W. B. 867	496; 32
Wela Wynaad, 21 C. D. 840	- 180
Walburn v. Ingilby 1 M & 17 at	- 394
Walkden Spinning Co. Booth (1998)	- 6
	- 432
	- 321
Walker v. London Tramways Co. (1070) 10 -	- 250
Walker v. London Tramways Co. (1879), 12 C. D. 705; 49 L 23; 28 W. R. 163	. J. Ch.
Walker r. Remmett 15 L. L. Ch. o	47, 443
Walker & Smith, Limited Re 79 J J C	- 340
Walker & Smith, Limited, Re, 72 L. J. Ch. 572; 88 L. T. 7 W. R. 491	92; 51
Walker, Société Générale c., 11 A. C. 20; 55 L. J. Ch. 169; 5- 389; 34 W. R. 662	- 99
389; 34 W. R. 662	4 L. T.
Walker Steam Trawl Fishing Q (191, 151, 155, 142, 14	5. 155, 291
Wall v. London & Northern Assets Corporation (No. 1), 14 T. 496; (1898) 2 Ch. 469	- 98
496; (1898) 2 Ch. 469	L. R.
Wall v. London & Northern Assets Corporation (No. 2), (1) Ch. 550	0, 175, 239 899) 1
Wallace's Case W N (1999)	- 171
Wallace's Case, W. N. (1900) 171; (1900) 2 Ch. 671; 69 L. 777; 83 L. T. 403	J. Ch.
Wallace v. Evershed, (1899) 1 Ch. 891	103, 109
	- 328
	- 040

4

xciv

	xev
Wal-Weg	
Wallace r. Universal, &c. Co., (1894) 2 Ch. 547; 63 L. J. Ch. 5 L. T. 852 (C. A.)	PAGE
L. T. 852 (C. A.)	98, 70
Wallcourt's (Lord) Case, W. N. (1899) 258; 7 Manson, 235 -	294, 324
Waller v. Loch, 7 Q. B. D. 619	- 131
Wallingford a Mutual Statistics	- 174
Wallingford v. Mutnal Society (1879), 5 App. Cas. 685; 50 Q. B. 49 : 43 L. T. 258, ao W. D. D. Cas. 685; 50	L. J.
4 40 1 40 141 4 400; 20 W, R 81	
Wallington, South African Territories, Ltd. v., (1897) 1 Q. 1 (C. A.): (1898) A. C. 200	B. 692
	322, 339
Wallis' Case, L. R. 4 Ch. 325, n.	109, 110
Wallis, Stacey (F.) & Co. r., 106 L. T. 541	- 199
Walters v. Woodbridge, 7 C. D. 504 -	- 211
Wandsworth Gaslight Co. r. Wright, 22 L. T. 404	
Wald b. Alpha Co., (1903) 1 Ch. 203: 72 L. J. Ch. 91, 51 3	W P
	43444
Ward v. Royal Exchange Shipping Co., 58 L. T. 174; 6 Asp.	- 000 ME 11
Wardle, Atkin r. (1889), 61 L. T. 23; 58 L. J. Q. B. 377	- 312
	248, 265
Warner Engineering Co. r. Brennan, 30 T. L. R. 191	- 235
Warner International Co., Itd., (1914) W. N. 61; 110 L. T. 43 Warrant Finance (2)	- 338
Warrant Finance ('o., Humber Ironworks ('o. v., L. R. 4 Ch. 6	i6 <u>- 338</u>
the station of the station works Co. v., L. R. 4 Ch. 6	
Warwick Gas Co., Tilson r., 4 B. & C. 962	409, 412
Washington Diamond Co., (1893) 3 Ch. 95; 62 L. J. Ch. 895; 69	- 41
27; 41 W. R. 681 -	L. T.
Waterlow Bros., Guy v., 25 T. L. R. 515	- 150
Waterproof Materials Co. W. N. (1000) 10 00 0	132, 145
Waterproof Materials Co., W. N. (1893) 18; 37 S. J. 231 - Watson Ashbury a 20 C D 2010 (1893) 18; 37 S. J. 231 -	- 423
Watson, Ashbury v., 30 C. D. 376; 54 L. J. Ch. 985; 33 W. R.	882 - 34,
Watson, Jonmenjoy v., 9 A. C. 561 - 38, 48, 81, 88, 90	, 214, 439
Watson & Co. v. Spiral Globe Co. (1000) a Ci	- 436
Watson & Co. v. Spiral Globe Co., (1902) 2 Ch. 209; 71 L. J 538; 86 L. T. 499	. Ch.
Watson v. Eales, 23 Beav. 294	- 280
Watson (Robert) & Co. (1999) o Cl.	- 151
Watson (Robert) & Co., (1899) 2 Ch. 509	- 121
Watts v. Bueknall, (1903) 1 Ch. 766; 72 L. J. Ch. 447; 88 1 845	L. T.
Wear Engine Works Co., Re, L. R. 10 Ch. 188; 44 H. J. Ch. 256 L. T. 314; 23 W. R. 735	5; 32
Webb, Bevan v., (1901) 2 Ch. 59; 70 L. J. Ch. 59; 84 L. T. 49 W. R. 548 (C. A.)	609 ;
	- 125
Webb, Hale & Co. v. Alexandria Water Co., 21 T. L. R. 572	- 141
Webb v. Earle, 20 Eq. 557; 44 L. J. Ch. 608; 24 W. R. 46-	84, 214
Webb, Reg. c., 14 East, 406 -	- 6
Webb v. Whiffin, L. R. 5 H. L. 718	- 404
Wedgwood Coal Co., Re, 6 C. D. 627; 37 L. T. 309	
Weeks b. Propert (1873), L. R. 8 C. P. 497 - 49 L. J. C. D. 100.	: 21
	190, 276
Weguelin, Gordillo v., 5 C. D. 303	- 286
	- 100

xev

Wei-Whe		PAOR
Weikershoim's Case, 8 Ch. 831: 28 L. T. R. 653	-	124
Welsbach Incandescent Gas Co., (1904) 1 (h. 87;	73 L. J.	Ch. 104;
89 L. T. 645 ; 52 W. R. 327	34, 82,	88, 90, 96, 219
Welsh Flannel and Tweed Co., 20 Eq. 367; 23 W 361; 44 L. J. Ch. 391	. R. 558	: 32 L. T.
Welton v. Saffery, (1897) A. C. 299; 66 L. J. Ch. 3	62: 76]	L. T. 505 :
40 W, R, 308 38 , 39 , 40 ,	69, 123,	416, 429, 443
wendorn & Co., (1905) 1 Ch. 413	-	
Wenlock (Baroness) v. River Dee Co. (No. 1), 36 C.	D. 685;	10 Ann
Cas. 354; 54 L. J. Q. B. 577; 53 L. T. 62; 49 J	P. 773	
Wenlock (Baroness) v. River Dee Co. (No. 2), 19	Q. B. D	. 155; 56
L. J. Q. B. 589; 57 L. T. 320; 35 W. R. 322	-	
Werderman v. Société Générale (1881), 19 C. D. 24	6; 45 L	. T. 514 :
30 W. R. 33	_	- 001
West Coast Goldfields, 21 T. L. R. 375; (1906) 1 Ch	n. 1	. 140 417
West Cork Rail. Co., Hutton v., 23 C. D. 672; 52 1	. J. Ch.	689: 31
W. R. 827 -		185, 433, 434
West Doven Line, Re, W. N. (1884) 139 -	-	
West End Hotels Syndicate v. Baver (1912), 29 T. I	. R. 92	
West Hartlepool Co., Re, L. R. 10 Ch. 618: 44 I	. J. Ch.	668 : 33
L. T. 149; 23 W. R. 938	-	- 393, 414
West Hartlepool Rail. Co., Wilson v., 2 D. J. & S. 4	92	- 75, 256
West India, &c. Steamship Co., 9 Ch. 11, n	-	00
West of England Bank, In re, Ex parte Budden & F	loberts (1879) 19
C. D. 288; 48 L. J. Ch. 764; 41 L. T. 179; 27 W	. R. 906	- 140
West Yorkshire Darracq Agency, W. N. (1908) 236	-	- 10*
West Yorkshire Darracq Agency v. Coleridge, (1911)	2K B	326 - 186
Westbury v. Twigg, (1892) 1 Q. B. 77 -	-	421
Western Brazilian Telegraph Co. v. Bibby, 42 L. T.	821	
Western Counties Steam Bakeries, (1897) 1 Ch. 61	7 · 66 T	. T. Ch
354 76 L 9 990 47 W D 410		227, 407
Western Loggett a 19 O P D as-		
Western of Canada, Re (1873), 17 Eq. 1; 43 L. J. C	 h 194	-160 - 273, 328,
(),		1 98, 414, 440
Western of Canada, Mears v., (1905) 2 Ch. 353; 74	LIC	b 201.
93 L. T. 150	_	10.*
Westminster Palace Hotel Co., Simpson v., 8 H. L.	C 719	- 107
N. S. 985 -		
Westmoreland Slate Co. v. Feilden, (1891) 3 Ch. 15 -		0, 66, - , 69
Weston's Case, 4 Ch. 20; 38 L. J. Ch. 49; 19 L. T.		- 405 W D
62		
Wey and Arun Canal, 4 Eq. 197 -	· 1	30, 133, 443
Whaley Bridge Co. v. Green, 5 Q. B. D. 109; 49 L. J	0 0	- 389
W. R. 351; 41 L. T. 674 -		
Whenteroft's Case 20 T T 204, 40 T T C and		93, 331, 332
Whoatley, Heward v., 3 De G. M. & G. 6: 3; 22 L.		12, 129, 261
L. T. (O. S.) 121; 1 W. R. 216	J. Ch. 4	
	-	- 116

.

xevi

	ACVII
Wha-Wil	
Wheatley c. Silkstone Coal Co. (1885), 29 C. D. 715; 54 L. 778; 52 L. T. 798 - 33 W D. 797	PAGE
778; 52 L. T. 798; 33 W. R. 797 -	J. Ch.
Whiffin, Webb v., L. R. 5 H. L. 718	309, 311
Whinney, Ec parte, 13 Q. B. D. 478	- 404
Whinney, Colonial Bank until A 78 -	- 405
Whinney, Colonial Bank v., 11 A. C. 426; 56 L. J. Ch. 43; 5, 362; 36 W. R. 703; 30 C. D. 261 -	5 L. T.
Whinney, Moss Steamship Co. r., (1912) A. C. 254 - White, Carton a. 25 (17) Co. r., (1912) A. C. 254 -	19, 140
White, Carter v., 25 C. D. 666	- 326
White v. Land, &c. Co., W. N. (1883) 174	- 338
\mathbf{v} muo \mathbf{v}_1 Lincoln (1803) & \mathbf{v}_{out} and	- 234
White's Case, 12 (' 1) 517, 19 7 7 (9)	- 999
White's Case, 12 C. D. 517; 48 L. J. Ch. 821; 41 L. T. 3; W. R. 895	33 ; 27
Whitechurch (George) Ttd	- 122
Whitechurch (George), Ltd. v. Cavanagh, (1902) A. C. 117; 85 349; 50 W. R. 218	L. T.
Whitefriars Financial Co. (1899) 1 Ch. 100	139, 261
Whitehall Court, Re (1887) 56 T. T. D. Don and T.	122, 123
	- 186
670; 48 W. R. 585 -	
Whitfield v. S. E. Rail. Co., E. B. & E. 122	- 122
Walley Partners, Re. 39 (1 1) 227 . 10 T T (1	- 74
28 W. R. 241	[. 11; 98. 110
Whitley, La Compagnie de Mayville e., (1896) 1 Ch. 788; 65 Ch. 729; 74 L. T. 441 - 44 W. P. 509	35, 110
Ch. 729; 74 L. T. 441; 44 W. R. 568	10. 0.
Whittaker v. Korshaw, 45 C. D. 320; 60 L. J. Ch. 9; 63 L. T. 39 W. R. 23	- 195
Whitmood (the 1 1 0	- 146
Whitwood Chemical Co. v. Hardman, (1891) 2 Ch. 416	
118 (118) (118) (1887), 12 A. U. 409: 57 T. J. Ch. au. 37	L.T.
457; 36 W. R. 145 - 38, 66, 68, 92, 93, 94, 116, 128; 57 Wickham, Rawlins v., 3 De G. & J. 304	377, 443
Wickham, Xenos v., L. R. 2 H. L. 310	- 355
Wigan Tranways Co. Comist. 11, 310	- 258
Wigan Tramways Co., Carrick v., W. N. (1893) 98 Wigfield v. Potter (1881), 45 L. T. 612	- 329
Wilcox & Co., W. N. (1903) 64	- 387
Wilkinson Sword Co. Ltd. (1903) 64	- 330
Wilkinson Sword Co., Ltd., (1913) W. N. 27; 29 T. L. R. 242	-
Will v. United Lanket Plantations (1014) 4 Gas	117, 119
THINKIN THOMAS & U.O. Re (1015) 1 CT DAR	, 85, 443
THERE IS COUDERS FORE 28 (T I) DOD. THE T	- 65
643; 36 W. R. 625	
Williams v. Hopkins, 18 C D 270	- 145
Williamson, Hilo Manufacturing Co (1010) and m	- 412
	- 352
36 W. R. 758	02 ·
Williamson & Sons, Davey & Co. v., (1898) 2 Q. B. 194; 67 L. Q. B. 699; 46 W. R. 571	- 131 T
Q. B. 699; 46 W. R. 571 Willmott v. London Collision and C	- 309
Willmott v. London Celluloid, 34 C. D. 147; 52 L. T. 642; W. (1885) 29	N.
Willows, York Tramways Co. v. (1882), 8 Q. B. D. 685; 51 L. Q. B. 257; 46 L. T. 996 - 30 W. D. co.	- 415 T
,	
Р.	05, 192
g	

-

xevii

Wil-Wri

xeviii

Wills C. Murray I Ba and		
Wills c. Murray, 4 Ex. 843; 19 L. J. Ex. 209 Wilmer c. Machaman (1991) or c.		
Wilmer r. Machamara, (1895) 12 Ch. 245; 61 L. 552; 43 W. R. 519	J. Ch. 516	· 79 T. P
Wilmot, Derby Connel C		
Wilmot, Derby Canal Co. v., 9 East, 359		
any and partor, of the day do r that he	T. 597: 21 1	- 209 V D 14
Wilson e. Brott, 11 M. & W. 115		
Wilse Ferguson c., 2 Ch. 77	115, 177	202 178, 179, 199
Wilson v. Kelland, (1910) 2 Ch. 306 -	-	
Wilson, Stevenson v., (1907) S. C., Ct. of Sess, 44 Wilson v. West Hartlengol Rail (1997) S. C., Ct. of Sess, 44	5 -	312
Wilson v. West Hartlepool Rail. ('o., 2 D. J. & S. Wilts and Berks Canal Co. Box a. 2 D. J. & S.	492	135
Wilts and Berks Canal Co., Rex v., 3 Ad. & El. 47 Wiltshire Iron Co., Re, L. R. 3 Ch. 443	7: 8 A.J. &	- 75, 256
Wiltshire Iron Co., Re, L. R. 3 Ch. 443		121. 201 - 125
47; 30 W. R. 40	B. 219 : 4	- 207, 399 16 T. T
Willipiegon Ulympia T44 (101)		- 179 179
Wincham Shipbuilding and D .:		- 356
Wincham Shipbuilding and Boiler Co., <i>Iu re</i> (. 9 C. D. 329; 26 W. R. 823; 38 L. T. 659 - Windham, Tow. boxd.	Hallmark'	Case)
Windham, Tow: hend ". (1750), 2 Ves. 1		- 203
		- 200
Winterbottom, Re 180 b 12 Ch. 303		- 300
Winterbottom, Re, 18 Q. B. D. 446; 56 L. J. Q. B. 2 Withernsea Brick Works, Re, 16 C. D. 337: 50	38: 56 L. 7	- 168 - 140
Withernsea Brick Works, <i>Re</i> , 16 C. D. 337; 50 J. L. T. 713; 29 W. R. 178	L. J. Ch. 1	85 43
Wood, Avery v., (1891) 3 Ch. 115		- 412
Wood, Deves a (1011) W NT AT		- 18
Wood, Deyes r., (1911) W. N. 51; (1911) 1 K. B. 8 Wood, Drincabler r., (1899) 1 Ch. 2001	06 .	- 296
548; 47 W. R. 252; 6 Manaon 56; 68 L. J. Cl	h. 181 : 79	T. T
Wood, Hamiyn # (1801) 0 C D		355.358
Wood v. Odessa, 42 (D ege, 10 T		- 263
Wood v. Odessa, 42 (°. D. 636; 58 L. J. Ch. 628 1 Me ₃ , 265	; 37 W. R	. 733 :
Woodbridge, Waltons C D		10 11 00-
Wood's Case, 3 De G. & J. Ss. 18 T		- 211
Wood's Case, 3 De G. & J. 85; 15 Eq. 236; 42 L. W. R. 645	J. Ch. 40.	3: 21
Wood's (A. M.) Shins Woodity D.		- 112
Wood's (A. M.) Ships Woodite Protection Co., In 76 164; 62 L. T. 760; 6 T. L. R. 30 Woods v. Winshill (1912) - R. 30	, 2 Meg.	C. R.
Woods v. Winskill (1913) a CL ann	-	- 150
Worley, Sadler v., (1894) 2 Ch. 303 - Worth, Ex parte (1°59), 4 Drew, 529	-	- 3.27
Worth, Ex parte (1059), 4 Drew. 529-	2 W. R. 47	8 - 323
Wragg, Limited Re (1907) 1 (1)		- 357
Wragg, Limited, Re, (1897) 1 Ch. 796; 66 L. J. Ch. 397; 45 W. R. 557-	419; 76 L	. T
Wre. ham, Mold and Connah's Quay Rail. Co., (1899) Wright's Case, L. R. 7 Ch. 55: 11 L. J. Ch.		
Wright's Case L B 7 (1)	1 Cg. 440	- 117
Wright's Case, L. R. 7 Ch. 55; 11 L. J. Ch. 1; 25 I W. R. 45; 12 Eq. 331; 24 L. T. 899; 19 W. R. 947 - Wright, Collen ', 7 El. & Bl. 301; 8 El. & Bl 647	L. T. 471	- 275
Wright, Collan : 7 Et 6 11. T. 899; 19 W. R. 947 -	166. 175	359 958
Wilkat, trean a 1 () D D	-	100 100
Wright v. Horton (1997) 40.		190, 199
Wright v. Horton (1887), 12 App. Cas. 371; 56 L. J. L. T. 782; 36 W. R. 17; 52 J. P. 179 Wright v. Kirby 23 Part 100	Ch. 872.	- 262
Wright v. Kirby, 23 Beav. 863	- (273, 277
	-	- 329
		0.00

.

Wri-Yui Wright M.

431; 51 W. R. 661 (C. A.) Wright Paral	(h 21	PAGE
Wright Daniel (C. A.)	. month i w	5 L. T.
(1902) 2 Ch. 191 - 71 1 - 1 (m	• •	- 338
Wright, Percival v., (1902) 2 Ch. (21; 71 L. J. Ch. Wright, Perketter and Ch.	846: 31 W.	R. 31 - 165.
Wright, Pinkett v., 2 Ha. 120; 12 Cl. & Fin. 764; 6 Jur. 1102 Wrigh, Wandan and St.		180, 190
6 Jur. 1102	12 L. J. CF	110.
Wright, Wandsworth Gaslight Co. c., 22 L. T. 104 Wyley c. Exhall Coal Co., 22 D.		
Walan , To and worth Cashght Co. r., 22 L. T. 101	-	- 154
Wyley c. Exhall Coal Co., 33 Beav. 538		169, 172
Wynn, Lawrence c., 5 M. & W. 355 -		- 414
· · · · · · · · · · · · · · · · · · ·	-	
	-	- 148

X.

Xenos v. Wickham, L. R. 2 H. L. 310

- 258

.

Y.

Yates, Norton c., (1905) W. N. 175 -Yeoland Consols, 58 L. T. 922; 4 T. L. R. 364 - 310 Yolland, Husson & Birkett, (1908) 1 Ch. 152; 77 L. J. Ch. 43; 97 - 115 York Tramways Co. c. Willows (1882), 8 Q. B. D. 685; 51 L. J. Q. B. 257; 46 L. T. 296; 30 W. R. 624 105, - 279 York, &c. Pail. Co. r. Hudson (1853), 16 Beav. 485 -- 105, 192 Yorkshire Co., 9 Eq. 650 18 W. R. 541 -Yorkshire Miners' Association, Howden v., (1903) 1 K. B. 308; 72 L. J. K. B. 176; 88 L. T. 134; (C. A.) affirmed by House of Lords (14th April, 1905), 21 T. L. R. 431 - 178 - 223 Yorkshire Woolcombers' Association, Houldsworth e. Same Co., (1904) A. C. 355; 73 L. J. Ch. 739; 91 L. T. 602; 53 W. R. 113 9 Young v. David Payne & Co., (1904) 2 Ch. 609; 92 L. T. 777; 73 L. J. Ch. 849; 20 T. L. R. 590 (C. A.) - 73, 281, 209, 310 Young v. Naval and Military Co-operative Society, (1905) ; K. B. 687; W. N. (1905) 41; 92 L. T. 458; 53 W. R. 447 188, 73, 235 Young v. South African Syndicate, (1896) 2 Ch. 268; 65 L. J. Ch 638; 74 L. T. 527; 44 W. R. 509 167, 170 188, 211 Ystalyfera Gas Co., W. N. (1887) 30; 3 T. L. R. 321 167, 170, 240 Yuill, Groymouth Point Elizabeth Rail. Co. v., (1904) 1 Ch. 32; 73 - - 128 -189, 195 -



COMPANY LAW.

CHAPTER I.

PRELIMINARY.

The following pages treat almost exclusively of companies incorporated The principal under the Companies Act, 1862-the Magna Charta of co-operative kinds of enterprise-or under the Companies (Consolidation) Act, 1908* (infra, known to 9 . p. 13), which has taken the place of the Act of 1862; but it is the law. necessary to bear in mind that such companies, though incomparably the most numerous and important, form only one of several classes of associations known to the law. Of these associations outside the Companies (Consolidation) Act, 1908, the principal are-(1) ordinary partnerships; (2) companies incorporated by roy ' charter; (3) compailies incorporated by special Act of Parliamen companies; (5) companies under the Act of \cdot i; (6) building societies; (7) industrial and provident societies; (b) friendly societies; (9) trade unions; and (10) limited partnerships. It is desirable, therefore, before dealing at large with companies under the Act of 1908, to say a few words as to each of the other kinds of companies or associations above referred to; for it is by comparing and contrasting the principal features of these other forms of co-operative effort with those of companies under the Act of 1908, that the special characteristics of the latter can be best brought into clear relief. To begin with-

(1.) Ordinary Partnerships.

In these associations the firm is not a person in law, distinct from Partnerships. the partners who compose the firm. The partners are themselves They are the joint owners of the partnership property;

* This Act is referred to in these pages as "the Act," or "the Act of 1908," or "the Consolidation Act of 1908." Р.

their shares in the partnership are not transferable, and each of the partners is an agent of the partnership to make contracts, undertake obligations and dispose of partnership property in the ordinary course of the partnership business. Upon all contracts and obligations so incurred the liability of the partners is unlimited. As between themselves, the partners may make what private arrangements they please; but "as between the partners and the outside world, whatever may be the partners' private arrangements between themselves, oach partner is the unlimited agent of every other in every matter connected with the partnership business, or which he represents as partnership business, and not being in its nature beyond the scope of the partnership. A partner who may not have a farthing of capital left may take moneys or assets of the partnership to the value of millions, may bind the partnership by contracts to any amount, may give the partnership acceptances for any amount, and may even, as has been shown in many painful instances in this Court, involve his innocent partners in unlimited amounts for frand which he has craftily concealed from them ": per Lord Justice James, Baird's case, 5 Ch. 725. This very serious liability as regards an ordinary partnership strikingly differentiates such an association from a statutory partnership, like a limited company. Partnership law is now to a large extent codified in the Partnership Act, 1890. 'As to "limited partnerships," see infra, p. 10.

(2.) Companies incorporated by Royal Charter.

Chartered companies. A charter of incorporation can only be granted by the Crown, for the constitution of corporations is one of the prerogatives vested in the Crown by the common law. This power is now supplemented by 7 Will. 4, c. 73. Instances in which the Crown has exercised the power are: The Russia Company, incorporated by Queen Elizabeth, 1555; Tho Senegal Adventurers, incorporated by the same Queen, 1588; The Levant Company, incorporated by the same Queen, 1588; The Levant Company, incorporated by the same Queen, 1592; The East India Company, incorporated by the same Queen, 31st December, 1600; The Hudson's Bay Company, 1670; The Eark of England, incorporated in 1674; The South Sca Company, incorporated 1711; The London Assurance Corporation, 1720; Peninsular and Oriental Steam Navigation Company, 1840; The British North Bornco Company, 1881; The British South Africa Company, 1889.

"GEOROE THE FIFTH, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British

COMPANIES INCORPORATED BY ROYAL CHARTER. Ch. I.

Dominions beyond the Seas King, Defender of the Faith, to all to whom these presents shall come, greeting [then follow recitals of the circumstances]: Now THEREFORE know ye that we of our special grace, &c., by these presents, for us, our heirs and successors, grant and ordain that A., B. and C., and all such other persons and bodies politic and corporate as have become, or from time to time hereafter may become, members of the said undertaking or company, and shall hold one or more shares therein, shall be a body politic and corporate in deed and in law by the name of the A. B. C. Company for carrying into effect the purposes hereinafter mentioned," &c.

It is, or was, a peculiarity of a chartered corporation that its members were originally under no liability for the debts of the corporation, the Crown having no power in incorporating to attach liability to the individual mombers of the corporation. This auomaly was, however, removed by the statute above mentioned, 7 Will. 4, c. 73, under which a considerable number of banks and other concerns havo from timo to time been incorporated with a liability attached to the shares in the capital, and sometimes with an additional liability of the like or double the amount in the event of a winding-up. There still, Fundamental however, subsists a difference of a fundamental character between difference a chartered company and a company formed under a special Act or chartered registered under the Companies Acts, and it is this: at common law a companies corporation created by the king's charter has power, as was determined in the Sutton's Hospital case (10 Rep. 13), to deal with its property, to bind itself by contracts, and to do all such acts as an ordinary person can do, and so complete is this corporate autonomy that it is unaffected even by a direction contained in the creating charter in limitation of the corporate powers. For the common law has always held that such a direction of the Crown-though it may give the Crown a right to annul the charter if the direction is disregardedcaunot derogate from that plenary capacity with which the common law endows the company, even though the limitation is an essential part of the so-called bargain between the Crown and the corporatiou. Sec judgment of Bowen, L. J., in Baroness Wenlock v. River Dee Co., 36 C. D. 685, and of Blackburn, J., in Riche v. Ashbury Rail. Co., L. R. 9 Ex. p. 224. This feature-the unrestricted corporate capacity of the chartered company-is in marked contrast to the strict delimitation by the legislature and the Courts of the statutory or registered company to its defined objects.

The power to incorporate by charter has always been sparingly exercised by the Crown, and the delay and exponse in tho proceedings

1(2)

and others.

for obtaining a charter—concurring with the reluctance of the Crown to grant—has, for many years past, made a charter a very exceptional mode of incorporation.

(3.) Companies incorporated by special Act of Parliament.

Special Act companies. The formation of companies by private or special Act of Parliament grew out of the canal-construction movement, a movement which followed closely on Brindley's success in the construction of the Bridgewater Canal under the Acts obtained in 1759 and 1760 by the Duke of Bridgewater.

It was very soon discovered that the best organization for the construction of these large undertakings was a company incorporated by special Act of Parliament. One of the earliest of these Acts was the Trent Navigation Act, 1766 (6 Geo. 3, c. 196). A considerable number of canal companies were so constituted, but it was not until the great movement set in for the construction of railways-inaugurated by the Stockton and Darlington Act of 1821-that companies constituted under special Acts began to multiply. Since then, great numbers of companies have been so constituted, and in particular in relation to railway, dock, water-works, gasworks, and tramway undertakings. In the case of most of these companies, the scheme of constitution and management is the same or similar, and, therefore, to avoid repetition and save expense, the legislature has embodied in certain Acts a code of general regulations or statutory provisions applicable to such companies and incorporated by reference into the special Act creating the company. Among such general Acts embodying typical provisions are The Companies Clauses Consolidation Act, 1845 (8 Vict. c. 16); The Railways Clauses Act, 1845 (8 Vict. c. 20); The Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18); The Gas Works Clauses Act (10 & 11 Vict. c. 15); The Waterworks Clauses Act (10 & 11 Vict. c. 17); The Harbours and Docks and Piers Act (10 & 11 Vict. c. 27); The Electric Lighting (Clauses) Act, 1899, and various other Acts amending and extending the above.

Special peculiarity of them compulsory powers. A special peculiarity of these statutory undertakings, and one which distinguishes them from ordinary trading companies registered under the Companies (Consolidation) Act, 1908, is that they are, in many cases, invested with compulsory powers: for instance, to take land or to commit what, but for these parliamentary powers, would amount to nuisances; otherwise their constitution is closely analogous; the liability of the members, for example, is limited to the amount of their shares, and the company in each case incor-

COMPANIES CONSTITUTED BY CONTRACT. Ch. I.

porated is restricted, as regards its powers, to the purposes of its creation and the terms of its parliamentary mandate. See Colman v. Eastern Counties Rail. Co., 10 Beav. 1; Salomans v. Laing, 12 Beav. 339; East Higham Rail. Co. v. Eastern Counties Rail. Co., 11 C. B. 775; Hawkes v. Eastern Counties Rail. Co., 5 H. L. C. 331. In the case last mentioned, Lord Cranworth, after reviowing the authorities, said: "It must, therefore, be now evident, as a wellsettled doctrine, that a company incorporated by Act of Parliament for a special purpose cannot devote any part of its funds to objects unauthorized by the terms of its incorporation, however desirable such application may be." See also Mann v. Edinburgh Northern Tramways Co., (1893) A. C. 69.

(4.) Unincorporated Companies constituted by Contract.

These companies made their appearance first in the seventcenth Common law century. It was a time when men of business were beginning to companies. recognize the advantages derivable from co-operation in commercial enterprise, the advantages which it offered, that is to say, on the one hand, for raising funds for the purposes of large and more or less speculative undertakings by means of contributions from a number of small capitalists ready and willing to co-operate, and, on the other hand, of minimising the risk by spreading the liability. The difficulty was how to secure these advantages. A charter was too costly, and a special Act of Parliament was impracticable. Business men had to devise for themselves a new form of partnership which should possess the advantages as nearly as might be of a chartered corporation, and in particular should have shares of fixed amount freely transferable by the holders. The outcome of these commercial needs was the unincorporated company, the lineal ancestor of the ordinary company under Companies Act, 1862, and its amending Acts, now reproduced and consolidated in the Act of 1908.

The law at first frowned on these new associations. It questioned their validity. It insisted on treating them as ordinary partnerships, and by this and other rules which it applied to them seriously checked and crippled their development. They continued, however, to be formed, and gradually the number increased until the fraudulent promoter appeared on the scene.

To such an extent did this person take advantage of the opportunity by floating all sorts of fraudulent and objectionable concerns that the legislature had, in 1719, to intervene and pass the Bubble Act with a view to putting down fraudulent companies. Unfortunately the Act

ð

was expressed in such ambiguous terms as to raise doubts whether it was not intended to stop generally the formation of companies with transferable shares, good and bad alike. The leading caso—a very instructive one—on this Act is R. v. Webb, 14 East, 406. The difficulty was solved, however, in 1825 by the repeal of the Bubble Act, and theneeforth, for a time, the formation of companies was left to the common law, subject to the doubts which existed as to whether, under the common law, they were legal or not, doubts which were subsequently settled in favour of their legality. See Walburn v. Ingilby, 1 M. & K. 61, decided by Lord Brougham; Garrard v. Hardey, 5 Man. & Gr. 471; Harrison v. Heathorn, 6 Man. & Gr. 81; and Sheppara v. Oxenford, 1 K. & J. 491.

Left to the freedom of the common law, the tide of company enterprise rose, and, es it did so, the policy of the legislature changed. In lieu of the policy of repression the legislature, in 1844, recognizing the advantages of the joint stock company principle, and the desirability of facilitating the association of persons in commercial undertakings, provided means for regulating them by passing, in 1844, the Act 7 & 8 Vict. c. 110. This Act, with certain exceptions, required all companies $\varepsilon \omega$ is equarkly formed to be registered under it. The formation of unregistered companies was thus, to a great extent, stopped, and though the Act was repealed in 1862, except as to them existing companies, the Act of 1862, as appears below, continued to prohibit the formation of unregistered companies for gain where the members exceeded twenty, or in the case of banking companies, ten. The Act of 1908 does the same.

Unincorporated company to be differentiated from ordinary partnership.

An unincorporated company has always been regarded by the law as a partnership with special features; one of these special features was the transferability of its shares. To secure the continuity of the concern, notwithstanding the death or bankruptcy of members, was another; and the vesting of the management in a select body of directors, to the exclusion of the members generally, was a third.

Deed of settlement.

Such companies were usually established by deed of settlement expressed to be made between the various shareholders and a trustee or trustees with whom the shareholders covenanted to observe the provisions of the deed. The deed commonly declared that the several persons for the time being holding shares in the capital of the company should constitute and be a company with a specified name, and with a specified capital, and subject to specified regulations (set out in the deed) until dissolved in a specified manner. And the deed usually also made the shares transferable.

What the founders of these associations aimed at was, in fact, to make them as nearly as possible a corporation with continuous existence, and

- 6

COMPANIES INCORPORATED UNDER 7 & 8 VICT. C. 110. Ch. I.

with transmissible and transferable stock, but without auy individual right in any associate to bind the other associated members or to deal with the assets of the association. In many cases they obtained a private Act of Parliament enabling them to sue and be sued in the name of some specified officer. See further as to unincorporated companies, Baird's case, 5 Ch. 725; Grain's case, 1 C. D. 307, 315; Burnes v. Pennell, 2 H. L. C. 897; Lindley on Companies.

Such associations being in contemplation of law nothing but great partnerships with some special features, the members have always been held liable for the debts and liabilities to the full extent of their

(5.) Companies incorporated under / & 8 Vict. c. 110 [1844].

The above Act was the first general registration Act in regard to Companies companies. Lord Cranworth has, in Oakes v. Turquand, L. R. 2 H. L. under the at p. 358, pointed out some of the circumstances which made the intervention of the legislature necessary.

"When it became the habit and interest," said that learned Judge, of persons engaged in commerce to unite in great numbers for carrying on any particular trade, it soon became evident that the ordinary provisions of the laws of this country were ill adapted to the business of such bodies. It is a general principlo of mercantile law, that when two or more persons are associated in partnership for carrying on a trade, every partner can bind his copartners in all contracts made in the ordinary course of the business. But where a hundred persons or upwards are engaged in any particular trade to be managed by directors acting for the whole body, that principle plainly became very inconvenieut in its application. So, again, it was a principle of our Courts that in any proceeding by or against a partnership, .11 the partners must, either as plaintiffs or defendants, be made parties to the proceeding. But when numerous members of a partnership, to the extent of many hundreds of persons, were concerned as partners, this rule would, if adhered to, have made litigation practically impossible, and would often have amounted to a denial of justice."

The Act was of a somewhat anomalous character. It incorporated the compauies registered under it, and thus endowed them with faculties, privileges and powers denicd to an unincorporated company. In particular it facilitated legal proceedings and the holding of property, but it still withheld from them one of the most important incidents of an incorporated company-the immunity of the members

Act of 1844.

from direct liability. Indeed, it expressly imposed on the members liability for the debts of the company just as if they were partners.

Notwithstanding this provision, an effort was in some cases made to obtain limited liability for a company registered under the Act. The Act provided that the deed of settlement should be filed with the Registrar of Joint Stock Companies and be open for public inspection, and it was thought that the insertion in the deed of settlement so filed of a clause limiting the liability of the members to the amount of their shares would or might be effective. Clauses to that effect were inserted in some cases, but it was ultimately held by the Court that this attempt to limit was, as regards outsiders, ineffectual. See *Greenwood's case*, 3 De G. M. & G. 459; and see further as to such companies, Lindley on Companies.

(6.) Building Societies

Building societies. under the Building Societies Act, 1874 (37 & 38 Vict. c. 42), and the Building Societies Act, 1894 (57 & 58 Vict. c. 47).

The liability of the members of these societies is limited. The societies are by the Act of 1874 incorporated. They are not companies, but they bear a great resemblance to companies. See further Wurtzburg on Building Societies.

(7.) Industrial and Provident Societies

Industrial societies. under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39); amended 1895 (58 & 59 Vict. c. 30).

The Act incorporates such societies (sect. 21), and limits the liability of the members. It also confers special rights and privileges. These societies are not companies, though, like building societies, they bear a considerable resemblance to them. They are intended for small capitalists, and accordingly the interest of a member is not to exceed 2001. (Sect. 4.) See Fowke, Industrial and Provident Societies.

Friendly societies.

(8.) Friendly Societies

under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25); amended Societies' Borrowing Powers Act, 1898 (61 & 62 Vict. c. 15); reamended Friendly Societies Act, 1908 (8 Edw. 7, c. 32).

These societies are not incorporated, but they are, by the Act, invested with various privileges, and the liability of the members is limited. A friendly society can convert itself into a company, and a

company can convert itself into a friendly society. (Sect. 71 of the Act of 1896.) See Fuller, Friendly Societies.

(9.) Trade Unions.

These associations, which at common law were illegal as in supposed Trade unions. restraint of trade, were legalised to some extent by the Trade Union Acts, 1871 and 1876 (34 & 35 Viet. c. 31, and 39 & 40 Viet. c. 22). "Parliament has legalised trade unions whether registered or not. If registered, they enjoy certain advantages." Per Lord Macnaghten in Taff Vale Rail. Co. v. Amalgamated Society of Ruilway Servants, (1901) A. C. 426: in which case it was decided that trade unions could be sued for wrongs committed by their agents. The Act of 1871, however, in legalising trade unions, contains an important qualification, for it expressly provides that it is not to enable the Court to entertain any legal proceedings for directly or indirectly enforcing or recovering damages for the breach of a large class of agreements, including almost all the material rules of these societies. For example, if it be desired to compel a member of the union to abstain from work during a strike or to insist on standard wages or hours, or to pay his subscriptions or fines, or if a member desires to compel the union to give him the benefits in the way of sick pay and otherwise stipulated for, the Court will not assist.

The Companies Acts, 1862 and 1867, are not to apply to any trade union, and registration of a trade union under them is void. See Trade Union Act, 1871, s. 5. By sect. 293 of the Act of 1908, the reference in that section to the Acts of 1862 and 1867 is to be read as a reference to the Companies Act, 1908. See, further, Company Precedents, Part I., p. 113; Chamberlain Wharf, (1900) 2 Ch. 605; Edinburgh and District Aerated-Water Manufacturers' Defence Association v. Jenkinson, 5 Ct. of Sees. Cas. 1159; and Howden v. Yorkshire Miners' Association, (1903) 1 K. B. 308; Taff Vale Rail. Co. v. Amalgamated Society of Railway Servants. (1901) A. C. 426; Osborne v. Amalgamated Society of Railway Servants, (1910) A. C. 87; 27 T. L. R. 115; Russell v. Amalgamated Society of Carpenters, (1910) 1 K. B. 506.

By the Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 4 (1), "No Court" is now "to entertain any action against a trade union . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union."

(10.) Limited Partnerships.

Limited partnerships.

Limited partnerships are associations established under the Limited Partnerships Act, 1907 (7 Edw. 7, e. 24). The name is somewhat of a misnomer, for in such an association there must be one or more partners with unlimited liability. Those partners are called "general partners"; the other partners are called "limited partners," the latter contributing to the partnership assets a specified amount in money or money's worth, and enjoying immunity from liability beyond the amount so contributed. But it is an essential condition of this immunity (sect. 6) that a limited partner shall not take part in the management of the business, and he is to have no power to b nd the firm. He may inspect the books and may advise, that is, consult with the other partners as to the state and prospects of the business, but he must not go beyond this. If he does, though it bo in ignorance of the law, or inadvertently, or at the urgent request of the general partners, he forfeits his immunity from liability, and is plunged into the unknown depths of unlimited liability.

These limited partnerships are an importation from abroad. On the Continent something of the kind has been for upwards of half a century permitted in several countries, but the scheme offers little attraction to those who have, as in England, the alternative of forming or joining a private company, with all the advantages and immunities conferred by the law ou such companies. The Act in effect merely limits the liability of a sleeping partner provided he strictly complies with the statutory requirements. If A. wants to join a partnership, and while limiting his liability wants to look after his money by taking part in the conduct of the business, the Act of 1907 affords him no facilities and no protection. If he wants to join a limited partnership he must make up his mind to leave the whole of the management of the business in the hands of the general partners; to intervene means for him to risk incurring liability for all the debts and obligations of the firm. The Act is full of pitfalls for the unwary. The Act has been in force for more than seven years, and instead of a rush to take advantage of its provisions, there has been great reluctance and hesitation; the rush has been to form private companies.

The provisions of the Bankruptcy Act, 1914, now apply to limited partnerships. (Sect. 127.)

The Companies Acts, 1862 to 1913.

Companies under the Act of 1862. The main object of the Act of 1862 (a masterpiece of legislation) was to throw open to all the coveted privilege of carrying on business with limited liability. The principle of the Act was to allow the

THE COMPANIES ACTS, 1862 TO 1913.

greatest freedom bc h in the formation and working of a limited liability company, and at the same time to ensure that those who dealt with such concerns should be informed that the liability of the members was limited. Abandoning the old cumbersome system introduced by the Act of 1844 of provisional and complete registration, the Act made the formation of a company a perfectly simple and inexpensive process-all that it required for the formation of a company was seven signatures to a written or printed document called a memorandum of association. This, on payment of a small fee, was to be registered and a certificate of incorporation to be given, and thereupon the company was at liberty at once to commence business. It was not bound before starting business to have any capital paid up or subscribed beyond the seven shares to be taken by the signatories of the memorandum : it might start on its commercial career without any further subscription, might at once enter into contracts, borrow money if it could, and carry on business. And the great boon or limited liability was secured by the insertion in the memorandum, as part of the name of the company, of the magic word " Limited," together with a clause stating that the liability of the members was to be limited.

The Act of 1862 was amended and extended by the following Acts :---

1. The Companies Seals Act, 1864 (27 Vict. c. 19).

The subse-

This Act emp wered companies in certain cases to have quent Acts. official seals for use abroad.

2. The Companies Act. 1867 (30 & 31 Vict. c. 131).

This Act provided for reduction of capital, issue of share-warrants to bearer, sub-division of shares and other matters.

3. The Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104).

This Act extended the powers of the Court in windingup as to compromises and an angements with creditors.

4. The Companies Act, 1877 (40 & 41 Vict. c. 26).

This Act provided further for reduction of capital.

5. The Companies Act, 1879 (42 & 43 Vict. c. 76).

This Act provided for re-registration with limited liability of unlimited companies, and also for the creation of reserve capital.

6. The Companies Act, 1880 (43 Vict. c. 19).

This Act provided for payment off of profits in reduction of capital, and empowered the Registrar to strike numes of defunct companies off the register.

11

Ch. I.

- 7. The Companies Colonial Registers Act, 1883 (46 & 47 Vict.
- This Act provided for colonial registers in certain cases. 8. The Companies Act, 1886 (49 Vict. c. 2.).

This Act amended the Act of 1862, as to winding-up in Scotland in certain respects.

- 9. The Preferential Payments in Bankruptey Act, 1888 (51 & 52 Vict. c. 62), though not one of the Companies Acts, nevertheless affects the winding-up thereof. See also the Act of
- 10. The Companies Memorandum of Association Act, 1890 (53 & 54

This Act provided for the extension of objects, &c.

11. The Companies Winding-up Act, 1890 (53 & 54 Vict. e. 63), largely modified provisions of the principal Act in regard to

12. The Directors' Liability Act, 1890 (55 & 54 Vict. c. 64).

This Act modified the liabilities of directors in regard to

- prospectuses, &e. 13. The Companies Winding-up Act, 1893 (56 & 57 Vict. e. 58),
 - modifying the Bankruptcy Act, 1883, in relation to winding-up.
- 14. The Preferential Payments in Bankruptcy Amendment Act, 1857 (60 Vict. e. 19).
- 15. The Companies Act, 1898 (61 & 62 Vict. c. 26), modifying s. 25 of the Companies Act, 1867.
- 16. The Companies Act, 1900 (63 & 64 Vict. c. 48), extensively amending the Companies Acts, 1862 and 1867.
- 17. The Companies Act, 1907 (7 Edw. 7, c. 50), amending the above Acts in a number of important particulars.
- 18. The Companies Act, 1908, enabling certain foreign and colonial companies to hold land and other property.

The existence of these eighteen Acts with their many provisions, original, supplementary, amending, re-amending, substitutionary and repealing, rendered it a difficult task even for the trained lawyer familiar with the Acts and decisions to know how the law stood, much more for the business man, and long before 1908 there was a growing consensus of opinion that the law needed simplifying, and that the living provisions of the law ought to be brought together in an orderly form under one comprehensive enactment, so that he who ran might read one Act in place of the mosaic of many separate Acts. This has now been accomplished by the Companies (Consolidation) Act, 1908 (7 Edw. 7, c. 69) and it marks a new and important starting

THE COMPANIES (CONSOLIDATION) ACT, 1908. Ch. I.

point in the history of our company law. This Act has been amended by the Companies Act, 1913, with reference to private companies.

The Act of 1968 its s little more than a consolidation of the existing law as already expressed in the Acts of 1862 to 1908. The alterations are 13w and trifling, but some of them change the law considerably. See Thomas v. United Butter Co., (1909) 2 Ch. 484. The drafting is in the main clear, but (alas!) practically no attempt has been made to embody in the Act the relevant decisions of the Courtsdecisions which throw so great a flood of light on the operation and meaning of the repealed Acts, and of the new Act. See p. 17, infra.

The Companies (Consolidation) Act, 1908, is divided into ten parts :---

Part I. Constitution and Incorporation.

Part II. Distribution and Reduction of Capital.

Part III. Management and Administration.

Part IV. Winding-up and Dissolution.

Part V. Registration Office and Fees.

Part VI. Application of Act to Companies formed and registered under former Acts.

Part VII. Companies authorized to register under the Act.

Part VIII. Winding-up of unregistered Companies.

Part IX. Companies established outside the United Kingdom. Part X. Supplemental.

And there are six Schedules :---

Schedule I. Tables A., B. and C.

Schedule II. Statement in lieu of Prospectus.

Schedule III. Forms of Memoraudum and Articles and Annual Summary.

Schedule IV. Provisions as to Scotch Orders.

Schedule V. Applicability of sect. 281.

Schedule VI. Repeals.

The Act was to come into operation on the 1st April, 1909. See sect. 296. It may be cited as "The Companies (Consolidation) Act, 1908" (see sect. 29 \tilde{c}), or, with the Act of 1913, as "The Companies Acts, 1908 and 1913."

One key to the understanding of the Act is to be found in the The interpreinterpretation section (sect. 285), attaching to certain words used in the tation of the Act special significations, "unless " context otherwise requires," Act. A brief comment on some of the it is may not be out of place. The section commences thus :-

285.-(1) In this Act, unless one context otherwise requires, the

following expressions have the meanings hereby assigned to them, that is to sny :--

"Existing company" means a company formed and registered

under the Joint Stock Companies Acts [i.e., of 1856, 1857, &c.], or for the Companies Act, 1862;

It follows, then that the various sections of the Act dealing with a "company" apply prime facie not only to companies formed under the Compunies (Consolidation) Act, 1908—i.e., on or after April 1st, 1909—but also to companies formed under the Act of 1862, at any time before April 1st, 1909.

This at a stroke brings within the operation of the Act the 50,000 or more companies registered under the Companies Acts, 1862 to 1908, and now carrying on business in the United Kingdom and all parts of the world. Henceforth they are to be governed by the provisions of the Act of 1908. But as regards existing companies, the application is subject to the words "unless the context otherwise requires," and further to the provisions of Part VI. and sect. 286 of the Act (see Appendix, *infra*, pp. 512, 522). Moreover, by sect. 247 of the Act its provisions are made upplicable in like manner to companies registered, but not formed, under the Joint Stock Companies Acts (as defined ir. sect. 285) or under the Act of 1862.

Articles."

Another im, rtant expression defined in s. 285 is the following :--

⁶ Articles " means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A. in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of that Act, or in Tuble A. in the First Schedule to this Act;

This expression—"articles "—now takes the place of the expression "regulations," so frequently used in the Companies Acts, 1862 to 1907. See, for example, sects. 12 and 56 of the Act of 1862; sects. 9 and 21 of the Act of 1867; sects. 3 and 13 of the Act of 1900.

We thus get rid of what has been for many years past a troublesome ambiguity—the use sometimes of "articles," sometimes of "regulations." In the present clition the author has uniformly adopted the expression "articles" as being in conformity with the language of the new Act, and also in harmony with legal and conmercial usage.

THE COMPANIES (CONSOLIDATION) ACT, 1908. Ch. I.

By defining "articles" as above the Consolidation Act also gets rid of the clumsy circumlocation so often appearing in the text of the Acts, e.g., in sect. 12 of the Act of 1862. "If authorized so to do by its regulations as originally framed or as altered by special resolutiou," and substitutes the simple expression "if authorized by its articles." See, e.g., sect. 41 (1908).

The following are some further defined expressions :--

- " Memorandum " means the memorandum of associution of a company, as originally framed or as altered in pursuance of the provisions of this Act;
- "Document" includes summons, notice, order, and other legal process, and registers;
- "Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;
- "Debenture " includes debenture st ck ;
- "Books and papers" and "books or papers" include accounts, deeds, writings, and documents;
- "Director" includes any person occupying the position of director by whatever name called ;
- "Prospectus" means any prospectus, notice, circular, advertisement, or other invitation. inviting the public to subscribe for or purchase any shares or debeutur - of a company.

Besides the above, "Private company" is defined in sect. 121. The repeals are dealt with in sect. 286, which runs thus :--

286.-(1) The Acts mentioned in the first purt of the Sixth Repeals. Schedule to this Act are hereby repeuled to the extent specified in the third column of that part:

Provided that the repeal shall not affect-

- (a) The incorporation of any company registered under any enactment hereby repealed; nor
- (b) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor
- (c) Table A. in the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventyone of that Act) so far as the same applies to any company existing at the commencement of this Act; nor

(d) The continuance in force of the enactments set out in the second part of the Sixth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.

(2) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889, with regard to

This must be read with sect. 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which runs as follows :----

38.-(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or,
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed;
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been

Windings-up commenced before the Consolidation Act of 1908 are excepted by sect. 287 :---

Pending liquidation.

287. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had

THE COMPANIES (CONSOLIDATION) ACT, 1908.

not passed, and for the purposes of the winding up the Act or Acts under which the winding up commenced shall be deemed to remain in

The operation of deeds, &e. prior to the Act is not to be affected.

288. Every couveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed shall be of the same force as if the Act had not passed, and for the purpose of that deed the repealed enactment shall be deemed

References in documents to the repealed Acts are transferred to the Consolidation Act.

291. Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the eorresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

How far the decisions on the Companies Acts, 1862 to 1907, may be resorted to for the purpose of interpreting the Companies (Consolidation) Act, 1908.

The Act of 1908 being a consolidation Act, it is apprehended that Decisions on the rule laid down by Lord Herschell in Bank of England v. Vagliano. (1891) A. C. 144, is in point. Ilis Lordship in that case, speaking with reference to the Bills of Exchange Act, 1882 (which consolidated the law relating to bills of exchange), said :--"I think the proper course is, in the first instance, to examine the language of the statute. and to ask, what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with this view.

"If a statute intended to embody in a code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any points specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before. by roaming over a vast number of authorities in order to discover what the law was-extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am, of course, far from asserting that resort may never be had to the previous

the repealed Acts.

Ch. I.

state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import such resort would be perfectly legitimate. Or again, if in a code of the law of negotiable instruments words be found which had previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I take these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground."

Nor is the principle thus laid down confined to a codifying Act, it extends also to a consolidating and amending Act. "The same principle applies to such an Act as that which is now before us, but in a ess stringent degree. In this Act, clauses of the repealed Ac⁴ re found repeated, but often in altered form, and with amend the whereby the sense may be to a great measure changed. Speaking generally, I think that the enactments must be dealt with as they now stand, and that a minute critical examination of the repealed clauses ought not to be entered upon for the purpose of interpretation except upon special grounds." Per Chitty, L. J., in *Thames Conser*rators v. Smeed, Dean § Co., (1897) 2 Q. B. 346 (C. A.).

Applying this principle to the Consolidation Act of 1908, which has to a very great extent adopted the wording of the Acts of 1862 to 1907, it is obvious that there is and must be ample scope for reference to the decisions on those Acts, and the right thus to refer is well settled.

Thus in a Mersey Dock case, 11 H. L. C. 443, Blackburn, J., in delivering the opinion of the majority of the judges, said: "Where an Act of Parliament has received a judicial construction putting a certain meaning on its words, and the legislature in a subsequent Act in pari materia uses the same words, there is a presumption that the legislature uses these words intending to express the meaning which it knew has been put upon the same words before; and unless there is something to rebut that presumption, the Act should be so construed, even if the words were such that they might originally have the construed otherwise."

The reports are full of cases in which this rule has been recognised and acted on : Re Cathcart, 5 Ch. 703; see Avery v. Wood, (1891) 3 Ch. 115; Greaves v. Tofield, 14 C. D. 571; Dale's case, 6 Q. B. D. 453; Rosenberg v. Northumberland Building Society, 22 Q. B. D. 373; Hodgson v. Bell, 24 Q. B. D. 528; Rex v. Abrahams, (1904) 2 K. B. 859.

Hence it may be taken that in re-enacting the provisions of the Companies Acts, 1862 to 1907, the legislature has not disturbed the

THE COMPANIES ACTS, 1862 TO 1908.

decided cases, and that these decided cases are still to be treated as relevant and available for the interpretation of the new Act, in so far as any questions as to its meaning may arise in the future. It by no means follows, however, that the new Aet is to be taken to adopt and affirm a construction erroneously placed on the former Aets. Colonial Bank v. Whinney (1885), 30 C. D. 261, furnishes a goed illustration. There the question arose whether shares in a company were or were not choses in action within sect. 44 of the Bankruptcy Act, 1883 dealing with reputed ownership). It appeared that in 1871 Vice-Chancellor Bacon, in Union Bank of Manchester, 12 Eq. 354, had decided that under a similar provision in a corresponding portion of the Bankrnptcy Act, 1869, shares were not included as choses in action; and this decision was relied on by Cotton and Lindley, L. JJ., the latter saving that "the decision of the Vice-Chancellor has never been appealed from or judicially disturbed. After it had thus steed for years the present Act of 1883 was passed. I do not think we ought to suppose the draughtsmen of that Act to have been unaware of the construction which had been put by the Court upen the Act of 1869, and it appears te me that it would be a very strange thing for us te say that the language used, in the Act of 1883, ought to be construed differently from the judicial construction which had been put on the same language in the Act of 1869." But on appeal to the House of Lords (1886), 11 A. C. 426, this decision was overruled, and it was held that, notwithstanding the erroneous decision of the Viee-Chancellor, shares were choses in action within the meaning of sect. 44 of the Bankruptcy Act of 1883. Moreover the application of a decision may be excluded by a change in the language of the new Act : Thomas v. United Butter Co., (1909) 2 Ch. 484.

Here, then, in the Compasies (Consolidation) Act, 1908, we find gathered together and set in order the results of more that fifty years of company legislation, and we may venture to assert that the provisions of the Act, interpreted and supplemented by the many important decisions of the Courts on the Companies Acts, 1862 te 1907, and supplemented also by the Acts relating to insurance companies referred to in Chap. XLI. of this work, form tegether a comprehensive, and in most respects, admirable system of law for regulating the constitution, management, and winding-up of cempanies throughout the United Kingdom-a system which contrasts very favourably with the complicated formalities and the hard-and-fast regulations and restrictions imposed by not a few foreign systems of law in regard to eoupanies and co-operative enterprises. Unlike these systems, the policy of our law has been to accord the utmost liberty in regard to the formation, the carrying on, and the dissolution of companies; and although this freedem has at times been abused by unscrupulous persons for their

2(2)

19

Ch. I.

own ends, necessitating the intervention of the legislature, such abuses are but an insignificant item in comparison with the vast volume of honestly formed and honestly managed companies; * while there can be no doubt that the facilities afforded by these Acts have largely stimulated and developed British trade and co-operative enterprise in all parts of the world.

• The share capital of companies now on the register under the Companies Acts amounts, according to the latest official return, to more than two thousand five hundred millions, while the total share capital of companies registered since 1862 exceeds seven thousand eight hundred millions.

20

đ

CHAPTER IL

FORMATION OF A COMPANY LIMITED BY SHARES --- ALLOTMENT AND COMMENCEMENT OF BUSINESS-GENERAL SKETCH OF PROCEEDINGS.

THE mode of forming a company limited by shares is extremely simple :---

Preliminaries.

The first step is to prepare the Memorandum of Association (see First steps. sect. 3 of the Act of 1908) and the Articles of Association (if there are to be any). See sect. 10.

The Memorandum of Association.

This is a document of extreme importance in relation to the proposed The memocompany, and it will be fully dealt with later on (Chapter III., p. 26). It is required to state (among other things) (1) the name of the company; (2) what part of the United Kingdom the registered office is to be situate in; (3) the objects of the company; (4) that the liability of the members is limited; and (5) the capital of the company. See the specimen form set out in the Third Schedule to the Act, infra, Appendix.

This document has to be subscribed by seven persons at least, or, in the case of a private company, by two persons at least. Each subscriber must write opposite to his or her name the number of shares-it must not be less than one-he or she takes, and each signature must be attested by a witness. (Sects. 3, 6.)

The memorandum may be wholly in writing, or it may be printed (save as regards the signatures), or it may be partly printed and partly in writing.

The signature of a subscriber cannot be attested by himself or by another subscriber. "The word implies the presence of some person who stands by, but is not a party to the transaction." Per Lord Selborne, Seal v. Claridge, 7 Q. B. D. 516.

The Articles of Association.

These contain "he regulations for the management of the affairs of The articles. the company an even conduct of its business. (Sect. 10.) In the case

randum.

REGISTRATION.

of a company limited by shares there is no obligation to register articles of association, but if it is registered without articles the regulations in Table A. in the First Schedule to the Act are to be deemed to be the articles of the company.

There is a third alternative, and that is to have a short set of articles of association, supplementing or modifying Table A., but otherwise leaving Table A. te operate. In such a case Table A., plus the supplementary or modifying provisions, will constitute the regulations of the company.

As a general rule, it is desirable for a company to have special articles of association, but there are a considerable number of cases in which Table A., in its new form, with any necessary modifications and additions as above, may work well enough.

The articles of association (if there are to be any) must be printed (sect. 12), and must be signed by the subscribers of the memorandum, and the subscribers' signatures must be attested as required by sect. 12(d) of the Act. See Articles of Association, Chap. IV., p. 37.

Memorandum and articles must each bear a 10s. deed stamp, and a 5s. registration stamp.

Registration.

Registration.

In order to effect registration of the company, the documents, prepared as above described, must be taken to the Registrar of Joint Stock Companies (sect. 15), with a statutery declaration by a solicitor of the High Court engaged in the formation of the company, or by a person named in the articles of association as a director or secretary of the company, of compliance with the requirements of the Act as to registration (sect. 17), and also (except in the case of a private company) with certain other documents below mentioned.

The above documents each require a 5s. registration stamp, and the Registrar, on payment of the requisite registration fee and stamp duties, registers and retains the documents, and issues a certificate of incorporation. Sect. 16; see Chap. V., p. 51.

As to the further declaration or licence required during the war, see Appendix, p. 632.

Fees.

Fees on Registration.

The fees on registration are proportioned to the amount of the capital. See Table B. in the First Schedule to the Act, and the note appended thereto in regard to the capital duty of 5s. per cent. imposed by the Stamp Act, 1891, and the Finance Act, 1899.

ALLOTMENT OF SHARES, ETC.

Form of Certificate of Incorporation.

The certificate of incorporation is in the terms following :----

I HEREBY CERTIFY that the —— Company, Limited, is this day incorporated under the Companies (Consolidation) Act, 1908, and that the company is limited.

Given under my hand this —— day of ——. [Signature] Registrar of Joint Stock Companies.

With the issue of the certificate of incorporation (see Chap. V., infra, p. 51), the company comes into existence as a body corporate. See Chap. VL, infra, p. 55.

Allotment of Shares and Commencement of Business and exercise of Borrowing Powers.

The following is a summary of the position :---

Class 1 Private Companies).

In the case of private companies as defined in sect. 121 of the Private Act (Chap. XXXVII., in/ra), the company can go to allotment companies. immediately after the certificate of incorporation is obtained, and can commence business and exercise its borrowing powers forthwith, a private company being exempt from all restrictions as to allotment and commencement of business.

Cluss 2 (Companies issuing Prospectus inviting Public to subscribe for Shares).

In the case of companies in relation to whose formation a prospectus Share inviting the public to subscribe for shares is issued— prospe

prospectus companies.

(a) The prospectus must contain the disclosure required by sect. £1, and must provide for payment of at least five per cent. application money on the shares offered (sect. 85), and must be dated and signed by every director or proposed director named in it, or by his agent duly authorized in writing, and must be tiled with the registrar before its issue. (Sect. 80.)

(b) If anyone is to be named in the articles or prospectus as a director or proposed director, he must by himself or his agent duly authorized in writing sign and file with the registrar a consent in writing to act as such director, and if the articles provide for a shure qualification, must either subscribe the memorandum of association for his qualification or sign Certificate.

Ch. II.

ALLOTMENT OF SHARES, ETC.

and file a contract to take and pay for such qualification. (Sect. 72.)

- (c) It must be seen that the articles tix the minimum subscription upon which the directors may proceed to allotment, unless the parties are content that the whole amount of the share capital for which the public are invited to subscribe shall be treated as the minimum subscription. (Sect. 85.)
- (d) On the application to register there must be delivered to the registrar a list of the persons who have consented to be directors. (Sect. 72 (2).)
- (e) Before going to allotment, care must be taken that, as required by sect. 85, the minimum subscription has been subscribed, and the sum payable on application has been paid to and received by the company.
- (f) It must be seen also that every director of the company has paid to the company on each of the shares taken, or contracted to bo taken, by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription. (Sect. 87 (1) (b).)
- (g) There must be filed with the registrar a statutory (seet. 87 (1) (c)) declaration by the secretary, or one of the directors, in the prescribed form. (Company Precedents, Part I., Form 227, 11th cd., p. 605.)

And thercupon the registrar will cert fy that the company is entitled to commence business. (Sect. 87 (2).)

Class 3 (Companies not issuing Prospectus inviting Public to subscribe for Shares).

Other companies. In the case of companies which do not fall within Classes 1 and 2:-

- (a) A statement in lieu of prospectus (sect. 82) must be filed with the registrar, and the statement must be in the prescribed form: see *infra*, Appendix, Act of 1908, Second Schedulo.
- (b) If anyonc is named in the articles or in the statement in lieu of prospectus as a director, or proposed director, he must by himself, or by his agent duly authorized in writing, sigu and file with the registrar a consent in writing to act as such director, and if the articles provide for a share qualification, must either subscribe the memoran. To of association for his qualification, or sign and file a co. It to take and pay for such qualification. (Sect. 72.)
- (c) It must be seen that the memorandum or articles fix, and that the statement in lieu of prospectus states, the minimum sub-

scription (if any) npon which the directors may proceed to allotment, unless the parties are content that the whole amount of the share capital, other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash, shall be treated as the minimum, and it must be seen that the minimum has been subscribed. (Sects. 82 and 85 (7).)

- (d) On the application to register there must be delivered to the registrar a list of persons who have consented to be directors. (Sect. 72 (2).)
- (e) It must be seen that every director of the company has paid to the company on each of tho shares taken, or contracted to be taken, by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash. (Sect. 87 (I) (b).)
- (f) There must be tiled with the registrar a statutory declaration (seet. 87 (1) (c)) by the secretary or one of the directors in the prescribed form. (See Company Precedents, Part I., Form 227, 11th ed., p. 605.)

And thereupon the registrar will certify that the company is entitled to commence business. (Sect. 87 (2).)

As regards companies in Class 3, the statement in lieu of prespectus must be filed, and all the above requirements must be complied with, even though the company on its formation issues, or proposes forthwith to issue, a prospectus inviting the public to subscribe for debentures or debenture stock. 25

Ch. II.

CHAPTER III.

MEMORANDUM C" ASSOCIATION.

Form of memorandum.

The specimen form of memorandum of association for a company limited by shares is set forth (infra, Appendix) in the Third Schedulo to the Act of 1908 (Form A.). This form follows, it will be observed the requirements of sect. 3 of the Act, and states :---

- (1) The name of the company. See Name of Company, infra. Chapter XXV.
- (2) In what part of the United Kingdom the registered effice is to he situate. See infra, Chapter XXIII. (3) The objects of the company. See infra, pp. 29 and 60.
- (4) That the liability of the members is limited. See infra, p. 32.

(5) The capital of the company and the shares into which such capital is divided. See infra. p. 32.

It is for the subscribers to the memorandum of association to frame and till up the memorandum as they choose; for the Act in sect. 2 expressly provides that any seven or more persons (or in the case of a private company two persons) associated together for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Act in respect of registration, ferm an incorporated company with or without

Name of company.

1. Name.

In the selection of a name for a company the greatest treedom of choice is allowed, but the following points must be borne in mind :--

- 1. The last word of the name must be the word "Limited." As to dispensing with this word in the case of certain companies, see infra, p. 455. As to the penalty for improper use of the word " Limited," see sect 282.
- 2. The word "Royal" or "Imperial" must not be used as part of the name without the consent of the Home Office.
- 3. A name must not be selected too clesely resembling the name used by any other concern, whether registered or not, currying on a business similar to that proposed to be carried on by the company. For the protection of registered companies, the Registrar.

Ch. III.

in such cases, is, by sect. 8, empowered to refuse registration, and the Court will not, in case of refusal, interfere with his discretion. Rex v. Registrar of Companies, (1912) 3 K. B. 23.

This section provides that " a company may not be registered under a name identical with that by which a company in existence is already registered, or so nearly resembling the same as to be enculated to decoive, except" as therein named; and, in the case of an unregistered company, or firm, it is wise in the promoters to observe the same rule. In neither case is registration any efficient protection against an action for an injunction at the sait of anyone prejudiced by the adoption of the name. The principle on which the Court interferes in such cases is, that one person is not to be permitted to represent the business which is carried on by another as carried on by him. Croft v. Day, 7 Benv. 84; Hendricks v. Montugue, 17 C. D. 638; Tussaud v. Tussaud, 44 C. D. 678; North Cheshire and Manchester Brewery v. Manchester Brewery, (1899) A. C. 83; F. Pinet & Co. v. Maison Louis Pinet, Limited, (1898) 1 Ch. 179; and Montreal Lithographing Co. v. Sabiston, (1899) A. C. 610; Société Panhard v. Lanhard Levassor Co., (1901) 2 Ch. 513; Aerators, Limited v. Tollit, (1902) 2 Ch. 319; British Vacuum Cleaner Co. v. New Vacuum Cleaner Co., (1907) 2 Ch. 312; Electromobile Co. v. British Electromobile Co., 97 L. T. 196; Cash, Limited v. Cash, (1902) W. N. 32; Valentine Meat Juice Co. v. Valentine Extract Co., 83 L. T. 259; Scottish Union and National Insurance Co. v. Scottish National Insurance Co., (1909) S. C. 318, Ct. of Sess. ; Standard Bank of South Africa v. Standard Bank, 25 T. L. R. 420.

The inadvertent omission by a limited company to publish its corporate name will not disentitle it to have the use of its trado name protected by injunction. *Randall, Limited v. British and American Shoe Co.*, (1902) 2 Ch. 354.

The prohibition against similarity of name does not apply where an existing company is in course of being dissolved and testifies its consent to the satisfaction of the Registrar. See sect. 8(1) of Act of 1908.

The following are some examples of the various kinds of names that may be adopted :---

The Wenlock Ironworks, Limited.

The York Supply Association, Limited.

The Patent Pencil Company, Limited.

The Birmingham Advance Corporation, Limited.

The Malaga Syndicate, Limited.

The London and South Const Bank, Limited.

The Gordon Trust, Limited.

The Tenby Club, Limited.

The Incorporated Institute of Barge Owners, Limited.

MEMORANDUM OF ASSOCIATION.

The Suburban News, Limited. La Trinidad, Limited. The J. K. Syndicate, Limited. Bass, Ratcliff, and Gretton, Limited. Sir Joseph Canston, Limited. Sir W. G. Armstrong & Co., Limited. George Newnes, Limited. Peter Robinson, Limited.

The last few names are specimens of names adopted on conversion of going business concerns into companies, it being very common in such enses to adopt the old name with merely the addition of the word

There is great inconvenience in having too long a name, and it is highly desirable, therefore, where practicable, to confine the name to three or four words. As to change of name, see infra, p. 250.

2. Registered Office.

Regiscered office.

Every memorandum of association is required to state whether the registered office will be situato in England, or in Scotlund, or in Ireland. If the registered office is to be in Wales, the proper statement in the memorandum is, that it is to be situate in England; England, for this purpose, including Welles. 20 Geo. 2, c. 42, s. 3. The statement as to the situation of the registered office is material, for various reasons, and, in particular, because on the situation of the registered office depends the place where the company is to be registered. Thus, if the registered office is to be in England, the company must be registered in London, unless the memorandum statos that the object is to work mines in the counties of Devon or Coruwall. In that case it must be registered at Truro. If the registered office is to be in Scotland, or in Ireland, the company must be registered in Edinburgh or Dublin, us the case may be. The London office for registration is at Somerset Houso.

Writs and notices are to be served at the registered office of tho company. See Chap. XXIII., " Registered Office."

The principal object of requiring a company to have a registered office is to provido some definite place at which notices and other documents may be served on it. Accordingly by sect. 62 of the Act, it is enacted that " Every company shall have a registered office to which all communications and notices may be addressed." By sect. 116, a document may be served on a company by leaving it or sending it by post to the registered office of the company. "Document" here includes summons, notice, order, or other legal process, and registers ; and under sett. 26 of the Interpretation Act,

THE OBJECTS CLAUSE.

1889, the service [by post] shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Sect. 62 (2) of the Act provides for notices to the registrar of the situation of the registered office, and of any change therein The situation of the registered office also fixes the domicile (Jones y Scottish Accident Co., 17 Q. B. D. 421) and nationality (Continental Tyre Co. v. Daimler Co., (1915) 1 K. B. 893' of the company. See further as to the registered office, Chap. XXIII., infra, and seets, of and 117.

3. The Objects Clause.

Every memorandum of association-this is the third requirement- Objectmust state the objects of the proposed company.

chen.

The statement of the objects is not a mere record of, what is contemplated by the subscribers, without operative effect. On the contrary, the statement has a twofold operation-

- (1) It affirmatively determines what shall be the powers of the company; for the stated objects confer on the company all powers reasonably requisite to the attainment thereof ;
- (2) It limits and restricts the powers of the company to those thus conferred, save so for as other powers are given by statute.

Hence, as it rests with the subscribers to declare the objects, it follows that the subscribers are by the Act furnished with the means, not merely to bring into existence a statutory corporation, but to endow that body with such powers (not illegal) as they, in their absolute discretion, think fit. This is their statutory right, and its importance cannot be exaggerated.

As regards legality, the subscribers may be associated together for any lawful purpose (sect. 2), and accordingly the following rules are applicable :-

- (a) The objects must not include anything in contravention of the Act. For example, a limited company cannot legally issne shares at a discount, and accordingly, to make the issuing of its shares at a discount one of the objects of such a company is not allowable. Ouregum Co. v. Peper. (1892) A. C. 125. Again, it is not a lawful of the to provide for a limited company dealing in its own shares. for that is in contravention of the Act.
- (b) The objects stated must not include anything in contravention of the general law. For example, it is not a legal object "te keep a gambling house in the United Kingdom," or "to ostablish and work lotteries in England," or "to wor"

Ch. III.

MEMORANDUM OF ASSOCIATION.

and develop inventions for importing tobacco into the United Kingdom free of duty," or " to work a scheme for debasing the coinage," or to promote the commission of burglaries-for all these objects are contrary to the general law.

(c) The objects must not include any which would render the company a trade union, for to register a trade union under the Companies Act, 1908, is illegal. See Trade Union Acts, 1871 and 1876, and sect. 294 of the Act of 1908.

The subscribers' discretion.

Subject to these restrictions the subscribers of a company's memorandum of association have complete freedom to frame the objects as they choose. It is for them to say whether the objects shall be wide or narrow, eautious or speculative, wise or ridiculous, reasonable or unreasonable, congruous or incongruous, diffuse and rambling, or concise and elliptical-whether they shail be concurrent, or independent, or substitutional, or contingent, or in the alternative.

No doubt some persons have argued that what the legislature really intended was that the principal objects should be specified -not the powers by which those objects are proposed to be attainedand proceeding from this premiss maintain that once a main or primary "object" is specified it is improper to set out in the memorandum further objects which merely confer "powers." But there is nothing in the Act to give colour to this contentiou or to show an intention to discriminate between main objects and objects merely conferring powers. Every object stated, whether main or auxiliary, in effect endows the company with a power or powers. To exclude objects conferring powers is to nullify the Act.

Besides these critics there is another class who complain of what may be called the multifariousness of the contents of a memorandum of association. The objects clause, according to their view, ought to -pecify the leading objects, be they one or many; and that is enough ! To go on and specify as an object anything which is implied or may possibly be implied as incidental, on a reasonable construction of the eading object or objects, is irregular and improper. There ought to he uo overloading, overlapping, repetition or surplusage. But here again the answer is that it is a matter for the subscribers' discretion. they have a statutory right to state the objects as they choose. If they deem it desirable to set out the objects in greater detail than some experts or pedants cousider necessary, there is nothing in the Act to prevent them, and there is much to be said from the commonsense point of view in favour of the practice. Take, for instance, borrowing powers of a company. It is unnecessary, any critic might say, to include a borrowing power in the objects of a trading company, for such a power is, according to the decisions, implied ; and so it is to the trained lawyer familiar with the authorities; but the presons to whom

a memorandum of association is addressed are in the main men of business, not lowyers, and for these it is expedient that the powers of the empany should is made manifest by adequate objects, and should not be left as far as possible to inference or implication. This principle has been extensively and almost universally need on during the last this y years. All has been sanctioned by the practice and example of the greatest masters of ecompany law, including Lord Maenaghteu, Lord Davey, and the Lords Justices Chitty, Rigby, and Farwell, when at the Bar. In the result cases of *altra vires* with reference to a company's objects have been almost banished from the Courts.

It is a curious fact that the advocates of this retrograde policy of extreme conciseness and reliance on implication are quite ready to elaborate the position by inserting express and detailed supplementary powers in the articles, and to assume that the general words in the memorandum will be interpreted so ns to include by implication the additional powers set out in the articles. And, no doubt, there are some dicta to the effect that this is allowable; but these dicta must be acted on with great caution. Thus, Jessel, M. R., iu Anderson's case, 7 C. D. 75, said : "Whore there are two contemporaneous documents executed and assented to by the same persons at the same time it uppears to use that the ordinary rule applies, neeording to which contemporaneous documents are to be read together, so that if there is any ambiguity in one it may be explained by the other." But these words must be read as qualified by the words which had just gone before: "I am not now speaking," said the learned judge, " of those portions of the memorandum of association which the Act of Parliament requires to be stated in the memorandum." And this distinction was further emphasised by Bowen, L. J., in Guinness v. Land Corporation of Ireland, 22 C. D. 377, where he pointed out that "the memorandum contains the fundamental condition upon which alone the company is allowed to be incorporated; they are conditions introduced for the benefit of the creditors and the outside public, as well as shareholders. The articles are the internal regulations of the company. How can it be said that in all cases the fundamental conditions of the charter of incorporation and the internal regulations of the company are to be construed together? . . . In any case it is, as it seems to me, certain that for anything which the Act of Parliament says shall be in the memoraudum, you must look to the memoraudum alone. If the legislature has said one instrument is to be dominant you cannot turn to another instrument and read it, ner modify the provision of the dominant instrument."

To sum up, experience shows that it is better in stating the objects to be explicit, and thus to preclude as far as practicable the doubts and difficulties which inevitably arise on the construction of a very concise statement of objects. Hence the somewhat elaborate statements of 31

Ch. III.

MEMOF INDUM OF ASSOCIATION.

objects now so commonly found. These clauses may, and undoubtedly do in some cases, err by excess of detail; but over-elaberation is better than over-conciseness. Nothing is more annoying to those who have to manage a company than to find that the powers of the company are fettered or questioned, and its business impeded or prejudieed simply because the draftsman of the memorandum of association has framed it without sufficient foresight or judgment, and has, contrary to the fact, assumed that the ordinary business man is familiar with the legal and somewhat conflicting decisions as to the powers which may be implied by a concise specification of objects.

The objects clause, then, must be drawn in clear and well-considered terms, and must on no account omit any of the clauses which experience has shown are or may be required for the working of the business.

As to the powers conferred by the stated objects, see infra, p. 60.

As to the construction of objects, see infra, p. 69.

As to the effect of general words, see infra, p. 72.

As to the importance of making the objects wide enough, see infra, p. 64.

As to the doctrine of ultra vires, see infra, p. 62.

Limitation of Liability.

Limitation of liability. The fourth elause of the memorandum states that the liability of the members is limited. This clause is to be read in conjunction with sect. 123 of the Act of 1908, which provides that in winding up, in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member. See Appendix.

Capital Clause.

" Capital " clause.

This clause must state the amount of the nominal capital, the number of shares into which it is divided, and the amount of each share.

What is to be the amount of the capital is a matter left to the discretion of the promoters. It can be as small or as large as they choose. The capital of the average company is 5,000*l*.,* or 10,000*l*., or 50,000*l*. or 100,000*l*. Sometimes it is larger, sometimes less. Companies have been registered with a capital of 7*l*. or less, and others—numerous now—with a capital of 5,000,000*l*. and upwards.

• By far the larger number of companies now registered are companies with a capital of between 1,000/. and 5,000/. See Board of Trade Report.

CAPITAL CLAUSE.

The material consideration in fixing the amount of capital is, What funds will the company want, and how much in the shape of paid-up shares are the vendors, if any, to got? Suppose the company is to be formed to acquire a going concern, and that the price to be paid therefor is 50,000% in paid-up shares, and 50,000% in cash, and that the company besides will want a working capital of 20,000%. This makes a total of 120,0001. Then, in addition to this, it may be desirable to have some shares in reserve, which can be issued as and when the company wants further capital, so that, in such case, the capital may properly bo fixed at, say, 130,0002, or 150,0002. Or to take another case: the purchase consideration may be 300,0001., to be paid, as to 200,000%, in cash, and as to 100,000% in paid-up ordinary shares, and the company may determine to raise the cash part of the consideration by the issue of 100,000% of debentures and 100,000% of preference shares. In such a case the capital will be, say, 200,0002, or, with an addition for working capital, 250,000/. In a case where the company is not proposing to buy any existing concern or property, but to start a fresh business, the question will simply be, What sum will it cost to start the new concern and to provide sufficient working capital? and the nominal capital will be fixed accordingly.

As regards the amount of the shares, this is again for the promoters Amount of to a :mine. 12. shares are very common. So are 51. shares and shares. Occasionally the shares are fixed as low as 1s. each, or 5s. $10^{-1} \cdots = 10^{-1}$ overyone is familiar with the 2s. shares of the Incandescent ea. . . Gas Light Company, Limited, which went up in the market to 701. or 80% each. Shares have been fixed as high as 1,000%, or even 5.000%. When the original capital is divided into soveral classes of each. shares, the amount of the different classes often varies. Some may be 10% each, some 5% each; some 1% each and others 1s. each. All these are matters which have to be thought out, with reference to the special requirements of the company, by those who are interested in its formation and fortunes.

It is not unusual to divide the shares in the original capital into two Classes of or more classes, e.g., preference shares and ordinary shares, or prefer. shares. ence shares and A. ordinary shares and B. ordinary shares, or ordinary shares and deferred shares, or preference shares, ordinary shares, and founders' shares; and various special rights, privileges, and conditious are attached to such shares. As regards preference shares and founders' shares, it is very common to declare these rights, privileges, and conditions by express provision in the memorandum of association, for by so doing, extra protection is secured to the holders of such shares against any alteration of their status. See further as to classes of share capital, p. 87. It is not, however, essential in a memorandum of association to specify the rights attached to each class, or, indeed, to

Ch. III.

33

Ρ.

MEMORANDUM OF ASSOCIATION.

disclose the fact that it is intended to divide the capital into different classes of shares, for all this can be done—and more properly done by the articles of association of the company. Thus the memorandum may state that the capital is 100,000% in 1% shares, and the articles may state that of the shares in the capital 50,000 shall be preference, with specified rights attached, and 50,000 shall be ordinary shares.

Other Provisions.

These are the five leading provisions or conditions in the momorandum of association of a company limited by shares, and they are the only provisions which the Act of Parliament requires to be stated therein, but occasionally additional provisions are inserted, clauses, for example, defining the rights attached, as above mentioned, to different classes of shares, rights as regards dividend, voting, and participation in assets on a winding-up, and various other matters. There is nothing illegal in the insertion in the memorandum of such additional provisions, but it must be borne in mind that, if inserted without qualification, they become conditions of the company's constitution within the meaning of sect. 7 of the Act of 1908, substituted for sect. 12 of the Act of 1862, and the rule is that such a condition cannot be altered, and that nothing can be done in contravention thereof—a conclusion of law which may prove embarrassing to the company. See Ashbury v. Watson, 30 C. D. 376.

If, however, the memorandum qualifies the provisions, e.g., by giving power to alter them, that power may be exercised. Welsback Incandescent Gas Co., (1904) 1 Ch. 87. But it is open to argument that sect. 45 impliedly nullifies, as to companies formed after 1st April, 1909, a power to alter the memorandum as to reorganisation of capital by consolidation or subdivision of classes of shares. (See further, p. 100, infra.)

Association Clause.

The memorandum of association of a company limited by shares concludes with what is commonly referred to as the association clause (see Third Schedule to the Act, Appendix, infra), whereby tho subscribers declare that they desire to be formed into a company, and agree to take shares, and the clause is followed by a tabular form in which the names, addresses, and descriptions of the subscribers, and the number of shares taken by each, appear.

Subscription of Memorandum.

Subscription of memorandum.

Association clause.

This is provided for by sect. 6. Anyone may be a subscriber. A married woman may be a subscriber: so may a bankrupt, an alien

Conditions and provisions generally in memorandum of association.

SUBSCRIPTION OF MEMORANDUM.

(Princess of Reuss v. Bos (1871), L. R. 5 H. L. 176), or an infant (Re Laron & Co. (No. 2) (1893), (1892) 3 Ch. 555), but there is some doubt as to this last point. An incorporated company with the requisite power may be a subscriber, and several persons may jointly be subscribers; but a firm is not a person, and the individual partners

A subscriber usually subscribes the memorandum with his own hand; but he cau subscribe by the hand of an agont duly authorized by him (Re Whitley Partners, 32 Ch. D. 337), and the Registrar does not call for evidence of authority if seven subscribe with their own hands. The number of subscribers must be at least seven, except in the case of a "private" company, but there may be as many more as the promoters think fit.

In the case of a "private company"-as defined by sect. 121-two subscribers are enough. (Sect. 2.)

Each subscriber must write opposite to his or her name the number of shares he or she takes, and must take one share at least.

Usually the subscribers each subscribe for one share; but sometimes they subscribe for a larger number. As to the liability to pay up the sharos subscribed for, see pp. 116-118.

If the articles require a qualification, the directors (except in the case of a private company, sect. 72 (3)) must sign the memorandum for their qualification, unless they sign and file with the Registrar a contract in writing to take the shares from the company and pay for

In subscribing the memoraudum of association care must be taken to write clearly. The signature should set out the full name of the subscriber, and should be followed by the subscriber's address, clearly written, and sufficiently explicit. and also by words denoting his occupation, or, if he has none, stating the fact. Thus the term "broker" should be qualified by stating what sort of broker. "Clerk" also should be qualified; but it is not necessary to state to whom the subscriber is clerk. It is sufficient to say, for example, "clerk to a

Attention to such details as these is necessary, otherwise when the document comes before the Registrar of Companies he may refer it back, on the ground that he caunot read the signatures, or that some of the requisite particulars are not clearly expressed. It is his duty to see that the requirements of the Act of Parliament are complied with, and that the documents are in order. Peel's case, 2

As regards the witnesses to the signatures of the subscribers, one Witnesses. witness for all the signatures will suffice, and, in that case, the words "Witness to the above signatures" will be used; but sometimes the

3(2)

35

CL. III.

MEMORANDUM OF ASSOCIATION.

same witness cannot attest all the signatures, and in that case the attestation clause must be altered. It may run thus :---

Witness to the above signatures other than that of A. B., , or,

Witness to the signatures of the above A., B. and C.,

Witness to the signatures of the above D., E., F. and G.,

The witness or witnesses must in each case give his or their address. This also should be clearly written and sufficiently explicit for identification. One of the subscribers cannot witness and attest the signature of another of the subscribers.

A subscriber to the memorandum cannot, after the registration of the company, repudiate his subscription on the ground that he was induced to sign by misrepresentation. Metal Constituents, Limited, Lord Lurgan's case, (1902) 1 Ch. 707.

CHAPTER IV.

ARTICLES OF ASSOCIATION OR REGULATIONS.

As already mentioned, the memorandum of association, when taken When articles in for registration, may (and in some cases must (see Appendix)) be required. accompanied by articles of association (sect. 10 of the Act) containing regulations for the management of the affairs of the company

Form and Subscription.

The articles are to be expressed in separate paragraphs numbered Form and arithmetically, and they may adopt any of the provisions contained in subscription. Table A. See Appendix. If no articles are so registered, the articles Table A. contained in Table A., so far as the same are applicable, are to apply to the company. (Sect. 11.)

In most cases a full set of articles is taken in for registration. In a good many cases a short set of articles only is registered making a few alterations in Table A., and supplementing it to some extent, and in a considerable number of cases Table A. is left to operate without alteration.

The articles, if any, must be printed, must bear the same stamp as Printing. a deed (10s.), and must be sigued by the subscribers to the memoraudum of association. Each subscriber must sign in the presence of a witness, who must attest the signature. (Sect. 12.) See Appendix (First Schedule to Act of 1908). As in the case of the memorandum, the signature may be under the signatory's own hand or that of his duly authorized agent: p. 35. One of the subscribers cannot attest the signature of another.

Copies.

Each member of the company is entitled to a copy of the memorandum and articles (sect. 18) on payment of a shilling.

Where articles have been registered a copy of every special resolution for the time being in force is to be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such special resolution; and where no articles have been registered a copy of any such special resolution is to be forwarded in

ARTICLES OF ASSOCIATION OR REGULATIONS.

print to any member requesting the same on payment of 1s or such less sum as the company may direct. (Sect. 70.) There is a ponalty for default.

Meaning in the Act of 1908 of the term "Articles."

Articles.

The expression "Articles" is frequently used in the Act of 1908, and in sect. 285 thereof it is specially defined. See *supra*, p. 14.

The expression "Articles" thus takes the place of the expression "the regulations" heretofore commonly used in a similar sense in the Companies Acts, 1862 to 1907. See, for example, sects. 12 and 50 of the Act of 1862; sects. 9 and 21 of the Act of 1867; sects. 3 and 13 of the Act of 1900.

Relation of the Articles to the Memorandum.

The memorandum the dominant instrument. The articles of a company are subordinate to and controlled by the memorandum of association, which is the dominant instrument. The memorandum contains the conditions upon which alone the company is granted incorporation—conditions which are fundamental, and with a few exections unalterable. The articles are the internal regulations of the company, and over these the members have full control, and may alter them from time to time as they think fit by pursuing the course pointed out in sects. 13 and 69 of the Act; subject only to this, that they keep within the limits marked out by the memorandum of association and the Acts.

"The memorandum is, as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulations for their own government as they think fit." Per Lord Cairns, L. C., Ashbury Rail. Co. v. Riche, L. R. 7 H. L. 670.

Hence, any articles that go beyond the company's sphero of action will be inoperative, and anything dono under the authority of such articles void and incapable of ratification.

If, for instance, the articles purport to confer on the company a power to buy its own shares (*Trevor* v. Whitworth, 12 App. Cas. 409), or to pay dividends out of capital (*Guinness* v. Land Corporation of Ireland, 22 C. D. 349), or to extend the objects by special resolution (Achbury v. Riche, supra), or to issue shares at a discount (Welton v. Saffery, (1897) A. C. 299), or prohibit the mombers from exercising the statutory right of applying for a winding-up order (*Re Peveril* Mines, (1898) 1 Ch. 122), or provide for the application of the profits in a manner which is inconsistent with some provision in the memorandum of association (Ashbury v. Watson, 30 C. D. 376), or purport to deprive shareholders who dissent from a scheme of reconstruction

Ultra vires provisions.

MEMBERS BOUND TO THE COMPANY.

under sect. 192 of the Act of 1908 (substituted for sect. 161 of the Act of 1862) of their statutory right to be paid out in cash (Baring Gould v. Sharpington Co., (1899) 2 Ch. 80; Payne v. Cork Co., (1900) 1 Ch. 308), they are to that extent invalid and ineffectual.

But though the articles cannot alter or control the memorandum, ye., if there be an ambiguity in the memorandum, the articles registered at the same time may, it has been said, be used to explain it. provided it is not in the objects. See supra, p. 31.

Binding Force of Articles.

Sect. 14 of the Act (substituted for sect. 16 of the Act of 1862) Binding enacts that "the memorandum and articles of association shall, when clauses. registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained a covenant on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act." And, under sect. 11, Table A., so far as applicable, and, under sect. 13, any new regulations adopted by the company are made binding in like manner as if they had been inserted in the original articles.

Thus, whatever the articles may be, they are binding in the manner, and to the extent, mentioned in sect. 14 of the Act. With regard to that section, it is to be noted that it does not make them absolutely binding on the company and the members thereof, but binding as if each member had covenanted to conform to such regulations.

The Members bound to the Company by implied Covenant.

The above section (14) does not say with whom the implied covenant Members' by the members is to be taken to be made, but it is sufficiently implied coveobvious that it is with the company, and, therefore, that the members company. are all beund to the company. See Bradford Bank v. Briggs, 12 App. Cas. 29. In that case the articles gave the company a lien on the shares of a member, and it was held that Briggs, the plaintiff in the action, being a member, was to be treated as having covenanted with the company to give it such lien. Lord Blackburn said (p. 33): "His preperty in the shares was, by virtue of sect. 16 of the Act (the corresponding section of the eld Act), bound to the company as much as if he had executed a covenant to the company in the same terms as Article 103." So, again, in Welton v. Saffery, (1897) A. C. 315, Lord Herschell said : "It is quite true that the articles constitute a contract between each member and the company." And in Imperial Hydropathic, &c. Co. v. Hampson, 23

Ch. IV.

ARTICLES OF ASSOCIATION OR REGULATIONS.

C. D. I. Bowen, L. J., said: "We are discussing the rights of directors of a statutory corporation created by the Act of 1862, and in such a case we must consider what are the rights of the directors and shareholders, for the articles of association by sect. 16 are to bind all the company and all the shareholders as much as if they had put their sends to them." That this is the true construction follows from the many decisions in which it has been held that the company is entitled to sue its members for the enforcement, and to restrain the breach by them of its articles, and to treat as irregular anything which is dono in contravention thereof. Macdongall v. Gardiner, 1 C. D. 13; Pender v. Lushington, 6 C. D. 70; Imperial Hydropathic Co. v. Hampson, 23 C. D. 1; Harben v. Phillips, ibid. 15.

How far binding between Members.

Whether implied covenant inter se.

In Eley v. Positive, &c. Co., 1 Ex. Div. 88, where the articles provided that the plaintiff should be solicitor to the company, Lord Cairns said : "They (the articles) are an agreement inter socios, and in that iow, when the introductory words are applied to Article 118, it but are a covenant between the parties that they w. I employ the plaintiff." See also Browne v. La Trinidad, 37 C. D. 1. So in Imperial Hydropathic Co. v. Humpson, 23 C. D. 1, Cotton, L. J., suid that the articles "under the Act are a contract between the sharehelders te comply with the regulations in them." And Stirling, J., in Wood v. Odessa Waterworks Co., 42 C. D. 636, said : "The articles of association constitute a contract not merely between the shareholders and the company, but between each individual shareholder and every other." See also Pulbrook v. Richmond, Sc. Co., 9 C. D. 610; and Bainbridge v. Smith, 41 C. D. 475, in which it was held that a director being a member was entitled to an injunction against his ce-directors restraining them from improperly excluding him from board meetings. Novertheless there is some reason to doubt whether this is really the effect of the articles, and Lord Herschell in Welton v. Saffery, (1897) A. C. at p. 315, stated the position in language somowhat different, but substantially to the same effect. "It is quite true," he said, "that the articles constitute a centract between each member and the company, and that there is no contract in terms between the individual members of the company ; but the articles do none the less, in my opinion, regulate their rights inter se." And this accords with the well-established principle that it is for the company, save in exceptional cases, to sue for a breach of the articles. Macdougallv. Gardiner, 1 C. D. 13; Foss v. Harbottle, 2 Hare, 461; Burland v. Earle, (1902) A. C. 83. And as to enforcing provisions in the articles for referring disputes te arbitration, see Hickman v. Kent or Romney Marsh Association, (1915) 1 Ch. 881.

HOW FAR BINDING ON COMPANY.

How far binding on the Company.

First, in relation to an outsider, do the articles bind the company? Whether The answer clearly is no. A provision in the articles in favour of company an outsider, e.g., with a promoter, that the preliminary expenses shall in whose be paid by the company, gives to the promoter no right of action favour. against the company. Re Rotherham Chemical Co., 25 C. D. 103; Melhado v. Porto Alegre Co., L. R. 9 C. P. 503. In this respect the articles of a company differ from an Act of Parliament. Such a provision in an Act of Parliament imposes on the company a statutory duty towards the promoter, and confers on the promoter a corresponding right of action. Tilson v. Warwick Gas Co., 4 B. & C. 962.

Secondly, in relation to members. Here the answer is yes. The articles do bind the company. The section (14) says so: "The articlos shall bind the company and the members thereof to the same oxtent as if, &e.," and these words must have effect given to them. It may possibly be urged that they are qualified, and that the company is only bound "as if the members had covenanted," not as if the members and the company had covenanted, and, therefore, that the company is not bound. But such a construction stultifics the section, and, in effect, strikes out of it the words, that "the articles sl bind the company," and in corroboration of this view, there a. numerous decisions showing that the company is bound. Thus, in Johnson v. Lyttle's Iron Agency (1877), 5 C. D. 687, an irrogular forfeiture of shares was impeached by a member, and set aside by the Court of Appeal on the ground, as James, L. J., said, that the notice prior to forfeiture "did not comply strictly with the provisions of the contract between the company and the shareholders which is contained in the regulations." So in Crum v. Oakbank Co., 8 A. C. 65, it was held that the plaintiff, a member, was entitled, as against the company, to insist on the observance of the articles as to dividends so long as they stood unaltered. So also in Wood v. Odessa Waterworks Co., 42 C. D. 636, Stirling, J., granted an injunction, at the instance of a member, to restrain the defendant company from contravening the articles. Furthermore, in Burdett v. Standard Exploration Co. (1900), 16 T. L. R. 112, Cozens-Hardy, J., held that a member was entitled to enforce compliance by the company with a clause in the articles giving him a right to a share certificate. And see Hickman v. Kent or Romney Marsh Association, (1915) 1 Ch. at p. 897.

These decisions, however, all deal with cases in which members claimed and sought to enforce or protect rights given them as members of the company. Where rights are by the articles given to members : ot as such, but in some other capacity (e.g., as directors, policy-helders, or otherwise), a member claiming to enforce the

bound, and

Ch. IV.

ARTICLES OF ASSOCIATION OR REGULATIONS.

Cases where company not bound by articles. same cannot, it seems, sue on the articles-treating them as a contract by the company with him-he must make out a contract outside the articles.

Thus, in Eley v. Positive, &c. Co., 1 Ex. D. 88, the articles contained a clause providing that A. should be employed for life as solicitor for the company, and should not be removed except for misconduct; he took office and was so employed for some time, and, whilst so employed, he became a shareholder; later on the company discontinued his employment ; he, still being a shareholder, sued for breach of contract, and it was held that no action lay. The matter was disposed of rather summarily in the Court of Appeal; Lord Cairns, L. C., delivered the judgment of the Court, and refused the plaintiff relief principally upon the ground that the articles "are an agreement inter socios, and, in that view, if the introductory words are applied to Article 118, it becomes a eovenant between the parties to it that they will employ the plaintiff. Now, so far as the plaintiff is concerned, this is res inter alios acta; the plaintiff is no party to it [although he was a member]. This article is either a stipulation which is binding on the members, or else a mandate to the directors; in either ease it is a matter between the directors and shareholders, and not between them and the plaintiff."

This case was followed in *Browne* v. La Trinidad. 37 C. D. 1, where the articles contained a provision that a contract with the plaintiff, made before incorporation, should be adopted by the company, and that it was thereby confirmed, and that the provisions thereof, so far as applicable to the company, should be construct as part of the regulations. Yet it was held that the plaintiff, though \cdot member of the company, had no cause of action against the company on this clause. Lindley, L. J., said: "That, having regard to the construction put up a sect. 16 [of 1862] in *Eley* v. *Positive*, §:c. Co., and subsequent cases [none to be found], it must be taken as settled that the contract upon which he can maintain any action, either on the common law side or the equity side "; adding, "there might have been some difficulty in arriving at that conclusion if it had not been for the authorities, because it happens that this gentleman has had shares allotted to him and is therefore a member."

It is not easy to reconcile the rule laid down in these decisions with sect. 16 of the Act of 1862 (now supplanted by sect. 14 of the Act of 1908), which expressly provides that the regulations "shall bind *the company* and the members thereof," but they must be taken to have settled the law in this respect.

It has been suggested that the meaning f the enactment (supra, p. 41) is that the implied covenant is only to bind the members to observe such of the provisions of the articles as concern their rights,

CONSTRUCTIVE NOTICE OF REGULATIONS. Ch. IV.

privileges, powers and obligations as members. But the section does not contain any such qualification : the implied covenant is to observe "all the provisions . . . of the articles."

Finding a difficulty in applying the above rule consistently with justice the Courts have in some cases acted on the footing that a clause in the articles, not dealing with the rights of a member as such, but apparently intended to operate as a contract with him, is to be regarded as the basis of a contract, i.e., as indicating the terms on which the company proposes to contract with him, and that if the parties enter into the relations contemplated by the clanse, they are to be treated as inving made a contract in the terms of the clause and are bound accordingly This is illustrated by Sucabey v. Port Darwin Gold Co. (1889), 1 Meg. 385. In that case the articles provided for the payment to each director by way of remuneration of a specified sum per annum. By a special resolution, in July, the company reduced this as from the end of the preceding year. The plaintiff thereupon resigned, and sued the company for three months' remuneration for services prior to the date of his resignation ; and the Court held that he was entitled to recover on the footing of an implied contract in the terms of the clause. "The articles," said Lord Esher, "do not themselves form the contract, but from them you get the terms upon which the director is serving." And this proposition was adopted by Stirling, J., in Re International Cable Co., 66 L. T. 2 1; and by Wright, J., in Ex parte Beckwith, (1898) 1 Ch. 324. Moreover, the principle involved is not confined to members, it extends also to ontsiders, e.g., to persons who take office as directors. Isaacs' case, (1892) 2 Ch. 158; Salisbury Jones' case, (1894) 3 Ch. 356. And see Pritchard's case, 8 Ch. 956. The question whether an implied contract so entered into is capable of being varied by the company against the will of the other party has not been finally decided. According to Swabey v. Port Darwin Gold Co., supra, it would seem that the contract, at any rate where it relates to service, can be varied by the company as to the future, and this accords with the views expressed in Doman's case, 3 C. D. 21, and in Argus Life Assurance Co., 39 C. D. 571. But the coutrary was decided in case of an express contract for service in Nelson v. James Nelson & Sons, Ltd., (1914) 2 K. B. 770; and see Punt v. Symons, (1903) 2 Ch. 506; Buily v. British Equitable Assurance Co., (1904) 1 Ch. 374 (reversed by the House of Lords, (1906) A. C. 35, on the ground that there was in fact no contract); and British Murac Syndicate, Ltd. v. The Alberton Rubber Co., (1915) W. N. 176.

ARTICLES OF ASSOCIATION OR REGULATIONS.

Constructive Notice of Memorandum and Articles.

Notice of regulations.

Under the Companics Acts the memorandum aud articles of association or regulations of a company are registered in a public office and are open for public inspection on payment of a small fee. (Sect. 243, which takes the place of sect. 174 of the Act of 1862.) They are public documents; and accordingly it is well settled that anyone, whether a shareholder or an outsider, who has dealings with a registered company, must be taken to have notice of the memorandum and articles or other regulatious which form the constitution of the company. This principle was fully recognized in regard to registered companies prior to the Act of 1862 (Ernest v. Nicholls, 6 H. L. C. 401), and was adopted in regard to the companies under the Act of 1862. See Sewell's case, L. R. 3 Ch. 131; Campbell's case, L. R. 9 Ch. 1. "Every joint stock company," said Lord Hatherley in Mahoney v. East Holyford Mining Co., L. R. 7 H. L. 869, "has its memorandum and articles of association . . . open to all who are minded to have any dealings whatsoever with the company, and those who so deal with them must be affected with notice of all that is contained in those two documents." And what is more, they must be taken not only to have read those documents, but to have understood them according to their proper meaning. Per Jessel, M. R., Griffith v. Paget, 6 C. D. 517; Oakbank Oil Co. v. Crum, 8 App. Cas. 71. See also Marshall v. Glamoryan Iron and Coal Co., 7 Eq. 137; Barrow Hematite Co., 39 C. D. 582; Argus Life Co., 39 C. D. 571; County of Gloster Bank v. Rudry, &c. Co., (1895) 1 Ch. 629; Owen and Ashworth's Claim, (1901)

Consequences.

This rule of constructive notice entails important consequences, for inasmuch as every one dealing with a company is to be deemed to have notice of its memorandum aud articles, it follows that he is fixed with notice of the extent not only of the company's powers, but of the directors' powers and of any limitations and restrictions thereon imposed by the articles or other regulations.

Thus if the articles provide that a bill of exchange to be effective must be signed by two directors, an outsider or anyone dealing with the company must see that it is so signed, otherwise he cannot claim under it. So, too, if the articles provide that the seal of the company is to be affixed in the presence of two directors, who are to sign their names, a person dealing with the company must see that this is done. This is a sufficiently onerous obligation to impose on those who deal with a registered company, but the incidence of the obligation is to some extent lightened by what is known as the

CONSTRUCTIVE NOTICE OF REGULATIONS. Ch. IV.

Rule in Royal British Bank r. Turquand (6 E. & B. 327).

This rule is that where a company is regulated by an Act of Parlia- Presumption ment, general or special, or by a decd of settlement or memorandum of regularity. and articles registered in some public office, persons dealing with the cempany are bound to read the Act and registered documents, and to see that the proposed dealing is not inconsistent therewith ; but they are net beund te de more; they need not inquire into the regularity of the internal proceedings-what Lord Hatherley called "the indoor management." They are cntitled to assume that all is being done regularly. See also Mahoney v. East Holyford Rail. Co., L. R. 7 H. L. 869; Bargate v. Shortridge, 5 H. L. C. 318; In re Land Credit Co. of Ireland, L. R. 4 Ch. 469; In re County Assurance Co., L. R. 5 Ch. 288; Duck v. Tow r Galvanizing Co., (1901) 2 K. B. 314. Premier Industrial Bank v. Carlton Co., (1909) 1 K. B. 106, is not easily reconcileable with the rule.

This rule is based on the principle of convenience, for business could net be carried on if a persen dealing with the apparent agents of a cempany was cempelled to call for evidence that all internal regulations had been duly observed. Thus where the articles give power to borrew with the sanction of a general meeting, a lender need not inquire whother such sanction has in fact been obtained. British Bank v. Turquand, ubi supra. He may assume that it has, and Royal if he is acting bona fide he will, even though the sanction has not been obtained, stand in as good a position as if it had been obtained.

So if there is a managing director, and authority in the articles for the directors to delegate their pewers to him, a person dealing with him may assume that he has power to do what he purports to do, provided that it is within the company's objects. All he has to do is to see that the managing director might have pewer to do what he purperts to do. That is enough for a persen dealing with him bona fide. Biggerstaff v. Rowatt's Wharf, (1896) 2 Ch. 93.

So, teo, in the case of a mortgagee taking a mertgage from a company which, as far as he can tell, has been duly executed. County of Gloster Bank v. Rudry, &c. Co., (1895) 1 Ch. 633. In that case a person dealing with a company in due course obtained from the company a mertgage under scal signed by two directors and the secretary. The articles contained no special provision as to the execution of such a document, but they provided that the directors should have power to fix a quorum, and that power they had exercised by fixing three as the quorum. In fact, the mortgage had been sealed at an irregular meeting, and no quorum was present. It was held, netwithstauding, that the mortgage was good, for the mortgagee had no means of knewing of this internal irregularity in the management.

ARTICLES OF ASSOCIATION OR REGULATIONS.

So, too, in a similar case. debentures issued under the seal of the company were held to be valid though there had been no meetings or resolutions of the company or the board. Duck v. Tower Galvanizing (o., (1901) 2 K. B. 314.

On the same principle, a person dealing with a company is entitled to assume that the directors who carry on its business are directors *de jure*. It matters not to him that they have not been duly appointed that is part of the indoor management. *Mahoney* v. *East Holyford Co.*, L. R. 7 H. L. 869; *Re County Life*, 5 Ch. 288.

Notice of irregularity.

But a person dealing with a company who has notice of the irregularity cannot claim the benefit of this rule. Thus where directors had only power to borrow in excess of 1,0001. with the assent of a general meeting, and without obtaining such assent had issued debentures for 2,500% to themselves in respect of money lent, it was held, that as they must be taken to have known that the internal regulations had not been complied with, the debentures could only stand good for 1,0001. Howard v. Patent Ivory Co., 38 Ch. D. 156. And see Tyne Mutual v. Brown, 74 L. T. 283. Nor does the rule apply, it seems, where requisite signatures are forged. Ruben v. Fingall Consolidated, (1906) A. C. 439. A person dealing with a company must take the articles to be such as appear at the office of the Registrar of Joint Stock Companies to be in force. If the directors propose to do somothing in excess of their powers thereunder, he is not entitled to assume that their powers have been extended by a special resolution (infra). v. Union Bank of Australia, 2 App. Cas. 366. Irvinc

Subject-Matter of Articles.

Clauses in articles.

The matters with which a company's articles usually deal are— (1) the exclusion, or partial exclusion, of Table A.; (2) the adoption of a preliminary agreement, if any; (3) the allotment of shares by the directors; (4) calls and forfeiture for non-payment of calls; (5) transfer and transmission of shares; (6) increase of capital; (7) reduction of capital; (8) borrowing; (9) general meetings; (10) directors; (11) dividends and reserve fund; (12) accounts and audit; (13) notices; (14) special provisions for winding-up. These various matters will bo found dealt with under their respective headings.

Alteration of Articles.

Alteration.

Sect. 13 of the Act gives to a company under the Act power by special resolution, but "subject to the provisions of the Act and to the conditions contained in the memorandum of association," to alter

or add to its articles, and it expressly provides that "any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution." Nothing could be wider than the terms of this section. It does not say that the articles for the management or administration of the business may be altered, or that the articles, othe, than those which form part of the constitution of the company, may be altered; there is no limitation, except that the power is to be subject to the Act and the memorandum. All or any of the articles (supra, p. 14) may therefore be altered, and a company cannot by a clause in its articles exempt any article from liability to alteration under the section. Walker v. London Tramways Co. (1879), 12 Ch. D. 705; Malleson v. National Insurance Co., (1894) 1 Ch. 200. And this applies not only as between the company itself and its shareholders (Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656), but as between the company and an outsider. Punt v. Symons & Co., (1903) 2 Ch. 506.

Sect. 13 of the Act of 1908 is substituted for sect. 50 of the Act of 1862, which was to the same effect.

At an early period, however, in the history of the Act of 1862, a construction was placed by Kindersley, V.-C., on the corresponding section in the Companies Act, 1856, which for many years had the effect of fettering to a large extent the freedom of companies under the Act of 1862. The case was Hutton v. Scarborough Cliff, &c. Co., 2 Hutton v. Dr. & Sm. 521 (No. 2). The company there was desirous of issuing some Scarborough of the shares in the original comital or professors shares but there. of the shares in the original capital as preference shares, but there being no power in its memorandum or articles to do so, the Court held (4 De G. J. & S. 672) that it could not be done, and the Vice-Chancellor had expressed a doubt whether it could be done by altering the articles. It was then proposed to alter the articles of association so as to enable new shares to be created and issued with a preference attached to them; but Kindersley, V.-C., held that this again could not be done, as it amounted to an alteration of the constitution of tho company, and was, therefore, ultra vires and invalid.

The learned judge in effect decided that the different articles Principle of were to be discriminated, and that there must be excepted from decision. alterability such portions of them as in the opinion of the Court were part of the company's constitution, and that it was only the articles as to the management and administration of the company which could be altered. Obviously this was unduly narrowing down the words of the section; nevertheless there was no appeal, and the decision, though it did not escape criticism (see Harrison v. Mexican Rail. Co., 19 Eq. 358), was for years recognized as authoritative.

Ch. IV.

ARTICLES OF ASSOCIATION OR REGULATIONS.

Dissent from the decision. At last, however, in British, §c. Corporation v. Couper, (1894) A. C. 399, Lord Macnaghten had occasion in the House of Lords to refer to this case, and said: "It seems to me that the decision was not founded upon a sound view of the Companies Act, 1862, and I respectfully dissent from it."

Andrews v. Gas Meter Co.

Hutton v. Scarborough Co. (No. 2) overruled.

Results.

Retrospective alterations allowable.

The way was thus prepared for the final demolition of the doctrine by the Court of Appeal in Andrews v. Gas Meter Co., (1897) 1 Ch. 361 (C. A.). In that case the original articles contained no power to issue preference shares, but the company, by special resolution, had altered its articles so as to take power, and had issued preference shares accordingly. The Court overruled Hutton v. Scarborough Cliff Hotel Co. (No. 2), ubi supra, and held the alteration effective. The principle on which the case was decided was that although by sect. 8 of the Act [of 1862] a company's memorandum is to state the amount of the original capital and the number of shares into which it is to be divided, yet that this does not extend to the rights of the shareholders in respect of their shares, and the terms on which additional capital may be raised. These are matters which may be regulated by the articles of association-indeed are more properly so regulated than by the memorandum, and are therefore matters which, unless dealt with in the memorandum, as in Ashbury v. Watson (30 C. D. 376), may be determined by the company from time to time by special resolution pursuant to sect. 50 of the same Act. "We are of opinion," said Lindley, L. J., delivering the judgment of the Court, "that the second decision in Hutton v. Scarborough Cliff Hotel Co. [supra] was wrong and ought not to be followed, and that the decision appealed from must be reversed, and the resolutions thereby declared to be ultra vires must be declared intra vires and valid. If, by declining to follow the second decision in the case referred to, we were disturbing titles or embarrassing trade or commerce, we should treat it as one of those decisions which, though wrong, it would be mischievous to overrule. But such is not the case, and it is desirable from all points of view to remove from companies a fetter which ought never to have been imposed upon them."

This decision has been very welcome, not merely because it removes a fetter on the issue of preference shares, but also because it disposes of the notion that the power to alter the articles given by the Act is not to have the full effect which the legislature contemplated.

In a subsequent case it was argued that the power to alter the articles conferred by sect. 50 of the Act of 1862 (now replaced by sect. 13 of the Act of 1908) did not justify a retrospective alteration, *e.g.*, the insertion of a lien clause (*infra*, p. 154) intended to give the company a lien on the shares of vembers for debts incurred before as well as after the insertion of the clause. The

Ch. IV.

argument if successful would have created the utmest cenfusien, and would to a great extent have deprived the members of that full contrel over the articles with which the section was intended to invest them. But it did not prevail, the Court of Appeal holding that the power of altering the articles was not thus to be limited, and that the iutroduction of a lien clause was valid and effective, though in some senses it operated retrospectively.

"The power," said Lindley, M. R., in that ease, "thus conferred on corporations to alter the regulations is limited only by the provisions contained in the statute and the conditions contained in the company's memorandum of association. It must be exercised for the benefit of the cempany as a whole [sed qu.], and it must not be exceeded. These couditions are always implied and are seldem if ever expressed. But if they are complied with, I can discover no ground for judicially putting any other restrictions on the power conferred by the section than thoso centained in it." Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656.

The foregoing decisions are in accordance with the principles of construction applied by the late Lord Justice Chitty in Pepe v. City and Suburban Permanent Building Society, (1893) 2 Ch. 311. In that case the plaintiff, a holder of fully paid-up shares, had under the rules given notice of withdrawal; afterwards, and before repayment, the society altered the rules by giving the directors power to pay off in priority members holding less than 50% in the society. It was held that the alteration was valid though in some sense it took away the vested right of the plaintiff.

"It was," said Chitty, J., in that case, "part of the plaintiff's contract with the seciety that the rules might be altered, and the power of altering them was wisely framed so as to require net a bare majority but three-fourths of the members to bring about the alteration. . . . The plaintiff's counsel says rightly that when the plaintiff gave notice of withdrawal he had a vested right to be paid according to the then existing rule, but this does not settle the questien, because there existed also against him the power of altering the rule, so that the question assumes this form, that he had a vested right liable to be divested by any later rule they passed. It may be wondered that the society should have such a pewer, but it may be greatly to the benefit ef all concerned to make alterations. And I say also that members place reliance on the sense of justice of the three-fourths majority required to effect the alteration."

See also British Equitable Assurance Co. v. Baily, (1906) A. C. 35; Rosenberg v. Northumberland Building Socy., 22 Q. B. 373; Re Barrow Hematite Co., 39 C. D. 582; Doman's case, 3 C. D. 21; Re Aryus Co., 39 C. D. 571. In the case last mentioned it was considered that a power in the deed of settlement of a company (not under the

P.

ARTICLES OF ASSOCIATION OR REGULATIONS.

Act of 1862) to alter such deed of settlement was to have full effect, and included even power to insert, by alteration, a clause providing for the sale of the whole undertaking. Re James Colmer, Ltd., (1897) 1 Ch. 524, shows the far-reaching operation of the decision in Andrews v. Gas Meter Co., supra. In Continental Union Gas Co. (1893), 7 T. L. R. 496, it had been held in effect that voting rights were matter of the company's constitution and unalterable; but in Re James Colmer, Ltd., Rom r, J., held that Hutton v. Scarborough Cliff Co., ubi supra, having seen overruled, there was no objection to an alteration of voting rights.

Limits to alteration.

Nevertheless, a limit must be placed on the general words contained in sect. 13; and the limit is this, that the section cannot be used to oppress or defraud a minority of shareholders, or so as to violate any statutory provision or principle of law. Peveril Gold Mines, (1898) 1 Ch. 122; Payne v. Cork Co., (1900) 1 Ch. 308. The power, in other words, like other powers, must be exercised fairly and according to law. And it is clear from the authorities that any abuse of the statutory power will be restrained. A majority, for instance, will not be permitted by the Court, under colour of the section, to commit a fraud on the minority. Menier v. Hooper's Telegraph Co., L. R. 9 Ch. 350. And see Gray v. Lewis, L. R 8 Ch. 1051 ; Atwool v. Merryweather, 5 Eq. 464, n.; Mason v. Harris, 11 Ch. D. 97; and Macdougall v. Gardiner, 1 Ch. D. 13; Burland v. Earle, (1902) A. C. 83; Normandy v. Ind, Coope & Co., (1908) 1 Ch. 84. And a company will not be allowed to alter its articles in breach of contract with an outsider. Allen v. Gold Reefs, (19:0) 1 Ch. at p. 673 ; Baily v. British Equitable, (1904) 1 Ch. 374 ; British Murac Syndicate v. Alberton Rubber Co., (1915) 2 Ch. 186. But short of fraud or oppression, breach of contract, or want of good faith, or contravention of the statutes on the part of the majority. the statutory power of alteration is subject to no restriction. As Lord Cairns. L. C., said in Ashbury v. Riche, L. R. 7 H. L. 653, 671, "The memorandum is, as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulations for their own government as they think fit."

Rectification by Court.

Rectification.

The Court has no jurisdiction to rectify the articles of association on the ground of mistake, for they have statutory operation. Evans v. Chapman, 86 L. T. 381.

51

CHAPTER V.

THE CERTIFICATE OF INCORPORATION.

"WHEN once," said Lord Cairns, in Peel's case (1867), 2 Ch. 674, "the memorandum is registered and the company is held out to the world as a company undertaking business, willing to receive shareholders and ready to contract engagements, then it would be of the most disastrous consequences, if, after all that has been done, any person was allowed to go back and enter into an examination (it might be years after the company had commenced trade) of the circumstances attending the original registration and the regularity of the execution of the document." Were such a thing permissiblo, a company's foundation would be built not on a rock but on sand. legislature was fully alive to the importance of this, of making the certificate of incorporation-the company's statutory charter-unimpeachable, and in sect. 18 of the Companies Act, 1862, it provided that "the certificate of incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with." In relation to this enactment it was long since held that the words "the requisitions of this Act in respect of registration" meant "the requisitions and conditions precedent and incidental to registration," and, accordingly, that once the certificato of incorporation was given, the company named therein as incorporated was to be taken to be duly and effectually incorporated, and all reference to prior matters was precluded.

Thus, in *Peel's case* (1867), 2 Ch. 674, the memorandum of association had, after signature and before registration, been altered without the privity of the signatories so materially that, in the words of Lord Cairns, "the alteration entirely neutralised and annihilated the original execution and registration of the document." The company was, however, registered, and the registrar gave his certificate of incorporation; subsequently the question arose whether this certificate was conclusive, seeing that according to sect. 6 of the Act the memorandum before registration has to be subscribed "by seven or more persons associated for any lawful purpose," whereas here the signature had been entirely annihilated. Nevertheless, it was held that the

4 (2)

CERTIFICATE OF INCORPORATION.

registrar's certificate of incorporation was conclusive. "The certificate of incorporation," said Lord Cairns, "is not merely a *primd facie* answer, but a conclusive answer to such objections, . . . when once the certificate of incorporation is given nothing is to be inquired into as to the regularity of the prior proceedings."

And shortly afterwards, Lord Chelmsford, L. C., dealing with the same point in Oakes v. Turquand, L. R. 2 H. L. 325, said : "I think that the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive that all previous requisitions have been complied with."

See also Salomon v. Salomon & Co., (1897) A. C. 22. The Court of Appeal there, whilst holding that the defendant company had been formed "for an illegitimate purpose," and "for objects not authorized by the Act," nevertheless held the certificate of incorporation conclusive, although, as we have seen, sect. 6 of the Act of 1862 required that the subscribers should be persons associated together for some "lawful purpose," following the view taken by the House of Lords in Princess of Reuss v. Bos, L. R. 5 H. L. 193. But no legislation, were it framed, as Lord Herschell said, by a "committee of archangels," can escape misinterpretation ; and in Re National Debenture Corporation. (1891) 2 Ch. 505, a learned judge refused to treat a certificate of incorporation as conclusive where he found as a fact that the memorandum of association had been subscribed by six persons only instead of seven, thus in effect treating the words "conclusive evidence" as meaning "prima facie evidence," although the legislature had significantly used the words "conclusive evidence" in contradistinction to the words "prima facie evidence" used by it in sects. 31 and 37 of the same Act. This decision was reversed on appeal on the ground that the evidence did not establish the fact so found. Unfortunately, however, the judges of the Court of Appeal let fall some dicta to the effect that if the judge below had been right as to the facts, his decision would have been correct in point of law. The Court, however, had no power to overrule Peel's case, and of course these mere dicta could in no way derogate from the authority of the decision in that case. Referring to these dicta, Vaughan Williams, J., in Laxon & Co. (2), (1892) 3 Ch. 555, said that he did not understand how they could be reconciled with the decision and words of the judgment of Lord Cairns in Peel's case, ubi supra; and it is to be noted that the Court of Appeal in Salomon v. Salomon & Co., as appears above, followed Peel's case. Further, in Ladies' Dress Association v. Pulbrook, (1900) 2 Q. B. 376, 381, where these dicts were relied on, Romer, L. J., whilst holding them not applicable, significantly added that "if it were not so, it might be necessary for us to consider whether these dicta could be

CERTIFICATE OF INCORPORATION.

justified." The existence of these dicta, however, ill-founded as they were, cast a shadow of uncertainty on the conclusiveness of the certifieate. It was also doubtful, from the remarks of Turner, L. J., in Re Northumberland Banking Co., 2 De G. & J. 357, whether the certificate was conclusivo, if the company was oue not authorized to be registered under the Act. To get rid of these doubts sect. 1 (1) of the Companies Act, 1900, was passed, and it dealt with both poiuts, expressly providing that "a certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and matters precedent and iucideutal thereto have been complied with, and that the associatiou is a company anthorized to be registered and duly registered under the Companies Acts." This section made it clear beyond all cavil that the certificate of incorporation is conclusive, even as Lord Cairns decided in 1867.

It is now repealed, but is re-enacted in sect. 17 of the Act of 1908.

Looking to the above decisions and to the words of sect. 17, it is clear that there is no longer any possible ground for questioning the conclusiveness of certificates of incorporation. Thus, even if the seven signatories to a memorandum were all written by oue person, or were all forged, the certificate would be couclusive that the company was duly incorporated. So, too, if the signatories were all infants, the certificate would still be conclusive, whether the remarkable decision in Laxon & Co. (2), (1892) 3 Ch. 555, that an infant is a "person" within sect. 6, can or cannot be supported.

As a safeguard, however, and to secure care in the preparation of documents and in the matters preliminary to registration, the legislature has taken the precaution to provile in sect. 17 (2) of the Act of 1908, that a statutory declaration ! y a solicitor of the High Court, and in Scotland by an enrolled 'aw agent, engaged iu the formation of the company, or by a person named in the articles of association as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept this declaration as sufficient evidence of compliance.

The practice now is to require the production of such a statutory declaration upon all applications to register under Part I. of the Act.

The further question whether a company, once incorporated by As to imregistration under the Act of 1862, could by scire facias or otherwise peaching incorporation be removed from the register and disincorporated, was touched on by sci. fa. but not dealt with by the Lord Chancellor in Salomon v. Salomon & Co., (1897) A. C. 22; the point had, however, been previously adjudicated on by the House of Lords in Princess of Reuss v. Bos (1871), L. R. 5 H. L. 176. In that case the question arose as to the

53

Ch. V.

CERTIFICATE OF INCORPORATION.

regularity of the constitution of a company-" The General Company for the Promotion of Land Credit, Limd." All the subscribers to the memorandum of this company were foreigners, and there was no intention to carry on business in England. Neither of these circumstances affected its validity, but the articles of association contained provisions contrary to the Companies Act, and Lord Hatherley, L. C., said : "All we have to ask ourselves is this, my lords. Has this company come into existence? Has it been born? . . . The question is therefore simply whether it has been created. If created, there is no power given in this Ac of Parliament, nor in any other Act of Parliament that I am aware of, by which, through any result of a formal application, like an application for scire facias to repeal a charter, the company can be got rid of, unless by winding up"; and Lord Cairns said : "My lords, it might have been a very wise provision of the legislature to say that in a case of this kind-a case where there was an abuse of the Act of Parliament going on; a case where, if it had been a matter of a royal grant, there would have been what is termed a forfeiture of the franchise by reason of non-user or mis-user: it might have been a very wise thing for the legislature to say that in a case of that kind there should be some peremptory mode of reducing or getting rid of the incorporation and putting an end to a state of things which was an abuse of, or a fraud upon, the Act of Parliament, a d which ought not to be allowed to continue. However, the legislature has not thought fit to provide any means in the nature of a process of reduction, in the ordi v sense of the term, for getting rid of an incorporation in any such Imstances."

See, also, what was said by Fry, J., in Glasser v. Giles (1881), 18 Ch. D. 180.

It is clear from these judicial observations that there was no⁺, under the Companies Acts as the law then stood, any jurisdiction to annul a certificate of incorporation, and the Act of 1908 has introduced no change in this respect.

The Registrar of Companies has, however, jurisdiction under sect. 242 of the Act of 1908 to strike the names of companies believed to be defunct off the register, subject to the observance of certain formalities. If companies so struck off are still carrying on business t. Court has power to reinstate them on the register. See In re Guitay Assurance Society, 34 Ch. D. 479; Re Langlaagte Proprietary Co. (1912), 28 T. L. R. 529; and Company Precedents, Part I., p. 1337. Sect. 242 of the Act takes the place of sect. 7 of the Companies Act, 1880, and sect. 26 of the Companies Act, 1900.

CHAPTER VI.

CORPORATE EXISTENCE AND POWERS.

Company a Legal Persona.

Upon the issue of the certificate of incorporation, a company regis- Company a tered under the Act of 1908 becomes a body corporate, or in other person. words, a corporation. (Sect. 16.) A corporation, it must be remembered, is not, like a partnership or a family, a mere collection or aggregation of individual units. It is, in contemplation of law, a person distinct from the members or shareholders who are interested in it-a metaphysical entity-a convenient fiction of law, but with no physical existence. As Lord Selborne said (G. E. Rail. Co. v. Turner, 8 Ch. 152): "The company is a mere abstraction of law." "A corporation," said Cotton, L. J., "is not a mere aggregate of the shareholders." Flitcrojt's case, 21 C. D. 535. "A corporation is a legal persona just as much as an in "ividual." Per Cave, J., in Re Sheffield, &c. Society, 22 Q. B. D. 476; Att. - Gen. v. Smith, (1909) 2 Ch. 524, in which it was held that a company was a person within the Dentists Act, 1878. "The company is at law a different person altogether from the subscribers to the memorandum of association." Per Lord Macnaghten, Salomon v. Salomon & Co., (1897) A. C. 22.

These several statements of the law are cited here because they emphasize the all-important distinction between the company as a body corporate, and the members or shareholders of that body.

This distinction lies at the root of many of the most perplexing Importance of questions that beset company law. It is a fundamental or cardinal the principle. distinction-a distinction which must be firmly grasped. Broderip v. Salomon, (1895) 2 Ch. 323 (C. A.) (reversed by the House of Lords on appeal), is a melancholy instance of the legal quagmire into which the neglect of this principle may conduct even the most learned judges.

The principle is thrown into very clear relief by contrasting a partnership with an incorporated company.

Company and Ordinary Partnership distinguished.

1. In the case of a partnership the property of the firm belongs to the Companies individual members. They are collectively entitled to it, whereas, in and partner-the case of a company, it belows to the control of the second seco the case of a company, it belongs to the company, and not to the guished and

contrasted.

members. Re George Newman & Co., (1895) 1 Ch. 685; Reg. v. Arnaud, 9 Q. B. 806,

2. Creditors of a firm are creditors of the members of the firm, and on obtaining judgment against the firm can levy execution on the property of the partners in the firm; whereas, in the case of a company the creditor bas no debtor but that abstraction the corporation. Per Cotton, L^{-*}, *Flitcroft's case*, 21 C. D. 533. The direct remedy of the creditor is solely against the incorporated company (per Lord Cranworth, *Oakes v. Turquand*, L. R. 2 H. L. 357), and judgment against the company gives no right to levy execution against the members.

3. A member of a firm can dispose of property and incur liabilities, within the scope of the business, to any extent; whereas a member of a company, as such, has no such power.

4. In the case of a partnership, restrictions on a member's authority contained in the partnership contract are of no avail as against outsiders; whereas, in the case of a company such restrictions are effective, because the public are bound to acquaint themselves with them. *Ernest* v. *Nicholls*, 6 H. L. C. 419.

5. A partner cannot contract with the firm, whereas a member of the company can contract with the company; for the company is in law a distinct person.

Elementary as this principle—of the independent corporate existence of a company—may seem to be, it has still—after all the many years' working of the Companies Acts—beeu so much misunderstood, and has had to be so elaborately explained and emphasized by the House of Lords in the case of Salomon v. Salomon, (1897) A. C. 22 above referred to—that it may be well to pause in order to examine briefly that decision. The case was this: One Salomon, a leather merchant, was the owner of a profitable business, and in order to obtain the advantages of limited liability, he being perfectly solvent at the time, determined to convert the business into a private company, see Chapter XXXVI., infra. Of the shares in the capital he himself took 20,000, and his wife and sons and daughter took each, one. No other shares were issued. Salomon received also mortgage debentures to the amount of 10,0001 in part payment by the company for the business.

It was the validity of these debentures which was questioned in the action on the ground that the company was a "one man company" and a sham, and so Vaughan Williams, J., held, being of opinion that Salomon & Co. was a mere alias for Salomon, and, therefore, that Salomon was bound to pay the unsecured creditors of the company out of his own pocket notwithstanding that his shares had all been fully paid up.

Re-affirmation of the principle.

Salomon v. Salomon in the House of Lords,

COMPANY AND PARTNERSHIP DISTINGUISHED. Ch. VI.

This decision the Court of Appeal uffirmed but on a somewhat different ground, viz. that the whole scheme was a fraud on the policy of the Act, and that it was never intended by the legislature that a company should consist of one substantial person and six mere dumnies devoid of any real interest. There must, the Court was of opinion, be seven bond fide traders associated. This decision caused great anxiety in the commercial world, as well it might, but it was unanimously reversed by the House of Lords, Salomon v. Salomon & Co., (1897) A. C. p. 22, on the ground that the only mode of uscertaining the intent and meaning of the Act was to examine its provisions and find what regulations it had imposed us a condition of trading with limited liability, and that the Act said not a syllable as to the seven members being beneficially or substantially interested.

"Tho statute," said Lord Chancellor Halsbury, "enacts nothing us to Judgments the extent or degree of interest which may be held by each of the seven, of the Law or as to the proportion of interest, or influence, possessed by one or case. the majority of the shareholders over the others." And Lord Herschell added, "It was said that in the present case, the six shareholders, other than the appellant, were more dummies, his nomineos, and hold shares in trust for him. I will assume this was so. In my opinion it makes no difference." Lord Macnaghten also said : "There is nothing in the Act requiring that the subscribers to the memorandum should be independent or unconnected, or that they or any of them should take a substantial interest in the undertaking, or that they should have a mind and will of their own, us one of the learned judges seemed to think, or that there should be anything like a balance of power in the constitution of the company." A serious danger was thus averted and the cardinal principle of corporation law-the independence of the company as a legal persona--was fully stationated.

Farrarv. Farrars, Limited, 40 C. D. 395-409, affords abother illus- Further cases. tration of the rule of independent corporate existence. In that case Lindley, L. J., said: "A sale by a person to a corporation of which he is a member is not, either in form or in substance, a sale by a person to himself. To hold that it is, would be to ignore the principle which lies at the root of the legal idea of a body corporate, and that idea is that the corporate body is distinct from the persons composing it. A sale by a member of a corporation to the corporation is in every sense a sale, valid in equity as well as at law."

So again in North West Transportation, §c. Co. . Beatty, 12 A. C. 589, it was held that a sale of property of the company to one of its members which had been sanctioned by a general meeting, could not be invalidated on the ground that it was carried by the votes of the purchaser. And see Burland v. Earle, (1902) A. C. 83.

Lords on the

Number of Members necessary to preserve Limited Liability.

Seven members required.

It may be convenient here to refer to sect. 115 of the Act of 1908, which provides, "If at any time the number of members of a company is reduced in the case of a private company below two, or in the case of any other company below seven, and it carries on business for more than six months whilst the number is so reduced, every person who is a member of such company during the time that it so carries on business after those six months, and is cognisant of the fact that it is so carrying on business with fewer than two or seven members as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time and may be sued for the same without the joinder in the action of any other member."

This section is a reproduction, with some necessary variations as to private companies, of sect. 48 of the Companies Act, 1862.

Having regard to this section, the members of a limited company other than a private company must be careful to keep the number of members up to seven. This is not a difficult thing, even where the number of members is small, for (as appears above, p. 57) a few shares can be transferred to clerks or nominees of the principal shareholders. All that is required is, that there should be seven, or in the case of a private company two, members on the register.

Commencement of Business.

Under the Companies Act, 1862, a company was entitled to commence business immediately upon its incorporation : it was, in the words of sect. 18 of that Act, "capable forthwith of exercising all the functions of an incorporated company." And this plenary capacity of starting business at once is still permitted to private companies. See sect. 16 of the Act of 1908. But as regards other companies, sect. 87 of the Act of 1908 restricts their power to commence business unless and until certain conditions have been complied with.

The section embodying the restrictions is in the terms following :--87.-(1.) A company shall not commence any business or exercise ment of busi. any borrowing powers unless-

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum [see infra, p. 105] subscription; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares

Penalty, unlimited liability.

What business may be commenced.

Restrictions on commenceness.

COMMENCEMENT OF BUSINESS.

offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares on the shares payable in cash; and

- (c) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and
- (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

(2.) The registrar of companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of a prospectus has been filed with him.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any money payable on application for debentures.

(5.) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6.) Nothing in this section shall apply to a private company or to a company registered before the 1st day of January, 1901, or to a company registered before the 1st day of July, 1908, which does not issue a prospectus inviting the public to subscribe for its shares.

The duty of the registrar in granting the certificate is purely ministerial. As to the meaning of "conclusive," see p. 52; and Hadleigh Castle Gold Mines, (1900) 2 Ch. 419, infra, p. 239.

The word "provisional" means that the contracts made by a com- Contracts pany before the date at which it is entitled to commence business are before to be treated as if they contained a provision that they shall not be binding on the company unless and until the company becomes entitled to commence business. Hence, if the company never becomes entitled to commence business a contract entered into by it never becomes

certificate.

Ch. VI.

binding on it, and no one can sue in respect of such contract. In re Otto Electrical Monufacturing Co., Jenkins' Claim, (1906) 2 Ch. 390; Clinton's case, (1908) 2 Ch. 515.

"Every person responsible for the contravention" would include diroctors, managers, and other executive officers, possibly the secretary, having regard to sub-sect. 1 (c). Conf. Burton v. Bevan, (1908)

What is the minimum subscription depends on the provisions of sect. 85 of the Companies Act, 1908. Sco infra, p. 105.

As to pre-incorporation contracts and contracts generally by a compauy, see Contracts, Chap. XXVI., infra.

Powers of Registered Company.

A company under the Act of 1908 has the following powers :----

- (1) Power to do whatever it is necessary to do with a view to the attainment of the objects (see supra, p. 29) stated in its memorandum, and also whatever may fairly be regarded as incidental to and consequential on the stated objects.
- (2) Power to do whatever else is legally authorized by the other clauses of its memorandum.

(3) Power to do such other things as it is allowed to do by the Act of 1908 or by any other statute.

That the powers of a registered company were dependent on and governed by its stated objects was recognized in an early case decided on the Joint Stock Companies Act, 1866, the immediate forerunner of the Companies Act, 1862. The Act of 1856 contained provisions as to formation almost identical with those subsequently adopted in the Act of 1862. In particular the Act required that the memorandum should state the objects of the proposed company, and it prohibited any alteration of the conditions contained in the memorandum of association. It was in relation to a company formed under this Act that Simpson v. Westminster Palace Hotel, 8 H. L. C. 712, was decided in 1860. In that case the memorandum stated that "the objects for which the company is established are the purchase of leasehold lands in the City of Westminster, the erection, furnishing and maintenance of an hotel thereon, and the carrying on the usual business of an hotel and tavern therein, and the doing all such things as are incidental or otherwise conducive to the attainment of these objects." The directors, whilst the hotel was in course of being built, agreed to let off for a stipulated period-a few years-a large portion of the builJing to the head of a Government Department for the business of Lis office, and evidence was given that such a letting was calculated to be productive of advantage to the company in its intended business. The case went to the House of Lords, and it was decided that the letting

POWERS OF REGISTERED COMPANY.

was not ultra vires, on the ground that it was temporary and preliminary, and conducive to the ultimate object of the whole being devoted to the proper purpose of the hotel. The Lord Chancellor (Lord Camphell), in his opinion, said : "The funds of a joint stock company established for oue undertaking cannot be applied to another. If an attempt to do so is made the act is ultra vires, and although sanctioned hy all the directors and by a large majority of the shareholders, any single shareholder has a right to resist it, and a Court of Equity will interpose on his behalf hy injunction. A railway company cannot apply its funds to make a line of railway different from that described in the Act hy which the company was constituted. A company established for granting fire and life insurances cannot engage in marine insurance. A company established to make a railway and exercise the trade of carriers upon the line from one town in England to another cannot add to it the trade of a steam-packet company; and no company can ever ahandon the business for which it was established and undertake another. . . . I agree that the case depends upon the fair construction of the third clause of the Memorandum of Association. There is a difficulty in saying that the letting of so large a portion of the hotel to the India Board for so long a time is carrying on the usual husiness of an hotel or tavern therein; but I conceive that it is in the words of the third clause, 'doing a thing otherwise conducive to the attainment of' the described objects of the undertaking. An hotel to he used as such still remains in the hands of the company. This hotel is larger than any other hotel in England, and in this portion of the building the usual husiness of an hotel and tavern is to be carried on. . . . I rely much upon the consideration that the arrangement is temporary and preliminary, and conducive to the ultimate object of the whole building being devoted to the proper business of the hotel," and the other learned lords concurred.

After the Act of 1862 came into operation this decision was treated as applicable to companies registered under that Act, and as importing that a company so registered was, as regards its powers, substantially in the same position as a railway, water, gas or other company incorporated for specified purposes or ohjects, and was not endowed with the general powers of a common law corporation (*supra*, p. 3). Whether this was the true positiou of such a company was not, however, finally settled until 1875, when the celebrated case of *Ashbury Railway Carriage and Iron Co. v. Riche*, L. R. 7 H. L. 653, was decided by the House of Lords. In that case the objects of the company were "to make and sell, or lend on hire, railway carriages and waggons and all kinds of railway plant, and to carry on the business of mechanical engineers and general contractors; to purchase, lease, work and sell, as

Ch. VI.

merchants, timber, coal, metals and other materials; to buy and sell any such materials on commission or as agents; to acquire, purchase, hire, construct or erect works or buildings for the purposes of the company; and to do all such other things as are necessary, contingent, incidental or conducive to all or any of such objects."

The company with this memorandum defining its objects had entered into a contract with the plaintiff in relation to the construction of a railway in Belgium, and the question raised in the action was, whether that contract was valid. The Exchequer Chamber, affirming the decision of the Court of Exchequer, held that the contract was ultra vires, but in the Exchequer Chamber, L. R. 9 Ex. 249, the judges were evenly divided in opinion.

Blackburn, J., in his judgment, in which Brett and Grove, JJ., also concurred, was of opinion that the company, being incorporated, was like a chartered or common law corporation endowed with full powers, that, although the Act might have expressly or impliedly cut down these powers it had not in fact done so, and that in the circumstances the contract was only ultra vires the directors, not ultra vires the company, and canable therefore of heir contract was the

company, and capable, therefore, of being ratified by the sharcholders. On appeal, the House of Lords held that the contract was *ultra vires* the company and therefore altogether void, and that the views put forward by Blackburn, J., and those who concurred with him, were erroneous.

The view of their Lordships was that a company under the Act of 1862 was not to be regarded as a common law corporation endowed with full powers, but as a statutory corporation endowed with limited powers only. Lord Chancellor Cairns, after premising (p. 669) that the subscribers "are to state the objects for which the proposed company is to be established, and that the existence, the coming into existence of the company, is to be an existence and to be a coming into existence for those objects, and for those objects only," and after referring to the words at the end of sect. 12, to the effect that "no altera-ion shall be made by any company in the conditions contained in its memorandum of association," proceeded as follows :--

Grounds for decision.

House of Lords'

decision.

"Now, my Lords, if that is so—if that is the condition upon which the corporation is established—if that is the purpose for which the corporation is established—it is a mode of incorporation which contains in it both that which is affirmative and that which is negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation, and it states, if it is neccessary so to state, negatively that nothing shall be done beyond that ambit, and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified."

"A statutory corporation," said Lord Selborne in the same case, "created by Act of Parliament for a particular purpose, is limited as

POWERS OF REGISTERED COMPANY.

to all its powers by the purposes of its incorporation, as defined in that Act. The present and all other companies, incorporated by virtue of the Companies Act, 1862, appear to me to be statutory corporations within this principle. The memorandum of association is, under the Act, their fundamental and, except in certain specified particulars, their unalterable law; and they are incorporated only for the objects and purposes expressed in that memorandum. I am unable to see any distinction for this purpose between statutory corporations under the Railway Acts and statutory corporations under the Companies Act, 1862. . . . I think that contracts for objects and purposes foreign to, or inconsistent with, the memorandum of association are ultra vires of the corporation itself. And it seems to me far more accurate to say that the inability of such companies to make such contracts rests on an original limitation and circumscription of their powers by the law and for the purposes of their incorporation, than that it depends upon some express or implied prohibition making acts unlawful which otherwise they would have had a legal capacity to do." And all the learned lords were of opinion that, if it were necessary to find words of prohibition, the words at the conclusion of sect. 12, to the effect that, "save as aforesaid, no alteration shall be made in the conditions contained in the memorandum of association," were sufficient, and that in thus prohibiting any alteration of the conditions in the memorandum the Act, in effect, prohibited the doing of anything beyond the objects expressed. They further held, as a corollary from the above, that the contract, being ultra vires, and therefore void in its inception, was incapable of ratification even by the unanimous consent of all the shareholders.

In a subsequent case (Att. Gen. v. Great Eastern Rail. Co., 5 App. Cas. 473), the principle laid down in Ashbury v. Riche was again recognized in the House of Lords, but it was in some degree qualified by the rule laid down by Lord Selborne, L. C., and the other Law Lords, to the effect that the principle was one to be reasonably, and not unreasonably understood and applied, and that whatever may fairly be regarded as incidental or consequential upon those things which the legislature had authorized (that is, those things specified in the memorandum as objects) ought not, unless expressly prohibited, to be held by judicial construction to be ultra vires.

Lastly, in London County Council v. Att.-Gen., (1902) A. C. 165, Lord Halsbury, L. C., referring to Ashbury Railway Carriage Co. v. Riche and Att.-Gen. v. G. E. Rail. Co., said, "I think now it cannot be doubted that those two cases do constitute the law upon the subject. It is impossible to go behind those two cases. They are now part of the law of this country and we must acquiesce in them whether we like them or not."

Ch. VI.

What powers implied. To apply and illustrate these principles :---

If a company is formed, for example, "to buy, sell and deal in coal," it may, for the purpose of carrying out its objects, not only buy, sell aud deal in coal, but may—(1) purchase or take on leaso stores; (2) open shops and agencies; (3) buy and hire trucks, carts, horses; (4) employ labour; (5) draw and accept bills of exchange; (6) borrow and give security; (7) incur debts; (8) make contracts for purchase or supply; (9) have a banking account; (10) bring actions and take proceedings; (11) compromise actions and disputes (*Bath's case*, 8 Ch. D. 334); (12) employ agents; (13) pay bonuses and pensions to employés: for these things are fairly incidental to and consequential on the object to "buy, sell, and deal in coal." As to pensions and gratuities, see Chap. XLIV., post.

Such a company may also pay all "expenses incurred in getting up and registering the company," and it may pay dividends out of profits, and may provide for payment, even out of capital, of interest on capital paid up in advance of calls, for clauses 17 and 72 of Table A. (substituted for clauses 7 and 55 of the original Table A.) treat such outgoings and expenses as properly dealt with by the articles, and what Table A. authorizes is not to be treated as ultra vires. Lock v. Queensland Mortgage Co., (1896) A. C. 461.

By sect. 16 of the Munitions of War Act, 1915, any company has power, notwithstanding anything contained in its memorandum of association, to carry on munition work during the present war.

Wide as the powers thus vested are, experieuce has shown that they are not wido enough to cover many of the transactions which are found necessary or convenient in the course of a company's business, irrespective of the fact already alluded to, that an overconcise statement of objects leaves, in the opinion of business men, too much to implication of law, thereby necessitating constant resort to legal advice, and also hampering business by the doubts it induces amongst outsiders as to the company's capacity to engage in a given transaction. See further, *supra*, p. 30.

Henco the objects clause of by far the greater number of existing companies is expressed in considerable detail (see p. 31), and specifies, in most cases at any rate, some objects which might be--to a lawyer --implied.

Specimen clauses: why inserted.

The following are the clauses most commonly found in memoranda of association :---

1. A clause authorizing the company to carry on the particular business which it is proposed to carry on, and also to carry on various other businesses which it may probably or possibly be desirable to carry on in conjunction therewith or in lieu thereof.

The object of this is to avoid the necessity for going to the Court

64

Necessity of amplifying objects clause.

Munition

work.

POWERS OF REGISTERED COMPANY.

(under sect. 9 of the Act of 1908 (embodying the Companies Memorandum of Association Act, 1890)) to extend the objects, and also to give the company full freedom for developing its business.

2. A clause empowering the company to acquire auy other business similar to its own, for it is extremely difficult to imply such a power from the memorandum. *Ernest* v. *Nicholls*, 6 H. L. C. 401.

3. A clause empowering the company to enter into any agreement for sharing profits, joint adventure, reciprocal concession, or other arrangement of a like nature with other persons or companies carrying on any similar business; for very clear powers are necessary to justify such transactions. Ex parte British Nation, §c. Association, 8 Ch. D. 704.

4. A clause empowering the company to take shares in other companies having similar objects, &c. Such a power is commonly wanted, and not easily implied (*Barned's Banking Co.*, 3 Ch. 105; *Lands Allotment Co.*, (1894) 1 Ch. 630), but may be implied, e.g., from a clause allowing amalgamation. *Re William Thomas & Co.*, (1915) 1 Ch. 325.

5. A clause empowering the company to promote other companies for any purpose calculated to benefit the company. This power, though ofteu required, cannot be implied. Joint Stock Discount Co. v. Brown, 8 Eq. 381.

6. A power generally to acquire property and rights which the company may think necessary or convenient for the purpose of its business. In dealing with outsiders, it is found useful to have an express power like this, and so preclude any question of capacity.

7. A power to lond money and guarantee the performance of contracts by customers and others. These loan and guarantee transactions are constantly called for in business, and yet the power is one not easily implied.

8. A power to borrow or raise money by the issue of debentures, debenture stock, or otherwise; for, although a *trading* company has an implied power to borrow and to give security to a reasonable amount (*infra*, Chapter XXXI.), it is found in practice highly desirable to have an explicit power in the memorandum. Some doubt, too, exists whether debenture stock of a permanent character can be raised without express power. See now, however, soct. 103 of the Act (1908).

9. A power to draw, make, accept, indorse, discount, and issue promissory notes, bills of exchange, debentures, and other negotiable or transferable instruments. This is very desirable; for, although a trading company has implied power to make and accept promissory notes and bills of exchange for the purpose of its business (see *In re Peruvian Rails. Co.*, L. R. 2 Ch. 623), the fact that various kinds of companies have been held not to possess any such implied power P.

5

Ch. VI.

clouds the implication with a most inconvenient uncertainty. Company Precedents, Part I., p. 474. See

10. A power to sell and dispose of the undertaking of the company for shares, debentures, or securities of any other company having objects altogether, or in part, similar to those of this company. This is effective. See Cotton v. Imperial, &c. Co., (1892) 3 Ch. 454; Grant v. United Switchback Co., 40 C. D. 135, in which a sale of the undertaking or any part was one of the objects. New Zealand, &c. Co. v. Peacock, (1894) 1 Q. B. 622, in which it was distinctly held by the Court of Appeal that a sale under the power in the memorandum was valid. So too in Foster v. Boraz Co., (1901) 1 Ch. 326; and Virian & Co., (1900) 2 Ch. 654. Lindley on Companies, 6th ed., 256. In the absence of an express power like this, a company cannot sell or dispose of its whole business (Simpson v. Westminster Palace Hotel Co., 8 H. L. C. 712). According, however, to Birgood v. Henderson's Transvaal Estates, (1908) 1 Ch. 743, the power to sell for shares cannot be exercised if winding-up and distribution among the shareholders of the proceeds of sale is in contemplation; but this view is commonly considered erroneous. See further infra, p. 427.

11. A power to apply for an Act of Parliament for any purpose which may seem expedient. Without such an express power a company cannot apply its funds in promoting a Bill to effect any modification in its constitution. Munt v. Shrewsbury, &c. Rail. Co., 13 Beav. 1; Simpson v. Dennison, 10 Hare, 51 ; Vance v. East Lancashire Rail. Co., 3 K. & J. 50.

12. A power to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account, or otherwise deal with, all or any part of the property and rights of the company. Although a trading company has an implied power to deal with its property for the purpose of its business (see In re Patent File Co., L. R. 6 Ch. 83), it is in practice found highly desirable to have express and explicit powers on such matters, and so preclude all question and doubt. See Kingsbury Collieries, (1907) 2 Ch. 259.

Intra Vires and Ultra Vires Procestory 1gs.

Powers of company as to expenditure.

It is a corollary from the rule in Ashbury v. Ricae, ubi suprathat a company's objects circumscribe its powers-that the funds of a company under the Act can only he applied in carrying out its authorized objects. "It cannot be questioned," said Lord Herschell in Trevor v. Whitworth, 12 App. Cas. 414, "since the case of Ashbury v. Riche, that a company cannot employ its funds for the purposes of any transactions which do not como within the objects specified in the memorandum. The capital may, no doubt, he diminished by expenditure upon, and reasonably incidental to, the

INTRA VIRES AND ULTRA VIRES PROCEEDINGS.

objects specified. A part of it may be lost in carrying on the business operations authorized. Of this all persons trusting the company are aware and take the risk. But I think that they have a right to roly on the capital remaining undiminished by any expenditure outside those limits "

The following are some of the cases in which the expenditure of the Examples of company's funds, or the omployment of its property, has been held intra viras a legitimate expenditure or employment on the objects of the company and therefore intra vires, though not expressly provided for : a company, formed to work a patent, expending its funds in purchasing such patent (Leijchild's case, 1 Eq. 231); a company, formed to work mines of which it had asquired a lease, speuding money in buying the freehold, including surface 'Johns v. Balfonr, 5 T. L. R. 389); a company, being second mortgagee of land in England, paying off the first mortgages in order to prevent foreclosure (Re Sheffield, Sc. Society v. Aislewood, 44 C. D. 412); a company, bound to supply boats for a ferry, employing the boats, when not wanted for the ferry, in excursions (Forrest v. Manchester Rail. Co., 30 Beav. 40); a hotel company letting off temporarily part of its premises not wanted for the purposes of its business (Simpson v. Westminster Palace Hotel Co., 8 H. L. C. 712); a colliery company selling land from time to time when the sale is reasonably necessary (Kingsbury Collieries, (1907) 2 Ch. 259); a company incurring debts for the purpose of its business (Russell v. East Anglian Rail. Co., 3 M. & G. 125); a company formed to acquire and work a mine, paying fees to a mining expert for a report of the mine to its solicitors and brokers, and for advertisements and printing (Lydney, &c. Co. v. Bird, 33 Ch. D. 85); a company paying its workmen a gratuity (Hampson v. Price's Patent Candle Co., 24 W. R. 754), or granting a pension to an ex-officer or his widow (Henderson v. Bank of Australasia, 40 C. D. 170; Hutton v. West Cork Ry. Co., 23 C. D. 672; Cyclists Touring Club v. Hepkinson, (1910) 1 Ch. 179, but the pensiouer cannot prove for the peusion if the company is wound up, Re Birkbeck Building Society, (1913) 1 Ch. 400), or compromising a bond fide dispute (Bath's case, 8 C D. 334), or selling its undertaking for shares, where authorized by its memorandum to do so (see supra, p. 66), or paying to a broker a reasonable brokerage for issue of its capital (Metropolitan Coul, &c. Co. v. Scrimgeour, (1895) 2 Q. B. 604), or incurring expenses ou printing, stamping and sending out proxy papers and circulars to sceure the defeat of a resolution which the directors consider adverse to the company's interest (Peel v. L. & N. W. Rail. Co., (1907) 1 Ch. 5; Campbell v. Australian Mutual, 99 L. T. 3), or, with wide powers of lending, lending money to a servant of the company (Rainford v. James Keith and Blackman Co., (1905) 2 Ch. 147).

All these have been held intra vires. So it is intra vires for a

5 (2)

Ch. VI.

Examples of ultra vires acts. trading company to borrow, raise money and give security on its property. General Auction Co., (1891) 3 Ch. 436.

The following, on the other hand, are a few cases in which transactions not expressly anthorized have been held ultra vires.

The application by a company of its funds towards promoting a Bill in Parliament to obtain powers for improving the navigation of a river was held *ultra vires*, though the prosperity of the company depended materially on the navigation of the river being improved. *Munt v. Shrewsbury Rail. Co.*, 13 Beav. 1. See also *Att.-Gen. v. Manchester Corporation*, (1906) 1 Ch. 643, as to acting as carriers in relation to tramways, and *Att.-Gen. v. North Eastern Rail. Co.*, (1906) 2 Ch. 675.

So a railway company (in the absence of a power for the purpose in itr constitution) was held incompetent to secure the capital and guarantee the profits of another company about to run steamboats in connection with the line, however beneficial it might be to the railway company. Colman v. E. C. Rail. Co., 10 Beav. 1. So, again, where a railway company proposed to subscribe to the Imperial Institute, this was held ultra vires. Tomkinson v. S. E. R., 35 C. D. 675. It is primá facie ultra vires for a railway company to take to working coal mines and dealing in coal for profit. Att.-Gen. v. Great Northern Rail. Co., 1 Dr. & Sm. 283. It is ultra vires for a corporation like the London County Council to run omnibuses. L. C. C. v. Att.-Gen., (1902) A. C. 165.

It is likewise ultra rires for a company, without special power in its constitution, to take over the undertaking of another company (Ernest v. Nicholls, 6 II. L. C. 401), or to enter into a partnership or annigamation arrangement (British Nation Life, 8 C. D. 701), or to promote another company. Thus, where a company was formed to carry on business as a bill broker and serivener and to make advances and procure loans and invest in securities, it was held that subscribing for shares in a new company, in order to assist in floating it, was not a bond fide investment, and therefore ultra vires. Joint Stock Discount Co. v. Brown, 8 Eq. 381. It is also ultra vires for a company to pay dividends out of eapital. It is now well settled that a company eannot apply its funds in purchasing its own shares (Trevor v. Whitworth, 12 App. Cas. 409); and the same case shows that even un express authority in the memorandum is unavailing to authorize it, the reason being that such a purchase operates as a reduction of eapital and can only be effected with the sanction of the Court. British, &c. Co. v. Couper, (1894) A. C. 339. For the same reason it is ultra vires for a company under the Companies Acts to make a present of bonus shares (Re Eddystone Co., (1893) 3 Ch. 9), or to issue its shares at a discount, that is to say, on the footing that the holders shall have paid-up shares on payment of less than the nominal

CONSTRUCTION OR INTERPRETATION OF OBJECTS. Ch. VI.

value of such shares. Ooregum Co. v. Roper, (1892) A. C. 125; Welton v. Saffery, (1897) A. C. 299.

And where a company issues debentures with bonus certificates for payment of an additional sum out of profits it cannot afterwards, by arrangement, issue paid-up shares in satisfaction of the certificates. See Buey v. Famatina Development Co., (1910) A. C. 439; Railway Time Tables Co., 68 L. T. 649; and Moseley v. Koffyfontein Mines, Limited, (1904) 2 Ch. 108.

Construction or Interpretation of Objects.

Whether any given transaction is or is not within the powers of a Construction. company is a question of law depending on the construction to be placed on the objects clause of the memorandum of association. "I ngree," said Lord Chanceltor Campbell in Simpson v Westminster Palace Hotel Co., 8 H L. C. 712, one of the earliest cases in the House of Lords on the powers of a registered company, "that the case depends upon the fair construction of the third clause of the memorandum of association." And so in Riche v. Ashbury Railway Carriage Co., L. R 7 H. L. 653, the whole case turned, as appears from the opinions of the Lords, on the construction to be placed on the objects clause of the memorandum of association. The transaction in question was hold ultra vires because it was not covered by the objects clause. Accordingly, if a question arises as to whether a transaction is or is not within the powers of a company to be inferred from its objects, one must scrutinize the objects clause and ascertain its meaning, and in doing this the rules which are to be applied to its interpretation or construction must be borne in mind. To construe a document is, as Lord Chehnsfor said in Scott v. Corporation of Liverpool, 3 De G. & J. 360, nothing more than this: to arrive at the morning of the parties to the instrument. For this purpose there are certain well-recognized rules which apply to a memorandum and articles of association, just as much as to any other document. Thus (i) the whole document must be read and considered. (ii) The expressed intention is to have effect; we are not ' speculate as to what the parties intended, but to ascertain it from the words used, for the expressed meaning is to be taken to indicate the intention. (iii) The "golden rule" must be observed, namely, that the grammatical and ordinary sense of the words is to be adhered to; unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity, repugnance or inconsistency, but no further. Gray v. Pearson, 6 H. L. C. 106. Where the language is clear and unambiguous it must have effect, even though in the result it may operate in a capricious and unreasonable manner; if it is ambiguous the more

reasonable construction should be adopted. (iv) Popular words are to be taken primi facie to be used in their popular sense, and technical words in their technical sense; but in each case the primi facie sense may be displaced or qualified by the context. (v) The words used must be read with reference to the subject-matter, secundam subjectant materiam; the memorandum must be liberally interpreted, at res magic valent quam percat. (vi) The ejusdem generis rule, the rule noscitur a socia, and the maxim expressio unius est exclusio alterius are also, at times, upplicable. The case of Riche v. Ashbury Railway Carriage Co., L. R. 7 H. L. 653 (further referred to supra, p. 6)), affords a good instance of the application of the uscitur a socias construction. In that case it was held, that the words "general contractors" inserted in one of the clauses were to be taken to refer to the precoding words of the same clause exclusively, and to be restricted accordingly.

"The purposes," said Lord Cairns, L. C., in that case, "for which a company, established under the Act of 1862, is formed, are always to be looked for in the memoriadium of association of the company. According to that memorandum the Ashbury Railway Carriago and Iron Company, Lianited, is formed for these objects : 'to make und sell, or lend on hire, railway curringes and waggons, and all kinds of railway plant, fittings, anachiaery, and rolling stock; to carry on the business of mechanical engineers and general contractors; to purchase, lease, work and sell mines, aninerals, laad and buildiags; to purchase and sell, as merchants, timbor, coal, metals or other materials, and to buy and sell such materials on commission, or as agents.' Part of the argument at your Lordships' Bar was as to the meaning of two of the words used in this part of the memorandum-the words 'general contractors.' My Lords, as it appears to me, upon all ordinary prineiples of construction those words must be referred to the part of the sentence which immediately precedes them. The sentence which I have read is divided iato four classes of works First, 'to make and sell, or lend on hire, railway carriages and waggons, and all kinds of railway plant, fittings, machinery, und rolliag stock.' That is an object sui generis, and complete in the specification which I have read. The second is, 'to carry on the business of mechanical engineers and general contractors.' That, again, is the specification of an object complete in itself; and according to the principles of construction, the teria 'general contractors' would be referred to that which goes immediately before, and would indicate the making generally of coatracts connected with the business of mechanical engineers-such contracts as mechanical engineers aro in the habit of making, and are in their business required, or find it conveaient to make for the purpose of carrying on their business. The third is, 'to purchase, lease, work and sell mines, minerals, land and buildings.' That is an object pointing to the working and the acquiring of mineral property,

CONSTRUCTION OR INTERPRETATION OF OBJECT.

and the generality of the last two words, 'land and buildings,' is limited by the purpose for which land and buildings are to be acquired, namely, the leasing, working and selling, mines and minerals. The fourth head is, 'to purchase und sell, as merchants, timber, coal, metals or other materials, and to buy and sell any such me vials on commission or as agonts.' That requires no commentary. My Lords, if the term 'general contractors' were not to be interpreted as I have suggested, the consequence would be that it would stand absolutely without any limit of any kind. It would authorize the making, therefore, of contracts of any and every description ; and the memorandum, in prece of specifying a particular kind of business, would virtually point to the carrying business of any kind whatever, and would therefore be alte, ther anneaning." Such words as "in or out of the colony" Committel v. Australian Mutual, Se. Society, 99 L. T. 3), or "in Mysons and Is when. " (Pedlar v Road Black Gold Mines, (1905) 2 Ch. at p. 135 Lave been nell not to be restricted by the context, but to be world-wide

These well settled rules of construction have since been supplemented and to some extent modified by a new rule of construction first suggested in Haven Gold Moning Co., 20 C. D. 151, and in German Date Co., 20 C. D. 169, and subsequently recognized in Crown Bank, 44 C. D. 641, Amalyamated Syndicate, (1897) 2 Ch. 600; Coolgardie Gold Mires, 76 L. T. 269.

According to these authorities, where the objects of a company of expressed in a series of paragraphs, the true rule of construction is a seek for the paragraph (commonly the first) which appears to subod, the main or dominant object of the company, and all the other paragraphs, however generally expressed, are to be treated as merely ancillary to this main object, and as limited and controlled thereby.

Assuming that this rule of construction is to be trented as established, it is, of course, to be borne in mind that, like every other rule of construction, it may be excluded or modified by the contents of tho document to be construcd, for every rule of construction contains by implication the saving clause "unless a contrary intention appear by the document."* Accordingly this "*c*imary object" rule must be applied with caution; it has only a *primid facie* application, and it must be seen that there is nothing in the document to exclude or modify it. *Pedlar* v. *Road Block*, (1905) 2 Ch. 427; 22 T. L. R. (1906) 179; and *Butler* v. *Northern Territories Mines of Australia*, 96 L. T. 41. Sometimes for this purpose the memorandum declares the intention to be that the objects specified in each paragraph of the clause, or in each of three or four specified paragraphs, shall, except

* See per Bowen, L. J., in Earl of Jersey v. Guardians of Poor of Neath, 22 Q. B. D. 548.

71

Ch. VI.

where otherwise expressed in such paragraph, be in no wise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company. These words are obviously intended to exclude or modify the rule, and the Court is bound to give effect to the intention thus indicated.*

There are other modes of excluding the rule oceasionally adopted. For example, the paragraphs stating the several leading objects of the company sometimes commence with the words "as an independent object." In other cases, the first few paragraphs are expressed in very wide general terms, and any special object is made subordinate thereto and is sometimes expressed to be "without prejudice to the generality of the preceding objects." See further, as to interpretation, Company Precedents, Part I., Char. VII.

General Concluding Words.

General words : effect thereof.

K.

The objects elause commonly concludes with the words : "To do all such other things as are incidental or conducive to the attainment of the above objects or any of them ": sometimes the words are even wider e.g., "all such other things as the company may think expedient." The latter words were used in Peruvian Rail. Co. v. "hames Co., L. R. 2 Ch. 617, and were relied on by Lord Cairns as enlarging the company's powers, but it seems very doubtful whether they can really add anything to what the law already implies as incidental to the specifically of unerated objects. See Baglan Hall Co., 5 Ch. 356; Simpson v. Westminster Palace Hotel Co., 8 H. L. C. 712; Taunton v. Royal Insur. Co., 2 H. & M. 135.

The operation of such general words should, it seems, be considered to be limited to such things as are naturally conducive to the objects specified, i.e., doing something bond fide connected with the objects to be attained and in the ordinary course of business adapted to their attainment. Joint Stock Discount Co. v. Brown, 3 Eq. at p. 150; 8 Eq. 381; Ashbury v. Riche, L. R. 7 H. L. 653 (where the words were "necessary, contingent, incidental, or conducive "); 20 L. T. 361.

Indefinite Objects.

Sometimes it is contended that when the objects are widely stated there is no sufficient "statement" of the objects within the require-

• Vet, strange to say, in Stephens v. Mysore Reefs Kangundy Mining Co., (1902) 1 Ch. 745, a learned judge disregarded the operation of such words, on the ground that indemuch as when applied to one particular paragraph they would be nonsense, they could not be held to apply to the other twenty-three paragraphs. Such a reading offends against the settled principles of construction, and cannot, it is apprehended, be maintained. [Possibly the only true limitation of the contention in the text is to be found in the dietum of Warrington, J., in Pedlar v. Road Block Mince, (1905) 2 Ch. 439 : "It is not right to accept a construction which would virtually enable a company to carry on any business or undertaking of any

COMPANY'S RESPONSIBILITY FOR ACTS OF ITS AGENTS. Ch. VI.

ments of the Act, but any objection of the kind is precluded by the certilicate of incorporation, which the Act makes conclusive evidence of compliance with the preliminary conditions, one of which is a statement of the objects. However, where the objects are ambiguous, that construction should be preferred which brings them within reasonable limits; but if there is no ambiguity there is no room for restrictive

Alteration of other Conditions in the Memorandum.

In .Ishbury v. Riche, L. R. 7 H. L. 653, the House of Lords was dealing Rale of ultra primarily with the objects of a company, but the rale there established and a to applies equally to the other conditions contained in the memorandum objects only. of association. Thus the name of the company (clause 1 of the memorandum) cannot be changed except as provided by sect. 8 of the Act (1908): the situation of the registered office (clause 2 of the memorandum) can only be altered by special Act of Parliament (but see infra, p. 243; ; and the capital of the company (clanse 5 of the memorandam) can only be altered in the manner specified in the Act of 1908, sects. 41 and 46, and, where sect. 45 applies, can only be reorganised in the manner required by that section.

Protection of Outsiders dealing bonâ fide.

These powers and disabilities of a company, as matters of public How rule record, everyone is presumed to know, but an outsider dealing affects with a registered company in regard to a matter apparently within the powers of the company (e.g., selling to it property or lending it money) is only bound to look to the memorandum and articles of the company, and if the transaction appears to be within the powers of the company, he may safely proceed; he is not bound to ascertain that the property or advance is really required for the purposes of the company. If he does not know of any intention to misapply the funds of the company or the money advanced, but acts bond fide in the matter, he is not prejudiced by any such misapplication (Hawkes v Eastern Counties Rail. Co., 5 H. L. C. 331; Re Marseilles, Sc. Rail. Co., 7 Ch. 161; Young v. David Payne & Co., (1904) 2 Ch 609); nor is he concerned as to any irregularities of internal management. See supra, pp. 44, 45.

Company's Responsibility for Acts of its Agents.

An ingenious perversion of the doctrine of ultra vires has sometimes Acts of agents led to its being contended that, inasmuch as the funds of a company of company: can be applied only to the promotion of its objects, they cannot be sc. applied in making good damage caused by the fraud, or negligence, or misconduct of its agents and servants.

outsiders.

CORPORATE EXISTENCE AND POWERS.

Company, when liable

This is a fallacy. There is nothing in the rule of ultra vires which in any way protects a company acting within its legitimate sphere from liability, to the extent of its assets, for the consequences of the acts of its agents, done by them on bchalf of the company aud in the conrse of the company's business. This liability is derived from the ordinary law of principal and agent, and it makes no difference whether the agent's wrongful act or default takes the form of malice, negligence, nuisance, or fraud. "The objects of the company," as Lord Cranworth said, in Ranger v. G. W. Rail. Co., 5 H. L. C. 86, "can only be accomplished by the agency of individuals, and there can be no doubt that, if the agents employed conduct themselves fraudulently, so that if they had been acting for private employers the persons for whom they were acting would have been affected by their fraud, the same principles must prevail when the principal under whom the agent acts is a corporation." See also Barwick v. English Joint Stock Banking Co., L. R. 2 Ex. 259; and Houldsworth v. City of Glasgon Bank, 5 App. Cas. 326, where Lord Selborne, referring to the observations of Willes, J., in delivering the judgment of the Exchequer Chamber, in Barwick v. English Joint Stock Banking Co., supra, said : "The principle on which the company is held liable in such cases has already received full recognition from the House of Lords. It is a principle not of the luw of torts, or of fraud or deceit, but of the law of agency, equally applicable whether the agency is for a corporation in a matter within the scope of the corporate powers, or for an individual, and the decisions in all these enses proceed not on the ground of any imputation of vicarious fraud to the principal, but because-as was well put by Mr. Justice Willes in Barwick's case, L. R. 2 Ex. 259-' With respect to the question whether a principal is answerable for the act of his agent in the course of his master's basiness, no sensible distinction can be drawn betweeu the case of fraud and the case of any other wrong.' ''

Other cases of liability.

Hence, a corporation may be held liable for negligence (Mersey Dock Trustees v. Gibb, L. R. 1 H. L. 93; Parnaby v. Lancaster Canal, 11 Ad. & El. 223; Lagunas Nitrate Co. v. Lagunas Syndicate, (1899) 2 Ch. 392, 423); for trospass (Maund v. Monmouthshire Canal, 4 M. & G. 452); for malicious prosecution (Abrath v. G. E. Rail. Co., 11 App. Cas. 247; Edwards v. Midland Rail. Co., 6 Q. B. D. 287; Cornford v. Carlton Bank, (1899) 1 Q. B. 392); for libel (Whitfield v. S. E. Rail. Co., E. B. & E. 122); for assault aud battery (Butler v. Manchester Rail. Co., 21 Q. B. D. 207); for nuisance (Rapier v. London Tramways Co., 69 L. T. 361); for frand (Barwick v. English Joint Stock Bank, L. R. 2 Ex. 259; Houldsworth v. City of Glasgow Bank, 5 App. Cns. 317; Mackay v. Commercial Bank of New Brunswick, L. R. 5 P. C. 394). It may be indicted or fined for breach of duty imposed by the law. Reg. v. Birmingham Rail. Co., 3 Q. B. 223; Reg.

v. Tyler & Co., (1891) 2 Q. B.588. It may be estopped by the acts of its ugents. Burkinshaw v. Nicolls, 3 App. CL4. 1004; Bloomenthal v. Ford, (1897) A. C. 156; Robinson v. Montgomeryshire Brewery Co., (1896) 2 Ch. 841. See Chap. XXV. And finally, it may be held guilty of laches, and bound by acquiescence. Erlanger v. New Sombrero Co., 3 App. Cas. 1218; Nicol's case, 29 C. D. 429. For although it may not have eyes and see what is going on, it has agents who can see. Crook v. Corporation of Seaford, 6 Ch. 551.

The extent of the company's liability is not limited because its constitution limits the amount of its expenditure. Gallsworthy v. Selby Dam Commissioners, (1892) 1 Q. B. 348; United Service Co., L. R. 6 Ch. 212.

A company can ratify an act which has been done on its behalf without authority, provided the act is not altra vires. Grant v. Switchback Co., 40 C. D. 135 ; Wilson v. West Hartlepool Co., 2 De G. J. & S. 475.

Statutory Powers independent of Memorandum.

Besides the powers given to a company by its memorandum of Statutory association, it has numerous other supplemental powers expressly dependent of given to it by the Companies Act, 1908. Of these the following may memorandum. be mentioned :--

- 1. Power hy sect. 8 to change its name in manner specified.
- 2. Power by sect. 13 to alter its articles. See p. 46.
- 3. Power by seet. 16 to have a common seal, and see sect. 79 as to official seals for foreign purposes.
- 4. Power by sect. 16 to hold lands notwithstanding Mortmain Acts.
- 5. Power by sect. 25 to keep a register of members which, by sect. 33, is made prima facie evidence.
- 6. Power by sect. 35 to keep a colonial register. See further,
- 7. Power by sect 37 to issue share warrants to bearer.
- 8. Power hy sect. 41 to increase its capital, consolidate its shares, convert shares into stock, and to re convert stock into shares.
- 9. Power by sect. 41 to sub-divide its shares.
- 10. Power by sect 45 to reorganise capital.
- 11. Power by sect. 46 to reduce its capital in various ways.
- 12. Power hy sect. 59 to make part of its uncalled capital incapable of being called up, except in a winding-up.
- 13. Power by sect. 76 to contract without seal. See infra, p. 254.
- 14. Power by sect. 78 to appoint an attorney to execute deeds, &c.
- 15. Power by sect. 89 to pay, in certain cases, commissions for taking up, underwriting, or placing shares.

CORPORATE EXISTENCE AND POWERS.

Statutory duties.

Together with these powers the Act imposes on a company a number of duties and obligations of which the following may be mentioned. The company must :---

Statutory Duties.

- 1. Supply to members on demand printed copies of its memorandum and articles, and of any special resolutions. (Sects. 18 and 70 of Act of 1908.)
- 2. Keep a register of members at its office (sect. 25) to be open for inspection. (Sect. 30.)
- 3. Make annual returns of its members, assets and liabilities, &e. to the Registrar. (Sect. 26.)
- 4. Give to the Registrar notices of increase of capital and consolidation of shares, &c. (Sects. 42, 43, and 44.)
- 5. Have a registered office (sect. 62), and notify to Registrar situation and change of situation. (Sect. 62.)
- 6. Put up the name of the company outside its office and place of business, and insert it in all its business publications, &c. (Sect. 63.)
- 7. Hold one general meeting every year within fifteen months of the last. (Sect. 64.)
- 8. If registered after 31st of December, 1900, hold the statutory meeting not less than one month after and not more than three months after it becomes entitled to commence business. (Sect. 65.)
- 9. Register special and extraordinary resolutions. (Sect. 70.)
- 10. Keep at its registered office a register of its directors or managers, and send a copy to Registrar and notify changes. (See sect. 75.)
- 11. File its prospectus (if any) with the Registrar, or statement in lieu thereof. (Seets. 80, 82.)
- 12. In issning a prospectus, comply with sect. 81.
- 13. Where sects, 85 and 87 apply, refrain from allotting shares or commencing business until the requirements of those sections have been satisfied.
- 14. Make returns of allotments to the Registrar within one month. (Sect. 88.)
- 15. File contracts and make returns where shares are allotted for a consideration other than cash. (Sect. 88.)
- 16. State in every balance sheet the amount paid by way of underwriting commission until written off. (Sect. 90.)
- 17. Have certificates of shares ready for delivery within two months. (Seet. 92.)
- 18. Register with the Registrar of Joint Stock Companies all mortgages and charges to which sect. 93 applies.

- 19. Keep a register of mortgages and charges open for inspection by shareholders, creditors, and the public. (Sects. 100, 101.)
- 20. Comply with sects, 112 and 113 as to andit.
- 21. Keep up the number of the members to seven, or in the case of a private company to two. See sect. 115, supra, p. 58.

Alteration of Objects.

In keeping a company strictly to the objects defined in its memo- Extension, randum of association the Legislature intended to protect, not only when allowinvestors and shareholders, but also the outside public, and more particularly creditors. Per Lord Cairns, Ashbury v. Riche, L. R. 7 H. L. 667. And in this, it was pursning a just and beneficial policy. But there was a sensible inconvenience attaching to the uaalterability of a compaay's memorandum in respect of the objects specified in it. Not, indeed, that the memorandum was ever, strictly speaking, unalterable. It was always possible to alter the objects by special Act of Parliament, and in many cases this was doae; but obtaining a private Act was an expensive and dilatory process. The only other alternative was to reconstruct-a course, again, involving inconvenience and dislocation. This hindrance to the legitimate expansion of a compaay's business the Legislature recognized, and in the Companies Memoraadual of Association Act, 1890, the provisioas The Act of of which are now embodied in sect. 9 of the Act of 1908, it administered 1890. a qualified relief, subject to certain simple and easy conditions. This Act provided that a company registered under the Companies Act, 1862, might by special resolution alter its memorandum with respect to its objects, and empowered the Court to confirm the alteration where it appeared that the alteration was required to enable the company-

- (a) To carry on its business more economically or more efficiently; or
- (b) To attain its main purpose by new and improved means; or
- (c) To enlarge or change the local area of its operations; or
- (d) To earry on some business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or
- (e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

The Act contained various provisions designed for the protection of creditors, including debenture holders, and also of shareholders whose rights may be affected by the proposed alteration. The legislative facilities thus offered to companies for enlarging the scope of their business objects have been largely made use of.

able.

77

Ch. VI.

CORPORATE EXISTENCE AND POWERS.

Instances of companies availing themselves of the Act. Thus a considerable number of companies have obtained power to raise meney by debentures and perpetual debenture stock. Reversionary Interest Society, (1892) 1 Ch. 615; Law Reversionary Interest Society, May, 1893; P. Phipps & Co., July, 1897; Union Rolling Stock Co., January, 1894; In Re Empire Trust, 64 L. T. R. 221.

The area of a company's operations has been enlarged in several cases. Indian Mechanical, &c. Co., (1891) 3 Ch. 538; London Joint Stock Bank, November, 1892; R. Bell & Co.; Crompton & Sons.

Several banks have largely extended their objects. London and Midland Banking Co., 1891; London Joint Stock Bank, November, 1892; York City and County Banking Co., 1894; Liverpool and District Banking Co., 1896; London and Westminster Bank, 1897.

Other companies have been enabled to acquiro other business concerns of a like nature (London Joint Stock Bank, November, 1892; Norwich Union, 1893; Leicestershire Banking Co., June, 1895), or

enter into arrangements for joint working. Tower Company, Limited. Investment companies have been allowed to enlarge the scope of their investments (Re Foreign and Colonial Government Trust, (1891) 2 Ch. 395; Government Stock Co., (1892) 1 Ch. 597); insurance companies to extend their objects so as to take in cognate businesses (Re Alliance Murine, (1892) 1 Ch 300: National Boiler, (1892) 1 Ch. 306); guarantee companies to extend their business to indemnity, burglary, &c. Law Guarantee, 1895; British Empire Co., 1897; Equity and Law Life, 1897; North of England Association, (1900) 1 Ch. 481. In some cases objects have been so extended as to allow the promotion of foreign companies and holding shares in them. Ocean Accident Co., July, 1893; Crompton & Sons. An unlimited company having neither shares nor capital has been allowed to alter its memorandum. North of England Steamship Insurance Co., In re, (1900) 1 Ch. 481. These are only a few instances out of many alterations sanctioned by the Court under the Act.

The Court rarely refuses to confirm a resolution for alteration of objects. If the alterations of the objects sanctioned are such as render the name of the company misleading, the Court is in the habit of requiring the company's name to be changed so as to express the alteration in its aims or sphere of operations. Foreign and Colonial Government Trust Co., supra : Government Stock Investment Co., (1892) 1 Ch. 597; Indian Mechanical, &c. Co., supra ; Alliance Insurance, (1892) 1 Ch. 597; Indian Mechanical, &c. Co., supra ; Alliance Insurance, (1892) 1 Ch. 300; National Boiler Insurance Co., (1892) 1 Ch. 306. The Court may also add words to the resolution so as to limit the extended objects. Spiers & Pond, W. N. (1895) 135; Fleetwood Estate Co., W. N. (1897) 20. But in In re Jewish Colonial Trust (Juednsche Coloninjbank), (1908) 2 Ch. 287, the Court refused to sanction an alteration involving the abandonment of objects of the company of a fundamental character,

PETITION TO OBTAIN SANCTION OF COURT. Ch. VI.

and confining them (from a world-wide) to a limited local area. And in Re Cyclists Touring Co., (1907) 1 Ch. 269, the Court refused to sanction an alteration extending the objects of a compuny formed to eater for, protect and assist cyclists so as to include the catering for and assistance of motorists, the latter being one of the daugers against which cyclists needed protection. In other cases the power which the Adoption of Act contains (sect. 1 (1), now sect. 264 of 1908), embling a company memorandum and articles regulated by deed of settlement to adopt a memorandum and articles, by companies has been exercised. The following are a few instances within the regulated by writer's own experience : Birmingham and Midland Bank ; Law Union settlement. and Crown Insurance Co. : Equity and Law Life Assurance Society ; Munchester and District Banking Co.; London and Westminster Bank.

In Consett Iron Co., (1901) 1 Ch. 236, a learned judge expressed doubts whether the Court has jurisdiction under the Act to sanction an alteration which amounts to a re-writing of the objects in modern form, and accordingly in that case the old objects were left, whilst five times as much matter (in the shape of new objects in modern form) was added. Apparently, therefore, the doubt is confined to the question whether the Court has jurisdict on to sanction an alteration which introduces a series of new objects in modern form instead of the old objects. This question has been answered ugain and again in the affirmative by the High Court. Thus, Henn Collins, J., in 1891, in the Birmingham and Midland Bank, Limited ; Kekswich, J., in 1893, in the Law Union and Crown Insurance Co., Limited; North, J., in 1894, in the York City and County Bank, Limited ; North, J., in 1895, in Leicestershire Banking Co., Limited ; Chitty, J., in 1896, in Equity and Law Life Assurance Society ; Vaughan Williams, J., in 1896, in the Union Steamship Co., Limited ; North, J., in 1897, in the London and Westminster Bank, Limited, and in Wakefield and Barnsley Union Bank, Limited ; Stirling, J., in 1897, in British Plate Glass Co., Limited ; Byrne, J., in 1899, in Halifax Joint Stock Bank, Limited : Farwell, J., in 1901, in Halifaz Commercial Banking Co., Limited; and Kekewich, J., in 1901, in Carlisle and Cumberland Banking Co., Limited, sanctioned an alteration which substituted a complete new set of objects in modern form for the old concise and imperfect objects. See also New Westminster Brewery, (1911) W. N 217, and Re Anglo-American Telegraph Co., (1911) W. N. 248. And it is to be noted that the Act empowers the company by special resolution to "alter" its objects and not merely to "extend" or "add

Where the company proposed to adopt new powers of unlimited extent the alteration was only permitted subject to modification. Re-John Brown, Ltd., (1914) W. N. 434.

The Act applies to a company formed under the Companies Act,

CORPORATE EXISTENCE AND POWERS.

1856. Copiapo Mining Co., In re, 6 Manson, 320; and see Re Euphrates and Tigris Steam Navigation Co., (1904) 1 Ch. 360. And see sect. 246 of the Act of 1908.

Where a company formed not for purposes of gain, without the word "limited," desires to alter its objects, it must first submit the proposed alteration to the Board of Trade. St. Hilda's Incorporated College, Cheltenham, (1901) 1 Ch. 556.

Petition to obtain Sanction of Court.

How to obtain sanction of Court.

The procedure to obtain the sanction of the Court is quite simple. A petition is presented, and, upon summons in chambers, directions are given as to advertising the petition and as to notice to debeuture holders (if any) (*Munster and Leinster Bank*, In re, (1907) 1 lr. R. 237, M. R.); and in the course of a short time, generally about a fortnight, the petition comes on again, and the order, if the Court approves, is made. A copy of this order is filed with the Registrar, who gives a certificate, and the transaction is then complete.

The jurisdiction under the Act is still vested in the judges of the Chancery Division (Islington Electric Supply Co., 93 L. T. N. 31), but this includes the judge to whom winding-up is assigned Mining Shares Co., (1893) 2 Ch. 660. As to transfer to the Couuty Court, see Rugeley Gas Co., W. N. (1899) 127. In the case of a company which has been allowed to dispense with the word "limited," the approval of the Board of Trade should be obtained to the proposed changes. St. Hilda's Incorporated College, Cheltenham, (1901) 1 Ch. 556. Advertisement of the order will not as a rule be required. Lancaster Banking Co., W. N. (1897) 3. For the Act contains no enactment corresponding to sect. 51 (3) as regards reduction.

CHAPTER VIL

CAPITAL.

Every company limited by shares has a capital. This capital-as Capital and one of the essential features in the company's constitution-is to be division foto mentioned in the memorandum of association, and the capital so amounts. mentioned is to be "divided into shares of a certain fixed amount." (Sect. 8 (1908).) What the amount shall be, and into what shares it shall be divided is left to the subscribers to the memorandum of association to determine; but, when determined, it constitutes one of the fundamental conditions of the company's constitution (see sect. 7 of the Act of 1862), and, accordingly, can only be altered in the manner provided for in the Act. See sects. 41, 45 and 46.

The capital is usually fixed at some round figure, proportioned to the requirements of the company in the early stages of its existence, e.g., 1,0001., or 20,0001., or 50,0001., or 100,6001., or 500,0001., or 1,000,0007. Thus, suppose the company to be formed to acquire a property for 100,0002, to be satisfied as to 50,0002 by paid-up shares, and as to the balance by eash, and that it will want 50,0007. for working capital: the initial capital will, in such cases, be fixed at-say 150,0002.

As to the amount of the shares, it is usually fixed at 11, or 51., or 102. Sometimes the amount is less-10s., 5s., 2s. 6? or even as low

Preference and other special Classes of Shares.

Not unfrequently, the capital is, by the memorandum and articles of Definition association, divided not only into shares of different amounts, but into of rights in different classes of shares with different sink as the last the last the last state. different classes of shares with different rights attached to them, eg., into preference and ordinary shares or preference, ordinary, and founders' shares. When this is the case, it is not uncommon to define in the memorandum some of the rights attached to the different classes of shares respectively, or to some one class of them.

The object of so defining the rights of shareholders in the memorandum is to fortify the position of the class, for rights once unconditionally attached by the memorandum to a particular class of shares cannot be altered or infringed. Ashbury v. Watson, 30 C. D. 376. That case decided that the specification in the memorandum of the rights attached to a class of shares, is to be regarded, prima face, as one of the "conditions" referred to in sect. 12 of the Act of 1862 6

shares of fixed

and in sect. 7 of the Act of 1908, and, therefore, made unalterable. But if the rights are only conditionally attached by the memorandum of association, e.g., if though specified therein they are accompanied by a clause in the memorandum providing for alteration, such a specification does not take effect as an unalterable condition: the power to alter contained in the same document is effective. Welsbach Incurdescent Gas Light Co., (1904) 1 Ch. 87; and see Underwood v. London Music Hall, Ltd., (1901) 2 Ch. 309.

In many-perhaps it would be correct to say in most-cases the form of the clause in the memorandum is to the effect that "the shares in the capital for the time being, whether original or increased, may be divided into several classes with any preferential, special, qualified, or deferred rights, privileges, or conditions attached thereto." and, in such case, the power to attach preferential rights is clear.

In other cases, now less common than formerly, the memorandum is wholly silent as to the issue of special classes of shares; but oven in such cases it was long since held that the articles, as originally framed aud registered, could effectually divide, or give power to divide, the capital into different classes of shares with preferential and other rights attached. Harrison v. Mexican Rail. Co., 19 Eq. 358; Re South Durham Brewery Co., 31 C. D. 61. This conclusion was not arrived at without difficulty, for the decisions in Hutton v. Scarborough Cliff. Sc. Co. ((1865), 4 De G. J. & S. 672; and (No 2) 2 Dr. & Sm. 521, supra, p. 47), both appeared to point to the conclusion that, where tho memorandum of association was silent as to any distinctions between shareholders, there was an implied condition of equality, and, if so, it was not easy to see how (looking to sect. 12 of the Act of 1862 (sect. 7 of 1908)) the articles could modify this condition. However, Jossel, M. R., in Harrison v. Mexican Rail. Co. (19 Eq. 358), held that the articles could for this purpose explain, though they could not contradict, the memorandum, and, although Kay, J., subsequently decided the contrary in Re South Durham Brewery Co. (supra), that decision was reversed on appeal.

It is, however, not uncommon to find that neither the memorandum nor the articles, as originally framed, give power to issue preference or other special classes of shares. In this case, memorandum and articles being both silent, the following questions sometimes arise :---(1) Can the company issue part of the shares in its original capital with preferential or special rights attached? (2) Can the company issue new shares created upon an increase of capital with preferential or special rights attached?

At one time it was generally considered that both these questions must be answered in the negative.

As to the first question, it was decided by Lord Westhury, L. C., that when both the memorandum and articles were silent as to pre-

General clause in memorandum as to division in classes.

Memorandum silent, but power in original articles.

Where memorandum and articles are both silent as to classes of shares.

Views formerly prevailing.

PREFERENCE AND OTHER SPECIAL SHARES. Ch. VII.

ference shares, a company could not issue shares in its original capital as preference shares, at any rate, without altering its articles; and, further, his Lordship expressed doubt whether even by altering its articles, the power could be obtained (Hutton v. Scarborough Cliff, Sc. Co., 4 De G. J. & S. 672); and the decision of Kindersloy, V.-C., in Hutton v. Scarborough Cliff, &c. Co. (No. 2), 2 Dr. & Sm. 520, 521, went far to confirm this doubt. And as to the second question, it was expressly answered in the negative by the decision of Kindersley, V.-C., in the case last mentioned.

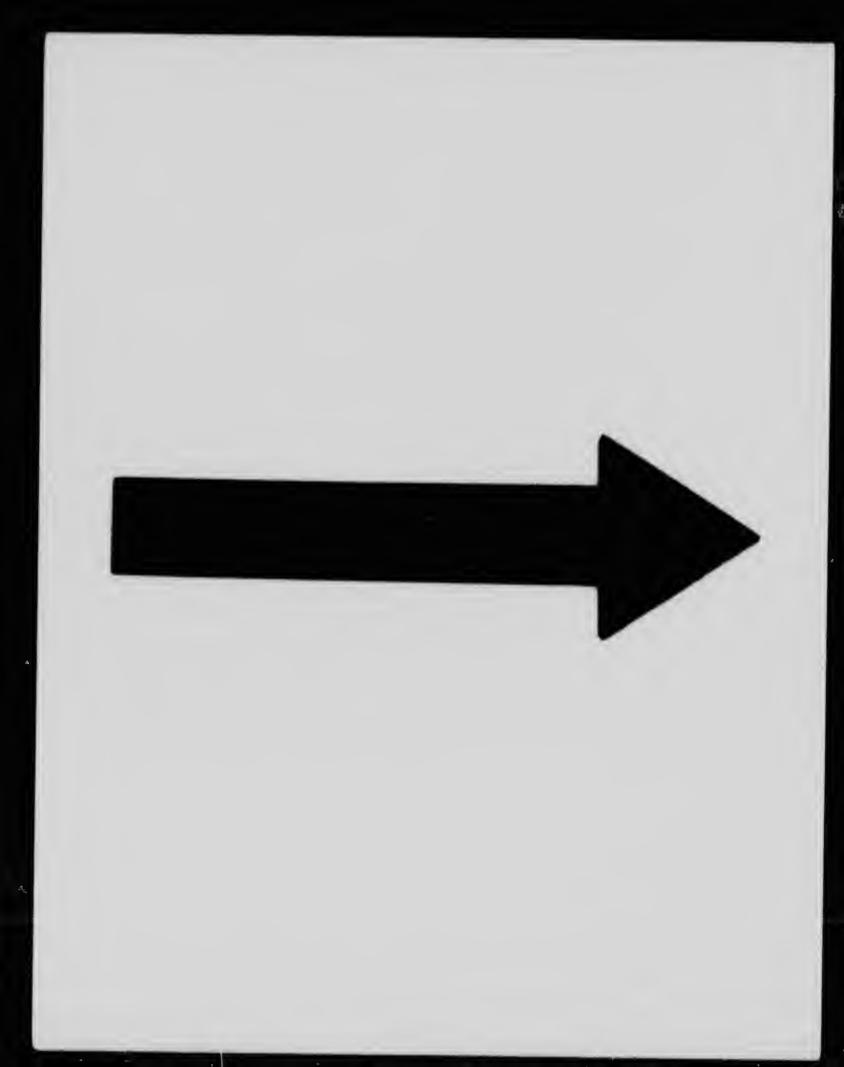
But this decision has now, as appears above (p. 48), been over- The law a ruled by the Court of Appeal in Audreurs v. Gas Meter Co., (1897) now settled 1 Ch. 361, and, accordingly, the correct answer to the second question is "yes, by altering its articles so as to take the requisite power."

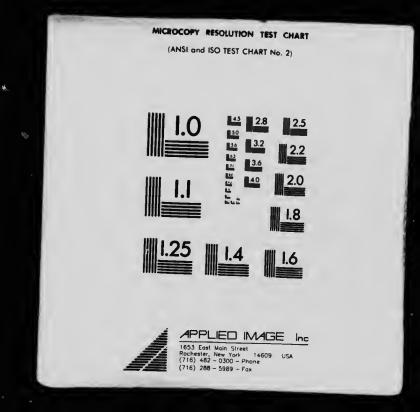
Moreover, the grounds given by the Court of Appeal for this decision go far to show that the same answer should be given to the first question; for it is now abundantly clear that silence in the memorandum does not amoant to an implied condition of equality as between the shares in the capital.

Cotton, L. J., in Guinness v. Land Corporation of Ireland, 22 C. D. 349, 377, said : "In reality it is not by implication from the construction of the memorandum that the equality of the shareholders as regards dividend arises, but by the implication which the law raises as between partners, unless their contract has provided to the contrary." And in a later case (Brilish Co. v. Couper, (1894) A. C. 399), Lord Maenaghten said : "I agree that the equality of shareholders as regards dividend is not an implied condition of the memorandum ; but I doubt whether it is necessary to have recourse to the doctrine of partnership. It seems to me that if the sum of the interests of persons concerned in a joint venture is divided into shares of equal amount distinguished by numbers for the purpose of identification, but with no other distinction between them, expressed or implied, it follows as a self-evident proposition that the interests of the shareholders in respect of their shares, as regards dividends and everything else, must

And, lastly, Andrews v. Gas Meter Co., supra, was decided in the Court of Appeal on grounds which are inconsistent with the proposition that silence gives rise to an implied condition of equality in the

There being, then, no implied and therefore unalterable condition of equality in the memorandum, it follows that an alteration of the articles can give the requisite power to issue part of the original shares as preference shares. This conclusion is not at variance with the decision in Hutton v. Scarborough Cliff Co. (4 De G. J. & S., No. 1, supro), for in that case the company was seeking to issue preference





shares, although neither its memorandum nor its articles gave power to issue the same, and although its regulations expressly, in effect, provided that all dividends were to be paid *pari passu*. It is only contrary to the doubt expressed by lord Westbury—a doubt which was nothing more than a dictum. As to altering the rights attached to classes of shares, see *infra*, p. 90.

Cumulative Dividends.

Cumulative and noncumulative dividends. In defining the rights of holders of preference shares in regard to dividends, it is necessary to determine whether a dividend payable to them is to be cumulative (*i.e.*, whether, where the profits of any year are insufficient to pay the preference dividend, the deficiency is to be made good out of the profits of subsequent years), or is to be non-cumulative (*i.e.*, payable as regards each year out of the profits of that year only).

Primá facie where the clause defining the preferential rights declares that the preference shares are to be entitled to a preferential dividend at a specified rate per cent., the dividend is cumulative. See Henry v. The Great Northern Co., 1 De G. & J. 606; Webb v. Earle, 20 Eq. 557; Foster v. Coles, 22 T. L. R. 555; but for clearness the word "cumulative" is sometimes inserted in the definition of rights, e.g., a fixed cumulative preferential dividend, &c. This prevents any mistake.

If the dividend is to be non-cumulative, the clause must be carefully framed accordingly, e.g., it should say that "the preference shares are to confer the right to receive out of the profits of each year a preferential dividend for such year" at the specified rate per cent.; or the definition may declare that the profits of each year available for dividend are to be applied first to the payment of a dividend for such year on the preference shares at the specified rate, and that the surplus shall be applicable to dividend on the other shares. All that is necessary is that it should appear with sufficient clearness that the preferential dividend for each year is to come only out of the profits of that particular year. If this intention is plain, the Court will give effect to it even though imperfectly expressed. Staples v. Eastman Photographic Materials Co., (1896) 2 Ch. 303. In addition to a fixed preferential dividend, preference shares are sometimes given the right to participate in surplus profits. But they have no such right unless it is expressly given to them by the articles. Will v. United Lankat Plantations. (1914) A. C. 11; National Telephone Co., (1914) 1 Ch. 755.

As to payment of arrears of preference dividend in the winding-up, see Crichton's Oil Co., (1901) 2 Ch. 184; W. J. Hall & Co., (1909) 1 Ch. 521; Company Precedents, 10th ed., Part 1., p. 817.

These are only some of the special rights and privileges attached to preference shares.

FOUNDERS' OR DEFERRED SHARES.

Preference as to Capital.

The right of a preference shareholder is primá facie confined to a Preference as preferential dividend. Apart from special provisions in the articles, to capital. he is not entitled to have his capital on a winding-up paid off in priority to the other shareholders (London India Rubber Co., 5 Eq. 519); but he is entitled, after repayment of all the paid up capital, to participate in the surplus assets of the shareholders in proportion to the nominal amount of the shares. Re Bridgwater Navigation Co., 14 A. C. 525.

" Preferential rights as to capital may be and often are attached. Then the clause runs that the preference shareholder: are to be entitled not only to a preferential dividend but to priority as regards capital in the winding-up. If so, the capital paid up on the preference shares in accordance with the clanse must, in a winding-up, be paid off out of the surplus assets before the ordinary shareholder can get anything. Re Bangor, Sc. Co., 20 Eq. 59. But the holders of preference shares are not then entitled to participate in any surplus capital. Re National Telephone Co., (1914) 1 Ch. 755 (not following Espuela Lond Co., (1909) 2 Ch. 187, having regard to the decision of the House of Lords in Will v. United Lankat, (1914) A. C. 11).

These are the general rules. But the rights of shareholders inter se must of course depend on the true construction of the documents. See infra, p. 416.

Founders' or Deferred Shares.

Besides preference and ordinary shares it is not at all uncommon, Founders' though it is less common than it was, to issue what are called founders' or deferred shares. or deferred shares. These shares are usually mentioned in the memorandum of association as part of the capital, e.g., capital 100,0001., in 100,000 shares of 17. each, whereof 100 shall be founders' shares. When this is the case, the memorandum generally defines the rights attaching to such founders' shares, e.g., that they shall confer on the holders the right to 10 per cent. of the surplus profits of the company for each year, which remain after paying a cumulative dividend at the rate of 10 per cent. on the capital paid up on all the other shares for the time heing issued. This is one very common clause, but the rights attached to founders' shares vary considerably. Sometimes there are 10,000 or more of 1s. each, and sometimes it is provided that each shall confer the same right as regards dividend, voting and in a winding up as if it were a fully paid-up ordinary share of 10/. (or 1/.). Founders' shares are mostly subscribed for by he vendors and promoters, but they are also sometimes used by way of bonus to attract subscribers for the ordinary or other shares.*

* Founders' shares offered as a bonus must not of course be issued without consideration or at a discount.

Ch. VII.

A prospectus must, under sect. 81, state the number of founders' or management or deferred shares, if any, and their rights and interests in the property and profits and their voting rights, unless sub-sect. 7 applies.

Increase of Capital.*

Increase of capital.

To increase the capital of a company limited by shares is to alter one of the couditions of its memorandum, but sect 41 of the Act of 1908 (which takes the place of sect. 12 of the Act of 1862) empowers a company limited by shares, "if so authorized by its articles," to alter the conditions of its memorandum so as "to increase its share capital by the issue of new shares of such conount as it thinks expedient." It is to be noted that the authority to increase may be unlimited and/or limited, and can be exercised from time to time (see sect. 32 of the Interpretation Act, 1889), but the Act does not say how the company may exercise the authority. It is not required that the increase shall be by special resolution, or extraordinary resolution, or by ordinary resolution. It follows that the power can be exercised on the company's behalf in the manner indicated in its articles, and whether "by special resolution," or "by extraordinary resolution," or "by resolution of a general meeting," or "by resolution of the directors," or "by the managing director," or "by the directors with the sanction of a special resolution" (Table A. of 1862), or "with the sanction of an extraordinary resolution" (Table A. of 1908), or otherwise. See Campbell's case, 9 Ch. 1.

In this respect the authority to increase is like the authority to convert shares \cdot to stock, or to consolidate shares (sect. 41), or the power to issue share warrants to bearer (sect. 37), or the power to adopt an official scal (sect. 79), or the power to pay interest during construction (sect 91). In all these cases the company can, "if so authorized by its articles," do the thing authorized in the manner authorized, and whether by special resolution, resolution of the directors or otherwise, and accordingly where the articles provide merely that "the company may increase its capital," without saying how, and contain the general clause (Table A., 71) enabling the directors to act generally on the company's behalf, the directors can exercise the power of increase. Camphell's case, supra.

The authority to increase is to be contrasted with the authority to reduce (sect. 46), and to sub-divide (sect. 41 (d)), which authorities can only be exercised by special resolution, and if the articles do not contain the requisite authority they must be amended by special resolution, and then the power has to be exercised by subsequent special resolution.

* As to control of new issues by the Treasury during the War, see Appendix, p. 632.

But two successive special resolutions can be passed in three meetings. John Crossley & Sons (1892), W. N. 55.

Where the articles do not contain the requisite authority to increase they should be amended by special resolution inserting the requisite authority. But a short cut may be taken, for in such case if the company passes a special resolution authorizing the creation and issue of the dosired new shares, that will in effect not on: give the authority to increase required by sect. 41, but uno flatu enn exercise that authority. It was so held by a full Court of Appeal in the directors to Campbell's case, L. R. 9 Ch. 1 at p. 21 (Lord Selborne, L. C., and James and Mellish, L. JJ.), differing in opinion from the Exchequer Chamber.

Where the articles of association enabled (clause 53) the company in general meeting to increase its capital, and by special resolution the words "by resolution of the directors" were substituted for the words "in general meeting," but the articles also contained a clause headed "Preference Shares," authorizing the issue of new shares with preferential or special rights, and generally on such terms as the company by resolution of a general meeting should declare, it was held that notwithstanding the alteration of clause 53, and that the new shares were issued as ordinary shares, clause 59 in effect precluded the directors from issuing the same without the sanction of a general meeting. Mosely v. Koffyfontein Co., (1911) A. C. 409. One would have thought that the object of clause 59 was to provide that no shares should be issued with any preferential or special rights without the sanction of the company in general meeting, and not to control or limit the directors' power to issue new as ordinary shares, especially looking to the alteration made in clause 53, and to the fact that sect. 41 of the Act authorizes the company "to increase its capital by the issue of new shares," so that really, as pointed out by Lord Selborne in Campbell's case, supra, there is no increase of capital until the new shares are issued. The decision is commonly thought to have defeated the manifest intention.*

What Classes of New Shares may be created.

Before answering this question it is necessary to make sure that Shares should Before answering this question it is necessary to make sure that only shows there is nothing in the memorandum to restrict or limit the company's be preference or ordinary, choice, e.g., that the memorandum does not provide that no preference of what class. shares shall be issued, or that specified first preferential rights shall be irrevocably (p. 81, supra) attached to a particular class of shares in the original capital, or that shares created upon an increase of

• This criticism was directed to the decision of the Court of Appeal ((1911) 1 Ch. 73). The House of Lords has subsequently affirmed the decision.

Ch. VII.

ca. 1 shall be deferred shares or ordinary shares only. Any such condition or provision, if contained in the company's memorandum and unqualified, must in nowise be contravened (Ashbury v. Watson, 30 C. D. 376; Re Welsbach Incandescent Gas Light Co.. (1904) 1 Ch. 87), but, subject as aforesaid, it is now settled, by the decision in Andrews v. Gas Meter Co., (1897) 1 Ch. 361, that it is open to the company, when the memorandum of association contains nothing to the contrary, to create and issue new shares with preferential or other special rights attached.

Thus, where the memorandum of association of a company contained a statement that the original preference shares therein mentioned should confer a right to a fixed cumulative preferential dividend, but also contained a power for the company to issue new shares on such special conditious as to priority or postponement, either for dividends or repayment of principal, as the company might determine, the company was held to have power to issue new preference shares to rank pari passu with the original preference shares. Underwood v. London Music Hail, Limited, (1901) 2 Ch. 309; Welsbach Incandescent The principal of the location

The principle of the decision in Andrews v. Gas Meter Co., supra, appears to be that "the rights of the shareholders in respect of their shares and the terms on which additional capital may be raised are matters to be regulated by the articles of association rather than by the memorandum, and are therefore matters which, unless provided for by the memorandum, as in Ashbury v. Watson, supra, may be determined by the company from time to time by special resolution pursuant to sect. 50 of the Act" (see sect. 13 of Act of 1908); and there is nothing inequitable in this readjustment of rights or interests, for the shareholders must be taken to have assented to it when they joined the company.

Assuming, then, that there is nothing in the memorandum to the contrary, the question as to what class of shares shall, upon a creation of fresh capital, be selected for increase, will turn on the special needs and circumstances of the company and on the condition of the market. According to the circumstances they will be pre-preference shares, preference shares, second preference shares, ordinary shares, or deferred shares.

As to the various rights commonly attached to preference shares, see supra, p. 84.

Notice of increase to registrar, Re

Notice of Increase to Registrar.

Where the capital is increased, notice thereof must be given to the Registrar within fifteen days from the date after the passing, or, in the case of a special resolution, of the confirmation of the resolution authorizing the increase; in default the company and every director nnd

STOCK.

manager will be liable to a penalty of 51. per day. Upon an increase of capital, duty has to be paid as provided for in See sect. 44. Table B in the First Schedule to the Act of 1908, and also (5s. per 100%) as provided for by sect. 7 of the Finance Act, 1899, and by sect. 5 of the Revenue Act, 1903.

Consolidation of Shares.

Sect. 41 of the Act of 1908 also gives power to cousolidate shares. Consolidation This power can, like the power to increase the capital, be made exer. of shares. cisable by ordinary, extraordinary, special, or other resolution of a general meeting, or by the directors. See supra, p. 86. And even where there is no power in the articles, it appears, on the principles of Campbell's case, 9 Ch 1, that the power may be exercised by a special resolution without first altering the articles. It is not very common to consolidate shares. It is more common to sub-divide them under the power contained in the same section. The tendency of modern business is to reduce, not increase, the denomination of shares.

Stock.

The conversion of paid-up shares into stock, also authorized by Conversion sect. 41 of the Act of 1908, may be effected either by special resolution or of shares into otherwise in such manner as the regulations provide. Such a conversion stock. can only be made where the shares are paid-up shares. Notice of conversiou must, as in the case of an increase of capital, be given to the registrar. (Sect. 42.) A considerable number of companies have availed themselves of this power, and have converted their shares into stock. One of the conveniences of stock, besides its divisibility, is that it becomes no longer necessary in a transfer to specify all the numbers of the various shares comprised in the transfer. A transfe, is merely of so much stock. Under sect. 41 stock can be re-converted into shares in the manner provided by the articles. Stock cannot be issued direct by the company; but, if it is so issued, this irregularity can be waived. Where, however, a company purported to issue honus stock and partly paid stock, these two issues were held to be entirely void, the holders had uo rights, and calls could not be made on them. Re Home and Foreign Investment Co., (1912) 1 Ch. 72.

Sub-division of Shares.

Sub-division of shares is provided for in sect. 41 of the Act Sub-division of 1908, which takes the place of sect. 21 of the Act of 1867, of shares. Prior to this enactment it was ultra vires to sub-divide shares. Rimington's case, 2 Ch. 714; see also Sewell's case, 3 Ch. 131. A power to sub-divide must be contained in the articles and must be

exercised by a special resolution. Hence, nulike increase of capital (see Campbell's case, p. 87, supra), if there be no power in the regulations, two successive special resolutions must be passed (1) altering the articles by inserting the power, and (2) exercising the power by effecting the sub-division. See West India, §c. Steamship Co., 9 Ch. 11; and Patent Invert Sugar Co., 31 C. D. 166. Notice of a special resolution to sub-divide shares must be given to the registrar. (Sect. 42.) The articles sometimes contain power on sub-division to attach a preference to some of the shares resulting from the sub-division as against the other shares; and, having regard to the decision in Andrews v. Gas Meter Co., (1897) 1 Ch. 361, it would seem that such a power can be inserted in the articles, even though not appearing in the articles as originally framed.

Alterations of Preferential and Special Rights.

Alteration of rights of special classes of sharcholders,

Where preferential or other special rights are by the memorandum of association unconditionally attached to a class of shares, such rights can only be altered by virtue of some power reserved in that memorandum (Ashbury v. Watson, 31 C. D. 371; Underwood v. London Music Hall, Limited, supra; Re Welsbach Incandescent Gas Light Co., (1904) 1 Ch. 87), or by virtue of a scheme sanctioned by the Court under sect. 120 of the Act, or under sect. 45 of the Act. See p. 100, post.

If the rights are attached by the articles only, the position is altogether different, and there is greater scope for alteration. This is a matter of great importance, for after issuing preference shares it is not uncommon to find it desirable to alter the rights attached thereto, *e.g.*, by sanctioning the creation of pre-preference shares, or of further preference shares ranking *pari pussu* with the original issue, or by reducing the rate of the preferential dividend.

It was formerly considered that such alterations could only be made where the articles in force when the shares were gave the requisite power. Thus in Harper v. Paget, where prefersued ence shares had been issued and it was proposed to issue further preference shares ranking pari passu with them, Jessel, M. R., granted an injunction to restrain such issue. This case is montioned in Griffith v. Paget, 5 C. D. 895. And see the Order, Company Precedents, Part I. 1408. But having regard to Andrews v. Gas Meter Co., (1897) 1 Ch. 361, it seems doubtful whether this view can be supported. There is, of course, no question that a clause in the articles, in force at the time when the shares were being issued, authorizing a modification of the rights attached thereto, e.g., with the sanction of a three-fourths majority in value of the holders of the shares of the class, is effective ; but the question is whether such a clause cannot, under sect. 13 of the Act of 1908, which takes the place of sect. 50 of the Act of 1862, be introduced into the articles so as to

REDICTION OF CAPITAL.

have full effect; and, looking to the dc ision above referred to, it would seem that this question should be unswered in the affirmative: the concluding words of sect. 13 of the Act point clearly to the conclusion that such a elause, if inserted, would be as valid as if contained in the articles of association as originally registered. See National Dwellings Co., 78 L. T. 144, North, J.

Whether a company, which has issued preference shares with rights only attached by the articles, can, without inserting any such clause in its articles, alter by special resolution the rights so attached is a still more difficult question; thus, if the company has issued 10,000 preference shares and 100,000 ordinary shares, would a special resolution reducing the dividend on the preference shares and earried by the votes of the holders of the ordinary shares bo effective ? Probably such interference with the rights of a class by a majority proposing to benefit themselves at the expense of the class so dealt with would be restrained as unfair and oppressive, and an abuse of the power to alter articles. See Menter v. Hooper's Telegraph Co., 9 Ch. 350; and see, per Romer, L. J., Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656.

Reduction of Capital.

The Companies Act, 1862, made no provision for reduction of Reduction of capital. The theory of that Act was that the limited capital, the capital. creditors' only fund, was not to be capable of reduction otherwise than in the prosecution of the company's objects; but the working of the Act showed that there were many eases where capital could be reduced without any injustice to ereditors, and where commercial convenience required that it should be reduced. In these cases the Companies Acts of 1867 and 1877 relaxed the severity of the rule against reduction, but they by no means abolished it. On the contrary the legislature has, throughout these Acts, in granting a qualified right of reduction to companies, studionsly safeguarded tho rights of ereditors by stringent conditions and every precaution in its power. The Act of 1908, sects. 46-56, re-enacts the provisior for reduction.

Power to Reduce.

In order to effect a reduction of eapital, the articles of the com- Power to pany must contain power to reduce. See sect. 46. Power in the redu memorandum is not effective. Re Dexine Patent Packing and Rubber Co., 88 L. T. 791.

If there is no such empowering clause in the articles, they must be altered by special resolution, and subsequently a further special resolution must be passed to reduce the capital in the manner proposed.

Ch. VII.

See Patent Invert Sugar Co., 31 C. D. 166; Oregon Mortgage Co. (1910), S. C. 964, Court of Session, and p. 90, supra. The statutory power cannot be fottored. Ayre v. Skelney's Adamant Cement Co., * T. L. R. 587. The resolution for reduction must state with sufficient clearness what is to be done in the way of reduction. It need not purport in terms to alter the memorandum of association (Campbell's case, 9 Ch. 1), but it must show what is proposed to be done, e.g., "that the present capital of 10,0002, divided into 1,000 shares of 10% each, be reduced to 5,000%, divided into 1,000 shares of 5% each, and that such reduction be effected by cancelling the present liability of 51, per share, and reducing the nominal amount of each share to 51.," or, "that the capital of the company be recared from 10,0001., divided into 1,000 shares of 10%. each, to 5,000%, divided into 1,000 shares of . I. each, and that such reduction be effected by cancelling , nid-up capital which has been lost or is unrepresented by available assets to the extent of ---- /., and by reducing the amount of the shares from 101. to 51.," or, "that capital of the company be paid off to the extent of 5% per share, upon the footing that the same may be culled up again as and when required in accordance with the regulations of the company."

Modes of reduction. Modes of Reduction.

There are several medes of reducing capital. Some of thes, in be carried out without the sanction of the Court; for others the sanction f the Court is required.

The general rule or principle of the Act is, that the capital of a company is not to be reduced without the sanction of the Court in any case where the rights of creditors are affected, and for this reason : The creditors of a company are invited to deal with the company on the footing of its registered capital being a reality, of the registered shareholders being liable for the unpaid portions of their shares, and of the company having received the paid-up capitul which appears in its register and in the returns to the Registrar of Joint Stock Companies, and if this liability to pay up were released or the paid-up capital returned to shareholders, or the creditors' security in any other manner given a vay or tampered with, it would seriously alter their position. Trevor v. Whitworth, 12 App. Cas. 409. The company's capital is embarked in its business and it must run the risks of that business. It may be diminished. It may be lost. Of that persons dealing with the company are aware and tuke the chance, but they have a right to rely, and were intended by the legislature to have a right to rely, en the capital remaining undiminished by any expenditure outside these limits, er by any return of any part of it to the shurehelders. Per Lord Herschell, Trevor v. Whitworth, &c., supra.

MODES OF REDUCTION.

It will be convenient to deal with reduction under two heads, viz.:-

- 1. Reduction not requiring sanction of Court.
- 2. Reduction requiring sanction of Court.

1. Reduction of capital without the sanction of the Court is allowable. Where cancin the following cases :---

- (a) A company may forfeit shares for non-payment of calls or instalments pursuant to its articles. Such a proceeding amounts, if there be any liability on the shares, to a reduction of capital, but the Act clearly contemplates such a reduction as an allowable proceeding. See Articles 24 to 30 of Table A.
- (b) A company may pay off paid-up capital out of accumulated profits. This is expressly sanctioned by sect. 40, e.g., where the company has a reserve of undistributed profits and it desires to pay off, say, the sum of 51. per share, on the footing that it should be capable ci being called up again. Neale v. Birmingham Transvays Co., (1910) 2 Ch. 464.
- (c) A company may, by special resolution under sect. 41 (e) of the Act of 1908, without asking for or obtaining the sanction of the Court, cancel shares which have not been taken or agreed to be taken (this is not reduction, sect. 41 (4)), but where it is desired to cancel shares which have been taken or agreed to be taken the sanction of the Court must be obtained.
- (d) A company may in certain cases accept a surrender of shares, e.g., as a short cut to forfeiture, but no company may take back shares which are effectually repudiated on the ground of misrepresentation; and it seems doubtful whether the power to acc , surrenders can safely be excreised urless it is sanctioned by the Court, or unless the company is in a position to forfeit the shares and boná fide arranges a surrender as a shor' cut to the same end. The validity of each case of surrender of shares must be decided upon its own merits. See what Lord Herschell said in Trevor v. Whitworth, 12 App. Cas. 418. "A surrende, of shares in consideration of a payment in money or money's worth by the company is a purchase by it of its own she es and is ultra vires." Per Lord Macnaghten, Trevor v. W. worth, supra; and see British, &c. Co., (1894) A. C. 399; and Bellerby v. Rowland and Marwood's S.S. Co., (1902) 2 Ch. 14.

In the case last mentioned a surrender of partly paid shares, though made in good faith, was held to be invalid. "Every urrender of shares," said Cozens-Hardy, L. J., in that case, "whether fully paid up or not, involves a reduction of capital which is unlawful, except

93

Ch. VIT.

not required.

tion of Court

where sanctioned by the Court under the Companies Acts of 1867 and 1877. Forfeiture is a statutory exception and is the only exception."

It has indeed been held that a surrender of shares in exchange for other shares may in some cases be effected without the sanction of the Court (new Eichbaum v. City of Chicago, §c. Ca., (1891) 3 Ch. 450), but in coming to this decision, Stirling, J., relied on Teasdale's case, 9 Ch. 54, the authority of which had been severely shaken by Trevor v. Whitworth, 12 App. Cas. 409. Moreover, Lord Justice Rigby, when ut the bar, advised (see Company Precedents, Part 1. 751), notwithstanding Eichbaum v. City of Chicago, Sc. Co., sapra, that a general scheme for exchange of shures was invalid as involving a trafficking by the company in its own shares (see Hope v. International Co., 4 C. D. 327), and that the shures issued by the company in exchange could not, for such a consideration, be regarded as effectually paid up or partly paid up, for the company gets no additional assets by the transaction, seeing that the amount paid up on the share surrendered in exchange already belongs to the company absolutely. And, lastly, on the appeal in Bellerby v. Rowland and Marwood's S.S. Co., supra, Stirling, L. J., expressed an opinion that in deciding Eichbaum v. City of Chicago, &c. Ca., he should not have followed Teasdale's case. Notwithstanding these considerations such an exchange was held by Warring-'on, J., not to involve a reduction of capital. See Rowell v. John Rowell & Sous, Ltd., (1912) 2 Ch. 609.

Where sanotion of Courf ,required,

- (a) Reducing the hirbility of shareholders in .espect of uncalled or unpaid capital, e.g., where the shares are 10% cach with 5% paid up, reducing them to 5% fully paid-up shares, and thus relieving the shareholders from liability of the uncalled shares. This is the kind of reduction more especially contemplated by the Act of 1867, and is provided for in sect. 46 (1) (a) of the Act of 1908.
- (b) Paying off or returning paid-up capital not wanted for the purposes of the company, e.g., where the shares are 10/. fully paid up, reducing them to 5/., and paying back 5/. per share. Sect. 46 of the Act expressly provides that this kind of reduction is to be allowable. Lees Brook Spinning Co., In re, (1906) 2 Ch. 394; Artizans' Land and Mortgage Carp., In re, (1904) 1 Ch. 796; Piercy, In re, (1907) 1 Ch. 289.
- (c) Paying off paid-up capital on the footing that it may be called up again. Thus, if the shares are 10*l*. fully paid up, paying off 2*l*. per share on the footing that when desired the company may call it up again. Fore Street, §c. Co., 59 L. T. 214.

- (d) Cancelling shares which have been surrendered, or the holders of which consent to enucellation. Llynei Co., 26 W. R. 55; Vivian & Co., 54 L. T. 381; Poole . National Bank of China, (1907) A. C. 228,
- (e) Paying off and cancelling preference shares, in pursuance of a contract in the presonandum and articles binding on both preference and ordinary shoreholders, by applying for the purpose a portion of the profits of the company. See In r. Dicido Pier Co., (1891) 2 Ch. 354.
- (f) Lost Capital. Cancelling capital which has been lost or is nnted by available assets. This is one of the commonest repre modes of reduction. A company, whose capital amounts to 100,0007, in 107, shares, has lost, say, 50,0007, by some business disaster. Nothing, as Sir George Jess I said, can be more beneficial to the company than to admit the loss, and to write it off (Iu re Ebbur Vale Co. (1877), 4 C. D. 827), e.g., to reduce its 10% shares to 5%, and thus place itself in a position to resume payment of dividends.

The provisions empowering a company to cancel "any lost capital, or any capital unrepresented by available assets," are alternative provisions, and the latter is not explanatory of the former. Hoare & Co., Ltd., In re, (1904' # Oh. 208.

(g) Any other kind of reduction (except the centioned on p. 93, supra), sect. 46. British and American o. v. Couper. (1894) A. C. 399; Poole v. National Bank of China, (1907) A. C. 229; Louisiana, §c. Co., (1909) 2 Ch. 552.

In connection with reductions it sometimes becomes necessary to cancel wholly or in part arrears of preference dividend. This requires an arrangement under sect. 120 (Australian Estates and Mortgage Co., (1910) 1 Ch. 414; Hoare & Co., (1910) W. N. 87), unless the memorandum or articles vest the requisite power in a class meeting. (Hoare & Co., (1904) 2 Ch. 208.)

All round Reduction.

Primá facie a reduction of capital should be an all round one; that All round is to say, where capital is to be paid off or to be eancelled as lost or reduction. unrepresented by available assets, or where the liability for uncalled capital is to be reduced, the same percentage should be paid off or cancelled or reduced in respect of each " are; and this pari passumode of reduction is the proper mode where there are several classes of shares, e.g., ordinary and preference shares (Bannatyne v. Direct Spanish Telegraph Co., 34 C. D. 287; Direct Spanish Cuble Co., 34 C. D. 307; Barrow Hematite Steel Co., 39 C. D. 582; Credit Assurance and Guarantee Corporation, (1902) 2 Ch. 601), unless such pre95

Ch. VII.

ference shares have priority as regards capital in winding-up (Re American Pastoral Co., 62 L. T. 625), in which case the loss should be thrown first on the ordinary shares. And see Floating Dock of St. Thomas, (1891) 1 Ch. 691; London and New York Co., (1895) 2 Ch. 860. But it is open to a company to pass a special resolution reducing the capital otherwise than in accordance with the legal rights of the shareholders, e.g., by paying off wholly or in part some of the shareholders, although all are entitled to rank pari passa; or by cancelling part of the capital paid up on one class, although both classes raak evenly as regards capital. And it is now settled that the Court has jurisdiction to confirm any kind of reduction, notwithstauding that it iavolves a departure from the legal rights of the classes. British and American Corporation v. Couper, (1894) A. C. 399; Credit Assurance and Gnarantee Corporation, (1902) 2 Ch. 601; Allropp and Sons, 51 W. R. 614; Welsbach Incandescent Gas Light Co., (1904) 1 Ch. 87; National Dwellings Society. In re, 78 L. T. 144; Louisiana and Southern States Real Estates Co., (1909) 2 Ch. 552; Thomas de la Rue & Co., (1911) 2 Ch 361. For the power to confirm a reduction conferred by the Acts of 1862 and 1877 (now represented by sect. 46 of the Act of 1908) is perfectly general.

"It will," said Lord Herschell, L. C., in British and American Corporation v. Couper, supra, "be observed that neither of these statute- [1867 and 1877, for which sects. 46-56 are now substituted] prescribes the mode in which the reduction of capital is to be effected, nor is there any limitation of the power of the Court to confirm the reduction, except that it must first be satisfied that the creditors entitled to object to the reduction have either conseuted or been paid or secured . . . If, then, the scheme which the Court is asked to contirm be in fact one for the reduction of capital, I am, with all deference, at a loss to understand how the Court in confirming it could be acting ultra vires, seeing that, as I have pointed out, the statute has not prescribed the manner in which the reduction is to be carried out. Nor has it prohibited any method of effecting that object . . . I think it was the policy of the legislature to entrust the prescribed majority of the shareholders with the decision whether there should be a reduction of capital, and if so, how it should be carried into effect. The interests of the dissenting minority of the shareholders (if there be such) are properly safeguarded by this: that the decision of the majority can only prevail if it be confirmed by the Court." And Lord Macnaghten, in the same case, referring to the power given by the Act of 1867, said, "The power is general the Companies Act, 1877, was passed merely in order to remove certaia doubts created by the decision of Sir George Jessel in the Ehbw Vale case, 4 C. D. 827, which was, I believe, a surprise to the profession at the time, and which is, I believe, generally thought to have been incorrect but there is

ALL ROUND REDUCTION.

not a word in the Act of 1877, from beginning to end, tending to narrow the scope of the Act of 1867. The generality of the power conferred by that Act is left wholly untouched." There can be no mistake here as to the principle on which the House of Lords proceeded.

Yet, strange to say, in Anglo-French Exploration, (1902) 2 Ch. 845, Buckley, J., treated this principle as unsound, and held that iuasmuch as the Act of 1877 gave specific power to cancel capital lost or unrepresented by available assets, it impliedly denied jurisdiction to sanctiou the cancellation of capital not lost or unrepresented by available assets, e.g., to sanction a cancellation of paid-up shares which the holder was willing to have cancelled for the company's benefit. This, as pointed out in the fifth edition of this work, was inconsistent alike with the principle laid down in the House of Lords as above stated, and with a series of cases in which the Court has from time to time exercised the very power thus supposed to be denied to it. See Llynvi Co., 26 W. R. 55; Re Vivian & Co., 54 L. T. 384; Islington Electric Co., W. N. (1892) 81; Re Dicido Pier Co., (1891) 2 Ch. 354.

However, in a recent case in the House of Lords, Poole v. National Bank of China, (1907) A. C. 229, that House dissented from the views so expressed by Buckley, J., and re-affirmed the principle laid down in British and American Corporation v. Couper, supra.

"The decision," said Lord Macnaghten, "of Buckley, J., in Anglo-French, &c. goes even further. His language, if correctly reported, seems to imply that because the Act of 1877 specifies certain cases and declares that the pewer conferred by the Act of 1867 includes those specified, it is to be inferred that in all other cases the jurisdiction of the Court is excluded. If that is the meaning of what the learned judge said, with all respect I am unable to agree with his view. The condition that gives jurisdiction is not proof of loss of capital or proof that capital is unrepresented by available assets, or that capital is in excess of the wants of the company. The jurisdiction arises whenever the company seeking reduction has duly passed a special resolution to that effect. In the present case the creditors are not concorned at all. The reduction does not involve the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital."

The Court will not sanction the cancellation of a class of shares on the footing that in lieu thereof the company is to issue to the holders a much larger amount of paid-up shares of another class. Development Co. of Central Africa, (1902) 1 Ch. 547.

If the company reducing its capital has a reserve fund, there is uo obligation to apply in the first instance the whole of such reserve fund to replace the capital account; and if the reserve fund has been employed in the business and is therefore mixed up with the general

Р.

97

ſ

assets, a loss falls on the reserve and on the paid-up capital rateably (*Re Hoare & Co.*, (1904) 2 Ch. 208; *Poole v. National Bank of China*, (1907) A. C. 229), unless the company chooses to throw on reserve a larger proportion than its rateable proportion.

In the case last mentioned, Lord Macnaghten said: "The Court of Appeal was not quite satisfied about the propriety of retaining in hand any part of the reserve fund, but the proposal was allowed to pass on the company giving an undertaking which is embodied in the order that no part of the sum retained out of the profit reserve fund should be applied otherwise than for capital purposes. As the company offered this undertaking I do not propose to your lordships that it should be omitted, but I do not quite understand what the undertaking means or how long it is intended to last. But I must say, speaking for myself, that I do not think that this addition to the order ought to be treated as a precedent in any other case."

The Court will not, under guise of a reduction of capital, sanction a resolution which effects a "conversion" and "re-allocation" as distinguished from a reduction of capital. Walker Steam Trawl Fishing Co. (1908), S. C. 123, Ct. of Sess.

Proceedings to obtain Sanction of Court.

Proceedings for sanction of Court.

As to the mode of procedure where the sanction of the Court is required, the first step is to pass the requisite special resolution reducing the capital. The next is to apply to the Court to confirm the resolution. This application is made by petition. The petition states the incorporation and nature of the company, its subsequent history, the passing of the special resolution for reduction, and the facts requisite to show that it is a propor case for reduction, and prays for a confirmation order. See Company Precedents, Part I., p. 1268. Where the reduction does not involve either the diminution of liability or the payment off of any paid-up capital (A. cases) the procedure is short and simple. A summons in chambers is taken out, and on it directions are given fixing a day for hearing the petition and ordering meanwhile advertisements to be inserted in the Gazette and other newspapers. The petition then comes on-usually in about a fortnight-and the order can be at once made without setting in motion any of the complicated machinery provided by the legislature where the rights of creditors aro involved. But the Court requires in these cases very clear proof that the capital alleged to have been lost has in fact been lost. Re Barrow Hematite Steel Co., (1900) 2 Ch. 846; on appeal, (1901) 2 Ch. 746. In cases (B.) which do involvo a diminution of liability or a return of paid-up capital, the procedure is much more elaborate. It is provided for

PROCEEDINGS TO OBTAIN SANCTION OF COURT. Ch. VII.

in detail in the Rules of the Supreme Court as to reduction of capital, 1908. See *infra*, Appendix; Company Precedents, Part I., An in set

An inquiry has to be made as to the debts and liabilities, advertisements have to be issued, the consent of creditors has to be obtained. Such as do not consent must be paid off, or provision be made for paying their debts into Court. As to obtaining consent of bearer debenture holder by extraordinary resolution under a majority elause in the trust deed, see Re Hydraulic Power Co., (1914) 2 Ch. 187; and as to satisfying landlord's claim to future rent, see Palace Billiard Rooms, Ltd. v. City Property, Ltd., Court of Sess. (1912), S. C. 5. Ultimately, at the end of six or eight months, the petition comes on and an order may or may not be made. If made, the order must be adver-The London Steamboat Co., 31 W. R. 781; Canada N. W. Co., W. N.*(1885) 61. In either case, (A.) or (B.), the words "and Reduced" have to be added to the company's name and used for a longer or shorter period. In (A.) cases these words need not be used until the presentation of the petition, and the Court has power in such cases to dispense with them altogether; but it rarely, if ever, does so now. In case (B.) the words have to be used as from the passing of the special resolution until such time as the Court shall fix for discontinuing. In both eases the Court generally requires the use of the words to be continued for a month from the order confirming the reduction. For cases as to dispensing with further use of the words "and reduced," see Sumatra Tobacco Co. (1898), W. N. 80; Re Australian Estates. (1910) 1 Ch. 414; Re Lindner & Co., (1911) W. N. 66; Andrew Knowles & Sons, Ltd., (1912) W. N. 300 (use of words on the company's seal dispensed with). In making the order the Court approves a minute expressing the new condition of the capital, as to the form of which see Company Precedents, Part I. p. 1297; and Oceana Development Co., (1912) W. N. 121, 138; Thomas Wolfe & Son, Ltd., (1912) W. N. 286; Re Victoria (Malaya) Rubber Estates, (1914) W. N. 307: and this minute, together with a copy of the order, has to be filed with the Registrar, who gives a certificate, which completes the reduction.

This certificato is conclusive of the reduction, even though it is shown afterwards that the company had not by its articles any power to reduce (*Re Walker and Smith, Limited,* 72 L. J. Ch. 572), or that the special resolution for reduction was invalid. Ladies' Dress Association v. Pulbrook, (1900) 2 Q. B. 376.

In Calgary and Edmonton Land Co., (1906) 1 Ch. 141, it was held by Buckley, J. (in total disregard of the express provisions of the Companies Act, 1867), that where eapital was to be paid off it ought to be paid off after the presentation of the petition, but before the order confirming the reduction. This was clearly organized off

This was clearly erroneous. See Com-7 (2)

pany Precedents, Part I., p. 1305; and Eady. J., in Lees Brook Spinning Co., (1906) 2 Ch. 394; Warrington, J., in Estate and Finance Co.; and Parker, J., in General Industries Development Syndicate, Limited (1907), W. N. 23, declined to follow the decision.

Occasionally the Court directs publication of the reasons for reduction. Truman, Hanbury & Co., (1910) 2 Ch. 498; Form 624, Company Precedents, Part I., p. 1284.

Re-Organization of Capital.

Re-organization which involves no alteration of the memorandum of association may be effected by the appropriate resolutions without the sanction of the Court. *Re Australian Estates Co.*, (1910) 1 Ch. 414.

Where the re-organization involves an alteration of the memorandum of association and also either consolidation of shares of different classes or division of shares into shares of different classes, the provisions of acet. 45 of the Act must be complied with, which involve a special resolution confirmed by the Court and a resolution passed by a majority in number of the shareholders of each class holding at least threequarters of the issued share capital of such class, and confirmed as a special resolution.

For a case of sub-division under this section, see *Re Vine and General Rubber Trust*, 108 L. T. 709. Meetings must be called for this purpose, at which proxies will be allowed. *Re Foucar & Co.*, (1913) W. N. 83.

Where an alteration of the memorandum is necessary, not involving consolidation or division of classes of shares, sect. 45 does not apply. *Re Schweppes*, *Ltd.*, (1914) 1 Ch. 322, following *Re Palace Hotel*, *Ltd.*, (1912) 2 Ch. 438, and overruling *Re Doecham Gloves*, *Ltd.*, (1913) 1 Ch. 226. [Jt is not quite clear how far the memorandum can then be altered by a scheme of arrangement under sect. 120 (see *Palace Hotel*, *Ltd.*, (1912) 2 Ch. at p. 442), since sect. 7 only authorizes alterations of the memorandum in cases for which express provision is made in the Act. But see *Re J. A. Nordberg*, *Ltd.*, (1915) 2 Ch. 439; where, however, this point was not raised.]

Rights accorded to preference shareholders do not necessarily interfere with the ordinary shareholders so as to require a meeting of the latter under the section. *Re Stewart Carburettor*, (1912) W. N. 100; 28 T. L. R. 335.

The proceedings are by petition similar in form to a petition for reduction of capital. The petition nced not be advertised. Ashanti Development, Ltd., (1911) W. N. 144.

CHAPTER VIII.

MEMBERSHIP.

EVERY company under the Act of 1908 is composed of members, Members. though in contemplation of law it is an entity distinct from such constituent members. In the case of a company limited by shares, the terms "momber" and "shareholder" are synonymous. A member Shareholders. is a shareholder, and a shareholder is a member. Wo have now to consider what it is which constitutes membership. It is a point of the first in portance in the law of companies, and to answer it we must turn to sect. 24, which takes the place of sect. 23 of the Act of 1862; that section provides as follows :---

"24.—(1) The subscribers of the memorandum of a company Who are under this Act shall be deemed to have agreed to become members of members. the company, and on its registration shall be entered as members in its register of members; (2) every other person who agrees to become a member of a company, and whose name is entered on its register of members, shall be a member of the company."

This section, it will be observed, deals with two classes :---

- (1) Those persons who have subscribed the company's memorandum Subscribers. of association.
- (2) Those persons who have agreed to be members, and whose C² ...

These and these only can strictly be called members in the sense of having acquired the full status of membership. Nicol's case (1884), 29 C. D. 421.

A person may, therefore, become a member or shareholder in any of the following ways :---

- (1) By subscribing the memorandum of association before its registration.
- (2) By agreeing with the company to take a share or shares, and being placed on the register of members.
- (3) By taking a transfer of a share or shares, and being placed on the register of members.

MEMBERSHIP.

- (4) By registration on succession to a deceased or bankrupt member.
- (5) By allowing his name to be en the register of members or otherwise holding himself out or allowing himself to be held out as a member. See *infra*, p. 126.

Premising thus much, let us proceed to analyse a little mere closely the conditions creating the status of membership; and first of personal subscribing the memorandum.

Subscribers to the Memorandum.

Subscribers to memorandum.

Every such subscriber becomes a member ipso facto on the incorporation of the company, and liable as the helder of whatever number of shares he has subscribed for. The 23rd section of the Act of 1862 (for which seet. 24 of the Act of 1908 is substituted), as Bowen, L. J., pointed out (Nicol's case, 29 C. D. 447), defines the status of a subscriber of the memorandum of association in a different way to the position of other persons who agree to become members. "It is plain," said Lord Cairns in Evans' case (1867), L. R. 2 Ch. 420, " that the original subscribers are by the Act of Parliament deemed to have taken the shares set opposite their names-the object being that the public might rest with confidence on the subscribers of the memorandum becoming members of the company." And see Migoth's case, 4 Eq. 238. In the case of the subscribers of the memerandum, therefore, ne allotment is necessary (Re London and Provincial Co., 5 C. D. 525); ne entry on the register of members is necessary. Nicol's case, supra; Alexander v. Automatic Co., (1900) 2 Ch. 63. The subscriber is bound to take the shares from the company, and to pay for them on call duly made like any other shareholder. Alexander v. Automatic Co., supra. He cannot in satisfaction of this obligation ike a transfer of fully paid shares "om another member; the only way no can possibly escape liability is by showing that all the shares have been allotted to others. Mackley's case, 1 C. D. 247; Evans' case, supra. See also Re Esparto Trading Co., 12 C. D. 191, where a subscriber who had not been placed on the register was nevertheless held liable for the shares he had subscribed for after a lapse of nine years. In In re Argyle, &c. Co., 54 L. T. 237, liability was enforced after a lapse of four years.

But where the subscriber showed that his subscription was intended to be on behalf of his firm, and the shares were allotted to the firm, it was held that he had discharged his obligation. *Dunster's case*, (1894) 3 Ch. 473.

As to the subscriber's liability to pay, see infra, p. 116.

A subscriber cannot repudiate on the ground of misrepresentation. Metal Constituents Co., (1902) 1 Ch. 707.

APPLICATION FOR SHARES.

Ch. VIII.

Other Members.

To come next to the second class of persons dealt with by sect. 24(2) Other -every other person who agrees to become a member, and whose members. name is entered in its (the company's) register of members.

Here the section contemplates two things :-(1) an agreement; (2) entry on the register. Au agreement alone does not create the status of membership. It is a condition precedent to acquiring such status of membership that the shareholder's name should be entered on the register. Per Fry, L. J., Nicol's case, 29 C. D. 421; see further, infra, p. 111.

The Agreement to take Shares.

There is ne difference, as Chitty, J., said in Nicol's case, 29 C. D. 421, Agreement to between a contract to take shares and any other contract. A formal take shares. agreement is not necessary. If, in substance, an agreement is made, the form is not material. Ritso's case (1877), 4 C. D. 782. constitute a binding contract to take shares in a company, when such contract is constituted, as it usually is, by application and allotment, there must be an application by the intending sharchelder, an allotment by the directors of the company of the shares applied fer, and a communication by the directors to the applicant of the fact of such allotment having been made. In re Scottish Petroleum Co.,

Application for Shares.

An application for shares is usually made in writing signed by the Application applicant, but au application by word of mouth is effective. Ex parte Bloxam, 33 Beav. 529 a ; Levita's case, L. R. 3 Ch. 36. An application is an offer by the applicant and, like any other effer, it may be withdrawn at any time before acceptance is notified to the applicant, er, if the acceptance is by post, at any time before the letter of acceptance is posted (Hehb's case, 4 Eq. 9; Dunlop v. Higgins, 1 H. L. C. 381; Henthorn v. Fraser, (1892) 2 Ch. 27; Wallace's case, (1900) 2 Ch. 671), and such withdrawal may be by word of mouth. Truman's case, (1894) 3 Ch. 272. Withdrawal by post is net effective unless it reaches the company before notice of allotment is posted. Byrne v. Van Tienhoren, 5 C. P. D. 344.

The general rule qui facit per alium facit per se applies to a centract Application to take shares, and, accordingly, A. can authorize B. to apply for by agent. shares on A.'s behalf, and, if shares are alletted to A., he becomes a member. Barrett's case, 4 De G. J. & S. 416; Hannan's Empress, 5 ... Co., (1896) 2 Ch. 643; Hindley's case, (1896) 2 Ch. 121. Ner is it

for shares.

MEMBERSHIP.

essential that the agent should have actual authority: it is sufficient if he is held out as having authority. Thus, where A. gives B. an open letter authorizing him to apply, and gives him private instructions limiting the authority. Here, if B. applies showing his authority but concealing the private instructions, A. is bound, though the application is in contravention of the private instructions. *Henry Bentley §* Co., 69 L. T. 204.

If A. applies for shares in a fictitious name and is allotted some, he will be held liable as a member in respect thereof, and his real name may be entered on the register. Pugh and Sharman's case 13 Eq. 566. Where an application is sent in the name of another not suij ris (e.g., an infant son), it has been held that the case is the same as if the application were sent in in a false or fictitious name. The transaction is fabula acta, and the applicant himself may be put on the list of contributories (Pugh and Sharman's case, 13 Eq. 566; Richardson's case, 19 Eq. 588; G. H. Levita's case, L. R. 5 Ch. 489); but there must, to constitute liability in such a case, be a contract, and there can be no contract where there is no intention of contracting, as the Court of Appeal pointed out. Cundy v. Lindsay, 3 App. Cas. 459. This was the case in Coventry's case, Britannia Fire Association, (1891) 1 Ch. 202 (C. A.).

Allotment of shares.

Allotment.

Acceptance of an application for shares is ordinarily evidenced by what is termed allotment. Allotment means the appropriation to an applicant by a resolution of the directors of a certain number of shares in response to an application. Shares so allotted are not, in general, specific shares identified by number; the numbering is left till later. To be effective an acceptance of an application for shares must be unconditional. If it introduces a new term (e.g., says that the shares must be paid up at once under penalty of forfeiture), it is not an effective acceptance, and is to be regarded as a new offer made by the company which will not result in a contract unless accepted by the applicant. Leeds Banking Co., 2 Dr. & Sm. 415; Addinell's case, 1 Eq. 225; Jackson v. Turquand, L. R. 4 H. L. 305.

So, too, a resolution for allotment to a person who las not applied, though communicated to the allottce, is in point of law merely an offer by the company.

To constitute a valid allotment there must, as a general rule, be a duly constituted board of directors. In re Homer District Gold Mines, 39 C. D. 546. But the rule in Royal British Bank v. Turquand, supra, p. 45, may sometimes render an allotment by an irregular board effective. And see Owen and Ashworth's Claim, (1900) 2 Ch. 272. And an allotment by a board irregularly constituted may be subsequently

WHEN FIRST PUBLIC ALLOTMENT MAY BE MADE. Ch. VIII.

ratified by a regular board. Portuguese Consolidated Coffee, 42 C. D. 160. A director who has joined in an allotment to himself will be estopped from alleging the invalidity of the allotment. York Tramways Co. v. Willows (1882), 8 Q. B. D. 685.

The duty of the directors as to allotnent is clear. Thoy are bound to act in good faith in the best interests of the company. London and Colonial Finance Co., 13 T. L. R. 576 (C. A.); Shaw v. Holland, (1900) 2 Ch. 305; Percival v. Wright, (1902) 2 Ch. 421. But it is generally considered that they may properly offer the shares to the existing shareholders at par or ovor, even though the shares stand at a higher price in the market: there is no duty to the company to hold out for the highest price. Hilder v. Dexter, (1902) A. C. 474.

When first public Allotment may be made.

Prior to the Companies Act, 1900, directors had an absolute disere- Restrictions tion as to when they should proceed to allotment; but the many offered to mischiefs which arose from companies going to allotment on a wholly public. inadequate subscription and merely for the purpose of paying preliminary expenses, led the legislature to interfero, and sect. 4 of the Act of 1900 and sect. 1 of the Act of 1907 imposed restrictions which, in substance, are re-enacted in sect. 85 of the Act of 1908. This section runs thus : -

85.-(1) No allotment shall be made of any share capital of a company offered to the public for subscription, nuless the following conditions have been complied with, namely :---

- (a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2) The amount so fixed and named and tho whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that

MEMBERSHIP,

money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day :

Provided that n director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to whive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say) :--

- (a) t 10 amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in each has been paid to and received by the company.

This sub-section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

With regard to the application of the above section-

- (1.) As to companies which invite the public to subscribe for shares, sub-sects. (1) to (6) inclusive apply, and the minimum subscription should be stated in the articles and in the prospectus.
- (2.) As to companies which on their formation do not invite the public to subscribe, and have, therefore, to file a statement in lieu of prospectus (under soct. 82), sub-sects. (1) to (6) do not apply unless and until these companies invite the public to subscribe, but sub-sect. (7) applies unless the company has allotted any shares or dobentures or debenture stock before 1st July, 1908. A minimum subscription clause should therefore be inserted in the articles and in the statement in lieu of prospectus.
- (3.) As to private companies sub-sect. (7) does not apply at all, but sub-sects (1) to (6) inclusive will apply if the company in contravention of its articles offers any of its shares to the public for subscription.

WHEN FIRST PUBLIC ALLOTMENT MAY BE MADE. Ch. VIII.

The following points ha ... be borne in mind :---

- (1.) As to the minimum subscription. The amount may be stated as so many shares, or so many pounds, or as a specified percentage of what is offered for subscription. West Yorkshire Darracq Agency, W. N. (1908) 236. The statement must be express. Roussell v. Burnham, (1909)
- (2.) The prospectus in (4) means the prospectus on which the applicant subscribed. Roussell v. Burnhom, ubi sup. (3.) The words at close of sub-sect. (1) of sect. 85, * 'as been paid

to and received by the company," mean what they say, and are not satisfied by the giving of a cheque until the cheque is honoured. Mears v. Western of Canada, (1903) 2 Ch. 313; National Motor, Sc. Co., (1908) 2 Ch. 228; Burton v. Beran, (1908) 2 Ch. 240. (4.) As to the meaning of "the public," see p. 341.

Sect. 82, referred to in par. (7) of sect. 85, above mentioned, runs thus :--

82.-(1) A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in the Second Schedule to this Act.

(2.) This section shall not apply to a private company or to a company

which has allotted any shares or debentures before the 1st July, 1908. The above sects. 85 and 82 should be read in conjunction with

sect. 86 of the Act, which provides as follows :----(1.) An allotment made by a company to an applicant in contra- Effect of

vention of the provisions of the last foregoing section (i.e., 85), shall irregular he voidable at the instance of the applicant within one month after allotment. the holding of the statutory meeting (infra, p. 161) of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2.) If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of the last foregoing section with respect to allotmen* ' damages, or costs which the company or the lottee may have sustained or incurred thereby: Provided that proceedings to recover such loss, damage, or costs shall not be commenced after the expiration of two years from the date of allotment.

MEMBERSHIP,

An allotment made by directors before the minimum subscription is obtained is, as sect. 86 provides, voidable, not void, and the allottee is entitled to react the contract at any time within one month of the date of the stat ry meeting. If the company is one to which the statutory meeting section (65) does not apply (*i.e.*, is a company formed before 1st January, 1901), there is no time limit on the shareholder's right to rescind thort of his affirming the contract. Finance and Issue Co. v. Canadian Produce Co., (1905) 1 Ch. 37.

It is not necessary that the rescinding shareholder should take actual legal proceedings to avoid the contract within the month. Notice of avoidance followed by prompt legal proceedings, though after the month, is sufficient. In re National Motor, &c. Co., (1908) 2 Ch. 228.

After allotment is once made, though irregularly, it is only voidable at the option of the shareholder. The company cannot insist on paying back the application moneys, for the shareholder may prefer keep the shares. Burton v. Beran, (1908) 2 Ch. 240. But he may still bring his action against the directors who have "knowingly contravened" the section to compel them to make good the loss occasioned to him by the irregular allotment. *Ib*.

"Knowingly contravening" the section means contravening it with knowledge ω_s the facts upon which the contravention depends. It is immaterial whether the directors had knowledge of the law or not. A director merely hearing the minutes of a preceding meeting, at which the resolution for the irregular allotment has been passed, read, and voting for their confirmation, will not fix him with knowledge so as to make him liable under this section. Burton v. Becan, (1908) 2 Ch. 240. The Court, it seems, has no jurisdiction to restrain directors by injunction from going to allotment in contravention of sect. 85, and it is said the proper remedy is by action against the directors for breach of their statutory duty. Finance and Issue v. Canadian Produce ('orporation, (1905) 1 Ch. 37. This seems to be a lame conclusion.

It will be observed that sect. 85 of the Act only applies to a company's first allotment of shares offered to the public for subscription: once the company has allotted shares offered for public subscription, it will not, if it makes a further issue, have again to comply with the section: nor does the section touch or affect in any way (except by sub-soct. (7)) an allo ment of shares not offered for public subscription, *e.g.*, offered to a limited circle of friends or relations.

The comment which suggests itself on this legislation is that there is nothing to prevent promoters putting the "minimum subscription" at a merely nominal figure, *e.g.*, seven 1*l*. shares.

NOTICE OF ALLOTMENT.

Notice of Allotment.

"I think," said Lord Cairns in Pellatt's case, L. R. 2 Ch. 527, Notice of "that where an individual applies for shares in a company, ther " sing allotment no obligation to let him have any, there must be a response company, otherwise there is no contract"; and this statement of the the law has always been accepted. The communication of the acceptance need not necessarily be in writing, but it must be communicated in some way, whether by writing or verbally, or by conduct. Gunn's case, L. R. 3 Ch. 40. Primá facie notice of allotment must be given to the applicant or to his agent duly authorized to receive notice of allotment (Levita's case, 5 Ch. 489; De Rosaz's case, 21 L. T. 10); for an agent to apply for shares has no implied authority to receive notice of allotment. Robinson's case, 4 Ch. 330; Wallis' case, L. R. 4 Ch. 325, n.

If, however, A., in applying, says, Give notice of allotment to B., and notice is so given, that is sufficient (De Posaz's case (1889), 21 L. T. 10), and so, too, an applicant may waive notice of allotment. Carlill v. Carbolic, &c. Co., (1893) 1 Q. B. 256.

There are other cases also in which notice of allotment is not necessary to complete the contract, e.g., where, by virtue of some agreement upon reconstruction or amalgamation, the company is under an obligation to allot the shares, and a person, entitled to an allotment in response to a circular calling on him to come in, claims allotment of his shares. In such case notice of allotneut may not be necessary (Gunn's case, L. R. 8 Ch. 40), unless, in leed, the circular shows that the offer is intended to invite application, not acceptance (Wallace's case, W. N. (1900) 171; (1900) 2 Ch. 671). However, in any case in which the company, by letter or otherwise, in effect offers a specified number of shares to a person and he writes back accepting them, no further notice of allotment is necessary.

Allotment and notice after incorporation, in response to an application before incorporation, is sufficient to constitute a complete contract (Downes v. Ship, L. R. 3 H. L. 342; Lawrence's case, 2 Ch. 412), for in such a case the application operates as a continuing offer and matures, on acceptance by the company after incorporation, into a

As a general rule, notice of allotment may be given by post (House- By post. hold Fire Insurance Co. v. Grant, 4 Ex. D. 216; Henthorn v. Fraser, (1892) 2 Ch. 27), and in such case the contract is complete when the letter is posted, even though it is never received. Harris' case, 7 Ch. 587. But handing to a town postman in the street who is clearing a pillar-box is not enough. London and Northern Bank, Ex parte Jones, (1900) 1 Ch. 220.

If notice of allotment is disputed the onus is on the company to prove Proof of notice.

109

Ch. VIII.

MEMBERSHIP.

the notice (*Reidpath's case*, 11 Eq. 86); but this onus it may discharge by proving acts on the part of the alleged member, going to show that ho was aware of the allotment and assented to it (*Crawley's case* (1869), 4 Ch. 322), for formal notice is not necessary. *Richards* v. *Home Assurance Association*, L. R. 6 C. P. 591. Notice of allotment, if brought home to the allottee, not from the company but *aliunde*, will bind him (*Wallis' case*, L. R. 4 Ch. 325, n.), *e.g.*, if the allottee is present at a board meeting at which the allotment is resolved on. *Ex parte Smedley and Fletcher*, W. N. (1867) 259.

Iu Crawley's case, supra, C. had applied for shares that were not allotted to him for fonrteen months, and accordingly he might have rofused the allotment on the ground that it was not made within a reasonable time. No notice of the allotment was given to him, but some months afterwards, he, at the request of B., signed a blank transfor of the shares, and that was held sufficient to show that he must have known of, and assented to, the allotment. "I think after that act," said Selwyn, L. J., p. 328, "he cannot be heard to say that he did not know of the allotment, or that it had not been communicated to him."

A letter of allotunent and letter of renunciation or any other document having the effect of a letter of allotment of any company had, by the Stamp Act, 1891, to be stamped with a penny stamp under a penalty on any person executing, granting, issuing or delivering it ont, of 207. Sect. 79 and Schedule I. But by sect. 9 of the Financo Act, 1899 (62 & 63 Viet. c. 9), a duty of 6d. is substituted for the 1d. duty when the nominal amount which is allotted or to which the letter of allotment relates is not less than 57, and a separate duty is charged in respect of letters of allotment and renunciation although entered in the same document. An unstamped letter of allotment, if posted or delivered, is still an effective acceptance of the application. *Re Whitley Partners*, 32 C. D. 337.

Entry on Register.

Entry on register necessary to complete membership. Where membership is constituted otherwise than by subscribing the memorandum of association, entry in the register of members is, by sect. 24, made a condition precedent to membership. The complete status of membership in such case is not acquired unless and until it can be predicated of the person that he is, within the words of the section, one "who agrees to become a member of a company, and whose name is entered in its register of members."

In this respect there is an essential difference between the requisites of membership as regards persons who subscribe the memorandum, and those who otherwise agree to become members.

ENTRY ON REGISTER.

The former, as we have seen (p. 102), become ipso facto, on the registration of the company, members irrespective of entry in the register of members; but the latter do not become members until agreement, plus entry in the register. This distinction is recognized in Nicol's case, 29 C. D. 421. In that case A. had agreed to take shares, and shares had been allotted to him; but his name had not been entered in the register. After some years, the agreement for membership not having been acted on, a winding-up order was made, and it was sought to place A. on the list of contributories, on the ground that he was a member. The learned judges were all of Agreement opinion that he had never become a member, that he had only agreed without regis-

tration not sufficient.

Cotton, L. J., said that the question was, whether, under the circumstances, A. had become an actual member or had only agreed to become a member, and stated that ' there was in this case no actual membership, although it would have been possible, if proper proceedings had been taken, to render the membership complete"; and Bowen, L. J., said: "It appears to me that A. never acquired the status of a member of the company. I think that he remained with contractual obligations to the company, which the company had for a time a right to enforce against him. . . . According to the twentythird section of the Act (1862) I think he had not become a corporate member"; and Fry, L. J., said that the section "makes the placing of the name of a shareholder on the register a condition precedent to

The result, therefore, in the case of an agreement to take shares not perfected by entry on the register, is that there is an agreement which the Court may or may not think ought to be specifically enforced, but there is no membership.

So, too, if B. takes a transfer of shares from A., aud the company rightly or wrongly refuses to register such transfer, B. is not a member, although either A. or B. ean enforce registration of the transfer under soet. 32 of the Act (1908).

Nor is the rule, that entry in the register is necessary to establish the status of memborship, in any way at variance with the rule as to settling the list of contributories in winding-up, namely, that a person who has agreed to become a member, and whose name is uot, but ought to be, on the register, is to be included in such list, for in a winding-up the Court has full power to rectify the register of members (sects. 32 and 163 of the Act); but oven in contributory cases the Court will not exercise this power unless the agreement relied on is one which, at the commoncement of the winding-up, the company was entitled to have specifically enforced. Arnot's case, 36 C. D. 707.

The above cases must also be distinguished from those in which a Wrongful

Ch. VIII.

MEMBERSHIP.

removal from register. person who has acquired the full status of membership is afterwards wrongfully removed from the register, as, for example, in consequence of a forged transfer having been proved. In such a case the person remains a member; he has acquired the full status, and the wrongful removal of his name does not affect his membership. Barton v. L. § N. W. Rail. Co., 24 Q. B. D. 77; Re Bahia Co., L. R. 3 Q. B. 595.

Registration subject to a condition. Moreover, it has been held that where shares are allotted subject to a condition, and the name of the allottee is entered in the register with words expressly referring to the condition, he has not obtained the complete status of a member. Spitzel v. Chinese Corporation (1900), 80 L. T. 347

Mere entry of a person's name ou the register cannot make him a member if there is no contract.

Delay in Allotment.

Delay in allotment.

Conditional

applic. ons.

It is an implied term in an application for shares that the offer must be accepted within a reasonable time, and, if it is not, the applicant is entitled to repudiate the allotment. See *Crawley's case*, L. R. 4 Ch. 323, *supra*, and *Ramsgate Hotel* v. *Montefiore*, L. R. 1 Ex. 109. What is a reasonable time must depend on eircunstances; but an allottee who receives notice of allotment, after a reasonable time has expired, must exercise his right of repudiation promptly. If he does not he will be bound; *d fortiori* if creditors' rights have intervened by a winding-up. *Boyle's case*, 33 W. R. 450; *Crawley's case*, *supra*.

Conditional Applications.

Sometimes au application for shares is made subject to a condition precedent, e.g., A. writes to a hotel company saying, If you will give me an order for furniture, I will take up fifty shares in your capital, which please allot. In such case an allotment disregarding the condition may be repudiated by the allottee; for where there is a conditional application for shares and an unconditional allotment there 's no The parties are not ad idem. Rogers' case, contract constituted. Harrison's case (1868), L. R. 3 Ch. 633 ; Wood's case, 3 De G. & J. 85 ; Shaw's case, 34 L. T. 715; Wood's case, 15 Eq. 236. The condition need not be contained in the letter of application. It is sufficient if the letter containing the condition reach the directors before allotment. Rogers' case, Harrison's case, supra. But in such cases if, after notice of allotment before the condition is complied with, the allottee abstains from repudiating, he will be taken to have waived the condition and Wheatcroft's case, 29 L. T. 324. he bound.

EXAMPLES OF CONTRACTS TO TAKE SHARES. Ch. VIII.

A distinction of a very material kind exists between an application with a condition precedent annexed, and an application with a collateral agreement or a condition subsequent. In the latter case the applicant on allotment becomes a shareholder in presenti absolutely, with only a right to enforce (if valid) the collateral agreement or condition subsequent against the company. Elkington's case (1867), L. R. 2 Ch. 511; Fisher's case and Sherington's case (1885), 31 C. D. 120; Bridger's case (1870), L. R. 5 Ch. 305; and Thomson's case (1865), 4 D. J. & S. 749, are good illustrations of the distinction.

Mistake as to Company.

Where a person applies for and takes an allotment of shares in Mistake as to Company A. believing it to be Company B., he may in some cases be company. entitled to repudiate membership if he acts promptly on discovering his mistake. International Society of Auctioneers and Valuers, Baillie's case, (1898) 1 Ch. 110; Cundy v. Lindsay, 3 App. Cas. 459, 465.

Who may take Shares.

As to the subscribers of the memorandum, see supra, p. 102. As to other persons, it is well settled that any person not under take shares. disability may become a member; a married woman may take shares (Re Leeds Banking Co., 3 Eq. 781; Married Women's Property Act, 1893, s. 1); a foreigner may take shares (Princess of Reuss v. Bos, L. R. 5 H. L. 193; but dividends due to enemy shareholders must be paid to the Public Trustee : see Trading with the Enemy Amendment Act, 1914, s. 2, and (as to notice) s. 3 (2)); a company having power to take shares may become a member (Re Barned's Banking Co., 3 Ch. 112); and even an infant may become a member, subject, however, to the right to repudiate the shares when he attains majority. Capper's case, 3 Ch. 458; Pugh and Sharman's case, 13 Eq. .36. Till disaffirmed the infant's contract is valid. Viditz v. O'Hagan, (1899)

Typical Examples of Contracts to take Shares.

(a) A. applies to the company for an allotment of a specified number Examples of of shares, and agrees to accept the same or any less number that may contracts to be allotted to him. In response to this application, the directors resolve that a specified number of shares be allotted to him, and notice of such allotment is given to him. This constitutes the agreement, and his name should at once be entered on the register.

(b) The company allots or offers to A. a specified number of shares, and A. notifies to the company his acceptance of the shares so offered. The agreement is complete, and A. should be entered in the register.

(c) A. authorizes some agent to apply for shares on his behalf, and such agent applies accordingly. The shares are allotted to A., and

take shares.

MEMBERSHIP.

notice is given to him as above, and he is duly registered. He is a member.

(d) B. without authority applies for shares on behalf of A., and the directors allot shares to A., and register him. Subsequently A. ratifies B.'s act, *e.g.*, either expressly. or by doing something (*e.g.*, signing a transfer, or taking a dividend) which shows that he assents to the allotment. A. is a member.

(e) A. being the holder of shares, transfers them by an instrument complying with the regulations of the company to B.; B. takes the transfer to the company, and the company passes it and places B. on the register. In this case, B. becomes a member in respect of the shares comprised in the transfer, and his name should be entered in the register in the place of Λ .'s.

(f) A. accepts office as a director of the company. The regulations of the company state that the qualification of a director is π many shares, and that unless he acquires such qualification within (say) a month after the incorporation of the company, he is to be dremed to have agreed to take the shares from the company, and is to be registered accordingly. A. does not take up the shares within the month, and shortly afterwards he is, by the officers of the company, placed on the register as the holder of such shares. He thereby becomes a member in respect of such shares. By accepting the office he is regarded as in effect agreeing to comply with the regulations, and by placing him on the register the company accepts his offer; and see pp. 184, 185, infra.

(g) A. accepts office as a director. The articles state that the qualification of a director is the holding of so many shares. A. does not acquire his qualification within a reasonable time, and he is, at the expiration of that time, placed on the register of members in respect of his qualification. He is estopped'from denying that he is a member in respect of the shares thus registered in his name, and should, therefore, he treated as a member.

(h) A., who has not applied for shares, is informed that he has been registered as a holder of a specified number of shares in a company. He signs a proxy paper in respect of such shares, or otherwise, in effect, acts as the owner of such shares. He is estopped from denying that he is the holder of such shares. Crawley's case, 4 Ch. 323.

(i) A. applies for shares on the footing that he is not to be liable thereon for the full amount, and the company allots shares which involve the full liability. A. novertheless exercises acts of ownership, e.g., by selling some and obtaining proxies. A. is bound. Re Railway Time Tables, §c. Co., 42 C. D. 98. "If she assented to have these shares in her name, that is all that is required to make her liable as a member," said Cotton, L. J., and Bowen, L. J., added: "From such

114

SPECIFIC PERFORMANCE.

assent to be on the register, and from such dealing with the shares which took place after she was on the register, there can be but one inference which the Ceurt ought to draw, namely, that she agreed to be a member of the company, and her name being on the register, her liability to the company is complete."

The cases under the last two heads come to this : that a person is to be regarded as a member if his name is on the register of members with his consent, or if he is estopped from denying that he is registered without consent. Ho may not have applied. The shares may have been placed there without his consent and contrary to his wishes, but if he assents to his name being on the register, he is to be considered a member of the company.

Mere entry of a person's name on the company's register, howover, without agreement or assent, is not enough. Thus, if a director resigns before the time for taking up his qualification shares has expired, and the company has, netwithstanding, entered his name on the register, without his assent, as the holder of the qualification shares, he may compel the company to tako his name off the register. Salisbury-Jones's case, (1894) 3 Ch. 356. So, too, if a man's name is put on the register upon the application of some person professing to act as his agent, but without any authority in fact, the company ean be compelled to take the name off. Ormerod's case, (1894) 2 Ch. 475. Or, again, where a man applies for shares, but withdraws his application before acceptance. If, nevertheless, the company allots and puts his name on the register, he may have it taken eff. 4 Eq. 9; Truman's case, (1894) 3 Ch. 272. Hebb's case,

A person improperly registered as a transferee of a share is not bound, and may have his name taken off the register. Heritage's case, 9 Eq. 5; Cartmell's case, 9 Ch. 691.

As to reseinding the agreement, see infra, p. 128.

The above are all eases of persons sui juris. In the ease of persons not sui juris, such as infants er lunatics, a controst to take shares is voidable (Lumsden's case, 4 Uh. 34; Ebbett's case, 5 Ch. 302; Capper's case, 3 Ch. 458; Yeoland Consols, 58 L. T. 922; Symons' case, 5 Ch. 298). but valid till disatfirmed.

Specific Performance.

The Court has jurisdiction to specifically enforce a contract by a specific perperson to take, or by a company to allot, shares (New Brunswick Co. \mathbf{v} , formance of contrast to Muggeridge, 1 Dr. & Sm. 363; Oriental Inland Steam Co. v. Briggs take shares. (1861), 31 L. J. Ch. 241; Odessa Tramways to. v. Mendel (1878), 8 Ch. D. 235); but the matter is one of judicial discretion, and if before action brought all the shares have been allotted to other resons, the only is only of a plaintiff claiming an allotment is an

8 (2)

115

Ch. VIII.

MEMBERSHIP.

action for damages for breach of centract. Ferguson v. Wilson (1866), 2 Ch. 77. A company may, by delay, disentitle itself to enforce an agreement. Nicol's case, 29 C. D. 421.

Cesser of Membership.

Cesser of membership. A person may cease to be a member of a company-

- (1.) By transferring his shares to another person. In such case, the transferor ceases to be a member so soon as the transferee is registered, but not before. After registration the transferor is still liable to be placed on the B. list of contributories as a past member, if the company is wound up within a year. Stanhope's case, L. R. 1 Ch. 161; Heritage's case, 9 Eq. 5.
- (2.) By his shares being forfeited. Dawes' case, 6 Eq. 232.
- (3.) By his shares being sold by the company under some provision in its articles (e. g., for enforcing a lien), and by the purchaser being registered as holder in his place.
- (4.) By death: but in such a case the deceased member's estate remains liable until the registration of some person entitled under a transfer from his executors or administrators. *Heward* v. Wheatley, 3 Dc G. M. & G. 628; Baird's case, 5 Ch. 725.
- (5.) By a valid surrender. Trevor v. Whitworth, 12 App. Cas. 409.
- (6.) By the trustee in bankruptcy of an insolvent member disclaiming his shares. See Bankruptcy Act, 1914, s. 54.
- (7.) By rescission of the contract of membership on the ground of misrepresentation (p. 128) or mistake (p. 113). This, however, does not apply to shares subscribed for in the memorandum of associatiou.

Liability to pay for Shares.

Liability on shares.

The terms of the Act of 1908, and in particular the provisions of sects. 14 and 123, leave no doubt, in the case of a company limited by shares, about the obligation of shareholders to pay to the company the full amount of their shares. The words of the section limiting the liability of members to "the amount unpaid on their shares," can only mean, as Lord Macnaghten pointed out in the Ooregum case, (1892) A. C. 145, that the liability of the member continues so long as anything remains unpaid on his shares. Nothing but payment, and payment in full, cau put an end to the liability. "All the legislation," said his lordship, "proceeds on the foeting of recognizing and maintaining the liability of the individual member to the company until the prescribed limits are reached." The liability under the Act of 1862 was to pay in money or (with the company's consent) money's worth. Baglan Hall Co., 5 Ch. 346. But by sect. 25 of the Companies Act, 1867, the legislature restricted the power to pay otherwise than in cash by providing that any shares should be deemed to have been

LIABILITY TO PAY FOR SHARES.

Ch. VIII.

issued and to be held subject to the payment of the whole amount thereof in cash nnless the same should have been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares. Whilst this section was in force it followed that once a share was issued it had to be paid up in full in each unless a sufficient contract providing for some other mode of payment was duly filed before such issue. See, further, infra, p. 119. The cash payment section was repealed by the Companies Act, 1900, as from 31st December, 1900, and the Act of 1908 leaves that repeal untouched. Hence shares, whether subscribed for in the memorandum or otherwise taken, may now be paid up in money or (with the consent of the company) in money's worth, e.g., by making over to the company property or rendering to it services. Baglan Hall Co., 5 Ch. 346 ; see also Wilkinson Sword Co., Ltd., (1913) W. N. 27; 29 T. L. R. 242 (where a contract was allowed to be filed twenty-four years after the formation of tho company in respect of shares for which the memorandum had been subscribed). And it is well sottled that if a valid contract be made for the acceptance by the company of specified property or services of substantial value in payment or part payment of shares the Court will not, whilst the contract stands, inquiro into the value of the consideration even at the instance of the liquidator (Pell's case, 5 Ch. 11; Re Baylan Hall Co., 5 Ch. 346); the attempt in Re Wragg, Limited, (1897) 1 Ch. 796, to upset this well-established rule signally failed. See also Re Theatrical Trust, (1895) 1 Ch. 771; Re Innes & Co., (1903) 2 Ch. 254; and, as to future services, Pellatt's case, L. R. 2 Ch. 527, and Gardner v. Iredule, (1912) 1 Ch. 700.

The result of these decisions is that a company may and sometimes does issue paid-up shares at a discount, by taking as the cash equivalent of payment property worth in the market much less than the nominal amount of such shares, and the transaction, though an abuse of the Acts, cannot practically be upset, but except in this way it is not permissible or practicable to issue shares on a cash basis at a discount or by way of bonus. Ooregum Gold Mining Co. v. Roper, (1892) A. C. 125; Eddystone Marine Insurance Co., (1893) 3 Ch. 9.

Where, however, the contract is fraudulent or shows on the face of it that the consideration given to the company is illusory, or is clearly not equivalent to the nominal value of the shares, tho shares cannot to this extent be treated as fully paid. Re Wrayy, Ltd., ubi sup., at p. 836; Hong Kong & China Co. v. Glen, (1914), 1 Ch. 527 (an agreement to allot as fully paid a certain proportion of all future

Under sect. 89 of the Companies Act, 1908, a commission may be paid for subscribing the shares, and thus in effect the rule that shares may not be issued at a discount is still further relaxed : that is,

MEMBERSHIP.

the financial result to the company is the same as if the shares were issued at a discount; but as a matter of form the transaction is correct: the shares are fully paid up by the subscriber, and the commission is paid him by the company out of its funds as part of its business expenditure.

Who is Liable.

Who is liable.

The registered holder of a share is the person liable in respect of anything unpaid on the sharo, and it makes no difference whether ho is the beneficial owner of the share or a mere trustee, nor, in the latter case, whether the company is or is not cognisant of the trust. *Chapman and Barker's case*, 3 Eq. 361. The *cestui que trust* cannot be made liable either as shareholder or as a contributory (*Bunn's case*, 2 De G. F. & J. 275, 300; *Somervail* v. *Cree*, 4 App. Cas. 618), for there is no privity of contract between him and the company.

The liability of the registered holder to pay arises in most cases from the operation of sect. 14 (2) of the Act (replacing sect. 16 of the Act of 1862), which expressly provides that "all money payable by any member to the company in pursuance of the conditions and regulations of the company nuder the memorandum or articles, shall be a debt due from him to the company"; and the articles generally provide that calls and instalments made payable by the terms of issue shall be paid when due by the holder to the company. See "Calls," p. 146. Sometimes, however, the articles are defective in this respect, and in such cas -s it is necessary to resort to the contract under which the shares were issued, and to rely on the promise therein to pay the whole or part by specified instalments. In a winding-up the liability to pay whatever may be called for arises under sect. 123 of the Act (replacing sect. 38 of the Act of 1862). Where the holder dies, his estate remains liable in respect of his share until some other person is registered as the holder thereof. When the holder transfers and the transferee is registered, the transforce becomes liable to pay all moneys subsequently becoming payable in respect of the share. Seo infra, p. 130. But though a person has by transfer, forfeiture, or surrender, ceased to be a member, he still remains secondarily liable in the event of a winding-up commencing within one year after he ceased to be a member. Sect. 123 of the Act.

Returns as to Allotments and Filing Contracts with Registrar.

The cash payment section of the Act of 1867 was repealed because it was found to operate very harshly at times on persons who had given full consideration for their shares and w not aware of the noncompliance with the section; but the policy \sim the law which dictated

DECISIONS ON SECT. 25 OF COMPANIES ACT, 1867. Ch. VIII

the section remains the same, that is to say, that persons dealing with the company, and shareholdors of the company also, are entitled to know the naturo of the quid pro quo for which shares have been issued as fully paid by the directors of the company. In repealing sect. 25 the logislature has therefore, in pursuance of this policy, made provision by soct. 88 (which takes the place of sect. 7 of the Act of 1900), for the company promptly filing with the registrar particulars of all allotments from time to time nude. The substituted section runs

88-(1.) Whenever a company limited by shares makes any allot- Return as to ment of its shares, the company shall within one month thereafter file allotments. with the Registrar of Companies-

- (a) a return of the allotments stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid ap otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted

The section also provides for filing particulars as to oral contracts and imposes penalties for default, and gives the Court power to extend the time for filing in certain cases, a remedy first given by the Act of 1898. Re Wilkinson Sword Co., (1913) W. N. 27; 29 T. L. R. 242. Neglect to file the required contract or particulars will not, as under sect. 25 of the Act of 1867, below referred to, render the shares linble to payment in cash, but will expose the directors and other officials of the company to heavy penalties.

Annual return under seet. 26, see p. 123.

Decisions on Sect. 25 (now repealed) of the Companies Act, 1867.

Sect. 25 of the Companies Act, 1867, ran as follows :--- "Every Filing of share in any company shall be deemed and taken to have been issued contracts and to be held subject to the payment of the whole amount thereof in of Act 1867. cush, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares."

under sect. 25

The result was that, to use Bowen, L. J.'s language in London Colluloid Co., 39 C. D. 204, "there is a statutory liability to pay the whole amount in cash, which can only be avoided under the statute in

MEMBERSHIP.

one way, namely, by a registered contract." A registered contract under sect. 25 did not, however, it must be remembered, exempt the shares from being paid up in "ill; the section only regulated the mode of payment. Per Lindley, 1 In re Addlestone Linoieum Co. (1887), 37 C. D. 205. It did not after t the quantum or the adequacy of the consideration. That was regulated by the Act of 1862, read in the light of the decisions cited on p. 117.

Sect. 25 was, as above mentioned, repealed by sect. 33 of the Act of 1900; but it is still desirable to refer to some of the leading decisions on the repealed section, having regard to the peculiar language used by the repealing section. It runs as follows :—

- 33.--(1.) Section 25 of the Con., mies Act, 1867, and the other enactments mentioned in the schedule to this Act to the extent specified in the third column of that schedule are hereby repealed.
 - (2.) No proceedings under section 25 of the Companies Act, 1867, shall be commenced after the commencement of this Act.

This provision-" that no proceeding under sect. 25 shall be comnucneed after the commencement of this Act"-may not, as Rigby, L. J., pointed out in Brutton v. Burney, Limited, (1901) 1 Ch. 637, cover the entire case. "Suppose," said the Lord Justice, "that a brewery company were to be wound up and there were surplus assets of which the appellants desired to obtain their share : though no proceedings could be taken against them under sect. 25, is it clear that they could obtain their sharo of the assets in the winding-up? I think is is not an unreasonable contention (whether it bo well founded or not it is not necessary now to decide) that in the absonce of a contract filed under sect. 25 they would not be able to obtain their sheres of the assets in the winding-up. It might be years before such a question arose, and meanwhile the sharoholders would be placed in a difficult position and the value of their shares might be seriously imperilled." From this position they would be rescued if they could obtain either before or in the winding-up relief by being allowed to file a proper contract or memorandum nunc pro tunc. Hence the Court in the case cited refused to treat the Companies Act of 1898 (which gave power to grant relief) as functus officio, and its powers have been invoked in at least one recent case: see Wilkinson Sword Co., (1913) W. N. 27.

Effect and remedy if not filed. Apart from the Act of 1898, in cases where owing to inadvertence a contract or sufficient contract was not filed at or before the issue of the shares, and the holders of the shares were thus left exposed to the danger of having to pay them over again, the Court had power, at the instance of the allottee, if ho camo promptly on discovering the mistake, to rectify the register under sect. 35 of the Act of 1862 by striking his

DECISIONS ON SECT. 25 OF COMPANIES ACT, 1867. Ch. VIII.

name off to the intent that after the contract has been filed he might obtain a re-allotment. New Zealand Kapanga Co., 18 Eq. 17 (n.); Denton Colliery Co., 18 Eq. 16. But evidence was always required that the allottees were ignorant of the omission to file, and very commonly evidence also of the solvency of the company. There was full evidence of solveney in the cases hast mentioned. See also Broad Street Co., W. N. (1887) 149, and Preservation Syndrate, (1895) 2 Ch. 768. where relief was given after the commencement of a winding-up, the notice of motion having been served before the winding-up.

This general power was, however, found inadequate to meet the requiroments of the situation, and it was supplemented by the management of the situation of the supplemented by the

- (a) Where no contract in writing at all was filed "at or before the issue" of the shares. See Jockson & Co., (1899) 1 Ch. 348. For the precise meaning to be attached to the words "at or before," see Tunnel Mining Co., Pool's case, 35 C. D. 579, and Anglo-Cotonial Syndicate, Limited, 65 L. T. 847.
- (b) Where a contract was filed at or before the issue, but it was insufficient-
 - (i) Becanse it was not made between the proper parties. See Dalton v. Dalton Time Lock, 66 L. T. 704; Hartley's case, 10 Ch. 157; Smith v. Brown, (1896) A. C. 614; Pritchard's case, 8 Ch. 960; Common Petroleum Co., (1895) 1 Ch. 759; Transvaal Exploring Co. v. Albion Transvaal Gold Mines, (1899) 2 Ch. 370.
 - (ii) Because it was not signed by both parties. New Eberhardt (b., 43 C. D. 118.
 - (iii) Because it did not specify or correctly specify the consideration or the general nature of the consideration. Kharaskhoma, (1897) 2 Ch. 451: Robert Watson & Co., (1899) 2 Ch. 509; S. Frost & Co., (1898) 2 Ch. 556; (1899) 2 Ch. 207; Markham and Darter's case, (1899) 2 Ch. 480; Tom Tit Cycle Ca., Fisher's case, 15 T. L. R. 132; W. N. (1899) 35; May's Metal Separating Syndicate, W. N. (1898) 159; Jackson & Co., (1899) 1 Ch. 348.
 - (iv) Because it did not state the number of shares to be allotted under it or gave merely an option to take shares instead of cash. Jackson & Co., supra: Coolgardie Mines, 14 T. L. R. 277; Transraal Exploring Co. v. Albion Transraal Gold Mines,

MEMBERSHIP.

(1899) 2 Ch. 370; Delta Syndicate, 30 C. D. 153; Common Petroleum Engine Co., (1895) 2 Ch. 759.

- (v) Because the shares were subscribed in the memorandum and the only contract filed was filed some time afterwards. F. W. Jarris & Co., (1899) 1 Ch. 193; Dalton Time Lock Co. v. Dalton, 66 L. T. 704 (C. A.); Archibald D. Dawnay, Lomited, W. N. (1900) 152, and Ebenezer Timmias & Son, Limited, 50 W. R. 134; and see Hartley's case, 10 Ch. 157, and Whitehead & Brothers, (1900) 1 Ch. 804.
- (vi) Where the shares though treated in the books as paid up in cash were, in fact, issued and credited for a consideration other than cash.

Meaning of "cash" in sect. 25.

The section used the term "cash." This did not mean exclusively current coin. If the company owed to A. 100%, presently payable, and A. owed the company 100*l.*, also presently payable in respect of his shares, and it was agreed between the parties that the one sam should be set off against the other, that amounted to payment in cush within the section. It was not necessary to go through the idle form of the company handing the 1001, over and the allottee handing it back again. Sparyo's case, 8 Ch. 407 ; W'hite's case, 12 C. D. 517. Some doubts were thrown on these cases by Lord Halsbury's observations in Johannesburg Hotel Co., (1891) 1 Ch. at p. 129 (C. A.); but the Privy Council has recently expressed a very clear opinion that Spargo's case was rightly decided. Lacocque v. Beauchemin, (1897) A. C. 358; North Sydney Investment Co. v. Higgins, (1899) A. C. 2 B. See also Barrow's cose, 14 C. D. 432; Coolgardie Mines, 14 T. L. R. 278; Jackson & Co., (1899) 1 Ch. 348; Transvaul Exploring Co. v. Albion Transvaal Gohl Mines, (1899) 2 Ch. 370, and Eastern and Aastralian Steamship Co., 68 L. T. 321.

As to cases where the company is estopped by certificate from alleging that shares have not been fully paid, see p. 144.

As to the construction of particular words in the Act of 1898, the following cases may be usefully referred to :--

"Credited as fully or partly paid for a consideration other than cash." This means in consideration of property or services or other benefits which the company agrees to take in payment instead of cash. *Tow Tit Cycle Co., Fisher's case*, 15 T. L. R. 132; W. N. (1899) 35.

"The company or any person interested in such shares or any of them may apply." See Whitefriars Financial Co., (1899) 1 Ch. 189.

"The Court" means the Court having jurisdiction under sect. 35 of the Act of 1862. Lucky Guss, Limited, 79 L. T. 722; Reeves & Son, (1899) 1 Ch. 184. And now under sect. 32 of the Act of 1908.

DECISIONS ON SECT. 25 OF COMPANIES ACT, 1867. Ch. VIII.

"Accidental or due to inadvertence." Lucky Guns, supra; Jackson & Co., (1899) + Ch. 348; Tom Tit Cycle Co., 15 T. L. R. 132; W. N. (1899) 35; Company Precedents, Part L, p. 1122.

"Or that for any reason it is just and equitable to grant relief." Roxburghe Press, (1893) 1 Ch. 210.

"Either before or after an order has been made or an effective resolution has been passed." Welton v. Saffery, (1897) A. C. 299.

"On such terms and conditions." See May's Metal Co., W. N. 1898) 159; Tom Tit Cycle Co., W. N. (1899) 35; Farmer's Limited. (900) 2 Ch. 442.

" Is satisfied that the filing of the requisite contract would cause delay or inconvenience or is impracticable." See Jackson & Co., (1899 1 Ch. 348; Reeves & Son, (1899) f Ch. 192.

The application in the Chancery Division is commonly made by aution, but may properly be by summons adjourned into Court (Duffin v. Mexican Gold Co., W. N. (1890) 116; Whitefriars Financial Co., (1899) 1 Ch. 184; Re Dowson, W. N. (1889) 222); in the winding-up Court it should be in Court. Concessions Acquisitions Syndicate, 68 L. J. Ch. 49.

The application mass be supported by affidavit. The affidavit must not barely state that the omission to file was accidental or due to inadvertence, but must set out the circumstances. Victoria Brick Works, W. N. (1898) 162; see, further, Company Precedents, 10th ed., Part L. pp. 1422-1444.

Annual Summary of Capital and List of Members.

By sect. 26 of the Act of 1908, every company having a share Annual capital must every year file a list of members and summary of shares summary. issued, &c. See Appendix, p. 456. "Year" in the section no doubt means the year commencing 1st January and ending 31st December. Gibson v. Barton, L. R. 10 Q. B. 329. A director not taking care that the return is made affords primi facie evidence of default. Gibson v. Barton, supra ; Edmonds v. Foster, 45 L. J. M. C. 41. And a director cannot excuse himself by showing that by his own default the meeting was not in fact called. Though the meeting is not held, the return should be made. Park v. Lawton, (1911) 1 K. B. 588. An offence under sect. 26 is a criminal offence. Reg. v. Tyler, (1894) 2 Q. B. 588. Proceedings to enforce the penalty are taken before a magistrate under the Summary Jurisdiction Acts 11 & 12 Viet. c. 43; 42 & 43 Viet. c. 49; and 47 & 48 Vict. c. 43. The magistrate may inquire into the sufficiency or accuracy of the return. Briton Medical, 37 W. R 52. As to what is a sufficient * return, Galloway v. Schill § Co., (1912) 2 K. B. 354. The complaint must be brought within six months Edmonds v. Foster, supra.

CHAPTER IX.

REGISTER OF MEMBERS.

Register of members.

EVERY company under the Act is to keep in one or more books a register of its members. See sect. 25 of the Act.

Contents.

Contents.

This register must centain :---

- (i) The names and addresses and occupations (if any) of the members of the company, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number (sect. 22) and the amount paid or agreed to be considered as paid on the shares of each member.
- (ii) The date at which each person was entered in the register as a member.
- (iii) The date at which any person eeased to be a member.

In default the company and its directors are liable to heavy penalties— 51. for every day the default continues.

In Vaglianc Anthracite Co., (1910) W. N. 187, it was held that a firm was not a "persen," and therefore ought not to be registered, but the section uses the term "member," not "person"; and in Weikersheim's Case, 8 Ch. 831; 28 L. T. R. 653, the Court of Appeal held that a firm could be registered.

Notice of any change of address is to be entered on the register. No notice of any trust is to be entered on the register. Sect. 27.

As to share warrants, see sect. 37.

In In re Key § Son, (1902) 1 Ch. 467, the Court refused to allow a memorandum of lien to be entered on the register by the company.

Inspection.

Inspection.

The register of members commencing from the date of the registration of the company is, by sect. 30, to be kept at the registered office of the company (sect. 62, p. 243), and by sect. 50 such register is to be open for inspection by members gratis, and for inspection by any other person on payment of one shilling or such less sum as the company may prescribe for each inspection.

A right is also given to require a copy of such register or any part thereof, and a penalty is imposed for refusal of inspection, and in

PUBLICITY OF REGISTER.

addition to this penalty, a judge sitting in chambers may by order compel an immediate inspection of the register, and disobedience of

that order boing a contempt of Court may be punished by imprisonment. The right to inspection does not in this case carry with it the right to take copies, such right being excluded by the section entitling the person inspecting to require a copy on certain terms. Balaghat Co. A. B. 665. ov realing Boord v. African, &c. Co., (1898 1 Ca. 57 d. Sixpence a folio of 100 words must therefore be paid.

The right forminates on a winding-up. Re Kent Coalfields Syndicate, (18 in 1 9, 13, 754.

Refusal in this section means a distinct and definite refusal. Rerv.

Wilts ond Berks Canal Co., 3 Ad. & El. 477. See, too, 8 Ad. & El. 901. A creditor or member may inspect by his solicitor or agent. Becan v. Webb, (1901) 2 Ch. 59, 75.

The Court will compel production, irrespective of motive. Davies v. Gas Light & Coke Co., (1909) 1 Ch. 248.

Closing of Register.

The company is empowered to close the register by advertisement, closing of but not for more than thirty days in each year. See sect. 31. register.

Register Prima facie Evidence.

The register of members is to be primá facie evidenco of any matters by the Act directed or authorized to be inserted therein. Sect. 33 of the Act. Hence it is not conclusive. Reese River, Sr. Co. v. Smith, L. R.

Publicity of Register.

It is important to note the fact that the register of members is, by the Publicity of Act, open to the public. In this respect the Act of 1862 differed from register the Act of 1844. Supro, p. 7. By sect. 50 of the Act of 1844 every shareholder was to have liberty to search the register at all reasonable times, but nobody was to be at liberty to search it who was not a

The Companies Act, 1862, retained the obligation as to keeping a register; but the Act introduced an important change in providing (sect. 32 of 1862) that the register should be open to the inspection not only of shareholders, but, on payment of one shilling, of all other persons. This would, of course, include creditors and persons dealing or about to deal with the company, and the change indicates unmistakeably an intention on the part of the legislature that the creditors and persons who contemplate dealing in some way with the company onght to have the means by inspecting the register of satisfying themselves

125.

REGISTER OF MEMBERS.

to what extent they may safely trust the company. Sect. 30 of the Act of 1908 is to the same effect.

While the liability of shareholders remained unlimited "such a power of inspection was not necessary, or, certainly, not at all so necessary. . . . But when the legislature enabled shareholders to limit their liability not merely to the amount of their shares, but to so much of that amount as remained unpaid, it is obvious that no creditor could safely trust the company without ascertaining first who the shareholders might be, and, secondly, to what extent they would be liable. This is obviously the reason why the new statute opened the register to the inspection of all the world. . . . The legislature took care to provide the register as the means of enabling persons dealing with the company to know to whom and to what they might trust. It intended to put the persons whose names are on it in the same position towards creditors (subject, of course, to the statutable restrictions) as persons engaged in an ordinary partnership, or persons trading formerly under the Act of 1844." Per Lord Cranworth, Oakes v. Turquand, L. R. 2 H. L. 366. In the same case his Lordship also said : "It is a fahacy to hold that the liability of the partners in these companies must rest entirely on the same principle of contract which was the foundation of the liability of the partners of any unincorporated companies prior to the institution of this class of associations. The question is not whether there was any privity of contract between the app Hant and creditors of the company, but it is whether, under the constitution of these newly created societies, there is a statutory liability imposed on persons in the position of the appellant. Secondly, it is an error to hold that creditors are not supposed to trust to the responsibility of the shareholders. The careful regulations as to the register of shareholders and the publicity to be given to them form a sufficient answer to that argument. Indeed, it is plain from the reason of the thing, that no credit would otherwise be given to the abstraction of a company."

Doctrine of holding out.

On the same principle in *Sewell's case*, L. R. 3 Ch. 138, where a registered shareholder wished to diselain the ownership of certain shares, Lord Cairns, while assuming in the shareholder's favour that he might have had a right to dischaim, was of opinion that "not having done so, and being aware that he was held out to the public as the holder of the shares, it is too late for him, months or even years afterwards, to enter into that question." "It is impossible," the same learned judge remarked on another occasion, "to disembarrass these enses of the effect which a man's name being on the register has in inducing other persons to alter their position." *Lawrence's case* (1867). L. R. 2 Ch. 417.

The result of this doctrine of holding out is that if a person's name

126

Object of publicity.

RECTIFICATION OF REGISTER.

is on the register with his consent, and he claims a right to have it removed on some ground or other, he must exercise the right promptly, otherwise he forfeits it. See Scottish Petroleum Co., 23 C. D. 434, in which BaggnHay, L. J., said : "The delay of a fortnight in repudiating Delay. the shares nucles it in my mind doubtful whether the repudiation in the case of a going concern would have been in time. No doubt where investigation is necessary some time must be allowed, as in the Central Railway Company of Venezuela, L. R. 2 H. L. 99; but where, as in the present case, the shareholder is at once fully informed of the circumstances, he ought to lose no time in repudiating." Even where a name is, pursuant to a roid contract, placed on the register. delay after knowledge may be fatal. Railway Time Tables Co., 42 C. D.

Novertheless the reliance to be placed on the register is qualified to Register not this extent that anyone dealing with the company must be taken to conclusive.

- (1) That shares may be transferred in accordance with the articles, and thus an insolvent shareholder may be substituted
- (2) That a member who has been induced to take shares by misrepresentations or mistake, even though on the register for years, may, while the company is a going concern, repudiate his shares and get off the register. See p. 352.
- (3) That there may be persons on the register placed there without their consent who may subsequently enforce the removal of their names. See further, Reese River Co. v. Smith, L. R. 4 H. L. 80; and Baillie's case, (1898) 1 Ch. 110, in which a person , register escaped on the ground that he had made a
- is to the company. (4) Th -
- person whose name has been improperly entered on the register under an allotment in contravention of sect. 85 of the Act of 1908, may claim under sect. 86 to be removed.
- (5) Where the entry on the register is there stated to be subject to some condition membership is not complete. Spitzel v. Chinese Corporation, 80 L. T. 347.

Rectification of Register.

It is a corollary from the principle that the register of members is Rectification to be the creditors' guarantee, showing them to whom and to what of register. they have to trust, that the register should be properly kept and that the names appearing therein should be the names of the persons really for the time being liable to the creditors. That this may be

Ch. IX.

REGISTER OF MEMBERS.

the case the legislature in sect. 32 of the Act of 1908 (replacing sect. 35 of the Act of 1862) provides a summary mode of rectifying the register from time to time by application to the Court in two classes of cases :—

- (1) Where the name of any person is without sufficient cause entered in or omitted from the register of members.
- (2) Where default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member.

Instances.

This jurisdiction is exerciseable after as well as before windingup (Susser Brick Co., In re, (1904) 1 Ch. 598), and is frequently The following are a few illustrative cases in which exercised. orders have been made: where the applicant was induced to take shares by misropresentation (Stewart's case, 1 Ch. 574; Anderson's case, 17 C. D. 373); where the company improperly neglected to register a transfer (Stranton Iron Co., 16 Eq. 559); where shares had been issued to the applicant as paid up without filing a contract in compliance with sect. 25 of the Companies Act, 1867 (New Zealand Kapanga Co., 18 Eq. 17); where shares were improperly forfeited (Ystalyfera Gas Co., W. N. (1887) 30); where the company, acting on a forged transfer, had removed the name of the applicant, the real owner (Bahia, &c. Co., L. R. 3 Q. B. 584); where there was a dispute between the vendor and purchaser of shares (Ex parte Shaw, 2 Q. B. D. 463); where shares had been irregularly allotted to applicant (Portuguese Consolidated, &c. Mines, 42 C. D. 160; Homer District Gold Mines, 39 C. D. 546); where the signatory of an underwriting letter not constituting a contract had been placed on the register (Consort, &c. Co., (1897) 1 Ch. 575); where a shareholder, who had made an altra vires surrender of his shares to the company, claimed to have his name reinstated. Bellerby v. Rowland and Marwood's Steamship Co., (1902) 2 Ch. 14 (C. A.).

The Conrt has rarely declined, as between a member and the eempany, to exercise its jurisdictien under the section (*Ex parte Parker*, 2 Ch. 685); but the Conrt had and has a discretion, although the words "if satisfied of the justice of the case," in sect. 35 of the Act of 1862 are not used in sect. 32 of the new Act. See, per Lord Macnaghten, *Trevor* v. *Whitworth*, 12 App. Cas. at p. 440, as to the materiality of these words. Where justice requires it, the order to rectify will be made *nunc pro tunc*. *Sussex Brick Co.*, (1904) 1 Ch. 598. An application under sect. 32 should be by motion intituled in the Companies (Conselidatien) Act, 1908, and in the matter of the particular company. If there is no winding-up pending, the application should be made to one of the ordinary judges of the Chancery Division (if it is mr. 4e in that Division), and not to the winding-up judge. *British*

RECTIFICATION OF REGISTER.

Columbian Exploitation Gold Estates, W. N. (1899) 32. For forms of notice of motion, and orders to rectify, see Company Precedents, Part I., 11th ed., pp. 1392 et seq. There is jurisdiction to rectify the register not only npon motion nuder sect. 32, but in an action against the company. Reese River Co. v. Smith, L. R. 4 H. L. 80.

In a voluntary winding-up the liquidator may alter the register on sanctioning transfers of shares made after the commencement of the winding-up. Companies Act, 1908, ss. 163, 186 (iv); Taylor, Phillips and Rickard's case, (1897) 1 Ch. 298.

Under a winding-up by the Court, the liquidator can now only rectify the register with the special leave of the Court. (Sect. 173.)

A secretary, as such, has no power to alter the register. Wheatcroft's case, 29 L. T. 326; Chida Mines, Limited v. Anderson, 22 T. L. R. 27.

Colonial Registers.

ŧ.

A company is by sect. 34 given 1 over in the circumstances specified Colonial therein, to "eause to be kept in any colony in which it transacts registers, business, a branch register or registers of the members resident in such colony." Such a register may be rectified by any competent Court in the colony. See the section in the Appendix.

CHAPTER X.

TRANSFER AND TRANSMISSION OF SHARES.

Transfer of shares, Act permits, subject to company's articles, "WHEN joint stock companies were established the great object," said Lord Blackburn, "was that the shares should be capable of being easily transferred." *Re Bahia and San Francisco Rail. Co.*, L. R. 3 Q. B. 595. In pursuance of this object, seet. 22 of the Act provides that shares in a company under the Act shall be capable of being transferred in manner provided by the articles of the company; and it is well settled that, unless the articles otherwise provide, the share-holder has a free right to transfer to whom he will. *Weston's case*, 4 Ch. 20.

It is not (as that case decided) necessary to seek in the articles for a power to transfer, for the Act gives that. It is only necessary to look to the articles to ascertain the mode of transfer and the restrictions upon it. See *Gilbert's case*, 5 Ch. 565.

So absolute, primâ facie, is tho right, that a transfer by a shareholder, if out and out, is valid, though made to a pauper and with the avowed object of escaping liability. De Pass's cose, 4 De G. & J. 544; Discoverers Finance Corporation, Lindlar's case, (1910) 1 Ch. 312; affirming Neville, J., (1910) 1 Ch. 207, and overruling Cooper's case, (1908) 1 Ch. 141. Hence the importance, in the interests of tho company, of inserting some qualification of the right in the articles.

Restrictions by articles. There is nothing to limit the restrictions which a company's articles may place on the right of transfer. In re Cauley & Co., 42 C. D. 209, 231; Stockton Malleable Iron Co., 2 C. D. 101. The articles may give the directors power to refuse to register a transfer in any specified cases; for instance, where ealls are in arrear, or where the company has a lien ou the shares—and some such provisions are usually inserted. Thus, Table A. in clause 20 provides that the directors may decline to register any transfer of shares to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. But the articles in many cases go far beyond this. They prohibit, for example, the transfer of a share to any person who is not a member of a specified class, or they provide, as they often do in private companies, that before transferring to an

TRANSFER OF SHARES.

outsider the intending transferor must first offer the shares to the other members, and give them a right of pre-emption. And there is nothing in such provisions, though permanent, to contravene the rule against perpetuities. Borland's Trustee v. Steel Brothers & Co., (1901) 1 Ch. 279.

Where a discretion as to registering transfers is by the articles Where given to the directors, the Court will not control the exercise of such discretion of discretion, unless it is proved that the directors are not comparing it, directors as to discretion, unless it is proved that the directors are not exercising it registration of bond fide (Ex parte Penney, 8 Ch. 452; Re Coalport China Co., (1895) transfers. 2 Ch. 404), or are acting, in other words, oppressively, capriciously, or corruptly, or in some way mald fide. Bell v. Bell, 65 L. T. 245. Nor will the Court draw unfavourable inferences against directors because they do not give their reasons for refusing to pass a particular transfer, for they are under no obligation to disclose their reasons either in Court or out of Court; it is enough that they have in fact considered the transfer, and that in exercise of the discretion given to them by the articles they have not passed it. See the above cases. But if the directors choose to give their reasons, the Court will then consider whether they are legitimate or not. Bell v. Bell, ubi supra.

In the absence of a wider power to refuse to register or transfer, the directors eannot refuse on the ground that the title will on the registration vest in the trustee in bankruptcy of the transferee. Sutton

v. English and Colonial Produce Co., (1902) 2 Ch. 502. Whatever the articles as to transfer may be, a shareholder desiring

to transfer must conform to them. If he does not, the company is entitled to refuse to register the transfer, and the Court declines in such a case to interfere.

On the other hand, registration by the secretary without the authority of the directors can be repudiated by them. Chida Mines v.

One of several transferors revoking his signature on mere suspicion of a breach of trust does not justify an absolute refusal to register.

A transfer is incomplete until registered. Société Générale v. Walker, Registratio-11 App. Cas. 28; Shropshire Union Co. v. The Queen, L. R. 7 H. L. necessary to complete 496; Roots v. Williamson, 38 C. D. 485; Powell v. London and Pro- transfer. cincial Bank, (1893) 2 Ch. 555. Pending registration, the transferee has only an equitable right to the shares transferred to him. He does not become the legal owner until his name is entered on the register in respect of the shares transferred to him. Before that he cannot be sued for calls. Ural Gold Fields v. Pappa, 15 T. L. R. 330. But delay in registration involves darger to him, for some prior equity may come to light, as in Ireland v. Hart, (1902) 1 Ch. 522, where a husband had mortgaged shares of which he was trustce for his wife; or a second transfer may be passed and registered, and

9(2)

complete

TRANSFER AND TRANSMISSION OF SHARES.

Priorities.

thus the prior transfer may be defeated. And see Peat v. Cla; ton, (1906) 1 Ch. 659. "The rule on this point is that, as between , o persons claiming title to shares in a company which are registered in the name of the third party, priority of title [i.e., equitable title] prevails, unless the claimant, second in point of time, can show that, as between himself and the company, before the company received notice of the claim of the first claimant, he (the second claimant) has acquired the full status of a shareholder, or, at any rate, that all formalitios have been complied with, and that nothing more than some purely ministerial act remains to be done by the company, which, as between the company and the second elaimant, the company could not have refused to do forthwith, so that, as between himself and the company, he may be said to have acquired, in the words of Lord Selborne, 'a present, absolute, uncouditional right to have the transfer registered' before the company was informed of the existence of a better title." Per Romer, J., Moore v. N. W. Bank, (1891) 2 Ch. 599; Guy v. Waterlow Bros., 25 T. L. R. 515.

Liability of transferor antil registration. Delay in registration prejudices the transferor also as well as the transferee, for in the case of shares which are only in part paid up, the transferor, whilst the transfer is unregistered, continues liable to the company to pay all calls in respect of the shares comprised therein that may be mad \vee the company. Hence the transferor is given by law a right to enforce registration of the transfer. See sect. 28.

It is not clear that the registration of the transfer divests the liability of the transferor for calls in arrear (Hoylake Rail. Co., 9 Ch. 257); but where the transfer is in the usual form it seems that the company may sue the transferee for the calls in arrcar (Herbert Gold, Limited v. Haycraft (C. A.), 27 March, 1901), and it is clear that the transferce takes the shares on the footing that the call has not been paid, and cannot vote in respect thereof if the articles provide that no member shall be entitled to vote at all if any calls or other sums of money shall be due and payable to the company in respect of the shares of such members. Randt Gold Mining Co v. Wainwright, (1901) 1 Ch. 184. In a winding-up he can certainly be called on to pay up whatever is theu unpaid on his shares (sect. 123 of the Companies Act, 1908), and it would seem that, even while the company is a going concern, it could make a fresh call on him for the amount of the old unpaid call, and that he would be liable to pay such call. Randt Gold Mining Co. v. New Balkis Eersteling, (1903) 1 K. B. 461 (C. A.); affirmed (1904) A. C. 165.

Where the articles contain a clause empowering the directors to reject a transferee whom they do not approve, and a holder of partly paid-up shares has actively or passively induced the directors to pass v

tl

 \mathbf{fr}

FORM AND EXECUTION OF TRANSFER.

and register a transfer, even though it be an out-and-out transfer Ch. X. which but for his conduct they would have refused to register, the company on discovering the facts may repudiate the registration. De Pass's case, 4 De G. & J. 514; Lindlar's case, (1910) 1 Ch. 312.

But where the articles contain no clause authorizing the directors to reject a transferee, a shareholder may at the last moment before liquidation, and for the express purpose of escaping liability, transfer his partly pai' shares to a transferee even though he be a punper, and may compel the directors to register that transfer, provided that it be an out-and-out transfer, reserving to the transferor no beneficial right to the shares, direct or indirect. Whe, her the transfer is of that character is a question of fact. Hyam's case, 1 D. F. & J. 75; Costello's case, 2 D. F. & J. 302; Lindlor's case, (1910) 1 Ch. 312.

Where the directors have a discretion as to registering transfers and the consideration is misstated, the company, on discovering the facts, may repudiate the transfer and restore the transferor's name to the register. Green's case, 19 W. R. 1057; sub nom. Rogers' case, 25 L. T. 406. Compare Weston's case, 4 Ch. 20, 27, where there was no misrepresentation.

Form and Execution of Transfer.

The form of transfer provided by a company's regulations is usually form and in close accord with the form given in clause 19 of Table A. The execution of directors may refuse to register if the prescribed form is not call manster. directors may refuse to register if the prescribed form is not substantially followed, but they may waive any irregularity, c.g., nonsignature by the transferee. Marino's case, 2 Ch. 596. And they must not be too technical. Thus, where the articles required a transfer to be "in the usual common form," according to which the address of the transferor and the distinctive number of the shares should appear, and the transfer tendered omitted these particulars, but was accompanied by the transferor's share certificate giving the omitted particulars, it was held that the transfer should be registored. Re Letheby & Christopher, Limited, Jones's case, (1904) 1 Ch. 815. Where there are joint holders, a transfer, to be effective, must be executed by all. If the signature of anyone be forged, the transfer will be void. Barton v. L. & N. W. Rail. Co., 24 Q. B. D. 77. Unless otherwise provided by the regulations, a transfer may be merely signed by the parties to it, but sometimes the regulations provide that a transfer is to be by deed; this, however, causes inconvenience without any corresponding advantage, for it interferes with the ordinary practice as to blank transfers.

According to that practice, upon a sale or mortgage of shares, the Blank

transferor very commonly signs and hands over what is called a blank transfer-

TRANSFER AND TRANSMISSION OF SHARES.

transfer (i.e., a transfer signed by the transferor, but with a blank for the name of the transferee), the intention being that the purchaser or mortgagee shall be at liberty later on to fill up the blank and perfect his security by getting himself registered. If, however, the regulations require the transfer to be by deed, the transferee cannot effectively fill up the blank and deliver the deed unless anthorized so to do by power of attorney under seal: whereas, if the transfer may be under hand merely, the authority to fill up the blank may be oral and may be implied from the nature of the transaction. See *Hibbleechite* v. *McMorine*, 6 M. & W. 200; *Powell v. London and Provincial Bank*, (1893) 2 Ch. 555; *France v. Clark*, 26 C. D. 257; *Ex parte Sargent*, 17 Eq. 273; *Tees Bottle Co.*, 33 L. T. 834.

A person taking a blank transfer and certificate by way of security is an equitable mortgagee, not a pledgee, and can sell after reasonable notice. *Stubbs* v. *Slater*, (1910) 1 Ch. 632.

Where a shareholder executes blank transfers to enable another to deal with the shares, 'ho is bound not to do anything to prevent registration of the transfer; and if he improperly intervenes, he is '...'le in damages. *Hooper v. Herts*, (1906) 1 Ch. 549.

As to the measure of dumages in such a case, see ib.

Where the regulations require a transfer to be under hand, the fact that it is under seal does not make it the less offective. Ortigosa v. Brown, 38 L. T. 145.

If a deed is requisito, it must be duly signed, sealed, and delivered. *Powell* v. London and Provincial Bank, (1893) 2 Ch. 555. A printed circle with the words "place for seal," is not equivalent to a seal. *Balkis Co.*, 36 W. R. 392.

Transfors by infants can only be made in pursuance of an order of some Court of competent jurisdiction, e.g., the Chancery Division, and by the person named in the order.

Sharos held by a lunatic member or by joint holdors, one of whom is a lunatic, can only be transforred pursuant to an order in lunacy and by the person named in the order. Lunacy Act, 1890, ss. 133, 136-139.

Married women can transfer without the concurrence of their husbands. Married Women's Froperty Act, 1882, s. 9.

A member can transfer his shares by attorney, but the power of attorney must be left with the transfer, and should either be retained by the company or should be filed pursuant to the Cenveyancing Act. 1881, s. 48. It should be duly authenticated, and unless it is irrevocable under sect. 8 or 9 of the Cenveyancing Act, 1882, evidence should be adduced that at the time the transfer was signed the appointer was alive.

Practice

The instrument of transfer, when executed by the transferor, is

When to be executed ander band or seal.

FORM AND EXECUTION OF TRANSFER.

handed to the transferee or his broker, together with the certificates observed on Ch. X. of title, and is then executed by the transfereo and deposited with the transfer.

A seller of shares is bound, if the contract fixes no date, to deliver Delivery of

the certificates within a reasonable time, and the reasonableness of the time cannot depend upon circumstances which are unknown to the buyer and aro not disclosed to him by the seller. De Waal v. Adler, certificates.

An agreement for the sale of a sharo does not impliedly bind Vendor not the vendor to procure the registration of the transfer. His duty is bound to procure performed when he hands over to the transferee a duly executed registration. transfer, together with the certificate or its equivalent. Skinner v. City of London, Sc. Co., 14 Q. B. D. 882; London Founders' Association v. Clarke, 20 Q. B. D. 576. But until the registration of the transfer the transferor is a trustee of the shares for the transferee. See Loring v. Davis, 52 C. D. 625; Hardoon v. Belilios, (1901) A. C. 118; Stevenson v. Wilson, (1907) S. C., Ct. of Sess. 445.

If the buyer wishes to protect himself he must buy "with registration guaranteed."

A company is not bound to register a transfer at once. It may investigation inquire, e.g., as to the authenticity of the transfer. Société Générale v. by company Walker, 11 App. Cas. 41; Ireland v. Hart, (1902) 1 Ch. 522; Ottos Kopje Diamond Mines, (1893) 1 Ch. 618. And where a transfer purports to be executed or signed by the agent of the transferor, the

directors are entitled to call for evidence of authority. A transfer of shares must be duly stamped. If gratuitous or for a Stamp.

nominal consideration, e.g., 5s., it must bear a 10s. stamp; but if on a sale it must bear an ad valorem stamp at the rate of 10s. per cent. on the price. See Stamp Act, 1891. The directors cannot safely register a transfer not duly stamped, for the transfer in such a case not being available as evidence for any purpose in a Court of justice (Stamp Act, 1891, s. 14 (a)), the directors could not use it to justify altering the register. Maynard v. Consolidated Kent Collieries Corporation, Limited, (1903) 2 K. B. 121. It makes no difference that the stamp is sufficient on the face consideration, if the directors know that such consideration is less than the real consideration. Ib.

Forged Transfers.

Sometimes a forged transfer is presented for registration. If the Forged company acts thereon it may incur serious liability, for the re- transfers. gistration of the transfer does not defeat the title of the true owner, and he has a right to require the company to restore his name to the register. Davis v. Bank of England, 2 Bing. 393;

ofore regis-

TRANSFER AND TRANSMISSION OF SHARES.

Stoman v. Bank of England, 11 Sim. 475; Barton v. L. & N. W. Roil. Co., 38 Ch. D. 149. Re Bahia, Sc. Co., L. R. 3 Q. B. 595, is an illustrative case. There the company, acting on a forged transfer, registered the transfereo and gave him a certificate of title; he then sold the shares, and the purchaser, when the shares were claimed by the real owner, was held entitled to damages as against the company. In order to minimise the danger incident to the registration of transfers. it is usual for the company, upon the deposit with it of a transfer, to write to the transferor a letter informing him of the deposit of the trausfer, and stating that it will be registered unless, by return of post, he objects. This course of procedure practically operates as a safeguard, but, in adopting it, a company does not relieve itself of its obligation to ascertain the authenticity of the deposited transfer. The transferor may not receive the notice, and, even if he does receive it, ho is not bound to reply; by not replying, he does not estop himself from asserting his rights at some subsequent period. Barton v. L. § N. W. Rail. Co. (1889), 24 Q. B. D. 77. Where the company registers a forged transfer it may, prima facie, on discovering the forgery, remove the name of the transferee from the register; it is not estopped by the registration. Simm v. Anglo-American, Sc. Co., 5 Q. B. D. 214. But, if it has issued to the transferee a certificate of title, and he or a bond fide buyer from him has acted thereon, the company may be liable in damages. See p. 143, infra ; Re Bahia, &c. Co., L. R. 3 Q. B. 595; Tomkinson v. Balkis Co., (1893) A. C. 396; Bloomenthal v. Ford, (1897) App. Cas. 156. Where, however, the certificate has been issued and sealed by the secretary frauduleutly, without the authority of the directors and for his own purposes, it has been held that the company is not estopped. Ruben v. Great Fingall Consolidated, (1906) A. C. 439, overruling Sham v. Port Philip, 13 Q. B. D. 103.

A person claiming under a forged transfer who sends in and procures registration of such transfer and the issue of a fresh certificate is bound, though acting in good faith, to indemnify the company. Sheffield, Corporation of v. Barclay, H. L., (1905) A. C. 392, reversing C. A., (1903) 2 K. B. 580. And on the same principle where a stockbroker, acting innocently under a forged power of attorney from one of two trustees of stock, had induced the Bank of England to trausfer the stock, he was held liable to indemnify the Bank as having impliedly warranted his authority to the Bank. Starkey v. Bank of England. (1903) A. C. 114; Oliver v. Bank of England, (1902) 1 Ch. 610.

Forged

Even where there is no such right of action, companies can, in some 1891 and 1892, cases, pay compensation under the Acts known as the Forged Transfer Acts, 1891 and 1892. These Acts, however, do not give any right to compensation; they merely give the company power to pay.

TRANSFERS DURING WINDING-UP.

Indemnity.

Upon a sale of shares there is an implied contract on the part of the Indonaty of buyer to indemnify the seller from any calls or liability which may transferer to arise in respect of the shares subsequently to the transfer. Kellock y Enthoren, L. R. 9 Q. B. 241; Loring v. Daris, 32 C. D. 025. Leri v. LEB DATA Pro-Ayres, 3 App. Cus. 852; Hardoon v. Belilios. (1901) A. C. 118.

Transfers during Winding-up.

These, where the winding-up is compulsory or under supervision. Transfers are uvoided by sect, 205 of the Companies Act unless sunctioned by dering windthe Court, and the Court will not, if a transfer is incomplete by reason ing-op of want of registration at the commencement of the winding-up, put the buyer on the register. Enumerson's case (1866 , L. R. 1 Ch. 433; and see In re-Onword Building Society, (1891) 2 Q. B. 163.

A voluntary liquidator has power under sect. 205, to register a transfer after winding-up (Re National Bank of Wales, (1897) 1 Ch. (C. A.) 298), and the transfer, if registered, has full effect. The transferce in such a case ought to be placed on the A list of contributories, the transferor on the B list. A transferce nuder a transfer excented before a confirmatory resolution for winding-up is not entitled to insist on the registration of such transfers merely because an action has been brought to declare the resolution invalid and an interlocutory order made to restrain the company acting on it. Violet Consolidated Gold Mining Co., 68 L. J. Ch. 535.

It is doubtful whether a voluntary liquidator can rectify more protime, although the Court can. Sussex Brick Co., 1904, 1 Ch. 598.

Transferor a Past Member.

Where there is a limbility in respect of uncalled capital on the shares Lability of transferred, the transferor, upon registration of the transfer, is freed transferors from this liability, subject to this qualification, that if a winding-up past member. takes place within one year he may be placed on the B list of contributories as a past member if the A list proves inadequate. See

Certification of Transfers.

When the holder of shares excentes a transfer thereof, it is Cortificates. for the transferee, as the party mainly concerned, to get the transfer when registered, and in order to do this he must be prepared to hand required

TRANSFER AND TRANSMISSION OF SHARES.

over, or to procuro someone olso to hand over, to the company the transferor's certificate of title to such shares. If the certificate comprises the shares transferred and no more, it can of course he handed over with the transfer to the transferee, and can ther he delivered by him to the company; but very commonly the certificato includes other shares, for example, the certificate may certify that A. is the holder of 100 shares; if he transfers only 50, he retains 50, and, therefore, does not want to hand over his certificate to the purchaser. And again, if, having 100 shares, he sells 50 to B. Practice as to. and 50 to C. he cannot hand over the certificate to both. In such cases the transferor usually lodges his certificate with the company, and then at his request, or at the request of his breker, the secretary "eertifies" the transfers (before they are handed over to the transferees), hy stamping in the margin the form of certification and signing the same. The following forms aroused :-- " Certificato lodged : for the ---- Company, Limited, ---- Secretary," or "Certificate for - shares [has been lodged] at the company's office. Date. Secretary."

The certification is regarded as a representation by the secretary,

on behalf of the company, that the transferor has produced such documents as ou the face of them show a prima facie title in the transferor te make the transfer, i.e., a certificate of title that tho trausferor is the registered holder of the shares comprised in the transfer, or clse a certificate that some other person is the registered holder, together with proper transfers from that person to the transferor. In giving such "certifications" the secretary is not supposed to do more than look at the documents produced; if they appear to be in order he certifies, if they aro not he refuses to certify; but he is not bound to inquire whether the documents produced to him are gonuine or not, or whether the various transfers are valid or invalid in point of law. "He does not warrant the title of the transferor, nor tho validity, in point of law, of the various decuments which tegether (purport to) establish his titlo." Por Lindley, L. J., Bishop v. Balkis

Effect.

Stock Exchange sanctions.

A transfer certified as above is, by the rules of the London Steek Exchange, accepted as good delivery of the shares to a purchaser without delivery of the certificate. But irrespective of these rules, by the general practice a transferee requires the share certificate or a certified transfer in order to comply with the articles of the company, which usually provide for the production of the certificate before a transfer will be registered.

Sometimes an official of the Londou Steck Exchange certifies.

Consolidated Co., 25 Q. B. D. 512.

It was held in one case (Re Concessions Trust, (1896) 2 Ch. 757), that where an instrument, purporting to transfer fully paid up shares,

re

Certification of outsider. Estoppel by certification

TRANSMISSION OF SHARES.

is certified by the secretary as above, the company is, by the certification, estepped from saying that they are not paid up. But it has now been decided by the Heuse of Lords that there is no estoppel where the secretary eertifies in cases in which he is not authorized to certify. George Whitechurch & Co., (1902) A. C. 117.

Certification of transfers given to the sceretary is an ordinary busi- Power of ness transaction within the power of a company. Bishop v. Balkis, §c. company.

If the company, after certifying, returns the certificate by mistake to the transferor, and the transferor pledges it in frand of the transferee, this, it seems, gives the pledgee no ground of action against the company. Longman v. Bath Electric Tramways, (1905) 1 Ch. 646.

Transmission of Shares.

Where a member of a company dies, his shares, as personal estate, Transmission vest in his executors or administrators, and the estate is liable (*Baird's* of shares. case, 5 Ch. 725); but the executors or administrators do not ipso facto become members of the company, nor is the company entitled, without their consent, to register them as members. Such registration (as members) may a olve them in a personal hability, and te justify it there must be some distinct and intelligent request on their part. Buchan's case, 4 App. Cas. 588. Where registered as members, there should be a clean registration, without any reference to their representative capacity. They may choose the order in which their names are to stand. Re Saunders & Co., (1908) 1 Ch. 415. Sect. 29 of the Act enables the personal representative of a deceased member, without himself becoming a member, to transfer the shares of the deceased, and the provision is commonly repeated in the regulations. See Clauses 21, 22 and 23 of Table A. This power is frequently exercised when the shares are not fully paid up. The transfer is subject

One of two executors registered as shareholders caunot transfer: all must concur. Barton v. North Staffordshire Rail. Co., 38 C. D. 458; Barton v. L. & N. W. Rail. Co., 24 Q. B. Div. 77.

A transfer by executors to one of themselves should be treated as primá facie regular. Grundy v. Briggs, (1910) 1 Ch. 444.

If a shareholder is domiciled abroad the company may not recognize his executors or administrator till prebate or letters of administration are obtained in England. Fernandez' Executor, 5 Ch. 314; A.-G. v.

New York Breweries, (1898) 1 Q. B. 205; affirmed, (1899) A. C. 62. As to colonial probate, see Colonial Probate Act, 1892 (55 Vict. c. 6).

The trustee of a bankrupt member generally has a right under the Trustee in regulations to be registered as a member in respect of the bankrupt's bankrupter.

TRANSFER AND TRANSMISSION OF SHARES.

shares. See Clause 22 of Table A., and *Re Bentham Mills Spinning Co.*, 11 C. D. 900, and *W. Key §: Son, Limited*, (1902) 1 Ch. 467. In the latter case there was a lien clauso, and the company claimed to enter the trustee's name with a memorandum stating the lien, and to indorse a similar memorandum, but the Court disallowed the entry and held the trustee entitled to a "clean" certificate. The equitable title vests in the trustee, and he has also, under sect. 48 (3) of the Bankruptey Act, 1914, a statutory power to transfer the shares subject to the same conditions as the bankrupt is subject to. If the shares are onerous, the trustee may by writing, within three months of his appointment, disclaim the shares, leaving the company to prove for the injury caused by the disclaimer. Bankruptey Act, 1914, s. 54; In re West of England Bank, Ex parte Budden and Roberts (1879), 12 C. D. 288; Levi v. Ayers, 3 App. Cas. 845.

As to the measure of damages in such a case, see *Re Hallett*, W. N. (1894) 156; *Re Hooley*, (1899) 2 Q. B. 579.

On the bankruptcy of a trustee of shares, the shares, being choses in action, will not pass to his trustee in bankruptey under the order and disposition clause. *Colonial Bank* v. *Whinney*, 11 App. Cas. 426.

A company cannot refuse to register a transfer of shares to a bankrupt director on the ground that if registered the shares will pass to the trustee in bankruptey. Sutton v. English and Colonial Produce Co., (1902) 2 Ch. 502.

A provision in articles for the compulsory transfer of shares of a bankrupt shareholder at a prearranged valuation is no fraud on the bankruptcy law. Borland's Trustee v. Steel Brothers, (1901) 1 Ch. 279.

As to a Scotch sequestrator's right to prove against the estate of a deceased shareholder, see *Tuticorin Co.*, 43 W. R. 190.

A clause, entitling a company to refuse to register any transfer made by a member who is indebted to it, has no application to a person claiming by transmission, such as a trustee in bankruptcy or an executor (*Re Bentham Mills Spinning Co.*, 11 C. D. 900; see, however, *Ex parte Harrison*, 26 C. D. 522); but this oversight is usually corrected in properly-framed regulations.

Share Warrants to Bearer.

Share warrants to bearer. The Act of 1862 made no provision for the ereation of shares to bearer. Shares of this description were first introduced by the Companies Act, 1867, and the provisions there relating to them are re-enacted in sects. 37 and 38 of the Act of 1908. Under sect. 37, a company is empowered, if authorized by its articles so to do, to issue, with respect to any share which is fully paid up, or with respect to stock, a warrant under the common seal stating that the bearer of the warrant is entitled to

SHARE WARRANTS TO BEARER.

the share or shares or stock therein specified. The section also empowers the company to provide, by coupons or otherwise, for the payment of future dividends. Seet. 37 further enacts that a share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by delivery of the share warrant. A considerable number of companies have taken advantage of these provisions as contained in the Act of 1867. Share warrants to bearer are always treated as negotiable instruments. Whether they are so or not under the Act is not quite clear, but there is a valid mercantile custom to treat them as negotiable which is as effective. Webb, Hale & Co. v. Alexandria Water Co. (1905), 21 T. L. R. 572. See infra, p. 306. One circumstance which operates as a check on or discourages the issue of shore warrauts is the heavy stamp duty payable on the issue of them under the Stamp Act, 1891, viz., three times the amount of duty payable on transfer, that is to say, 30s. per cent. When a share warrant is issued, the name of the prior holder of the share is to be struck out of the register of members. See seet. 37 (5). Hence, whilst the share warrant is outstanding there will be no registered holder. The Act provides in sect. 26 as to the particulars to be contained in the annual summary where share warrants have been issued, and seet. 38 provides penalties for forgery

Holding a share warrant will not qualify a director where a share qualification is required.

The holder of a share warrant may be deprived of the right of voting, but this is seldom done, though the right to vote is usually qualified by providing for the deposit beforehand of the warrant. 141

Ch. X.

CHAPTER XI.

CERTIFICATES OF SHARES.

Nature and Form of.

Certificates of title to shares. SECTION 23 of the Act provides that a certificate under the common seal of a company specifying any shares or stock held by any momber of the company, shall be *primd facie* evidence of the title of the member to the shares or stock, and the articles of the company usually contain express provision as to the issue of such certificates. Moreover, sect. 92 of the Act makes provision for the prompt issue of certificates. The document issued is commonly in these terms :--

" The

Company, Limited.

"This is to certify that A. B. is the registered holder of — shares of \pounds — each, numbered — to — inclusive, in the above-named company, and that the sum of \pounds — has been paid up on each of the said shares. Given under the common seal of the said company this — day of —."

The articles of a company usually give the members the right to a certificato (see Table A, Clause (6)), and this right can be enforced by action against the company. Burdett v. Standard Exploration Co., 16 T. L. R. 112.

Convenience of. A share certificate is meant to facilitate dealings by sharcholders with their shares in the market by enabling them, on any such dealing, whether it is one of sale, mortgage or pledge, to show on the spot a good *primá facie* marketable title to the shares. "The certificates in companies of this kind," said Lord Selborne, in *Société Générale de Paris* v. *Walker*, 11 App. Cas. 20, 29, "are the proper, and indeed the only, documentary evidence of title in the possession of a shareholder."

A share certificate is a declaration to all the world that the person in whose name the certificate is made out, and to whom it is given, is a shareholdor in the company, and it is given by the company with the intention that it should be so used by the person to whom it is given, and acted upon in the sale and transfer of shares. Per Cockburn, C. J.,

in Re Bahia, §c. Rail. Co., L. R. 3 Q. B. 595. And see per Lerd Cairns, L. C., in Shropshire Union, Sc. Co. v. The Queen, L. R. 7 H. L. at p. 509, and Burkinshaw v. Nicolls, 3 App. Cas. 1004, at p. 1017. Being thus addressed to the world, and all persons being invited to rely upon it, the directors of a company are bound to use the ntmost care in issuing certificates; for the general rule is that a May raise an person making a representation of fact with the intention that it estoppel. shall be acted on, is estopped from denying its truth as against any person acting on it bond fide. Pickard v. Sears, 6 Ad. & El. 469; Freeman v. Cooke, 2 Ex. 654. Hence if, by inadvertence or negligence, an incerrect certificate is issued, the company may incur serious liabilities in respect thereof. But the case is different where the secretary of a company, for his private ends, has fraudulently affixed the seal of the company to a certificate and forged the names of two of the directers. A certificate so issued raises no estoppel against the company in favour even of a mortgagee without notice. Ruben v. Great Fingall Consolidated Co., (1906) A. C. 439. The eases on estoppel by certificate fall into two classes-representations by a company raising an estoppel as to title, and representations raising an estoppel as to payments on shares. The principle in both

Estoppel as to Title to Shares.

Thus, in Re Bahia and San Francisco Co., L. R. 3 Q. B. 593, the Estoppel of company, acting upon a forged transfer, purporting to be a transfer by company as to title by A., a shareholder, to B., issued to B. a certificate representing him to certificate be the owner of the shares. C., in reliance en this certificate and in issued. good faith, purchased and paid for the shares specified in it, and was duly registered as owner thereof. The forgery was subsequently discovered, and the company was compelled to restore the name of A. to the register in respect of the shares in question : his title, ef course, no forgery could displace (Barton v. L. & N. W. Rail. Co., 38 C. D. 144); but the company was also held liable, in an action by C., to pay him damages for wrengfully removing his name; for though the shares were not really his, the company was estopped, by its conduct, from setting up this defence.

In Ottos Kopje Diamond Mines, (1893) 1 Ch. 618, A. bought shares on the faith of a certificate representing B. as the holder, and took a transfer from B. accordingly. The company had, in fact, issued the certificate to B. in pursuance of a forged transfer, and refused to register the transfer to A. The Court held that A. was, under the circumstances, entitled to damages, and that the measure of such damages was the value of the shares at the time of the refusal to

143

Ch. XI.

CERTIFICATES OF SHARES.

register. The aggrieved party nust, however, in such cases show that he acted on the certificate, for if he merely relies on a forged transfer and is registered and receives a certificate of title, the company is not estopped as against him (Simm v. Anglo-American Telegraph Co., 5 Q. B. Div. 188; Coates v. L. & S. W. Rail. Co., 41 L. T. 553; Vulcan Ironworks Co., W. N. (1885) 120); but if he acts on the certificate ' re A. was registered as the holder of the case is different. Thu: shares under a forged transfer, and received a certificate of title thereto and bond fide acted upon it by selling tho shares, the company was held estopped from denying his title to the shares, and such title being displaced by that of the true owner, ho was held entitled to damages from the company. Tomkinson v. Balkis Co., (1893) A. C. 396. So, also, if he is put to rest until it is too late to get redress against the real wrongdoer there is an estoppel. Dixon v. Kennaway & Co., (1900) 1 Ch. 833.

Estoppel as to Payment on Shares.

Estoppel of company by certificate as to payment on shares.

The only difference in this case is that the representation made by the company is one as to payment and not title, but the company is equally bound to pay damages if its representation is acted on in good faith. Thus, if a company issues a certificate describing a share as fully paid up, when in fact it is not fully paid up, a purchaser of the share, who acts on the faith of the certificate, is entitled to hold the share as paid. Burkinshaw v. Nicolls, 3 App. Cas. 1004. See also Rowland's case, W. N. (1880) 80; and Markham and Darter's Bloomenthal v. Ford, (1897) A. C. 162, case, (1899) 1 Ch. 414. There A. lent the company 1,000/. affords a good illustration. on the terms that he was to have fully paid-up shares as security, and the company issued to him a certificate stating that he was the registered holder of 10,000 fully paid-up shares. The shares were, in truth, not paid up, but of this fact the lender had no knowledge. and it was held, in a winding-up, that the company was estopped from saying that the shares were not paid up, and that A., who honestly believed the representation made in the certificate to be true, was not bound to make any inquiry, or to ascertain how it was that the company was in a position thus to register him as the holder of paid-up shares for which he had not in fact paid. The company, in such a case, has no right to say : "I told you so-and-so, but you ought not to have believed me. You were too great a fool. I had the right to mislead you because you were too great a fool." Per Lord Halsbury, L. C. The estoppel will arise in favour of a firm, though one of the directors signing the certificato is a member of the firm. Coasters, Limited, 103 L. T. 622; (1911) 1 Ch. 86. See, also.

Parbury's case, (1896) 1 Ch. 100, in which the company was held estopped as against an original allottee who had acted on the company's certificato.

A transferce with knowledge or notice that the representation is net correct cannot, however, invoke the doctrine of estoppel in his favour (Crickmer's case, L. R. 10 Ch. 614), but the onus of proving notice rests on the person sotting up the case of notice. In re Hall & Co., 37 C. D. 712.

Directors who issue certificates for shares or stock which do not exist may be held personally liable in damages upon an implied warranty of authority. Firbank v. Humphreys, 18 Q. B. D. 54.

A certificate that a person is the holder of shares or stock does No stamp not require any stamp. It is not a deed. Queen v. Morton, L. R. required.

But a scrip certificate or other document entitling any person to become the proprietor of any share of any company or preposed company requires a penny stamp. Stamp Act, 1891, s. 79.

As to estoppel by "ccrtification," see supra, pp. 138, 139.

Deposit by Way of Equitable Mortgage.

A valid equitable mortgage of shares or stock may be effected by Equitable. depositing the certificate relating thereto. Tahiti Cotton Co., 17 Eq. mortgage by 273. Williams v. Colonial Rank 38 C. D. 395. France v. Clark of deposit of 273; Williams v. Colonial Bank, 38 C. D. 395; France v. Clark, 26 deposit of certificates. C. D. 263; London Joint Stock Bank v. Simmons, (1892) A. C. 201; and Sheffield v. London Joint Stock Bank, 13 App. Cas. 333; De Verges v. Sandeman, Clark § Co., (1902) 1 Ch. 579. If a purchaser of shares leaves them in the hands of a breker, together with blank transfers, and the broker deposits the certificates by way of charge, the purchaser may be estepped from disputing the validity of the charge. Fuller v. Glyn, Mills, Carrie & Co., (1914) 2 K. B. 168.

Renewing Lost Certificates.

The articles very commonly contain provision for the issue of a Lost certififresh certificate in the place of any certificate which has been lost cates. or defaced. See Clause 7 of Table A., infra. Appendix.

Note at Foot.

The certificate very commonly bears at the foot thereof a nete to the Note. effect that before any transfer is registered the certificate must be produced. This note, it seems, is only a warning to the shareholder te take care of tho certificate. It is not addressed to outsiders, and therefore does not create a contract or estoppel against the company en which they can rely. Rainford v. James Keith and Blackman Co., (1905) 1 Ch. 296; Guy v. Waterlow Bros., 25 T. L. R. 515. See dicta te the contrary in Société Générale v. Walker, 11 App. Cas. 20.

CHAPTER XII.

CALLS.

Calls on shares. A MEMBER is under a liability to pay up in accordance with the articles the amount for the time being unpaid on his shares. If his shares have been issued as paid up or partly paid up, whether for cash or otherwise, or if he or some prior holder has paid them up wholly or in part, he may be wholly or *pro tanto* exempt from calls; but *primid facie* his liability is to pay the full amount in money or, if so agreed, in money's worth. Under sect. 25 of the Companies Aet, 1867, he had to pay in each unless a contract otherwise providing was filed with the registrar, but this section has been repealed. See *supra*, p. 119.

The nature of this liability is defined by sect. 14 of the Act. See supra, p. 116. A shareholder is bound, indeed, to pay the full amount unpaid on his shares, but he is not bound (unless, indeed, the terms of issue so provide) to pay up at once. He is only bound to pay in accordance with the articles, e.g., by instalments, according to the terms of issue, or in response to ealls. In re Kershaw, Whittaker v. Kershaw, 45 C. D. 320; Re Russian Spratts, Limited, 78 L. T. 480; Alexander v. Automatic Telephone Co., (1900) 2 Ch. 56. When the liability to pay has thus matured into a debt, this indebtedness on the shareholder's part to the company is by the section "to be in the nature of a specialty debt." An instalment payable by the terms of issue is not a call. Croskey v. Bank of Wales, 4 Giff. 314; Alexander v. Automatic Telephone Co., (1900) 2 Ch. 56.

Call-making Power a Trust.

The power to make calls is a power in the nature of a trust, and it must be exercised for the general benefit of the company. Gilbert's case, 5 Ch. 559; Alexander v. Automatic Telephone Co., (1900) 2 Ch. 56. If it is being exercised mald fide, e.g., for the directors' own ends or other indirect purpose, this is an abuse of the power, and an injunction may be obtained restraining the eall. See p. 149, post. Norman v. Mitchell, 19 Beav. 278; Logan v. Courtown, 13 Beav. 22;

MAKING OF CALLS.

Bailey v. Birkenhead Co., 12 Beav. 433. But the Court does not readily accede to such an application. The onus of proving mala fides in such a case is on the shareholder. Odessa Tramways Co. v. Mendel, 8 C. Div. 245. In the absence of proof of mala fides, it is a well-established principle that the Court will not interfere with the discretion of the directors in making a call. Ibid.

Making of Calls.

A call is made by the directors or other the executive of the company pursuant to the provisions of the company's articles. These generally provide (see Table A., Arts. 12-17) that the directors may from time to time make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them and not by the conditions of allotment thereof made payable at fixed times, and that each member shall pay the amount of every call so made on him to the persons and at the times and places fixed by the directors. Usually the notice of a call is 14 or 21 days. The terms thus defined by the articles are the terms on which, and on which only, the shareholder has agreed to pay, and in making a call care must, therefore, be taken that the directors making it are (i) duly appointed (Howbeach Coal Co. v. Teague, 5 H. & N. 151); and (ii) duly qualified (Iron Ship Co. v. Blunt, L. R. 3 C. P. 484; Sharp v. Dawes, 2 Q. B. D. 26); (iii) that the meeting of the directors has been culy convened (Garden Gully United Quartz Mining Co. v. McLister, ! App. Cas. 46; Faure Electric Accumulator Co. v. Phillipart, 58 L. T. R. 525); (iv) that the proper quorum is present (Austin's case (187), 24 L. T. 932); and (v) that the resolution making the call is duly assed and specifies the amount of the call, the time and place-for these are of its essenceand to whom the call is to be paid. See Re Cauley & Co., 42 C. D. 209; conf. Johnson v. Lyttle's Iron Agency, 5 C. D. 687. A proper entry must also be made in the minutes. Cornwall Mining Co. v. Bennett, 5 H. & N. 423. Unless these matters are attended to the call may be invalid, and when the company comes to sue for the amount or seeks to enforce payment by forfeiture it may be embarrassed by finding that all the proceedings are vitiated by an initial

irregularity. See, however, as to such irregularities, p. 192. Sometimes the articles limit the amount of a call-provide, for example, that the amount shall not exceed one-fourth of the nominal amount of the share, and sometimes that a specified interval must elapse between the times fixed for payment of two successive calls. Any

conditions of this kind must be kept in mind in making a call. Calls should be made pari passu unless the articles otherwise

10 (2)

147

Ch. XII.

provide, and directors can only justify a call made on certain selected members only (if at all) on very special grounds. Galloway v. Hallé Concerts Society, (1915) 2 Ch. 233. If the directors omit to make calls on their own shares they may be held guilty of misfeasance. Alexander v. Automatic Telephone Co., (1900) 2 Ch. 56.

It n.ay sometimes be proper for directors to make a call in order to restrain threatened transfers (*Gilbert's case*, 5 Ch. 559): and where a company is about to sell it. undertaking, there is no objection to a call being made with a view to increasing the saleable assets by the amount thereof. *New Zealand Co.* v. *Peacock*, (1894) 1 Q. B. 622.

A call may be made payable in instalments without any express authority in the articles. Ambergate Rail. Co. v. Norcliffe, 6 Ex. 629; Lawrence v. Wynn, 5 M. & W. 355.

Directors may make calls after a voluntary winding-up has commenced with the sanction of a general meeting or of the liquidators. Fairbairn Engineering Co., Ladd's case, (1893) 3 Ch. 450.

Interest.

Interest on

The articles usually contain also a provision to the effect that if any call is not paid at the time fixed, the holder for the time being of the share is to be liable to pay interest at P_{-} orified rate, sometimes 10 per cent. See Table A., Art. 14. Such clause is binding and will be given effect to. It does not, how ever, apply in the case of calls made by the liquidators of a comp. my. Welsh Flannel and Tweed Co., 20 Eq. 367. As to liability to pay interest on calls after forfeiture of the shares, see Stocken's case, L. R. 3 Ch. 412; Faure Electric Accumulator Co. v. Phillipart, 58 L. T. R. 525.

Deceased Member.

Calls where member deceased. Although the articles generally provide that calls are to be nade on the "members," a deceased member, whilst his name remains en the register, is to be treated as a continuing member so far as may be necessary to make his estate liable. New Zealand, §c. Co. v. Peacock, (1894) ' Q. B. 622.

In the administration of the insolvent estate of a deccased person the amount due for calls which may be made in respect of shares in a company held by him should be estimated and proved for, as well when the company is a going concern as when it is being wound up. *Re McMahon, Fuller v. McMahon*, (1900) 1 Ch. 173.

0

PAYMENT IN ADVANCE OF CALLS.

Bankrupt Member.

If a shareholder becomes bankrupt and the company proves in the bankruptey for the uncalled liability on the shares and receives a dividend, this does not make the bankrupt a holder of fully-paid shares so as to entitle him to participate in surplus assets of the company. Proof is not equivalent to payment. Re West Coast Goldfields,

Enforcing Payment.

The duty of the directors of a company when a call is made is to Enforcement compel every shareholder to pay to the company the amount due from of payment him in respect of such call, and they are guilty of a breach of their duty if they do not take all reasonable means for enforcing payment. Spackman v. Evans, L. R. 3 H. L. 186.

It is a breach of trust for them to favour any director in such a matter. Alexander v. Automatic Telephone Co., (1900) 2 Ch. 56.

It is now common to sue for a call on a writ specially indorsed under Ord. III. r. 6 of Supreme Court Rules. After judgment has been obtained agains the defaulting sharehelder, the company can, if needs be, proceed against him in bankruptcy. Re Winterbottom, 18 Q. B. D. 446. See also as to forfeiture, Chapter XIII. Whilst the company is a going concern the shareholder can plead a set-off. Re Hiram Maxim Co., (1903) 1 Ch. 70. As to the method of enforcing calls due to an English company from contributories in Ireland, see Re Bank of Egypt, Ltd., (1913) 1 I. R. 502.

Injunction to Restrain Enforcement of Call.

If a call is improperly made, the shareholder can obtain an injunction to restrain the directors from enforcing the call by forfeiture pending the trial of the question ; but usually only on the terms that the amount of the call should be paid into Court. Lamb v. Sambas Rubber Co., (1908) 1 Ch. 845; and see Jones v. Pacaya Rubber Co., (1941) 1 K. B. 455.

An injunction to restrain the enforcement of a call by action at law cannot now be granted. Judicature Act, 1873, s. 24 (5); and see Galloway v. Hallé Concerts Society (1915) 2 Ch. 233.

Payment in Advance of Calls.

The articles of a company usually contain a clause similar to Payment in Clause 17 of Table A., empowering the directors to receive from any advance of calls calls.

149

Ch. XII.

CALLS.

member money in advance of calls, on the footing that interest is to be paid thereon whilst in advance. This is an extremely important power and one which is frequently exercised. It is in the nature of a trust to be faithfully exercised for the benefit of the company, and accordingly the directors should only receive money in advance when, in their judgment, the same car be advantageously used for the purposes of the company, and the rate of interest should not be excessive. Poole, Jackson and White's case (1878), 9 C. D. 322; In re Pyle Works, 44 C. D. 58%. Hence, where directors under a power of this kind paid up in advance their own shares, and the same day appropriated the amount in payment of their fees, the company being insolvent, it was held, that the transaction, not being bond fide, was ineffectual, and that the directors remained limble on their shares. Sykes's case, 13 Eq. 255. See, however, Mason's case, In re Liverpool Insurance Co., 30 W. R. 378; In re A. M. Woods, Ship v. Woodite Protection Co., 2 Meg. C. R. 164; also Washington Diamond Co., (1893) 3 Ch. 95. It has now been settled by the House of Lords that where money is paid up in advance under such a clause on the footing that it is to carry interest, such interest is to be paid whether there are or are not profits for the payment thereof. If there are no profits, or the profits are insufficient, then the company must pay out of capital, and there is nothing ultra vires in this. Lock v. Queensland Co., (1896) A. C. 461, 467. Where capital has been paid up in advance it ranks for repayment in a winding-up primd facie before capital not paid up in advance. Maude's case, 6 Ch. 51; Wakefield, §c. Co., (1892) 3 Ch. 165; In re Exchange Drapery Co., 38 C. D. 171. The company is not entitled to repay the amount advanced at any time against the wish of the shareholder. London and Northeru S.S. Co. v. Farmer, (1914) W. N. 200; 111 L. T. 204.

CHAPTER XIII.

FORFEITURE.

The articles of a company generally contain provisions for the Forfeiture of forfeiture of shares for non-payment of calls or instalments. See shares for Table A., Arts. 24-30 : sometimes for non-payment of debts also of calls. See Dunlop v. Dunlop, 21 Ch. D. 583, and the footnote on p. 160, post. Such a power to forfeit is not inherent in a company. Clarke v. Hart, 6 II. L. C. 633. It only exists where it is given by the articles or introduced into them, as it may be, by special resolution. Dawkins v. Antrobus, 17 C. D. 634; Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656. When given, it is like other powers of directors, fiduciary -to be exercised, that is, for the benefit of the company.

A collusive forfeiture made for the purpose of enabling a member Collusion favoured by the directors to escape from his liabilities is an abuse of the power and a fraud on the other shareholders. Re Esparto Trading Co., 12 C. D. 191; Spackman v. Evans, L. R. 3 11. L. 186; Lord Wallcourt's case, W. N. (1899) 258. Forfeiture is treated very strictly by the Courts, and directors seeking to enforce it must exactly pursue the course of procedure marked out by the articles. Clarke v. Hart, supra. A Irregular. slight irregularity is as fatal as the greatest. Garden Mining, Sc. Co. v. McLister, 1 App. Cas. 39; Johnson v. Lyttle's Iron Agency. 5 C. D. 687. Thus if the call, in respect of which the forfeiture is chade, was not validly made (Garden Gully United Quartz Mining V. v. McLister, supra), or if the notice on which the forfeiture is i unded is inaccurate in requiring payment of interest from a wrong date offer the date of the call instead of the date appointed for puyment, the forfeiture may be held invalid. Johnson v. Lyttle's Iron Agency Co., supra ; Watson v. Eales, 23 Beuv. 294 ; Faure Electric Accumulator (... v. Phillipart, 58 L. T. 525. Even where a shareholder is seeking to reacind his contract the Court can restrain a forfeiture. Lamb v. Sambas Rubber, (1908) 1 Ch. 845; Jones v. Pacuya Rubber Co., (1911)

Where a shareholder is bankrupt the notice of forference may still be given to him. Graham v. Van Dieman's Land Co., in L. J. Ex. 73; but it is well to give notice to the trustee also. So where the shareholder is dead the notice may be sent to his registeresl address. Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656 at p. 670. [Note that in this case the notice in fact reached the executors; but the statement of the law at p. 670 is probably sufficient to override the doubt expressed in James v. Buena Ventura, (1896) 1 Ch. at p. 465.]

FORFEITURE.

The exercise of a power of forfeiture is a question of expediency as to which the directors must exercise their discretion. *Bigg's case*, 1 Eq. 309. On forfeiture the shares become the property of the company and may be sold by it. See Table A., Clause 27.

Directors do not lose the power of forfeiture because the company charges all its uncalled capital in favour of trustees for debenture holders. *Re Agency Land and Finance Co. of Australia*, 20 T. L. R. 41.

In a voluntary winding-up the directors can, with the sanction of the liquidator, exercise the power of forfeiture. See sect. 185 (iii) of the Act of 1908, and *Re Fairbairn*, §c. Co., (1893) 3 Ch. 450.

The articles generally give power to the directors to sell forfeited shares. Iu such a case the directors can sell at a discount, that is for less than the amount paid up prior to the forfeiture. Morrison v. Trustees' Executors Co. (1899), 68 L. J. Ch. 11; 79 L. T. 605 (C. A.). [But semble the transferee will remain liable to pay any amount remaining unpaid on the shares at the time of sale. S. C. And see New Balkis v. Randt Gold Mining Co., (1904) A. C. 165, and p. 153, post.] In such a case the transferee will be a holder of shares in respect of which money is due, and may therefore by a clause in the regulations be debarred from voting. Randt Gold Mining Co. v. Wainwright, (1901) 1 Ch. 184. He should be credited with any subsequent payments made by the ex-owner. Randt Gold Mining Co., (1904) 2 Ch. 468.

Power to annul.

Relief against.

The articles very commonly give power to the directors so long as they have not sold the forfeited shares to annul the forfeiture on such terms as they think proper. This power cannot be exercised without the consent of the late holder. *Exchange Trust, Limited, Larkworthy's case*, (1903) 1 Ch. 711.

Relief against Forfeiture.

Where a forfoiture has been duly and bond fide effected, equity will not relieve against it. Sparks v. Liverpool Waterworks Co., 13 Ves. 428. A shareholder who desires to challenge a forfeiture as invalid may bring au action to set it aside (Sweny v. Smith (1867), 7 Eq. 324; Johnson v. Lyttle's, §c. Co., supra; Re New Chili, §c. Co., 45 C. D. 598); and may obtain an injunction to restrain the forfeiture pending the trial, usually on the terms of payment of the amount called up into Court; see Jones v. Pacaya Rubber Co., (1911) 1 K. B. 455 (where the forfeiture was restrained pending the trial of an action elaiming rescission of the contract to take the shares); and mere laches will not disentitle a legal owner of shares to such relief if the forfeiture is invalid (Garden Gully, §c. Co. v. McLister, 1 App. Cas. 39); but it is different where years have elapsed and the shareholder claiming relief was himself party as director to the forfeiture. Jones v. North Vancouver Land Co., (1910) A. C. 317.

p

6

152

Forfeiture

ing-up.

Sale of

shares.

after wind-

LIABILITY AFTER FORFEITURE.

Ch. XIII.

A shareholder whose shares have been irregularly ferfeited (e.g., Damages for without proper notice) can sue the company or, in a winding-up, prove irregular for damages against the company. In re New Chili, Sc. Co., 45 C. D.

A clause in a company's articles forfeiting the shares of any shareholder who should commence or threaten an action against the company or the directors on payment to the shareholder of tho full market value of his shares is invalid, as an infringement of a shareholder's legal rights. *Hope* v. *International Financial Society* (1876), 4 C. D. 327.

Liability after Forfeiture.

Forfeiture of shares prevents primá facie any action by the company Liability for 1.1st calls (Stocken's case, 3 Ch. 415), and when a person has been after. induced by misrcpresentation to become a member, forfeiture places him in a position, it used by the company, to set up the misrepresentation by way of defence, even in a winding-up. Aaron's Rieef v. Twiss, (1897) A. C. 273. But the articles commonly provide that where a share has been forfeited the member shall be liable for payment of the call with interest, and this creates a new obligatiou (Stocken's case, supra) which can be enforced by action at law, but not by placing the holder on the list of coutributories. Ladies' Dress Association v. Pulbrook, (1900) 2 Q. B. 376.

A call may be "owing" within the meaning of such a clause, though it has not become payable when the forfeiture takes place. Foure v. Phillipart, 58 L. T. 525.

The forfeiture of a share does not relieve the forfeiting member from liability in respect thereof if the company should be wound up within a year after the forfeiture: he will still be liable as a past member to the extent specified in sect. 123 of the Act. Creyke's case, L. R. 5 Ch. 63. So a shareholder who has transferred his shares within a year of a winding-up is liable as a past member, though the shares have been forfeited in the hands of a transferee. Bridger's and Neill's cases (1869), L. R. 4 Ch. 266.

A liquidator has no power to cancel a forfeiture of shares duly made by the directors before the commencement of the winding-up. Dawes' case, 6 Eq. 232.

When shares forfeited for non-payment of calls are sold, the purchaser is liable to a fresh call in respect of the capital comprised in such prior calls (*New Balkis Eersteling v. Randt Gold Mining Co.*, (1904) A. C. 163), for the company cannot sell free from that liability. But subsequent payments by the former holder, on account of the prior calls, should be credited to the purchaser in due course. *Randt Gold Mining Co.*, (1904) 2 Ch. 468.

CHAPTER XIV.

LIEN ON SHARES.

How created.

The lien clause : its operation. A COMPANY has, primâ facie, no lien on the share of a member (Pinkett v. Wright, 2 Ha. 120; 12 Cl. & Fin. 764); but the articles may, and usually do, provide that the company shall have a paramount lien on the shares of each member for his debts and liabilities to the company, whether matured or not. See Company Precedents, 11th ed., Part I. p. 662, and Table A., cl. 9. And such a provision is effective. New London, §c. Co. v. Brocklebank (1882), 21 C. D. 302; Bradford Bank v. Briggs (1886), 12 App. Cas. 29. The lien thus created takes effect as an equitable charge (Ex parte Lewis (1871), 6 Ch. 818) created in favour of the company by covenant of the shareholder, the covenant being implied by virtue of sect. 14 of the Act. See Bradford Bank v. Briggs, supra; and also p. 39, supra. A lien clause may be adopted by special resolution. Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656.

A right of lien may be discharged by a clear arrangement between the shareholder and the company. Bank of Africa v. Salisbury Gold Mining Co., (1892) A. C. 261.

Validity of Lien against Third Persons.

As to subsequent mortgage or purchase. A lien clause in the articles not infrequently gives rise to questions of priority between the company asserting the lien and persons claiming under the shareholder. For example, the company may receive notice that the shareholder has mortgaged or sold the shares, and the question then arises whether, if the shareholder subsequently becomes indebted to the company, the company's lien will rank in priority to the mortgagee or purchaser.

Exemption clause.

The answer to the question generally turns on the presence or absence in the articles of a clause (below referred to as an exemption clause) relieving the company from the obligation to take notice of equities in relation to its shares. It will be convenient to consider, in the first place, cases

WHERE THERE IS AN EXEMPTION CLAUSE. Ch. XIV.

Where there is an Exemption Clause.

See, for examples, p. 158.

In New London and Brazilian Bank v. Brocklebank (1882), 21 C. D. New London, 302, there was a paramount lien clause and also an exemption clause. \$c. Bank v. The shares were acquired with trust money. One of the holders became indebted to the bank, and upon the bank seeking to enforce its charge the prior equity of the beneficiaries was set up, with the result that the Court of Appeal (Jessel, M. R., and Lindley and Holker, L. JJ.) held that the bank had a lien on the shares which must prevail over the title of the beneficiaries. Jessel, M. R., considered that, as the lien was given by the articles, it took effect from the time the member was admitted, and further, that the beneficiaries were not entitled to repudiate the lien and exemption clauses, and Lindley, L. J., said that he failed to see upon what ground the equitable owner could claim title to the shares and yet "repudiate the terms upon which the trustees have acquired the shares."

In the last edition of Lindley on Company Law, p. 637, this case is referred to as an authority for the proposition that-

"In the case of companies which are exempted from the duty of taking notice of trusts, the lien is available against a shareholder who is merely a trustee for others for debts due from him personally."

And the decision was recognized as a binding authority by Farwell, J., in the recent case of Borland's Trustees v. Steel Brothers §.

Again, in Miles v. New Zealand, Alford, &c. Co. (1886), 32 C. D. 266, there being a lien clause and an exemption clause, it was held by the Court of Appeal that the company was not bound to take notice of a mortgage, and was entitled to rank before the second mortgagee in respect of a claim arising after notice to the company of such

And in Sociëté Générale v. Walker (1886), 11 App. Cas. 20, where there was an exemption clause, Lord Selborne said that he thought "upon the true and proper construction of the Companies Act, 1862, and of the articles of this company, there was no obligation upon this company to accept or to preserve any record of notices of equitable interests or trusts if actually given or tendered to them, and that any such notice if given would be absolutely inoperative."

This passage was thought by Lord Halsbury, L. C., in Bradford Banking Co. v. Briggs (see infra), to go too far; but, apparently, attention was not called to the fact that, in the case last mentioned, there was no exemption clause, whereas, in the case Lord Selborne was dealing with, there was a very full exemption clause.

Brocklebank.

LIEN ON SHARES.

Principle of decision.

The principle of these decisions appears to be that a shareholder cannot both approbate and reprobate, and that those who claim nnder him cannot repudiate either the lien clanse or the exemption clanse, any more than those claiming under a lease or a policy can repudiate the conditions thereof. Qui sentit commodum, sentire debet et onus. See Macdonald v. Law Union, Sc. Co. (1873), L. R. 9 Q. B. 328, and Borland's Trustee v. Steel Brothers & Co., (1901) 1 Ch. 279 (Farwell, J.). It is the same principle as that a person who takes property with notice of an equity attached thereto is bound thereby. See Tulk v. Moxhay (1848), 2 Ph. 774. "If," said Lord Chancellor Cottenham in that case, " un equity is attached to the property by the owner, no one purchasing with notice of that equity can stand in a different situation from the party from whom he purchased." Tulk v. Moxhay was a case as to nser of land, but there is no difference in principle whether the subject-matter is land or a chattel, e.g., a ship. See De Mattos v. Gibson (1858), 4 De G. & J. 276, in which Knight-Brnce and Turner, L. JJ., both considered that, when there was a contract between A. and B. as to the employment of a chattel the Court of Chancery had power to restrain C., claiming through B. with notice, from doing anything in contravention of the contract. "A system of law," said Knight-Brnce, L. J., "in which such a power does not exist must surely be very defective. I repeat that in my opinion the power does exist here."

Object of sect. 27 of the Act. Company looks to registered holder.

The importance of thus relieving the company from an obligation to recognize equities is well pointed out by Lord Coleridge, C. J., sitting in the Court of Appeal in Re Perkins, 24 Q. B. D. 613. "It seems to me," he said, "extremely important not to throw any doubt on the principle that companies have nothing whatever to do with the relations between trustees and their cestuis que trust in respect of the shares of the company. If a trnstee is on the company's register as a holder of shares, the relations which he may have with some other person in respect of the shares are matters with which the company have nothing whatever to do. They can only look to the man whose name is upon the register. It seems to me that if we were to throw any doubt upon that rule, we should make the carrying on of their business by joint stock companies extremely difficult, and might involve those companies in very serious questions, and the ultimate result would be anything but beneficial to the holders of shares in such companies themselves." Lord Esher and Fry, L. J., concurred. It is for these dicta that the case is cited. The actual point decided was a somewhat different ene, viz., that as the company were not bound to recognize trusts, they had no lien npon the shares for a debt due to them by the cestui que trust of the shareholder.

WHERE NO EXEMPTION CLAUSE.

Where no Exemption Clause.

On the other hand, cases sometimes occur where there is a lien Where no clause but no clause exempting the company from taking notice of exemption trusts and equities. In such cases the company has to rely exclusively on sect. 27 of the Act, which provides that "No notice of any trust, expressed, implied or constructive, shall be entered on the register or be receivable by the registrar in the case of companies under this Act and registered in England or Ireland."

This section is very wide in its terms; but it has been held by the House of Lords, on the corresponding section in the Act of 1862, that notice of an equitable mortgage created by the shareholders, is not notice of a "trust" within the meaning of the sections. Bradford Banking Co. v. Briggs (1887), 12 App. Cas. 29. In that case the articles contained a clause giving the company a first and permanent lien, and there was no exemption clause. The company received notice of a mortgage by the shareholder, and afterwards it advanced money to the shareholder and claimed priority for its advance, contending (1) that on the true construction of the lien clause (103) in its articles (which gave the company a first and permanent lien) the shareholder had agreed that the company should have a lien ranking in priority to all other charges with or without uotice, and that the second mortgagee with notice of this bargain could not establish any claim in violation of it; and (2) that the company was, under sect. 30 of the Act of 1862 (now sect. 27), entitled to disregard

the notice as notice of a trust, and on that ground, entitled to priority. It was held that the principle of Hopkinson v. Rolt, 9 H. L. C. 514. applied, and there being nothing in the articles to the contrary, the company was not entitled to disregard notice of the mortgage and insist upon priority for its subsequent advances.

As to the first of these contentions, the House of Lords was of opinion that it was inconsistent with the real meaning of the clause. "I cannot agree," said Lord Blackburn, "that such is the true construction of Art. 103." And Lord Fitzgerald observed that "the principle of Hopkinson v. Rolt governs the present case unless there is something in Art. 103 which prevents its application. The articles provide for the transfer of shares; ... but there is no limit to the right of the shareholder to pledge, or raise money on, his shares unless it is to be found in Art. 103." and he considered that "full effect may be given to its terms, and yet the lien conferred by it be limited as to liabilities of the shareholder contracted up to the time at which the company shall have had notice that he has ceased to be the heneficial holder of the shares."

clause.

Ch. XIV.

LIEN ON SHARES.

As to the second contention, the House of Lords held that netice of the inertgage was not notice of a trust within the meaning of the section.

It is material to note that this case was decided on the construction of the articles and of sect. 30 of the Act of 1862. It did not decide that there was any inexorable rule of equity making it impossible, by the articles, to exclude the application of the rule in *Hopkinson* v. *Rolt, supra*. On the contrary, as appears above, the provisions of the articles were carefully considered, and it was held that they did not import any intention to exclude the rule, for they in ne way attempted to relieve the company frem uoticing equities. And as regards sect. 30 ef the Act ef 1862 (now sect. 27 of 1908), the case merely decided that notice of a mortgage was not notice of a trust. Bradford Banking Co. v. Briggs therefore in no way derogates from the authority of New London and Brazilian Bank v. Brocklebank, 21 C. D. 302, supra, p. 155. See also the judgment of Farwell, J., in Borland's Trustee v. Steel Brothers § Co., (1901) 1 Ch. 288.

Exemption Clauses.

The terms of exemption clauses vary considerably. In New London and Brazilian Bank v. Brocklebank, 21 C. D. 302, supra, p. 155, the clause ran-

"The company shall not be bound by or recognize any agreement to transfer or charge any share, or any equitable, coutingent, future or partial interest, or other right in, to, or in respect of such share, except an absolute right thereto in the person from time to time registered as the holder thereof."

The clause in Société Générale v. Walker, supra, p. 155, ran thus-

"The company shall not be bound by or recognize any equitable, contingent, future, or partial interest in any share or any other right in respect of a share except absolute right thereto in the person from time to time registered as the holder thereof, and except also as regards any parent. guardian, committee, husband, executor, or administrator or trustee in bankruptcy his right under these presents to become a member in respect of or to transfer a share."

In Miles v. New Zealand, §c. Co., supra, p. 155, the clause was in these terms-

"The company shall not be bound to recognize any contingent, future, partial er equitable interest in the nature of a trust, or otherwise in any share er any other right in respect of any share except an absolute right thereto in the person from time to time registered as the helder thereof."

Another prevision very commonly found in articles is that "[Save as herein otherwise provided] the company shall be entitled to treat

the registered holder of any share as the absolute owner thereof, and, accordingly, shall not [except as ordered by a Court of competent jurisdiction or as by statute required] be bound to recognize any equitable or other claim to, or interest in, such shares on the part of any othor person." Such a clause is framed with a view to enabling the company, whether in relation to a lien clause or otherwise, to deal with the registered holder of a share as the absolute owner, and to relieve the company altogether from any obligation to take notice of any claims or assertions of equitable interests that may come to it.

How far such a clause operates has not yet been fully determined. Such a clause It is, however, clear that, even without the words in brackets, it does does not exclude the not prevent a person equitably interested in shares from procuring Court. the intervention of the Court to protect his rights. Binney v. Ince Hall Coal Co., 35 L. J. Ch. 363; Taylor v. Midland Rail. Co., 8 W. R. 401. In this respect it goes no further than sect. 27 of the Act. See Bradford Banking Co. v. Briggs, 12 A. C. 29, supra, p. 157; and Company Precedents, Part I. p. 650.

How Lien enforced.-Sale.

The articles generally give power to the company to enforce a lien Enforcing by sale after default (see Table A., Art. 10), and, if needs be, to lien. transfer the shares into the purchasers' names. This is right; for, in the absence of some such provision, it may be necessary to apply to the Court. New London, &c. Bank v. Brocklebank, 21 Ch. D. 302, supra, p. 155. On the other hand, the charge which a lieu creates being a mortgage within the meaning of sect. 2, sub-sect. (vi) of the Conveyancing Act, 1881, the shareholder or his transferee is entitled, by sect. 15, sub-sect. (i) of that Act, to require the company, on payment of the sum due, to assign the debt and their lien on the shares to his nominee. Everett v. Automatic, &c. Co., (1892) 3 Ch. 506 : but see Re Magneta Time Co., (1915) W. N. 318, as to the necessity of concurrence of a subsequent incumbrancer.

This being so, it may be that the power of sale given by sect. 19 of the same Act to mortgagees is applicable. Sect. 19, no doubt, only gives the power to a mortgagee to sell whore the mortgage is "by deed," but under sect. 14 of the Act of 1908, the lien clause binds the shareholder as if it were his deed of covenant with the company. Bradford Bank v. Briggs, supra.

The clause conferring a lien extends not only to the shares, but to the dividends thereon (Re General Exchange Bank (1871), L. R. 6 Ch. 818; Hague v. Dandeson, 2 Ex. 741), and also to any assets which, in a winding-up, may come to the shareholders in respect thereof. Er parte Lewis, 6 Ch. 818.

159

Ch. XIV.

LIEN ON SHARES.

When the holder of shares subject to a lien by the company sells some of them the purchaser is entitled to marshal as against an execution creditor of the vendor, and to throw the lien in the first instance upon the shares remaining unsold. *Gray* v. *Stone & Funnell*, 69 L. T. 282; W. N. (1893) 133.

Forfeiture.

Forfeiture clause. Occasionally the articles provide that a lien may be enforced by forfeiture, but such a provision is not effective; for the lien is an equitable mortgage, and a clause for forfeiture in a mortgage is, in equity, inoperative. The rule is that, "once a mortgage always a mortgage" (Salt v. Marquis of Northampton, (1892) A. C. 1), and any attempt to clog the equity of redemption is futile.

Simple forfeiture clause without lien. Sometimes it is thought better to avoid any question as to the operation of the lien clause by striking it out altogether, and adopting in lieu thereof a forfeiture clause for non-payment of any debt. Such a clause is sometimes used (*Dunlop v. Dunlop*, 21 C. D. 583), and is effective (a). It practically overrides *Bradford Banking Co. v. Briggs, supra*, p. 157.

Charging Orders.

Charging orders. As to obtaining charging orders on shares, see 1 & 2 Vict. c. 110, s. 14; 3 & 4 Vict. c. 82, s. 1; R. S. C., Ord. XLVI. r. 1; and Company Precedents, Pt. II. pp. 557, 650. A charging order cannot be made upon the shares of a judgment debtor if he is a trustee of the shares. *Cooper v. Griffin*, (1892) 1 Q. B. 740; *Howard v. Sadler*, (1893) 1 Q. B. 1, *South Western Loan and Discount Co. v. Robertson*, 8 Q. B. D. 17. See also *Ideal Bedding Co. v. Holland*, (1907) 2 Ch. 157. A charging order must be enforced in a separate action commenced by writ or originating summons. Company Precedents, Part II. p. 650. See *Leggott v. Western*, 12 Q. B. D. 287; *Ricketts v. Ricketts*, W. N. (1891) 29; R. S. C., Ord. LV. r. 58.

[(a) The validity of the clause was not questioned in Dunlop v. P alop, and the dicta of the House of Lords in the subsequent case of Tretor v. Whitworth, 12 A. C. at p. 417, and of the Court of Appeal in Bellerby v. Rowland & Marwood, (1902) 2 Ch. at p. 32, may raise a doubt whether forfeiture is permissible for purposes other than those specified in Clause 26 of Table A.—ED.]

CHAPTER XV.

GENERAL MEETINGS.

The Statutory Meeting.

SECT. 65 of the Companies (Consolidation) Act, 1908 (which has First statutaken the place of sect. 12 of the Companies Act, 1900), runs as tory meeting of company.

(1.) Every company limited by shares and registered on or after the 1st day of January, 1901, shall, within a period of not less than one menth nor more than three months from the date at which the company is entitled [see p. 23] to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2.) The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company a report (in this Act called "the statutory report") to every member and te every other person entitled under this Act to receive it.

(3.) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state-

(a) the total number of shares alletted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are se paid up, and in either case the consideration for which they have been allotted;

P.

(b) the total amount of cash received by the company in respect of such shares, distinguished as aforesaid ; (c) an abstract of the receipts of the company on account of its

capital, whether from shares or debentures, and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

11

(d) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its upproval, together with the particulars of the modification or proposed modification.

(4.) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the anditors, if any, of the company.

(5.) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.

(6.) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by 'hem respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuunce of the meeting.

(7.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8.) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9.) If a petition is presented to the Court in manner provided for in Part IV, of this Act for winding np the company on the ground of default in filing the statutory report, or in holding the statutory meeting, the Court may, instead of directing the company to be wound up, give directions for the report to be filed or a meeting to be held, or make such other order as may be just.

(10.) The provisious of this section as to forwarding and tiling the statutory report shall not apply in the case of a private company.

The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company what shares have been taken up, what moneys received, what contracts entered into, what sums spent on preliminary expenses, &c. Furnished with these particulars, the shareholders are to have an opportunity of meeting and discussing the whole situation—the

ORDINARY AND EXTRAORDINARY GENERAL MEETINGS. Ch. XV.

management, methods and prospects of the company. If the shareholders fail to do so, they have only themselves to blame.

As regards the details of the section, it is to be noted that it is only Notes on the applicable in the case of a company limited by shares. Hence the section. section does not apply to unlimited companies, or to companies limited by guarantee (even where these companies have a capital divided into shares), and it applies only in part to private companies. And see

sub-sect. (10); Gardner v. Iredale, (1912) 1 Ch. 700. The words "entitled to commence business" at the commencement

of the section refer, in the case of a company which on its formation invites the public to subscribe for shares, to sect. 87. (Su) (a, p. 57.) In the case of a private company the words refer to the date of incorporation. Such a sompany is entitled to commence business immediately on its incorporation, for sect. 10 of the Act declares that it shall "be capable forthwith of exercising all the powers of an incorporated company"; and, as Lord Macnaghten said in Salomon's case, (1897) A. C. 22, "The company attains maturity on its birth. There is no period of minerity, no interval of incapacity."

The notices convening the statutory meeting should state that it is

to be the statutory meeting. Gardner v. Iredale, (1912) 1 Ch. 700. For a case where the company was wound up for default in compliance with this section, see Rr Kent Outcrop Coal Co., (1912)

Ordinary and Extraordinary General Meetings.

A general meeting of the shareholders of a company is, by sect. 64, Annual to be held once at least in every calendar year, and not more than meeting. fifteen months after the holding of the last preceding general meeting, and there are penalties for default; moreover, the Court, in case of default, can order the meeting to be convened. The calendar year commences 1st January (Gibson v. Barton, L. R. 10 Q. B. 329 Park v. Lawton, (1911) 1 K. B. 588). Sect. 26 implies that an ordinary meeting is to be held every year. The statutory meeting is not an ordinary meeting. Hence both should be held, though the holding of an extraordinary meeting would no doubt be a sufficient compliance with sect. 64. Lord Claude Hamilton's case, L. R. 8 Ch. 548.

The articles usually distinguish between ordinary meetings and Ordinary and extraordinary meetings. See Clause 17 of Table A. The term "ordinary extraordinary meeting" is generally confined to the annual meeting which, by the articles, is usually to be held at some specified period of the year. The article for this purpose commonly provides that the directors are to hold one meeting every year at a specified date, and that they may call other meetings whenever they choose; and further, that they shall call an extraordinary meeting whenever they are required so to

11 (2)

meetings.

do by a requisition signed by a specified proportion of the members. Macdougall v. Gardiner (1875), L. R. 10 Ch. 606; see Chuse 48 of Table A. Sect. 66 of the Act of 1908 (re-enacting provisions first introduced by sect. 13 of 1900) provides that the directors must call an extraordinary meeting on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls and other sums then due have been paid, and that if the directors do not, pursuant to any such requisition, convene a general meeting within twenty-one days the requisitionists, or a majority of them in value, may themselves convene such a meeting. See sect. 66 below.

Who may Convene.

The articles, as above stated, generally provide that the directors may, and that they shall, upon a specified requisition by members, convene a general meeting. This means prime facie that the directors may by resolution passed at a duly convened and constituted meeting of the board order the meeting to be convened. Haycraft Gold Reduction Co., (1900) 2 Ch. 230; Harben v. Phillips, 23 C. D. 14. But if the articles so provide, a resolution in writing signed by the directors without meeting is as effective as a resolution passed at a board meeting. Notice of a general meeting given by the secretary without the sanction of the directors or other proper authority is invalid. Ibid.; and Re State of Wyoming Syndicate, (1901) 2 Ch. 431. But such a notice may be ratified by the directors before the meeting. Hooper v. Kerr Stuart & Co., 83 L. T. 729, infra, p. 195.

Moreover, a resolution passed by a meeting which has the appearance of being regularly convened, will not be invalidated because some of the acting directors who joined in convening the meeting were not duly appointed. Browne v. La Trinidad, 37 C. D. 1; British Asbestos Co. v. Boyd, (1903) 2 Ch. 439. See also Boschoek Proprietary Co. v. Fuke, (1906) 1 Ch. 148, where the object was to coufirm past proceedings.

Directors in calling meetings, as in other matters, must consider the general interests of the company.

Extraordinary general meeting. As regards a meeting on requisition the articles commonly contain independent provisions on the subject. Where this is so the shareholders can proceed either under the articles or under sect. 66, as may seem the more convenient, but subject to this qualification, that the articles cannot abridge the statutory right. Usually it is found better to proceed under the section.

The section above referred to (which takes the place of sect. 13 of the Act of 1900) runs thus:--

66.-(1.) Notwithstanding anything in the articles of a company. the directors of a company shall, on the requisition of the holders of

not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2.) The requisition must state the objects of the company. be signed by the requisitionists and deposited at the office of the company, and may consist of several documents in tike form each signed by one or more requisitionists.

(3.) If the directors of the company do not proceed to cause a meeting to be held within twenty one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convent the seting, fast one meeting so convened shall not be held after the smooths from the date of such deposit.

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meetars for the purpose of considering the resolution and, if thought fit, of confirming if as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors."

(Clanse 1.) The holder of fully paid shares can take part in a requisition in respect of those shares, notwithstanding that calls remain unpaid on other shares held by him. Fruit and Vegetable Association v. Kekewich, (1912) 2 Ch. 52.

(Clause 2.) Documents may be "in like form," notwithstanding slight differences of language. Fruit and Vegetable Association v. The The Second Second

The mere fact that some of the resolutions referred to in the requisition could not be put to the meeting does not relieve the directors from an obligation to call the meeting. Isle of Wight Rail.

The Court would not under the old law compel directors to convene a general meeting pursuant to a requisition where the articles enabled the requisitionists themselves to call the meeting (*Macdougall v. Gardiner*, 10 Ch. 606), and the same rule will probably be adopted under the Act. The shareholders have the remedy in their own hands. But there might be special circumstances where the Court would interfere, e.g., where there was a deadlock (*Brick and Stone Co.*, W. N. (1878) 140; *Sailing Ship "Kentmere" Co.*, W. N. (1897) 58), or where there was no board, or such disputes between the governing body as to prevent the affairs of the company being properly carried on.

Trade $\exists uxiliary \ Co. v. Vickers. 16$ Eq. 298. In such a case the Court would meet the situation by an injunction or appointment of a receiver.

In an argent case a mandatory injunction has been granted directing the directors to call a meeting "forthwith" under sect. 66 (1). Rutherford v. Farmery (1915, R. No. 1524), Astbury, J., 12 Nov. 1915.

Notice.

Omission to give notice to any particular inembers.

Notices as per regulations. Contents of notice. Special or ordinary business.

Unless the articles otherwise provide, every member is entitled to notice of a general meeting-usually a seven days' notice-and the omission to give due notice, therefore, invalidates the meeting (Smyth v. Darley, 2 H. L. C. 789); but a clause in the articles commonly relaxes this rule as regards an accidental omission or nonreceipt. See Clanse 49 of Table A.; and as to members who are abroad, see infra, p. 232. Unless the articles otherwise provide, the executors or administrators of a deceased member, until registered as members, are not entitled to notice. Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656. To convene a meeting of the subscribers of the memorandum a reasonable notice is sufficient. Two days was held sufficient in John Morley Building Co. v. Barras, (1891) 2 Ch. 386. Sunday is not a dies non, apart from express provision. Child v. Edwards, (1909) 2 K. B. 753. T: e notice of meeting must be given in accordance with the articles; i a susually require the notice to specify the date, place, and hour of meeting, and in case of special business, the general nature thercof. Where the articles are thus framed, it is necessary to define what is special business, and this is usually done by saying that at an ordinary meeting, the consideration of the accounts and reports, the election of directors and other officers in the place of those retiring by rotation, and the declaration of a dividend shall be considered ordinary business; but that any other business transacted at an ordinary meeting, and all business transacted at an extraordinary meeting shall be considered special business. See Clause 50 of Table A. An ordinary meeting may deal with special business if the notice specifies it. Graham v. Van Diemen's Land Co., 26 L. J. Ex. 73. The notice convening a meeting at which any special business is to be transacted must state the nature thereof, otherwise the meeting will have been irregularly convened and cannot deal with the matter. Laue's case, 1 De G. M. & G. 421; Hampshire Co., (1896) 2 Ch. 743; Kaye v. Croydon Tramways Co., (1898) 1 Ch. 358 (C. A.).

But a resolution need not be in the identical terms of the resolution specified in the notice of meeting, if, as passed, it is in substance covered by the notice. *Torbock* v. *Lord Westbury*, (1902) 2 Ch. 871.

If a member is known to be dead, it is enough to send a notice to his registered address. Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656.

NOTICE.

Ch. XV.

Notices are not construed with excessive strictness. Wright's case. Terms of 12 Eq. 545; Grant v. United Switchback, 40 C. D. 137; Henderson v. notices not strictly Bank of Australia, 45 C. D. 330. Substantial compliance with the construed. articles is sufficient. In re British Sugar Refining Co., 3 K. & J. 408; Yonny v. South African Syndicate, (1896) 2 Ch. 268. Notices are to be construed as a business man would construe them, and to be understood in the ordinary sense (Alexander v. Simpson, 43 C. D. 139); but it is not enough, in a notice of an extraordinary meeting, merely to say "special business." Wills v. Microy, 1 Ex. 869. Nor is it enough to state that remnneration is to be allowed to the directors, without stating the amount, if the amount is large. Baillie v. Oriental Telephone Co., (1915) 1 Ch. 503.

Nor will a notice pointing to a particular course of action justify the adoption of only a part thereof, for how is it possible for the Court to know how many shareholders abstained from attending the meeting, being satisfied that the arrangement as it was proposed was advantageous to them, and being quite content to exercise no voice abont it? Per Page-Wood, V.-C., Clinch v. Financial Corporation, 5 Eq. 461. Thus, where a meeting was convened to consider resolutions for reconstruction and for winding-up as incidental thereto, and at the meeting a naked resolution for winding-up was passed, it was held to be invalid as not in accordance with the notice. Re Tecde & Bishop. 70 L. J. Ch. 409; W. N. (1901) 52; 84 L. T. 561. The authority of the case is, however, shuken by the recent decisions in Thomson v. Henderson's Transvaal Estates Co., (1908) 1 Ch. 765, in which it was held that where the notice specified soveral resolutions, some altra vires and some intra vires, and all were passed, the latter were effective, although the other resolutions were void. And see per Lord Selborne, Ashbury v. Riche, L. R. 7 H. L. 693.

But if the articles or the Act give a general power to deal with certain business at a general meeting without notice of such business. the fact that the notice convening the meeting specifies a particular resolution for dealing with such business does not limit the powers of the meeting. Bethell v. Treach Tubeless Co., (1900) 1 Ch. 408. In that case it was held that at a meeting to confirm a special resolution for winding-up voluntarily the company, having without notice a general power under the Act to appoint a liquidator, might appoint B, though the notice stated that A, would be proposed. So, if the notice convening an ordinary meeting states that A, and B, will be proposed as directors, this does not prevent the appointment of C, and D. if by the regulations the appointment of directors is part of the business of the meeting and requires no special notice : and see Betts & Co. v. Macnaghten, (1910) 1 Ch. 430, and post, p. 175.

Where a contract is to be submitted to a meeting for confirmation,

and directors of the company aro intorested therein, it has been held that the notice convening the meeting should give particulars as to that interest. Kaye v. Croydon Tramways Co., (1898) 1 Ch. 358 (C. A.); Tiessen v. Henderson, (1899) 1 Ch. 861; Normondy v. Ind, Coope & Co., 1908) 1 Ch. 84. See contra, Southall v. British Mutual, 6 Ch. 614 (C. A.), and Grant v. United Switchback Co., 40 C. D. 135 (C. A.).

On the other hand, where a meeting is convened to pass a special resolution adopting a new set of articles in lieu of the existing articles, it has been generally assumed that if the notice stated the terms of the proposed resolution that was a sufficient compliance with sect. 51 of the Act of 1862 (for which sect. 69 of the Act of 1908 is substituted), without the notice specifying the details of alteration involved. The Court has repeatedly acted on this assumption, and the most eminent counsel have advised that it was correct.

Nor is it easy to see why the words of the pection should, in such case, be supplemented by the Court. However, a learned judge (now dead), in Normandy v. Ind, Coope § Co., (1908) 1 Ch. 84, considered that such a notice was insufficient, and that the notice ought to specify the material alterations proposed. It was not, however, really necessary to decide the point. See, too, Grant v. United Switchback Rail. Co., 40 C. D. 135; Southall v. British Mutual, 6 Ch. 614.

A notico that a meeting will be held in a certain contingency is not a good notice (Alexonder v. Simpson, 43 C. D. 139), unless the articles sanction such a form of notice. Re North of England Steamship Co., 1905) 2 Ch. 15. (Company Precedents, Pt. I. p. 696.) But even without special authority in the articles, it is possible to convene the two meetings for passing and confirming a special resolution if care is taken that the notice convenes both meetings unconditionally. Espuela Lond and Cattle Co., 48 W. R. 684 (Byrne, J.). In constraining a notico, the rule is that the shareholders, to whom it is addressed, are to be presumed to know the Acts of Parliament, and also the terms of the memorandum and articles; and they must therefore read the notice in the light of these documents. Campbell's case, 9 Ch. 22; Oakbonk Oil Co. v. Crum, 8 App. Cas. 70. A notice convening a meeting to pass a special resolution need not state that the resolution will be proposed "as an extraordinary resolution," notwithstanding the wording of sect. 69 of the Act. Re Penarth Pontoon Co., (1911) W. N. 240.

Quorum.

Quorum of general meeting.

Form of notice in

case of

special resolution.

Notice of meeting to

be held on

contingency only.

> In order to constitute a general meeting a quorum of members must be present. If there be no provision as to a quorum in the articles, two members are requisite for a quorum. This is the common law rule. One member cannot for the purposes of an Act constitute a meeting, though for the purposes of a contract it may be possible.

East v. Bennett Brothers, (1911) 1 Ch. 163; Sharp v. Dawes, 2 Q. B. D. 26; In re Sanitary Carbon Co., W. N. (1877) 223. But a single person may constitute a "meeting" where that word has a special signification givon it by the articles. East v. Bennett Brothers, (1911) 1 Ch. 163.

The regulations very commonly make three a quorum, as in Clause 51 of Table A., but sometimes a scale is established for deter-

Where articles provide for a quorum "present in person or by proxy," proxies can be counted. Sometimes there is a different quorum fixed for general meetings of shareholders and for meetings of particular classes of shareholders. See Hemans v. Hotchkiss Co., (1899) 1 Ch. 115; Company Precedents, Part I. p. 685.

If no quorum be present, then there is no meeting and the proceedings are invalid. Cambrian, Sc. Co., 31 L. T. 773; Romford Canal Co., 24 C. D. 85. Sometimes the articles provide that for some particular elass of business a smaller quorum shall be sufficient. Occasionally it is provided that if a quorum is not present the meeting is to stand adjourned, say, for a week, and that at the adjourned meeting those who are presont shall be a quorum. This also is

Chairman.

The articles generally provide for the directors electing a chairman of of their meetings (conf. Table A., Art. 90); and the chairman so general meeting chosen is, as a rule, by the articles, to be entitled to preside at a general meeting (see Table A., Art. 53); or in his absence some other director. If no director is willing to act ns chairman, then some person selected by the meeting is to act. In the absence of any such provisions the meeting will itself choose its own chairman from amongst the membors present. The duty of the chairman is to keep order and see that the business is properly conducted. Indian Zoedone Co., 26 C. D. 70. His decisions on points of order and upon any incidental questions that arise are to be taken primá facie to be correct. S.C.; and see Wandsworth Gaslight Co. v. Wright, 22 L. T. 404. If the articles so provide, the chairman's decision as to the validity of a vote is conclusive. Wall v. London and Northern Assets Corporation (No. 1), (1898) 2 Ch. 469. He may also, by the vote of a majority, stop a discussion on a resolution after it has been

Where the articles say that he "may" adjourn, ns in Clause 55 of Table A., he has a discretion, and may decline to adjourn. Salisbury Gold Mining Co. v. Hathorn, (1897) A. C. 268. But if he departs from his duty, e.g., by prematurely closing the meeting and purporting to adjourn it, his acts become irregular, and it is open to the meeting

meeting.

to select another chairman and proceed with the business. National Ducellings Co. v. Sykes, (1894) 3 Ch. 159. See further, p. 175.

In the case of a special or extraordinury resolution, where no poll is duly demanded, the declaration by a chairman that a resolution has been carried, is, by sect. 69 of the Companies Act, 1908, made "conclusive evidence of the fact, without proof of the number or proportion of votes." It is now settled that "conclusive" in this section means what it says, conclusive and not primed facie evidence. See Ke Gold Co., 11 C. D. 719: Hadleigh Castle Gold Co., (1900) 2 Ch. 419; Arnot v. United African Lands, W. N. (1901) 28, C. A., overruling Young v. South African Syndicate, (1896) 2 Ch. 268.

But a chairman's declaration is not, it seems, conclusive where the declaration that the resolution is passed shows on the face of it that it was not passed by the requisite majority. *Re Caratal (New) Mines, Limited*, (1902) 2 Ch. 498, and see pp. 51, 239.

The articles (see Table A., Art. 56) commonly contain similar provisions making the chairman's declaration conclusive as to the pussing or not passing of a resolution by a specified majority, and should be construed accordingly.

Votes.

The articles generally determine how many votes a member is to have. Very commonly they provide that a member shall have one vote for every share held by him. See Clause 60 of Table A. Sometimes they provide that the voting shall be in accordance with a scale. Sometimes one class of shares is given no votes or only a qualified right of voting. In the absence of any regulations as to votes, each member has one vote only, whether on a show of hands or at a poll. (Sect. 67.) The register is the only evidence of a member's right to vote at a general meeting. Pender v. Lushington, 6 C. D. 70. If the articles so provide, the chairman's decision as to the validity of a vote is, in the absence of frand, conclusive. Wall v. London and Northern Assets Corporation, (1898) 2 Ch. 469. A shareholder's vote is a right of property which he may use as he pleases. The propriety or impropriety of his motive is immaterial (Pender v. Lushington, 6 C. D. 70); he is entirely free to exercise his own judgment as to how he shall vote (North-West Transportation Co. v. Beatty, 12 App. Cas. 589; Burland v. Earle, (1902) A. C. 83), und may, at uny rate in some cases, bind himself by contract to vote, or not to vote, in a particular way (Greenwell v. Porter, (1902) 1 Ch. 530), and the Court has no power to go behind the vote and to invalidate it on the ground that the shareholder had a personal interest in the subjectmatter different from, or opposed to, that of the company, and did not exercise his voting power for the best interests of the company.

8

a

 \mathbf{a}_{j}

n

68

uı

Aı

Votes at general meeting.

SHOW OF HANDS-POLL.

Soo East Pant Mining Co. v. Merryweather, 2 H. & M. 254. Burland v. Earle (supra). But a majority of the members will not be allowed by vote to commit a fraud on the minority, e.g., by sanctioning a salo te themselves of the property of the company at an undervalue. Menier v. Hooper's Telegraph Co., 9 Ch. 350; Burland v. Earle (supra); and see Atwool v. Merryweather, 5 Eq. 464, n.; Mason v. Harris, 11 C. Div. 97; Alexander v. Automatic Telephone Co., 1900) 2 Ch. 56; Allen v. Gold Reefs of West Africa, (1900) 1 Ch. 656.

There is nothing to prevent a shareholder transferring some of his shares to uominees to increase, where there is a scale, his voting power. In re Stranton Iron Co., 16 Eq. 559: Pender v. Lushington, 6 C. D. 70. An alien enemy cannot vote. Robson v. Premier Oil Co.,

A provision in a company's articles that no objection shall be taken to any vote except at the meeting at which it is tendered, or any adjournment thereof, is binding, and votes not then disallowed cannot afterwards be challenged 'Wall v. London and Northern Assets Cor-

poration (No. 2), (1899) 1 Ch. 550), but such a provision is unusual. By the Collecting Societies and Industrial Assurance Companies Act, 1896, restrictions are placed on the voting by "collectors" who are members of an industrial assurance company.

Where the shareholder is a company, that company is by sect. 68 authorized to vote by its representative.

Resolutions.

Questions for submission to a general meeting are generally expressed Resolutions. in the form of resolutions. A resolution, according to the ordinary practice of companies, may be proposed by the chairman or by some other member, and, in either case, is put by the chairman to the meeting, whereupon it is open to discussion : when the discussion has closed, the chairman puts the resolution formally to the vote by stating what the resolution is, and that it has been proposed by A. and seconded by B., and he then calls for a show of hands: "those who are in favour of the resolution, hold up one hand; those who are against the resolution, hold up one hand "-- and having counted the uumber pro and con., he then states the result, e.g., "the resolution is carried," or "the resolution is lost." Thereupon a poll can be demanded unless the regulations otherwise provide.

The articles usually give the chairman, where the votes are equal, a casting vete, both on a show of hands and at a poll (see Table A.,

Art. 58); but in the absence of such provision he has no casting vote. A resolution inconsistent with the articles is invalid, unless confirmed as a special resolution. Quin and Artens v. Salmon, (1909) A. C. 442.

Ch. XV.

Show of Hands.

Show of hands.

Pell.

Unless the articles otherwise provide, questions arising at a general meeting are to be decided, in the first instance, by a show of hands. This is the common law rule which, unless excluded, applies automatically. Horbury, §c. Co., 11 C. D. 109. In taking a vote by show of hands, the duty of the chairman, unless the articles otherwise provide, is to count the hands held up and to declare the result accordingly, without regard to the number of votes that a member holding up the hand possesses; and without regard to the fact that some members hold proxies for some other members. Ernest v. Loma Co., (1897) 1 Ch. 1; overruling In re Bidwell Brothers, (1893) 1 Ch. 603.

Where the number of votes on a show of hands is equal, the chairman has no casting vote by common right.

Poll.

A vote by show of hands is a rough and ready way of taking the sense of a meeting; but it is often a very inadequate means for arriving at the wishes of the whole constituency of the company. To ascertain these, the articles usually provide for the taking of a The right to demand a poll is a common law right, and, poll. according to the common law, any one member may demand a This rule can only be excluded by express provision. poll. Reg. v. Wimbledon, 8 Q. B. D. 459. It may be qualified by the articles, and is to some extent qualified as to special and extraordinary resolutions by sect. 69 of the Act. See p. 237, infra. Usually the articles contain a provision as to how many members may demand a poll. When a poll is duly demanded, it is the chairman's duty to grant it, and to fix the time and place for taking it; for if a poll is duly demanded, the show of hands is nullified. Anthony v. Seger, 1 Hagg. Cas. Con. 9, at p. 13. If, by the regulations, the poll is to be taken "in such manner as the chairman may direct," a poll may be taken then and there. Chillington Iron Co., 29 C. D. 159. As to the manner of taking a poll, it is usual to require every person who desires to vote to sign a paper headed, as the case may be, "For" or "Against" the motion. The votes of each member are then inserted, and, these having beeu added up, the chairman declares the result. A meeting or the chairman has power to appoint scrutineers to examine and count the votes at a poll and to report the result to the chairman (Wandsworth Co.v. Wright, 22 L.T. 104), and this is often done. A member may vote at a poll, though not present when the poll was demauded. Campbell v. Maund, 5 Ad. & El. 865. If a poll is duly demanded, it must be taken, and in such case the

PROXIES.

meeting subsists in contemplation of law until the poll has been taken; and this is so, even though the chairman refuses to grant the poll and there is no express adjournment of the meeting. Regina v. Wimbledon, 8 Q. B. D. 459. If a poll is not completed on the day on which it is commenced, it must be continued subsequently, for the chairman is not entitled to close the poll whilst voters are coming in. Reg. v. St. Pancras, 11 Ad. & E. 15; Reg. v. Graham, 9 W. R. 738. To shut out and exclude a voter may invalidate a poll. Reg. v. Lambeth, 8 Ad. & El. 356. Upon taking a poll, the right to vote and the number of shares is to be determined. if any question arises, by a reference to the register of members. Pender v. Lushington, 6 C. D. 70. To appoint a subsequent day for the taking of the poll is not an adjournment, although the meeting subsists till the poll is taken (Reg. v. Chester, 1 Ad. & El. 342); but it is not uncommon to adjourn to hear the result.

At a poll there is no power, in the absence of express provision in the articles, to take it by voting papers. McMillan v. Le Roi Mining

Proxies.

Prima face, there is no right to vote by proxy, for the common Proxice. law does not recognize any such mode of voting; but the articles generally confer such a right, for it is extremely inconvenient that a member, especially when residing at a distance, should be obliged personally to attend every meeting.

The directors, acting in good faith in the interests of the company. may do what they consider requisite to get the members to votagainst or in favour of a particular resolution, e.g., they may at the expense of the company send out stamped proxy forms. Peel v. L. & N. W. Rail. Co., (1907) 1 Ch. 5, overrnling Studdert v. Grosvenor. 33 C. D. 528.

The articles generally fix the required form of proxy. commonly runs :- " I, A. B., appoint C. D. to be my proxy to voton my behalf at the general meeting of the company to be held on the ---- day of ----." See Table A., Clause 67.

The articles also as a rule require the instrument of proxy to be signed by the appointor, or, in the case of a corporation, to be under its seal. In such a case a foreign or colonial corporation which has no seal, can nevertheless appoint proxies. Colonial Gold Reefs, Ltd. (1914) 1 Ch. 382. Sometimes it is provided that the instrument must be signed in the presence of a witness. In such case, signature in the presence of a witness is necessary. Harben v. Phillips, 23 C. D. 32. A proxy cannot attest his own appointment. Ex parte Cullen, (1891 2 Q. B. 151. A proxy paper for a single meeting only requires a

penny stamp. If for several meetings, it requires a 10s. stamp. Sect. 80, Stamp Act, 1891. 'To cancel an adhesive stamp the signatory should place his initials and the date on it or otherwise mark it so as to be incapable of subsequent use. *McMullen (Sir Alfred Hickman) Steamship, Ltd.*, 71 L. J. Ch. 755.

A proxy paper signed in blank and handed over to some one with authority to fill up the blank, is effective if the blank has been properly filled up when the proxy paper is deposited or used. Sadgrove v. Bryden, (1907) 1 Ch. 318; Ernest v. Loma Co., (1897) 1 Ch. 1. The articles very commonly require instruments of proxy to be deposited with the company a certain number of hours before the meeting. See Clause 66 of Table A. If so, further proxies cannot be deposited after the date of the meeting for the purpose of a poll taken subsequently. Shaw v. Tati Concessions, (1913) 1 Ch. 292.

If the shareholder himself after appointing a proxy attends the meeting, his being there does not, it seems, avoid the instrument of proxy; but if he votes before his proxy has voted for him, he impliedly revokes the proxy. *Knight* v. *Bulkeley*, 5 Jur. (N. S.) 817; 33 L. T. 7; Story on Agency, s. 475.

As to a corporation representative, see s. 68, infra, p. 467.

Speeches-Defamation.

Defamatory speeches at general meetings.

A speech by a shareholder at a meeting defamatory of the directors, but on a matter affecting the interests of the shareholders, is privileged (Parsons v. Surgey, 4 Fost. & Fin. N. P. Cas. 247); but the privilege is gone if the public or the press are present at the meeting at the express invitation of the shareholder publishing the defamatory matter. Ibid. As to where reporters are present uninvited, see Pittard v. Oliver. (1891) 1 Q. B. 474; and Marks v. Samuel, (1904) 2 K. B. 287, C. A. If the directors of a company invite a newspaper to a private meeting. query, whether the company can sue the newspaper for publishing, in a report of that meeting, a true statement of what was said by a shareholder, because that statement is defamatory. Liverpool Household Stores v. Smith (1887), 37 C. D. 170. A report to the public press of the proceedings of a general meeting, if containing libellous matter, is not privileged. Popham v. Pickburn, 7 H. & N. 891: Darison v. Duncan, 7 E. & B. 229. But a report sent to the members is privid facie privileged. Laughton v. Bishop of Sodor & Man, 4 P. C. 195; Waller v. Loch, 7 Q. B. D. 619. And see Quartz Hill Gold Mining Co. v. Beall, 20 C. D. 508.

AMENDMENTS.

Ch. XV.

Amendments.

Where a resolution is proposed there is a prima facie right to Amendments propose any relevant amendment coming within the scope of the to proposed notice. Thus if the notice is the increase the variable of the resolutions. notice. Thus, if the notice is "to increase the capital of the company," and a resolution is proposed accordingly to increase it to 10,000%, an amendment cau be proposed to increase to 20,000%, or to 50,000%, but an amendment to alter the articles or removo the directors would be irregular, and the chairman should not allow such an amendment to be put to the meeting, for it does not come within the scope So, too, if the notice is "to increase the capital by 20,0007." or "to increase the directors' remnneration by 1007." an amendment to increaso the capital to 50,000%, or the remuneration by 500L, would be irregular: for it is not fair to call the members together for an apparently limited and small object, and then to spring on them a much larger proposal. Those who are absent may have stayed away because they are content with what is proposed in the notice, and those who are present by proxy, are presumed to havo given the proxy on the basis of the notice. See Teede & Bishop, Limited, W. N. (1901) 52, and Clinch v. Financial Corporation, 5 Eq. 161; Wall v. London and Northern Assets Corporation (No. 1), (1898) 2 Ch. 469, 484; Stroud v. Royal Aquarium Society, 89 L. T. 243. Similarly, if the notice of meeting is to ratify a particular agreement, it would seem permissible to ratify the agreement subject to modifications or conditions, provided they do not make the agreement more onorous as regards the company. Il right's case, 12 Eq. 335, n., 341, n. Where the notice is in general terms, e.g., "to increase the capital" or "to increase the directors' remuneration" cf. Baillie v. Oriental Telephone Co., (1915) 1 Ch. 503), there is a wide scope for amondment. Where the notice stated that the business was to pass with such amendments as should be determined, a resolution re-electing three directors, it was held that an amendment to elect two extra directors was competent. Betts v. Macnaghten, 25 T. L. R. 552. See also Henderson v. Bank of Australasia, 45 Ch. D. 330.

So, too, a notice of meeting to confirm a resolution to wind up and to appoint a particular person liquidator is effective to confirm the resolution, though a person other than the person named is appointed liquidator; for as soon as a resolution for the voluntary winding-up of a company has been passed, a liquidator can be appointed without any previous notice. Re Trench Tubeless Tyre Co., (1900) 1 Ch. 408.

If a chairman refuses to allow a proper amendment to a proposed resolution to be put, oven under a mistaken idea that the amendment is *ultra cnes*, the resolution may be irregular. The mover of the amendment not challenging the chairman's ruling is not a waiver of

his right to impeach the resolution. Henderson v. Bank of Australasia (1890), 45 C. D. 330. Unless the regulations otherwise provide, an amendment at a meeting need not be seconded if it is put and voted on. In re Horbury Bridge Co., 11 Ch. D. 118.

Adjournment.

Adjournment of general meeting.

The articles commonly confer on the chairman power, with the consent of the meeting, to adjourn. This gives the chairman a discretion. The meeting muy reselve te adjourn, but it is for the chairman to determine whether he will exercise the power vested in him. Salisbury Gold Mining Co. v. Hathorn, (1897) A. C. 268. The articles often provide for a poll being taken-on the spot-on the question of adjournment. If the chairman improperly adjourns or stopthe meeting, the meeting can choose another chairman and go on with the business. National Dwellings Society v. Sykes, (1894) 3 Ch. 159. On the other hand, if the meeting is duly adjourned or dissolved, members who remain behind cannot continue the business. Rex v. Gaboriau. 11 East, 77. As regards notice, au adjourned meeting is regarded in law as a continuance of the ordinary meeting (Scadding v. Lorant, 3 H. L. C. 418); and accordingly a .esh notice thereof need not be given. Wills v. Murray, 4 Ex. 843. Directors, in the absence of express provisions in the articles, have no power to pestpone a meeting which has been duly convened. Smith v. Paringa Mines, (1906) 2 Ch. 193.

Irregularities, &c.

Rule in Ford

The rule in Foss v. Harbottle, 2 Ha. 461 (infra, p. 242), is upplicable to general meetings, and accordingly the Court declines to interfere, at the instance of a minority, in respect of domestic irregularities (Macdougall v. Gardiner, 1 C. D. 13); the principle being that it is within the power of the persons who have committed the irregularity at once te set the matter right by calling a fresh meeting and dealing with the matter with all due formalities. Browne v. La Trinidad, 37 C. D. 1.

CHAPTER XVI.

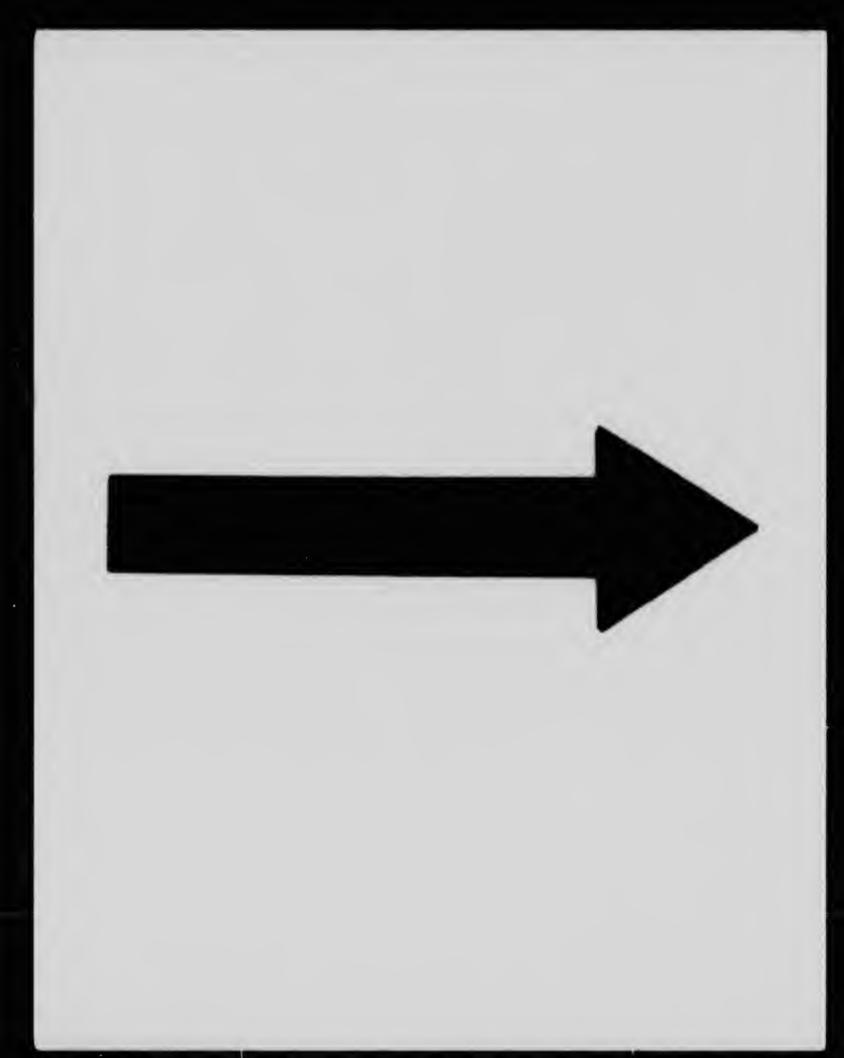
DIRECTORS.

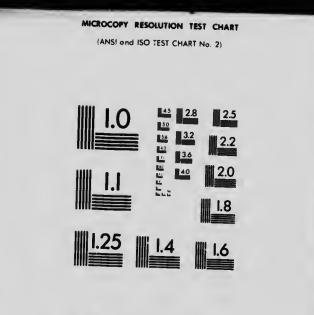
A COMPANY cannot act in its own person, for it has no person. Per Company Lord Cairns, Ferguson v. Wilson, L. R. 2 Ch. 89. Accordingly it must only acts by agents, and usually those persons, by subma it note hand to be agents. act by agents, and usually these persons, by whom it acts, by whom the business of the company is carried on or superinteaded, are termed directors. The Act, however, as we have seen, leaves the members entirely free to determine how and by whom the business shall be managed, and accordingly, in some cases, the regulations provide that iastead of directors there shall be a "council" or a "managing committee," or that the business shall be carried on by "managers." In other cases, especially in private companies, it is not uncommon to provide that the business shall be managed by "governing directors" or by "permanent directors," or by a sole "governing director." In all these matters the articles can be framed as may seem expedient, but whatever the title chosen for the governing body, and whatever the scope of their duties, the rules which apply to directors apply also to members of a council or committee, who, in substance, stand in the position of directors. The definition of "director" in sect. 285 of the Companies Act, 1908, "includes any person occupying the position of director by whatever mane called." A limited company may be a director or the sole director of another company if it has the requisite power. Bulawayo Market Co., (1907) 2 Ch. 458. See Company

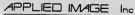
Directors, Agents of Company.

Directors, whether they are called "directors" or a "council" or a Their acts Directors, whether they are called "directors of a council of a fact and "managing conimittee," are, in the eye of the law, agents of the generally bind company. company for which they act, and the general principles of the law of only, and not company and its directors. Hence (1) where directors make a contract certain cases. in the name of or purporting to hind the company, it is the company- Law of the principal—which is liable on it, not the directors; they are not principal and personally liable unless it appears that they underteels are not agent obtains personally liablo unless it appears that they undertook personal liability (Lindus v. Melrose, 3 H. & N. 177; McCollin v. Gilpin, 5 Q. B. D. 390), e.g., by contracting in their own names or by contracting for the company without using the word "limited" as part of the name. See sect. 63 (3) of the Act. Dermatine Co. v. Ashworth, 21 T. L. R. 510. As to their liability for damages where they contract for the company without authority, see p. 190, infra.

12







1653 East Main Street Rochester, New York 14609 USA (716) 482 - 0300 - Phane (716) 288 - 5989 - Fax

(2) Where directors contract in their own names but really on behalf of the company, the other party to the contract can, generally, on discovering that the company is the real principal, sue the company on the contract. See Pollock on Contracts, 7th ed., p. 102. (3) Where directors enter into a contract which is within the power of the company but is beyond the powers of the directors, the company, like any other principal, can ratify the contract. Grant v. United Switchback Rail. Co., 40 C. D. 135. That directors are agents is established by a long series of decisions.

Cases establishing It position of directors as agents. w

It will be sufficient to refer to one of these, Ferguson v. Wilson, 2 Ch. 77, in which it was held by Turner and Cairns, L. JJ., that directors were not liable in respect of a contract of the company on the ground that they were agents. "What," said Cairns, L. J., in that case, "is the position of the directors of a public company? They are mercly agents of the company. The company itself cannot act in its own person, for it has no person, it can ouly act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent, for wherever an agent is liable those directors would be liable. Where the liability would attach to the principal, and the principal only, the liability is the liability of the company. This being a contract alleged to be made by the company, I own that I have not been able to see how it can be maintained that an agent can be brought before this Court, or into any other Court, upon a proceeding which simply alleges that his principal has violated a contract that he has entered into. In that state of things, not the agent but the principal would be the person liable." See further, infra, p. 199, as to contracts by directors.

Directors Trustees, in what sense.

Directors how far trustees? Directors are not only agents but they are in some sense and to some extent trustees or in the position of trustees. No doubt their position differs considerably from that of the trustees of a marriage settlement or will, and it is well settled that the strict rules applicable to such trustees do not apply in all respects to directors. Their conduct is to be measured with reference to the character of the undertaking which they are appointed to manage and conduct.

Nevertheless it is impossible now to dispute the proposition that they are in some sense trustees, that proposition having been established by a long series of cases.

Thus in Charitable Corporation v. Sutton (1742), 2 Atk. 400, Lord Hardwicke, L. C., held that committeemen or directors of a chartered corporation who had misapplied its funds and committed breaches of its bye-laws, were liable as trustees for "breach of trust." So, in York, §c. Rail. Co. v. Hudson (1853), 16 Beav. 485, directors who had

DIRECTORS TRUSTEES, IN WHAT SENSE. Ch. XVI.

improporty dealt with funds of the company were held liable as trustees. Romilly, M. R., there said, "the directors are persons selected to manage the affairs of the company for the benefit of the shareholders. It is an office of trust which, if they undertake, it is their duty to perform fully and entirely."

So, in Ferguson v. Wilson (1866), 2 Ch. 90, Lord Cairns, whilst holding directors to be mere agents and, therefore, not liable on a contract made on behalf of the company, said that "the case was to be distinguished from proceedings by shareholders against directors treating the directors as trustees-which in point of law they areand seeking redress against them for a breach of trust. That kind of ease is exactly the converse of the present. Here the shareholders who file the bill, in point of fact allege that the company has done no wrong whatever, that it is the exceutive which has committed the wrong and they-the shareholders-file the bill to protect, as it were, the company from the unlawful acts of the directors. There, the directors, being in the position of trustees, are, of course, liable in this

This two-fold character of directors is, perhaps, best expressed in Lord Selborne's words in G. E. Rail. Co. v. Turner (1872), 8 Ch. 149, where he said (p. 152): "The directors are the more trustees or agents of the company-trustees of the company's money and property : agents in the transactions which they euter into on behalf of the company." And this is the way in which it is put by Sir George Jessel in the case of Forest of Dean, Sc. Co. (1879), 10 C. D. 450: "Directors," said that learned judge, "are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their

So in Joint Stock Discount Co. v. Brown, 8 Eq. 381, where directors had misapplied funds of the company, it was declared that they had "committed a breach of trust and were jointly and separately liable" accordingly. See also Flitcroft's case, 21 C. D. 519; Pelly's case, ibid. 492; Faure Electric Co., 40 C. D. 150; Oxford Benefit, Sec. Society, 35 C. D. 502; Leeds Estate, &c. Co. v. Shepherd, 36 C. D. 787; and Masonic and General Life, &c. Co. v. Sharpe, (1892) 1 Ch. 154: in all which eases directors were held liable as trustees. It was as being trustees that directors were held, before the Trustee Act, 1888, disentitled to elaim the benefit of tho Statutes of Limitation (see Flitcroft's case, supra); and it is as trustees that they have since that Act been held entitled to the benefit of the qualified provisions for limitation of actions contained in sect. 8 of the Act of 1888. This was decided in Re Lands Allotment Co., (1894) 1 Ch. 616, where Lindley, L. J., said : "Although directors are not, properly speaking, trustees, yet they have always been considered and treated as trussees of money which

12 (2)

comes to their hands, or which is actually under their control, and evor since joint stock companies were invented directors have been held liable to make good moneys which they have misapplied, upon the same footing as if they were trustees"; and the learned judge proceeded to point out that, in accordance with the established rules, directors are considered *express* trustees of money which they have control of; and Kay, L. J., in the same case, added: "When they" directors, that is—"get assets of the company under their control or into their hands and deal with them in a way which is beyond the powers of the company, they are liable for a breach of trust"; and he held, therefore, that they were trustees within sect. 8 of the Trustee Act, 1888.

James, L. J., it is true, in *Smith* v. *Anderson*, 15 C. D. 275, defined the status of a director in language differentiating it from that of trustee, but this dictum cannot outweigh the authorities above referred to.

Perhaps the best—or the least controversial—way of putting it is to say that they occupy a fiduciary position.

But this fiduciary position does not oxtend to directors as shareholders in their individual capacity; there is nothing, for instance, to prevent directors purchasing on their own account shares in the company from the executors of a deceased shareholder. *Percival* v. *Wright*, (1902) 2 Ch. 421; conf. *Burland* v. *Earle*, (1902) A. C. 83; but if they take an unfair advantage of their position, they may be made to account for the resulting profit. *Allen* v. *Hyatt* (1914), 30 T. L. R. 444.

As throwing some light on the process of reasoning by which directors are regarded as trustees, it is to be borne in mind that the funds of a company are by statute made applicable only to specific purposes, at 1 are in that way impressed with the qualities of a trust fund. See *Ernest* v. *Croystill* (1860), 2 D. F. & J. 175, per Knight-Bruce and Turner, L. JJ.; and *Great Eastern Rail. Co.* v. *Turner*, 8 Ch. 149, per Lord Selborne; and *Ashbury* v. *Riche*, L. R. 7 H. L. 689, per Lord Hatherley; and *Russell* v. *Wakefield Waterworks*, 20 Eq. 474, per Jessel, M. R. *Moxham* v. *Grant*, (1900) 1 Q. B. 88. Thus they may be followed into the hands of any alience who takes with notice of their ultra vires application.

As to the relief of directors for breach of trust where they have acted honestly and reasonably, see scct. 279 of the Act of 1908, *infra*, p. 520.

Appointment of Directors.

First directors. First directors are usually named in the articles of association, if there are any, but not uncommonly the articles, instead of naming them, contain a power for the subscribers, or the majority of them, by writing, to appoint them, as in Table A., clause 68. Where directors are to be named in the articles, sect. 72 of the Companies

PROVISIONS OF ACT OF 1908.

Act, 1908. as to filing consents and contracts for share qualifications (see infra), must be borne in mind. If there are no articles, or there is no such provision, then clause 68 of Table A. proscribes that it shall rest with the majority of the subscribers of the memorandum to appoint in writing. In such case the signatures of a majority to the appointmont will be sufficient. Where the power is given to the subscribers and nothing is said about the majority, the subscribers should all sign the appointment (Great Northern Salt Co., 44 C. D. 472), or a meeting of the subscribers may be alled, and a resolution passed thereat, which is another way of eff. ing the appointment; and in that case, if a majority be present, they are competent to appoint. London and Southern, §c. Co., 31 C. D. 223. If there are no directors and no provision in the regulations for the appointment of the first directors, and Table A. is excluded, they can be appointed under sect. 67 of the Act, by which five members may convene a meeting to appoint directors. The articles may give power to a vendor or other outsider to appoint one or more directors. If so, the company cannot alter its articlos so as to destroy this power, but the Court will not grant an injunction to enforce the appointment of any particular director who is objectionable to the company on personal grounds. British Murac Syndicate, Ltd. v. The Alberton Rubber Co., (1915) 2 Ch. 186.

Where the articles delegate the power of appointing additional directors to the board, a genoral meeting has no power to do so. Blair Open Hearth Furnace, 108 L. T. 665.

But if the directors cannot agree, the company retains power to appoint new directors. Barron v. Potter, (1914) 1 Ch. 895.

Provisions of Act as to naming Directors in Articles.

Sect. 72 of the Companies (Consolidation) Act, 1908, provides as Restrictions follows :---

on appoint-

72.-(1.) A person shall not be capable of being appointed director director. of a company by the articles, . . . unless, before the registration of the articles, . . . he has by himself or by his agent authorized

- (i) signed and filed with the registrar a consent in writing to act as (ii) either signed the memorandum of association for a number of
 - shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2.) On the application for registration of the memorandum and articles of association of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has

181

Ch. XVI.

.ot so consented the applicant shall be liable to a fino not exceeding tifty pounds.

(3.) This section shall not apply to a private company. . . .

The word "articles" in this section refers to the articles in force, whether in their original form or as altered by special resolution. See sect. 285. Where an agent signs the consent he must produce his authority.

An intended director who subscribes the memorandum for his qualification becomes bound on incorporation to take the shares even though the company never commences business.

As to what is a private company, see sect. 121.

Maximum and Minimum Number.

Maximum and minimum number of directors. The regulations usually fix what is to be the maximum and minimum number of the directors. As a general rule, a large board is not desirable, for it weakens the sense of individual responsibility. Where a minimum number is fixed, and the number of the directors falls below the minimum number, the remaining directors *primd facie* cannot act (*Alma Spinning Co.*, 16 C. D. 681), unless the articles contain the ordinary provision enabling the directors to act notwithstanding vacancies. This provision does not make their acts valid if the minimum number never was appointed. *Slg, Spink & Co.*, (1911) 2 Ch. 430; *Scottish Petroleum Co.*, 23 C. D. 431; *Re Bank of Syria, Owen and Ashworth's claim, Whitworth's claim*, (1901) 1 Ch. 115. Nevertheless, their acts may be valid in favour of a person who has no notice of the irregularity. *British Asbestos Co.*, (1903) 2 Ch. 439.

Qualification.

Qualification.

The general law requires no share qualification for a director, and Table A., Art. 70, only requires a nominal qualification-tho holding of at least one share in the company. But the articles of a company very commonly contain a provision that "the qualification of a director shall be the holding of [a specified number of] shares in the company"; it being thought desirable in most companies to require a qualification, as giving a director a personal interest in the undertaking. Archer's case, (1892) 1 Ch. 322. The amount is commonly fixed at 1001. or 2001., but sometimes at 1,000% or 5,000%, and occasionally-in the case of important private companies-at 10,000%. or 50,000%. There is, however, in the case of an ordinary company, no particular advantage in requiring a large qualification; on the contrary, it is detrimental as restricting the class of persons eligible for office, and possibly depriving the company of the services of an eminently suitable director, simply because he has not got sufficient funds to take up his qualification. Many questions have arisen in regard to qualification clauses, and more particularly as to the liability of a director to take up his qualification shares. Where

QUALIFICATION.

the clause is framed in the terms above mentioned, it has long since been settled that it does not compel the director to take shares from the company. The meaning of such a clause is, that the director is under an obligation to acquire the requisite qualification in some way or other, whether from the company, or by transfer from a friend, or by purchase in the market; but that he is to have a reasonable time-now two months (sect. 73, bolow)-within which to do so. Brown's case, 9 Ch. 102. After the two months have expired he is disqualified from acting as a lirector, but the mere acting as a director does not import any agreement to take the shares from the company. Erown's case, supra. Nevertheless, if in such circumstances he is put on the register by the officers of the company after the time limited for qualifying has expired, he cannot repudiate the shares; he is estopped by his conduct. Brown's case, supra; Lord Inchiquin's case, (1891) 3 Ch. 28. The law has now, however, been supplemented by sect. 73 of the Act of 1908, which takes the place of sect. 3 of the Act of 1900. The section

73.—(1.) Without prejudice to the restrictions imposed by the last Sect. 73 foregoing section (see p. 18!), it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2.) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification : and a person vacating office under this section shall be inequable of pullification.

(3.) If after the expiration of the said period or shorter time any unqualified person acts as director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

This section, it will be observed, leaves it still optional with a company to have a qualification clause or not. It is comprehensive in so far as it applies to companies formed before the Companies Act. 1908, as well as after, but it creates a duty only, not a contract.

Sub-sect. 3 will, however, go far to discourage unqualified persons from acting as directors, for it imposes a definite liability to pay a fine of five pounds per diem by way of punishment. Prior to the enactment a company could only recover compensation if it could prove damage. *Coventry's case*, 14 C. D. 660.

A joint holding may qualify a director. Glory Paper Mills, (1894) 3 Ch. 473; Grundy v. Briggs, (1910) 1 Ch. 444.

► A well known and commonly adopted form of qualification clause now is, that if the director does not qualify within, say, one month "he is to be deemed to have agreed to take the shares from the company." This clause was an effective one; and if, after the month was up, the director was still in office, and did not hold the requisito qualification, the contract was complete, and the company or its liquidator might place his name on the register for the qualification shares. *Isaacs' case*, (1892) 2 Ch. 158. If, however, the director resigned within the month, he escaped even under such a clause. *Salisbury Jones' case*, (1894) 3 Ch. 356. And as under sect. T3 (2) of the Act, a director vacates office at the expiration of the time limited, it is doubtful whether *Isaacs' case*, supra, now operates. See Company Precedents, Part I., p. 722.

A special resolution raising the share qualification, e.g., from 50 to 250 shares, does not make the directors "cease" to hold their qualification, or necessarily vacate their offices under such a clause as sect. 73 (2). Molineaux v. London, Birmingham and Manchester Insurance Co., (1902) 2 K. B. 589.

Occasionally a clause says that no person shall be eligible as a director unless he holds a specified qualification. This makes the possession of the qualification a condition precedent to election, and if the person elected does not possess the qualification he does not become a director de jure. Jenner's case, 7 C. D. 132. At times the form runs that a director's qualification shall be the holding of so many shares "in his own right." To the unsophisticated layman these words might seem to mean, holding beneficially and not as a mere trustee for some third party; but it has been decided that this is not so, and that if the director holds the shares as trustee, he is none the less duly qualified (Pulbrook v. Richmond Mining Co., 9 C. D. 610; Cooper v. Griffin, (1892) 1 Q. B. 740; Howard v. Sadler, (1893) 1 Q. B. 1)-a construction which goes far to defeat the object of the clause, that the director shall have a sub-tantial stake in the company. See Archer's case, (1892) 1 Ch. 322. However, th 1gh the first of these cases was decided thirty years ago, the Court has in several recent cases sought to restrict its application. Thus it has been held that if a person is entered on the register as holding shares as liquidator of some other company, he does not hold "in his own right." Boschoek Proprietary Co. v. Fuke, (1906) 1 Ch. 148, see, too, Sutton v. English and Colonial Produce Co., (1902) 2 Ch. 502. According to that case, if the beneficiary, where a share is held in trust, gives notice to the company claiming the shares, the qualification of the registered holder is gone-i.e., the company must take notice of the trust.

Present of qualification It has too often happened in the history of companies that a director has accepted a present of his qualification from a promoter or vendor,

REMUNERATION.

Ch. XVI.

being assured that it is quite the usual thing. Such a transaction shares from constitutes a gross breach of trust on the part of the director. It promoter, amounts to accepting a retaining fee from the promoter or vendor: the director is liable to account to 've company for any damages sustained by such breach of trust (Hay's case, 10 Ch. 604; Pearson's rase, 5 C. D. 336; London & S. W. Canal Co., (1911) 1 Ch. 346, and there is no right of set-off. In re Carriage Supply Association (1884). 27 C. D. 322. The same principle applies if he takes up and pays for his qualification, receiving at the same time an indemnity from the promoter (in such case the indemnity is a thing of value, and the director must account to the company for it : Archer's case, (1892) 1 Ch. 322); or if he holds his shares as a bare trastee for the promoters. The damages in that case may be the highest value of the shares. Re London and Sonth Western Canal, (1911) 1 Ch. 346. [Sed gnære whether this decision is sound in principle.]

The mere fact that the director of a company holds his qualification shares as trustee for another company does not render him liable to account to that company for the director's fees which he earns. ReDover Coalfields Extension, Limited, (1908) 1 Ch. 65.

Remuneration.

Primá facie, directors of a company are not cutitled to remuneration. Remuneration. Dunstan v. Imperial, &c. Co., 3 Bar. & Ad. 125; Hutton v. West Cork tion. Rail. Co., 23 Ch. D. 672; Strond v. Royal Aquarium Society, 89 L. T. 243. But the articles usually provide expressly for payment of remuneration. Table A. (cl. 69) so provides. And where this is the case the provision operates as an authority to the directors to pay such remuneration out of the funds of the company; and there is no rule to the effect that the remuneration can only be paid out of profits. Harvey Lewis's case, 26 L. T. 673. Where a decision of the Board as to mode of division is required, there is no right of action till resolution passed. Morrell v. Oxford Portland Coment Co., 26 T. L. R. 682.

The amount of remuneration to be paid to directors is a matter of internal management. Burland v. Earle, (1902) A. C. 83; Normandy v. Inc., Coope & Co., (1908) 1 Ch. 84.

A director can sue for romaneration agreed to be paid bim by the company (Orton v. Cleveland Co., 3 H. & C. 868; N.t v. Atlanta Co., 11 T. L. R. 407, C. A.), and prove in the windingup like au ordinary creditor. Beckwith's case, (1898) 1 Ch. 321; A 1 Bischit Co., W. N. (1899) 115; Dale & Plant, 43 Ch. D. 255. Leicester Club Co., Cannon's case, 30 C. D. 629-which was a dccision to the contrary-cannot be relied on. Whether the articles de or do not constitute a contract for this purpose between the company and the directors (see supra, p. 39), they operate, it has

vendor, &c.

been held, as an offer accepted by the director, au . , give the terms on which the director is serving the company. Suc. , v. Port Darwin Gold Mining Co., 1 Meg. 385; Isaacs' case, (1892) 2 Ch. 158; Peruvian Co., (1894) 3 Ch. 690. But it is open to directors by a resolution to renounce the right to future remuneration under such implied con-McConnell's case, Re London and Northern Bank, (1961) 1 Ch. tracts. 728. An agreement by all the directors with the company to renonnee the right to remuneration is binding on each director. West Yorkshire Darracq v. Coleridge, (1911) 2 K. B. 326. To take remuneration in excess of what is payable under the regulations is a misfeasauce; and directors who are parties to such payments are jointly and severally liable to make good the amount. George Newman, (1895) 1 Ch. 674; Oxford, Sc. Society, 35 C. D. 502; Leeds Estate Co. v. Shepherd (1887), 36 C. D. 809; Re Whitehall Court (1887), 56 L. T. R. 280. But it scems competent to the company in general meeting to ratify excess remuneration in accordance with the principle recognized in Grant v. United Switchback, 40 C. D. 135, C. A. Directors must not pay the income tax on their remuneration out of the company's funds. Boschoek Proprietary Co. v. Fuke, (1906, 1 Ch. 148.

Where, under the articles, a director is to be paid so much por aunum, and he vacates office before the eud of a current year, the question whether he can maintain a claim for an apportioned part of the remuneration for that year, has given rise to considerable difference of opinion. In Sucabey v. Port Darwin Gold Mining Co., Limited (1889), 1 Me₅. 385, the question was considered by the Court of Appeal-Lord Halsbury, L. C., Lord Esher, M. I and Lindley, L. J. There the clause in the articles provided that "the arectors shall each receive by way of remuneration out of the funds of the company in each year the sum of 2001., and the chairman in addition 1001. per annum." A director resigned in the course of a current year, and he was held entitled to an apportioned part of the reuuneration for that year. In that case Lord Halsbury, L. C., said. "As to the point of the service being determined in the middle and not at the end of the year disentitling the plaintiff to anything because the service was for a year, the judgment of Stephen, J., was right. But upon the articles there were two cases in which the service could be brought to an earlier termination than the year, namely, if the directors give a month's notice of resignation the resignation must be accepted by the company; but if this wore done, then both the parties contemplated an earlier determination of the service than a full year. On the other hand, the company could, if it thought fit, by special resolution determine the service between it and its servants. There was therefore a reciprocal right to put an end to the service at an earlier period than the end of the year. It follows from that, as a necessary consequence, that both parties must have contemplated that, as this was a service for

e:

H

I

A

C

Ch. XVI.

hirs and reward, a proportionate part of the remuneration agreed a on should be paid if the service was determined at an earlier period than the full year." On the other hand, in Salton v. New Beeston Cycle Co., (1899) 1 CI 772, Cozens-Hardy, J., held that where the article proded that "the directors shall be entitled to receive by way of omuner tion in each year 5,0001.," a director who vacated office in a current year was not entitled to any apportionmen* : and this was followed by Wright, J., in McConnell's case, (1901) 1 Ch. 728, where the words were "each director shall be paid the sum of 300% per unnum"; and by Bruce, J., in Iuman v. Acroyd and Best, 82 L. T. 621; affirmed, (1901) K. B. 613, where the words were "the sum of 300% per nunum per director." See also Central de Kapp Gold Mines, 69 L. J. Ch. 18. But in nearly all these cases the Court proceeded on the erroneous assumption that in Swabey v. Port Darwin Gold Mining Co., Limited, the Court of Appenl was dealing with a case in which the articles provided that the renumeration to be paid to the directors should be AT THE BATE of 2007, per annum as stated in the head-note to that case. Thus, in luman v. Ackroyd and Best, supra, Bruee, J., distinguished Swabry v. Port Darwin Gold Mining Co., on the ground that "in that case the remuueration stipulated to be paid to the directors was to be at the rule of 2001, per annum, and I think there that the observations of the Lord Chancellor with respect to the reciprocal rights of the parties must be read in connection with and in regard to the particular form of the stipulation in that case." But on this point the head-note in Swabey v. Port Darwin Gold Mining Co. is incorrect. The remuneration clause did Nor contain the words "at the rate." The terms of the chuse taken from the articles registered at Somerset House are set forth above (p. 187), and the above decisions, grounded ou this inaccuracy, require therefore reconsideration, as noted in the appeal Ackroyd, (1901) 1 K. B. 618.

Furthermore, it is not easy to see why the Apportionment Act, 1870 [33 & 34 Vict. c. 35), does not apply. That Act expressly provides that all rents, annuities (including salaries and pensions), and other periodical payments in the nature of income shall be apportionable, and provides for the recovery in due course of an apportioned part of an annuity determined by death or otherwise. In Salton v. New Beeston (yele Co., supra, it was argued that the Act applied, and on the other hand the case of Li undes v. Earl Stamford (1852), 18 Q. B. 425 (decided on the Apportionment Act, 1834, which was very differently expressed), was apparently relied on; but in his judgment, Cozens-Hardy, J., made no reference to the Apportionment Act. However, in Imman v. Ackroyd and Best, supr., Bruce, J., considered that the Apportionment Act, 1870, must have been taken into consideration by Cozens-Hardy, J., and Wright, J., and held to be inapplied.

Where the company went into liquidation a few days before the expiration of a year, and the director's work for the year was completed, he was held entitled to remumeration for the year. Shares, Bryant & Co., W. N. (1901) 124. If the remuneration is to be paid "at such time as the directors determine," a director has no right antil such determination. Coridad Copper Co. v. Swallow, (1902 2 K. B. 44 (C. A.); Inman v. Ackroyd, supra. A director may in some cases be entitled to remuneration although not qualified. Salton v. New Breston Cycle Co., supra; International Cable Co., 66 L. T. 253. A salaried director is not, in the absence of a clear provision to the contrary, entitled to his travelling expenses in attending board meetings. They are covered, primd facie, by his remuneration. Young v. Naval and Military Co-operative Society, (1905) 1 K. B. 687.

Where the articles fix the remuneration of directors, and providthat the company may, by resolution in general meeting, grant to the directors any additional remuneration, it has been held to be *ultra vires* for the directors to grant a retiring pension to a managing director. Normandy v. Ind. Coope §: Co., (1908) 1 Ch. 84. Sed quare : and see Cyclists' Touring Club v. Hopkinson, (1910) 1 Ch. 179. Remuneration ceases as from the time when any director ought to have vacated office under the provisions of the articles. Consolidated Nickel Mines, (1914) 1 Ch. 883.

Resignation.

Resignation.

Prima facie, a director, like any other ugent, can at any timo resign his office, and usually the regulations make express provision accordingly. It seems enough if he gives notice to the company in the manner provided by selled of the Act of 1908. See, however, Municipal Freel ld Lond Co. v. Pollington, 63 L. T. 238. That he must give notice to the company i... general meeting appears to be unsound. And there is nothing to prevent a director from parting with his qualification shares, and so vacating office by disqualification. Cilbert's case, 5 Ch. 565. A resignation once made is irrevocable. Reg. v. Mayor of Wigan, 14 Q. B. D. 908; Glossop v. Glossop, (1907 2 Ch. 370.

Where a director who was both a permanent and an ordinary one resigned, it was held that the resignation applied to both offices. *Moseley* v. *Koffyfontein*, (1910) 2 Ch. 382.

Disqualification.

Disqualification. The regulations commonly provide for special cases in which a director is to vacate office by reason of disqualification, *e.g.*, if he accepts any other office under the company, becomes bankrupt, or lunatic, or ceases to hold his qualification shares, or absents himself or is absent from meetings of the directors for a lengthened period. See Company Precedents, Part I., p. 730, and Table A., cl. 77.

POWERS OF DIRECTORS.

In such a case the director, upon the event happening, vacates his office automatically. Bodega Co., similed, (1904) 1 Ch. 376.

Even apart from such provision, it is well settled that the acceptance by a director of an incompatible office vacates his directorship. See Milward v. Thatcher, 2 T. 81; Eales v. Comberland Lead Co., 6 H. & N. 481; Iron Ship Co. v. Blant, L. R. 3 C. P. 484. The trusteeship of a debenture holders' trust deed, if paid, is a "place of prolit" disqualifying within the meaning of such a regulation. Astley v. New Tiroli C 1899) 1 Ch. 151. Au "office under the company" may, but will not assually, include the appointment of o of the directors to be solicitor of the company. Harper's Tick. Issuing Machine, Ltd., (1912) W. N. 263; 29 T. L. R. 63.

"Becomes bankrupt" means becomes such after election. It does not proclue" he election as a director of a person whe at the time is an undischarged bankrupt. Dawson v. African Co., (1898) 1 Ch. 6.

"Becomes insolvent." Rey. v. Suddlers Co., 10 H. L. C. 404; Sissons v. S., 54 S. J. 802; Mans. 48; James v. Rockwood Collery Co., 106 L. T. 128; London & Count'es Assets Co. v. Brighton Grand Concert Wall, Ltd., (1915) 2 K. B. 492.

"Cense to hold": a director does not "cease to hold" shures where ho has never acquired them. Forbes' case, 8 Ch. 775. Nor does he "cease to hold" by the qualification boing raised from, e.g., 59 to 250 shares. Molineaux v. London, Pirmingham and Manchester "nsurance Co., (1902) 2 K. B. 589.

"Absenting himself" means being absent ver "arily (Mack's case, W. N. (1906) 114), but a director may be treated absenting himself if ill-health obliges him to go abroad. McCon and search absenting himself and Northern Bank. (1901) 1 Ch. 728. As to the meaning of "concerned in any contract with the company," Star Steam Laundry, (1913) W. N. 39; 108 L. T. 367.

Unless otherwise provided, a director is not entitled to join in forming a quorum for the consideration of matters with regard to which he is not entitled to vote. *Re Greymouth Point Elizabeth Rail. and Coal Co.*, (1904) 1 Ch. 32.

As to acts done by disqualified directors, seo infra, p. 191.

Powers of Directors.

The articles generally give to the directors a number of specific Powers of powers scattered up and down the various clauses, but, in addition directors to these specific powers, there is almost always inserted a general clause on the lines of Clause 71 of Tablo A., providing that the directors may exercise all the powers of the company not by the articles or by statute required to be exercised by the company in general meeting. Such a general vesting of powers in the directors is valid and effective, and all that has to be done, in 1894

Ch. XVI.

considering whether any particular transaction is within the powers conferred by such a clause on the directors, is to search the articles and the Acts to see whether there is any express provision requiring, for that transaction, the authority of the company in general meeting, and, if there is no such provision, the directors must be treated as competent to carry out the transaction. "The articles " said Mellish, L. J., in In re Patent File Co., L. R. 6 Ch. 83, at p. 88, "give to the directors the whole powers of the company, subject to the provisions [of the articles and of the Companies Act. 1862, and I cannot find anything either in the Act or in the articles to prohibit their making a mortgage by deposit." So, in In re Anglo-Danubian Co., 20 Eq. 339, where it was a question of directors' power to issue debentures at a discount, Jessel, M. R., said : "Looking to the 66th clause, I cannot have any possible doubt. The directors can do anything the company can do." See, also, Australian Co. v. Mounsey, 4 K. & J. 733; Pyle Works, No. 2, (1891) 1 Ch. 173; Hampson v. Price's Patent Candle Co.. 45 L. J. Ch. 437.

In exercising these powers, whether general or special, directors must always bear in mind that they are trustees for the company, and must exercise the powers for the benefit of the company, and for that alone. Richmond's case, 4 K. & J. 325; Gilbert's case, 5 Ch. 559; Re Gresham Life Assurance Society, Exparte Penney, L. R.8 Ch. 449; Punt v. Symons & Co., (1903) 2 Ch. 506; Percival v. Wright. (1902) 2 Ch. 421.

Where directors have a discretion and are *bond* fide acting in the exercise of it, it is not the habit of the Court to interfere with them. Gresham Life, L. R. 8 Ch. 449.

Where the articles vest the general powers of the company in the directors, "subject to such regulations not being inconsistent with the aforesaid regulations," as may be prescribed by the company in general meeting, the company in general meeting cannot override the directors' powers by prescribing a regulation or passing a resolution inconsistent with the articles. Automatic Selt-Cleaning Co. v. Cunninghame, (1906) 2 Ch. 34; Gramophone and Typewriter, (1908) 2 K. B. 89; Salmon v. Quin & Axtens, (1909) A. C. 442. See, however, Marshall's Value Gear Co. v. Manning, Wardle & Co., (1909) 1 Ch. 267.

Acts in Excess of Authority.

Acts of directors in excess of authority. Directors who act in excess of their authority—e.g., borrow beyond the limit of their borrowing powers—are, in some cases, held liable to those with whom they deal, on the footing that they are to be taken to warrant their authority. Collen v. Wright (1857), 8 El. & Bl. 647: Weeks v. Propert, L. R. 8 C. P. 427; Chapleo v. Brunswick Estate, 6 Q. B. D. 715; Firbank's Executors v. Humphrys, 18 Q. B. D. 54; Oliver v. Bank of England, (1902) 1 Ch. 610, furnish examples of this doctrine.

8

f

h

DEFECTIVE APPOINTMENTS.

Ch. XVI.

Defective Appointments and Acting after Disqualification.

A person who has not been duly appointed is not a director (Jenner's Acts where case, 7 Ch. D. 132); and his purporting to act as such does not give the not duly apcompany any right of action against him unless it can show damage. pointed a director. Coventry's case, 14 Ch. D. 660. But the company may bring an action to restrain a de facto director from acting as director or representing himself as such. This right, however, is contined to the company; an individ al member has no right to bring such an action where a director is improperly disqualified or appointed. For the matter is one for the company to determine, that is, for the majority, and if the majority choose not to interfere, the individual member must conform to the will of the majority. Sce rule in Foss v. Harbottle.

As regards persons dealing with the company-outsiders, that isthe concluding paragraph of sect. 71 of the Act to some extent prevents the inconvenience which may arise from directors being irregularly appointed, for it provides that "until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened and all proceedings had thereat to have been duly held, and all appointments of directors, managers or liquidators shall be deemed to be valid." And sect. 74 provides that the acts of a director or manager shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification ; but these provisions are obviously inadequate, and it is therefore usual to insert in the articles a clause supplementing them. See, for example, Clause 94 of Table A. to be observed that there is a distinction between the words of sect. 71 and the words of the clause, for the words of the section are qualified by the introduction of the words "until the contrary is proved." The provisions above referred to are effective not only as regards members, but as regards outsiders, for, as we have seen (supra, p. 44), outsiders, even more than members, are cutitled to presume that the proceedings of the company have been conducted with due regularity. Mahouey v. East Holyford Co., L. R. 7 H. L. 887, is an instance. There de facto directors had not been duly appointed, but the company was held bound by their acts as against an outsider, and Lord Cairns relied, amongst other things, on a clause in the regulations similar to Clause 94 of Table A. The protection enures for the benefit of a director who has taken over the rights of the outsider. See Re Bank of Syria, (1900) 2 Ch. 272. See, also, Newhaven v. Newhaven, 30 C. D. 363; Briton Medical Co. v. Jones, 61 L. T. 384; Dawson v. African, &c. Co., (1898) 1 Ch. 6; Howbeach

pointed a

Coal Co. v. Teague, 5 H. & N. 151; and British Asbestos Co. v. Boyd, (1903) 2 Ch. 439. In Dawson v. African, §c. Co. it was held that a call made by directors, who had not been duly appointed or were disqualified, was valid; and in the British Asbestos Co. the combined effect of an article analogous to Clause 94 of Tablo A. and of sect. 67 of the Act of 1862 (for which sect. 74 is now substituted), was held to validate the acts of a person who had vacated his directorship by becoming secretary, but had gone on innocently acting as director. And see Transport v. Schonberg, 21 Times L. R. 305.

A director who takes part in irregular proceedings may be estopped from setting up the irregularity. *Faure* v. *Phillipart*, 58 L. T. 527; *York Tramways* v. *Willows*, 8 Q. B. D. 685.

The clause will not, however, protect a person who knows of the invalidity of the appointment (*Staffordshire Gas Co.*, 66 L. T. 414; *Tyne Steamship Co.* v. *Brown*, 75 L. T. 483); a director, for instance, making a *malå fide* transfer of his shares, accepted collusively by the other directors. *Murray* v. *Bush*, L. R. 6 H. L. 77; see further, as to the protection afforded to outsiders by the rule in *Royal British Bank* v. *Turquand, supra*, p. 44.

A de facto director is as much in a fiduciary position as a de jure director, and liable accordingly. Coventry's case, 14 C. D. 670.

Contracts by Directors with Company : Bribes.

Contracts by eompany with directors or in which they are interested.

Unless the articles confer on a director express powers of contracting with the company, a director's powers of so contracting are extremely limited. He may take up shares in the company, he may subscribe for debentures in the ordinary course of business (Campbell's case, 4 C. D. 470; and soe London and Colonial Fin. Corp., 77 L. T. 146, C. A.); but otherwise he is, like a trustee, disqualified from contracting with the company (Albion Co. v. Martin, 1 C. D. 580), and for a good reason. The company is entitled to the collective wisdom of its directors, and if all or any of such directors are interested in a contract, the company loses the benefit of its directors' unbiassed judgment (Imperial Association v. Coleman, 6 Ch. 558; and see Costa Rica Rail. Co. v. Forwood, (1900) 1 Ch. 756; affirmed, (1901) 1 Ch. 746); for on any such contract being entered into, a conflict of interest and duty must or may ariso, and in this conflict the interests of those whom the director is bound to protect run a great risk of being sacrificed. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of the contract in question. Aberdeen, &c. Co. v. Blackie, 1 Macq. 401; Parker v. McKenna, 10 Ch. 118; Bray v. Ford, (1896) A. C. 50. If, for example, the directors (there being no relaxation of the rule in the articles) agree to sell to one of themselves part of the property of the company.

Ć

c

h

CONTRACTS BY DIRECTORS WITH COMPANY: BRIBES. Ch. XVI.

the company is entitled to have the sale set aside, or, at its option, to sue the directors for breach of duty. So, too, if a director, concealing his interest, sells, through a third party, his property to the company, the company is entitled to reject the property and claim repayment of the purchase-money (In re Cape Bretor Co., 29 Ch. D. 795; Chesterfield and Boythorpe Colliery v. Black, 26 W. R. 207), or to retain the property and claim damages for any loss sustained by the non-disclosure. Leeds and Hanley Co., (1902) 2 Ch. 809. And the same rule applies to contracts with any company in which n director holds shares. And if that company has notice of the facts, the contract may be set aside. Transvaal Land Co. v. New Belgium Co., (1914) 2 Ch. 488. But this right the shareholders may waive to any extent by provisions in the articles as below mentioned, and even in the absence of such a provision they can, by resolution of a general meeting, duly convened, confirm a contract in which the directors or some of them are interested. Grant v. United Switchback Co., 40 C. D. 135; Kaye v. Croydon Tramways Co., (1898) 1 Ch. 358; Imperial Association v. Coleman, L. R. 6 H. L. 190; Costa Rica Rail. Co. v. Forwood, (1901) 1 Ch. 746 (C. A.).

Directors, as we have seen, are agents of the company, and it is a Secret well-settled rule that an agent cannot, without the knowledge and benefits of consent of his principal, be allowed to make any profit out of the matter of his agency beyond his proper remuneration. "No man," directors. said Lord Cairns, L. C., "can in this Court, acting as agent, be allowed to put himself in a position in which his interest and duty will conflict." Parker v. McKenna, 10 Ch. 118; see also Bray v. Ford, (1896) A. C. 50. And this rule applies with peculiar stringency to the directors of a joint stock company. Hence any secret benefit obtained by a director by reason of his position, or in the course of the company's business, whether it takes the form of a commission, or of qualification shares, or a sum of cash, is regarded as a bribe, and the director is accountable to the company for the amount (see Eden v. Ridsdale, §c. Co., 23 Q. B. D. 368; Boston Co. v. Ansell, 39 C. D. 339; Parker v. Lewis, 8 Ch. 1035); and if the bribe has not been paid, the company can sue the briber for the excess of price caused by the bribe. Mayor of Salford v. Lever, (1891) 1 Q. B. 168; Whaley Bridge Co. v. Green, 5 Q. B. D. 109; Grant v. Gold Exploration Syndicate, (1900) 1 Q. B. 233. Where a director has been promised a present of this kind, he cannot enforce payment. The consideration is corrupt, and the law will render no assistance to him. Harrington v. Victoria Dock Co., 3 Q. B. D. 549; Shipway v. Broadwood, (1899) 1 Q. B. 369.

In the alternative the company may, if it chooses, rescind the contract; for where one party to a contract bribes or has any underhand dealing with the agent of the other party; the latter on discovery P.

may repudiate the contract. Panama and Pacific Co. v. Indiarubber Co., L. R. 10 Ch. 515; Shipway v. Broadwood, (1899) 1 Q. B. 369. And see the Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34).

So, too, a company acting as manager must rest satisfied with the agreed remuneration, and cannot charge extra for services rendered by its employees. Bath v. Standard Land Co, (1910) 2 Ch. 408.

Relaxation of the above rules. These are the rules *primd facie* applieable to such transactions, but a company is at liberty to waive the benefit of such rules, and to allow a director to make a contract, or to be interested in a contract, with the company, and the articles very commonly make provision accordingly. The usual form which such a provision takes, is that a director may make contracts, or be interested in contracts, with the company : but he is to disclose the nature of his interest to the board, and is not to vote in regard to the matter. Experience has shown that, as a general rule, such provisions are desirable; for it often happens that a company may be largely benefited by being able to deal with one of its own directors : All that is required is that the other directors should have such knowledge as will enable them to scrutinize the terms of the contract with more than usual care. Imperial Association v. Coleman, 6 H. L. 190; Southall v. British Mutual, §e., 6 Ch. 619; Adamson's case, 18 Eq. 670; Costa Rica Co. v. Forwood, (1900) 1 Ch. 756.

Proceedings of Directors.

of directors. The meetin Co., (1

The directors of a company must, as a general rule, act at board meetings unless the regulations otherwise provide. Hayeraft Gold Co., (1900) 2 Ch. 230. Nevertheless, it does not follow that a transaction can be invalidated as against an outsider who has dealt with the company boná fide merely because the directors acted without meeting. County of Gloncester Bank v. Rudry, &c. Co., (1895) 1 Ch. 629: Rr Bank of Syria, Owen & Ashworth's claim, (1901) 1 Ch. 115. And the articles not uncommonly negative the rule, and expressly declare that a resolution in writing signed by all the directors shall be as effective as if passed at a board meeting, and there are cases in which this is found extremely convenient. Primá faeie one director alone has no power to act on behalf of the company. R. N. Cunningham, 58 L. T. 16; Lindley, 156. He is only ene of a body of directors in whom collectively the management is vested.

The articles usually provide that the directors may conduct their proceedings as they think fit. Sometimes proxies are allowed.

Notice of Board Meeting.

(

n

Notices of directors' meeting*. Primá facie due notice must be given convening a meeting of directors, and in default the meeting is irregular (Harben v. Phillips, 23 C. D. 34); but this is not always necessary, for by the articles.

QUORUM OF DIRECTORS.

or by the determination of the directors, meetings may be held at fixed times, and it may be arranged that in such cases no notice need be given. Where notice has to be given, it must be given a reasonable time before the meeting. Browne v. La Trinidad, 37 C. D. 1. Otherwise it will be invalid, unless, indeed, all the directors arc present at the meeting. The notice need not specify, unless the articles otherwise provide, the nature of the business to be transacted. La Compagnie de Mayrille v. Whitley, (1896) 1 Ch. 788. As regards directors abroad, the regulations commonly provide that no notice need be given, and even in the absence of such a provision it appears that notice need not be given to a director abroud, unless, indeed, he is within easy reach. Halifax Sugar Co. v. Francklyn, 59 L. J. Ch. 593. Sometimes by an accidental onlission to give due notice to Omission of some one director, or by reason of there no being a quorum present, notice or want a meeting of directors is rendered irregular, but the directors nevertheless transact business on behalf of the company, e.g., allot shares, make contracts, &c. In such a case, the rule in Royal British Bank Outsiders unv. Turquand (see p. 44, supra) applies, and outsiders will not, as a prejudiced general rulc, be prejudiced by such irregularities. They are not con- larity of cerned to see to the internal regularity of the company's proceedings_ proceedings. its "iudoor management" as Lord Hatherley termed it-and are entitled to assume that everything has been properly done. Where there has been any such irregularity, a subsequent regularly constituted board meeting can always ratify and confirm what was done by the Ratification. irregular board, and it will then be valid ab initio. Portuguese Copper Co., 45 C. D. 26: Land Credit Co., 4 Ch. 473 ; Hooper v. Kerr Stuart 5 Co., 83 L. T. 729; 45 S. J. 139 (22 Dec., 1900). And see State of Wyoming Syndicate, (1901) 2 Ch. 431, 437.

Quorum of Directors.

The articles generally fix, or enable the directors to fix, the quorum Quorum of for a board meeting, that is to say, what number of directors must be directors. present to enable them to act as a board, and exercise the powers vested in the directors collectively. Primâ facie, a power to fix a quorum cannot be exercised by less than a majority of the directors at a board meeting. A director must not be counted in a quorum for the consideration of matters on which he is not entitled to vote. Re

Greymouth Point Elizabeth Rail. Co.; Yuill v. Same, (1904) 1 Ch. 32. If the requisite quorum is not present the meeting is irregular and cannot transact business : so too if the number of directors of the company is less in the whole than the required minimum board, no effective board meeting can be held (Faure Electric, &c. Co. v. Phillipart (1888), 58 L. T. R. 525), unless the articles give power to act notwithstanding vacancies. Scottish Petroleum, 23 C. D. 411; Bank 13(2)

of quorum.

195

Ch. XVI.

of Syria, (1900) 2 Ch. 272. If no quorum has been fixed the number who usually act will do. Lyster's case (1867), 4 Eq. 233. It must be borne in mind that a provision for a quorum does not dispense with the due convening of a meeting. The directors must all be summoned. If they have been, or such of them as can be reached by notice, and if all the directors or a quorum be present, the meeting can proceed to business.

The quorum clause in Table A. is 88.

Minutes.

It is the duty of directors to keep proper minutes of their proceedings. See infra, p. 244.

Resolutions of Directors.

The directors exercise their powers by resolutions passed at board meetings. Thus a call is made by passing a resolution-

"That a call of -----l. per share be, and the same is hereby, made on the members of the company, such call to be payable to, &c., on, &c., at, &c."

The following are other examples :---

"That the shares numbered, &c., of A. B. be, and the same are hereby forfeited."

"That Messrs. ---- and ---- be and they are hereby appointed a committee with power to arrange with Mr. the terms on which he shall supply, &c., and make a contract with him accordingly for a period not exceeding twelve calendar months."

"That the sum of -----l. be raised for the purposes of the company by the issue of mortgage debentures to that amount. and that the solicitor be requested to furnish a draft debenture for the approval of the board."

C. 7 1

pa

"That the seal of the company be affixed to a contract, &c."

"That Mr. ----'s offer to supply the company with ----- 110 and the same is hereby accepted, and that the secretary do give Mr. ---- notice of this resolution."

"That an offer be made to Mr. ---- on behalf of the company to, &c."

It is not, however, essential to the validity of a directors' resolution that the determination should be embodied in a formal resolution, and the minutes in recording it often, in fact, enter only the substance, e.y."a contract with A. B. for the supply of, was submitted and approved."

In order to carry a resolution in regard to external matters into effect, it is sometimes necessary to do some further act in the name of the company, e.g., where a resolution has been passed to borrow

Resolutions of directors.

Examples.

DELEGATION-COMMITTEES.

Ch. XVI.

money it will be necessary to apply to some person or persons to lend the same, or to issue a prospectus, and when a lender has been found and the security agreed on, the directors will pass a resolution approving thereof and directing the seal to be affixed and the contract to be signed by two directors on behalf of the company. Hence, a matter may come before the board several times before it is completed. So, too, a mechanical aet may be necessary, e.g., to sign or seal a

Delegation.

The maxim "delegatus non potest delegare" applies to directors, and Delegation they cannot, therefore, prima facie dolegate their powers (Cobb v. Becke, by director-6 Q. B. 936); but this rule may be controlled by an express or implied authority to delegate, and usually the articles expressly provide that the directors may appoint servants and agents and determine their duties and powers, and further that the directors may delegate to any one or more of themselves any of their powers. Conf. Tablo A. cl. 91. A delegation thus authorized is good. In re Taurine Co., 25 Ch. D. 118; Leeds Estate Co. v. Shepherd, 36 Ch. D. 787.

Delegation may also be presumed. See Totterdell v. Fareham Brick Co., L. R. 1 C. F. 674; Regent's Canal, W. N. (1867) 79; Lyster's case, 4 Eq. 238; Mahoney v. East Holyford Co., L. R. 7 H. L .69. See, however, Premier Industrial Bank v. Carlton Manufacturing Co., (1909) 1 K. B. 106, and note, supra, p. 45.

Delegation does not prevent the directors from still acting in regard to the matter delegated. Huth v. Clarke, 25 Q. B. D. 391.

If directors delegato their powers to a committee without fixing a quorum, whatever the committee does must, unless the articles otherwise provide, bo done in the presence of all its members. In re Liverpool Household Stores Association (1890), 59 L. J. Ch. 624.

Committees.

The delegation to a committee is usually effected by resolution Committees passed at a meeting of the board, e.g.of directors.

"That Messrs. ---- and ---- be, and they are hereby appointed, a committee, with power on behalf of the company

"That Mr. ---- be and he is hereby appointed a committee for the purpose of, &e.; and that the following powers and authorities be delegated to him, (1) power to, &e.; (2) power

"That Messrs. — and — be, and they are hereby appointed, a committee for the purpose of settling with Mr. - - the terms of an agreement for, &e., and that they be authorized to execute on behalf of the company an agreement in writing embodying such terms."

Rotation.

Rotation of retirement of directors.

Removal of directors. The articles of a company usually provide that a proportion of the directors, usually one-third, shall retire by rotation year by year, but in the case of private companies these provisions are often omitted or considerably qualified. See clauses 78-86 of Table A.

Removal.

The articles generally contain power to remove a director, but unless they do so a director eannot, it has been held, be removed without first altering the articles by special resolution so as to take the requisite power. Imperial Hydropathic Co. v. Hampson, 23 C. D. 1; Browne v. La Trinidad, 37 Ch. D. 1. But removal is one thing and specific performance another, and the Court, it is now well settled, will not enforce specifically a contract of service either at the instance of en ployer or employed. Hence, if a director refuses to act the Court will not force him to act, and if, on the other hand, a company, by resolution of a general meeting, refuses to employ a director, the Court will not force it to do so. Harben v. Phillips, 23 C. D. 14; Bainbridge v. Smith, 41 C. D. 462. It is a different thing, however, when a board of directors excludes one of their body from acting. The Court does not regard such exclusion as the act of the company (even though the directors have, under the articles, the general powers of the company), and it will accordingly, on the application of the aggrieved director, grant an injunction restraining the other directors from excluding him from office. Pul'srook v. Richmond, §c. Co., 9 C. D. 610. It will not, however, restrain the company, and if, after the grant of the injunction, the shareholders, by a resolution in general meeting, declare that they do not wish the particular director to act any longer, the Court will discharge the injunction and decline to assist him any further, at least, by injunction. Bainbridgev. Smith, 41 C. D. 475. For any other redress he may claim he must proceed by action for damages.

(

C

8

iı

p

d

81

p

aj

or

m

11

Se

be ma

or

to

har

e. 4

Lin

the Nic

8ee

Where the power to remove is only for reasonable cause, it is for the meeting to decide what is reasonable cause, and the Court will not interfere with their decision. Inderwick v. Snell, 2 M. & G. 216; and see Gresham Life, 8 Ch. 449; Osgooil v. Nelson, L. R. 5 H. L. 636. If, owing to the irremovability of a director, there is a deadlock, a winding-up order may be obtained. Suiling Ship Kentmere, W. N. (1897) 58.

Table A. gives a power to remove-Art. 86.

LIABILITIES OF DIRECTORS.

Liabilities of Directors. As to Contracts.

Diroctors being ...gents (see above, p. 177), are not liable on contracts Contracts purporting to bind their company. If, having nuthority, they make a by directors contract professelly for the company, then the company, their their profession of the company. contract professedly for the company, then the company, their principal, and the company only, is liable on it, if they have not authority to make the coutract, still they are not porsonally liable on the contract (Ferguson v. Wilson, L. R. 2 Ch. 77), although they may be liable to an action for damages for brench of implied warranty of unthority. Collen v. Wright. 7 E. & B. 301; 8 E. & B. 647; Coventry's case, (1891) 1 Ch. 202. The general rule is thus stated by Lord Cairns in Ferguson v. Wilson, supra : "Whenever an agent is liable, those directors would be liable. Where the liability would attach to the principal and the principal only, the liability is the liability of the company."

Thus, if the directors order goods for, or on cohalf of, their company, or if they enter into an agreement for, or on behalf or on account of, the company, the company is liable and not the directors, whether the contract bo in writing or verbal.

But the directors of a company may, of course, if they choose, Directors contract, so as to bind themselves personally : whether they have done may bind so depends on the terms of the contract. If, for example, they contract themselves personally. in their own names, without disclosing that they are acting for the company, they are, without doubt, personally liable; or, if they contract, disclosing the fact that they are directors, but without using words sufficient to bind the company, e.g., the word "Limited," they are personally liable on the contract. The test of liability is, does it appear from the terms of the contract that the directors were contracting on behalf of the company? If it does, they are protected. "Ltd." may be used as an abbreviation for "limited." F. Stacey & Co. v. Wallis, 106 L. T. 541. See also sect. 63 (3) of the Act, and Civil Service Society v. Chapman, (1914) W. N. 309.

Thus, if the directors contract in their own name, but expressly on behalf of the company or for the company, that is sufficient, and it matters not whether the words appear in the description of the parties, or in the body of the contract, or are added by way of qualification to the signature. Gadd v. Houghton, 1 Ex. D. 357. On the other hand, if the directors contract without purporting to bind the company, e.g., where they say: "We, the directors of the --- Company, Limited, hereby agree," &c., the contract does not purport to bind the company, and the directors are therefore liable. Nicholson, 1 H. & N. 165; McCollin v. Gilpin, 5 Q. B. D. 390; and see Dermatine Co. v. Ashworth, 21 T. L. R. 510.

Ch. XVI.

As to Frauds and other Torts.

Any director who is a party to a fraud, such as the issning of a frauduleut prospectus, or to the commission of any tort, is personally liable. This is on the principle that whoever commits a wrong is liable for it himself, and none the less so that he was acting as an agent or servant on behalf, and for the beuefit, of another; for the contract of agency or service cannot impose any obligation on the agent or servant to commit, or assist in the committing of, fraud or any other wroug. Collin v. Thompson's Trusters, 4 Macq. 424, 432. The company may also be liable (supra, pp. 73-75), but that does not exonerate the director, nor ought it in reason to do so, for though the company is an artificial person in law, it is in fact the directors who set the company in motion. So, too, if, by the order of the directors, a trespass is committed, a patent infringed, or other wrongful act committed, the directors who are parties to it are personally liable. If more than one person is concerned in the commission of a wrong, the person wronged has his remedy against all, or any one or more of them, at his choice; for every wrongdoer is liable for the whole damage, and it does not matter whether they acted as between themselves as equals, or one of them as agent or servant of another. Pollock on Torts, 7th ed., p. 190.

But a director is not to be held responsible for the fraud of his co-directors, unless he has expressly or impliedly authorized it. Cargill v. Bower (1878), 10 Ch. D. 502. "A director," us Lord Hatherley said, "cannot be held liable for being defrauded. To do so would make his position intolerable." Land Credit Company of Ireland v. Lord Fermoy (1870), L. R. 5 Ch. 772; In re Charles Denham & Co., 25 Ch. D. 752; Dovey v. Cory, (1901) A. C. 477; Prefontaine v. Grenier, (1907) A. C. 101.

As to the measure of damages where a director had by frandulent misrepresentations induced his co-directors to advance him moneys of the company on an insufficient security, see *Exploring Land and Minerals Co. v. Kolchmann*, 94 L. T. 234.

Agaiu, if a directer ueglects te comply with the requirements of the Act of 1908, he is, er may be, liable in damages personally. See, further, *infra*, p. 357.

€

r d

te

et

al

T

be

W

Negligence.

Negligence of directors. "By accepting a trust of this sort (*i.e.*, the management of a company's affairs), a person," says Lord Hardwicke, "is bound to exercise it with fidelity and reasonable diligence" (*Charitable Corporatica* v. Sutton, 2 Atk. 405); and Jessel, M. R., in another case. said: "Directors are bound to use fair and reasonable diligence in

200

Frauds and

torts of

directors.

NEGLIGENCE.

Ch. XVI.

the discharge of their duties, and to act honestly; but they are not bound to do more." Forest of Dean, Sc. Co., 10 C. D. 452.

"If the directors act within their powers and with such care as is reasonably to be expected from them, having regard to their knowledge and experience, and if they act honestly for the benefit of the company which the present, they discharge both their legal and equitable duty to the company, and will not be liable for mistakes or errors of judgment." Laganas Nitrate Co.v. Laganas Nitrate Syndicate, (1809) 2 Ch. 392. And see Brazilian Rubber Plantations, 27 T. L. R. 109.

Thus, in Turquand v. Marshall (1869), 4 Ch. 376, it was sought to make directors liable on the ground, amongst other things, that they had made an improvident loan to one of themselves; but relief was refused, and Lord Hatherley, L. C., said : "They were intrusted with full powers of lending money, and it was part of the business of the concorn to trust people with money, and their treat to an undue extent was not a matter with which they could be fixed unless there was something more alleged, as, for instance, that it was done fraudulently and improperly, and not merely by a default of judgment. Whatever may have been the amount lent to anybody, however ridiculous and absurd their conduct might seem, it was the misfortune of the company that they chose such unwise directors; but so long as they kept within the powers of their deed, the Court could not interfere with the discretian exercised by them." To do so would seriously cripple directors in the exercise of that free judgment on which the company's welfare so much depends; but there is nothing in those words to import that directors may not be liable for negligence, as distinguished from want of juagment, as Lord Hatherley subsequently explained in Overend, Gurney & Co. v. Gibb, L. R. 5 H. L. 480.

"I should like," said his Lordship there, "to say one word as regards the case of *Tarquand* v. *Marshall*. I certainly never intended to lay down the strong position that a person, acting for another as his agent, is not bound to use all the ordinary prudence that ean be properly and legitimately expected from any person in the conduct of the affairs of the world, viz., the same amount of prudence which in the same circumstances he would exercise on his own behalf."

Referring to this topic, Lord Lindley, in his work on Companies, remarks that although, speaking gonerally, directors have a wido discretion, and, in the absence of proof of *mala fides*, it may be difficult to establish a case of culpable or wilful default, yet, if such a case be proved, and loss by the company attributable theroto be also proved, the directors would be liable to make good such loss. The negligence for which a director will be held liable must, however, be such as would make him liable and the section. Marzetti's case, 28 W. R. 541.

What has helped not a little to perplex the law on this point is the notion which has long been floating about in the minds of even eminent lawyers—that directors are not liable for more negligence, but only for gross negligence, and the case of Overead, Gurney v. Gibb, L. R. 5 H. L. 480, is sometimes referred to us un authority for the prope ion—though not very happily, inasmuch as in that case neglig was not alleged. It was in that very case, too, that Lord Hatheriey used the words above cited without any dissent on tho part of the other learned lords.

Directors' imprudence may, it is true, he so gross, so pulpuble, us to justify the inference that they were not acting *bond fide* in the exercise of the discretion committed to them; but *mala fides* or fraud of this kind is quite distinct from negligence, with reference to which the word "gross" does not seen to mean mything at all. "Gross negligence," remarked Rolfe, B., in *Wilson* v. *Brett*, 11 M. & W. 115, "is the same thing as 'negligence' with the addition of a vituperative epithet," and this epigram was cited with approval by Willes, J., in *Grill v. General*, §c. Co., L. R. 1 C. P. 603, affirmed L. R. 3 C. P. 476. Erle, C. J., referring to this expression, 35 L. J. C. P. 324, said : " I advisedly abstained from using a word to which I can attach no definite meaning; and no one, as for as I know, ever was able to do so."

On the other hand, Romer, J., in giving ovidence before the Ho :see of Lords Select Committee in 1897 on the then pending Companies Bill, said :--- "As I understand the law, a director is only liable for what is called 'gross negligence' . . . he is not hold liable for ordinary more negligence if it is of a simple character." But when asked by the Lord Chancellor, "Do yon, as a lawyer, say there is any difference between gross negligence and negligence?" the unswer of the learned judgo was, "It is very difficult to say as a lawyer." At all events, in Loganas Nitrate Co. v. Laganas Syndicate, (1899) 2 Ch. 392, and in National Bank of Wales, (1899) 2 Ch. 672, Romer, J., and Lindley, L. J., maintained the atility of the phrase "gross negligence." "Their negligence," said Lindley, M. R., in the last-mentioned case, speaking of directors, " must be not the omission to take all possible care, it must be much more blameable than that; it must be in a business sense culpuble or gross. I do not know how better to describe it." Unfortunately these expressions do not remove the obsenrity of the word " gress."

The trath is that negligence is a parely relative term: it is the absence of due care or diligence, and what is due care or diligence must in every community be judged by the actual state of the society, the habits of business, the general usages of life and the changes as well as the institutions peculiar to the age. Story on Bailments, § 14. In a recent case (Dorey v. Cory, (1901) A. C. 477) a bank had

NEGLIGENCE.

Ch. XVI.

sustained heavy losses by the issue of frandulent balance sheets and the improper advance of money to customers of the bank. The frands were the work of the manager and the chairman, and the question arose whether a co-director, though, in fact, innocent of any complicity, was liable to the company for negligence in not having discovered the frands. The Honse of Lords in the result entirely exonerated him from limbility. "It is obvious," said Halsbury, L. C., in giving judgment, "that if there is such a duty of detecting frands) it must render anything like an intellof labour impossible. Was Cory to turn himself into an auditor, a t devolution managing director, a chairman, and find out whether anditors. manuging directors, and chairmen were all alike deceiving him? That the letters of the unditors were kept from him is chenr. That he was assured that provision had been made for bad debts and that he believed such assurances is involved in the admission that he was gnilty of no moral fraud : so that it comes to this-that he ought to have discovered a network of conspiracy and fraud by which he was surrounded, and found out that his own brother and the managing director . . were inducing him to make representations as to the prospects of the concern and the divilends properly payable which have turned out to be improper and false. I cannot think it can be expected of a director that he should be watching either the inferior officers of the bank or verifying the calculations of the auditor himself. The husiness of life could not go on if people could not trust those who are put in a position of trust for the express purpose of attending to details of management": and Lord Davey milded, "I think the respondent Cory was bound to giv his attention to and exercise his judgment as a man of business on the nutters which were brought before the board at the meetings which he attended, and it is not proved that he did not do so. But I think he was entitled to rely upon the judgment, information, and advice of the chairman and general manager, as to whose integrity, skill, and competence he had no reason for suspirion. I agree with what was said by Sir George Jessel in In re Wincham Shipbuilding and Boiler Co., Hallmark's cuse, 9 C. D. 329, and by Mr. Justice Chitty, in In re Denham & Co., that directors are not bound to examine entries in the company's books. It was the duty of the general manager and (possibly) the chairman to go carefully through the returns from the branches and to bring before the board any matter requiring consideration, but the respondent was not, in my opinion, guilty of negligence in not examining them for himself, notwithstanding that they were laid on the table of the board for reference."

A director is not necessarily affected with constructive notice, in the absence of actual knowledge of the facts which appear in the books of the company. *Coasters Limited*, 103 L. T. 622.

In determining whether a director has been guilty of negligence, the Court will, as *Dorey* v. *Cory*, *supra*, and other cases show, take into account the character of the business, the number of the directors, the provisions of the articles, the ordinary course of management and practice of directors, the extent of their knowledge and experience, and, in a word, all the special circumstances of the particular case.

Given a case of duty not performed, the burden of proving that the non-performance is equivalent to negligence rests on those who allege such negligence (In re Liverpool Household Stores (1890), 59 L. J. Ch. 618), for directors have a large discretion, and while acting honestly within it cannot be charged with misfcasance. Thus directors will not be held liable for misfeasance because, in the exercise of their discretion, they allow calls to remain unpaid (In re Liverpool Household Stores, supra), or because they rely on subordinates doing their duty (Dovey v. Cory, supra), or do not sue for a debt of the company. In re Forest of Dean Coal Mining Co. (1878), 10 Ch. D. 450. It may in some cases be the best policy for the company not to press for payment. Even if it is not, mere errors of judgment and imprudence on the part of directors do not constitute either negligence or misfeasance. Marzetti's case, 28 W. R. 541. As Lord Justice Cotton said : "Trustees are liable, whatever trouble they take, if the fund in their care goes not according to the trust. Opinions of counsel, bona fides, or care, do not protect them. Directors are confidential agents with the liabilities of trustees; but they have a large discretion, and if they act bond fide they are relieved, and are not liable for want of judgment or error if they make a payment which is not, in fact, for the purposes of the company." See, also, Re Faure Accumulator Co., 40 C. D. 150; Sheffield and South Yorkshire, &c. Society v. Aizlewood, 44 C. D. 412; and as to imprudence, Turquand v. Marshall, 4 Ch. 376; Overend, Gurney v. Gibb, L. R. 5 H. L. 480; London Financial Association v. Kelk, 26 C. D. 107; Grimwade v. Mutual Society, 52 L. T. 409. See Brazilian Rubber Plantations and Estates, (1911) 1 Ch. 425, as to indemnity provisions in the articles.

But it is one thing to make a payment injudiciously, and another to make it without inquiry. Thus, if a director signs cheques for the company he is bound to inform himse'f of the purposes for which the cheques are being given. He cannot be allowed to say that the signing was a ministerial act—a mere matter of form. If he neglects inquiry, trusting to his co-directors, he does so at his own risk. *Joint Stock Discount Co. v. Brown* (1869), 8 Eq. 381. And see *Coats* v. *Crossland*, 20 T. L. R. 800.

And if directors do not really exercise their judgment they may be liable. New Mashonaland Co., (1892) 3 Ch. 577; Re Leeds Co., 36 C. D. 787.

MISFEASANCE AND BREACH OF TRUST. Ch. XVI.

Negligence by Non-Attendance at Board Meetings.

If directors are guilty of gross non-attendance and leave the manage- Negligence ment to others, they may be guilty, by this means, of the breaches of of directors trust which are committed by others. Due Laboration of the breaches of by nontrust which are committed by others. Per Lord Hardwicke, Charit- attendance able Corporation v. Sutton, 2 Atk. 405. But it is not necessary for a to affairs. director to attend every board meeting unless the articles otherwise provide. This was laid down long since in Perry's case, 34 L. T. 716. in which Bacon, V.-C., said, that a director " is not bound to attend every meeting of the directors. It is not part of the duty of a director to take part in evory transaction which is considered at a board meeting." And Jessel, M. R., recognized this qualification in In re Forest of Dean Co., 10 Ch. D. 452. "They [directors] are bound, no doubt," said the learned judge, "to use all reasonable diligence, having regard to their position, though probably an ordinary director, who only attends at the board occasionally, cannot be expected to devote as much time and attention to the business as the sole managing partner of an ordinary partnorship ; but they are bound to use fair and reasonable diligenco in the management of their company's affairs, and to act honestly."

In the case of Re Denham & Co., 25 C. D. 752, a director who for four years had attended no board meetings was held not to be personally answerable for frandulent reports and balance-sheets issued and passed by his co-directors, or for dividends paid by them. But there the articles were in special terms. In Marquis of Bute's case, (1892) 2 Ch. 100, non-attendance by a trustee of a savings bank for a long period was excused, but here there were fifty trustees. In that case Stirling, J., said: "Neglect or omission to attend meetings is not, in my opinion, the same thing as neglect or omission of a duty which ought to be performed at those meetings." See also Exploring Land and Minerals Co., 94 L. T. 234.

Misfeasance and Breach of Trust.

Besides negligence, directors, as agents and trustees, may be held Misteasance liable for various other kinds of misconduct and delinquency. These and breach of trust are generally grouped together under the head of what is known as "misfeasance," or breach of trust, the term "breach of trust" being of trust. generally confined to some misapplication of the funds of the company (see supra, pp. 179, 180), and the term "misfeasance" to other breaches of duty which do not involve such misapplication. For instance, to apply the funds of the company to ultra rives purposes (Cullerne v. London Society, 25 Q. B. D. 485), or to pay dividends out of capital (21 Ch. D. 519), is a breach of trust; see supra, pp. 179, 180; to allot shares knowingly to an infant (Re Wilson, & Ch

45), or to take a bribe (Pearson's case, 5 Ch. D. 336); to give a creditor a fraudulent preference, or to commit a breach of the articles resulting in loss to the company-these are acts of misfeasance. The following are some cases in which directors have been

charged with or made liable for misfeasance or breach of trust :--Stringer's case, L. R. 4 Ch. 475 (claim against directors to repay dividend declared and paid under delusive balance-sheet); Rance's case, L. R. 6 Ch. 104 (director ordered to repay bonus improperly paid to him); National Funds Assurance Co., 10 C. D. 118; Alexandra Palace Co., 21 Ch. D. 149; Flitcroft's case, 21 Ch. D. 519; Denham & Co., 25 C. D. 752; Re Sharpe, (1892) 1 Ch. 154; London § General Bank (2), (1895) 2 Ch. 673 (directors ordered to repay dividends improperly paid to shareholders out of capital): De Rurigne's case, 5 Ch. D. 306; Pearson's case, 5 Ch. D. 336; Metcalf's case, 13 (. D. 169; Carriage Co-operative Association, 27 C. D. 322 (orders against directors who had improperly obtained their qualification shares from promoters or vendors); Archer's case, (1892) 1 Ch. 352 or to compel director who had obtained from promoter a secret advantage-an indemnity against loss on his qualification-to account to company); London and S. W. Canal, (1911) 1 Ch. 346 (order against director who held his qualification shares as trustee for and at will of promoter); Postage Stamp, &c. Co., (1892) 3 Ch. 566 (directors ordered to account for gift of shares by vendor); Englefield Co., 8 C. D. 388 (directors ordered to make good sum paid to promoter for preliminary expenses, out of which directors' qualification provided); Marzetti's case, 28 W R. 541 (director ordered to repay sums nominally paid for preliminary expenses, but really for rigging the market); Geo. Newman & Co., (1895) 1 Ch. 674 (director held liable for present made to himself without the sanction of the company's articles); Parker v. McKenna, 10 Ch. 118 directors held liable for illegitimate profits made by dealings with the company's shares); Boston Deep Sea Co. v. Ansell, 39 Ch. D. 339 (managing director held liable for secret commission); In re Cape Breton Co., 29 Ch. D. 795, and 12 App. Cas. 652 (director selling his own property to the company without disclosure): "The misfcasance in such a case is not selling, but in not disclosing," per Lord Herschell ; Alexander v. Automatic Telephone Co., (1900) 2 Ch. 56 (lirectors held liable for not making calls on themselves).

Directors who purposely abstaiu from making inquiries, in pursuance of an understanding between them to that effect, into the price paid to each other for properties sold to the company, are guilty of a gross dereliction of duty. Coats v. Crossland, 20 T. L. R. 800.

In cases of misfeasance or breach of trust the delinquent director has no right of set-off. In re Anglo-French Co-operative Society, 21 C. D. 492; In re Carriage Supply Association, 27 C. D. 322; Flitcroft's case,

206

Examples of misfeasance and breach of trust.

DISPOSITIONS PENDING WINDING-UP. Ch. XVI.

21 C. D. 519. And he cannot rely on a release in general terms. Re Joint Stock Trust (1912), 56 S. J. 272.

Statutory Relief of Directors.

By sect. 279 of the Companies Act, 1908 (which takes the place Statutory By sect. 279 of the Companies Act, 1990 (which that's the place of sect. 32 of the Act of 1907), special provision is now made for the relief of directors.

¹¹279. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the Court hearing the case that the director or person is or may be hable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his hability on such terms as the Court may think proper."

National Trustee Co. of Australasia v. General Finance Co., (1905) A. C. 373, points to the conclusion that it is not enough to prove that the trustee (remunerated) acted reasonably and honestly. It must, in addition, be proved that he ought fairly to be excused. See also In re Smith, Smith v. Thompson, 71 L. J. Ch. 411; Re Turner, Barker v. Iviney, (1897) 1 Ch. 536; Re Second East Dulwich 745th Starr-Bowkett Building Society, 68 L. J. Ch. 196: Re Grindey, Clews v. Grinaey, (1898) 2 Ch. 593; Perrins v. Bellamy, (1899) 1 Ch. 797; and Re Lord de Clifford, (1900) 2 Ch. 707.

Dispositions pending Winding-up.

Directors who dispose of the company's property pending a wind- Disposition ing-up petition are prima facie hable, on a winding-up, for all such of property by anectors moneys not expended by them in the ordinary course of business pending (Companies Act, 1908, s. 20": Re Neath Harbour Works, 35 W. R. 827); winding-up but where such payments are honestly made and i... the ordinary course of business, it is usual for the Court to allow them, as where a charge on ealls is given to prevent the ruin of an insurance company (International Life Assurance Society, L. R. 10 Eq. 312), or a contract for sale of goods is completed by sale and delivery. Wiltshire Iron Co., L. R. 3 Ch. 443. In sanctioning dispositions the Court is guided by the same principles as those applied by the Court in bankruptcy to "protected transactions." Re Repertoire Opera Co., 2 Manson, 314. Directors should, however, be on their guard what they do after petition presented. Ibid.

The acceptance of a bill of exchange in the ordinary course of business by a director after commencement of a voluntary winding-np is not capable of being sanctioned under the section, the directors being functi officio. (Seet. 186 (iii).)

petition.

Penalties.

Statutory penalties. The Act imposes a number of penalties for breach of its provisions. The most important of these are the following :---

Alteration of Memorandum.-Sect. 9. Default in relation to alteration of objects.

Copies of Memorandum and Articles.-Sect. 18. Default in supplying copies of memorandum or articles.

Register of Members .- Sect. 25. Default in keeping register of members.

Annual Returns .- Sect. 26. Default in making annual returns.

Inspection of Register.-Sect. 30. Default as to allowing inspection of register.

Sub-division of Shares.—Sect. 41. Default as to sub-division of shares. Increase of Capital.—Sect. 44. Default as to giving notice of increase of capital.

Name of Company .- Sect. 63. Default as to publishing name.

General Meeting.-Sect. 64. Default in convenit. annual general meeting.

Special Resolutions.-Sect. 70. Default in registration of copies of special and extraordinary resolutions.

Register of Directors.-Sect. 75. Default as to register of directors. Commencing Business.-Sect. 87. For commencing business prematurely.

Allotments of Shares .- Sect. 88. Default in returning allotments.

Share Certificates .- Sect. 92. Default as to issuing certificates.

Appointment of Receiver. -- Sect. 94. Default as to registering appointment of receiver.

Accounts, filing .- Sect. 95. Default in filing accounts of receiver.

Return of Mortgages .- Sect. 99. Default in return as to mortgages.

Registration of Mortgages and Charges. - Sect. 100. Default in registering mortgages or charges.

Inspection of Mortgage Register.-Sect. 101. Default in allowing inspection.

Balance Sheet.-Sect. 113 (4). For issuing unsigned or without report attached.

False Returns.-Sect. 281. For false returns and statements.

As to the prosecution in respect of offences made punishable by fine, see sects. 276 and 277.

Application of Funds ultra vires the Company.

Ultra vires application of funds. If directors apply funds of the company to purposes which are *ultra vires* the company, they are liable to replace them, however honestly they may have acted. *Cullerne* v. *London*, &c. *Society*, 25 Q. B. D. 485. "If," said Lord Justice Lindley in that case, "a director, acting *ultra vires*. that is, not only beyond his own power, but also beyond any power the company can confer on him, parts with money of the

208

CRIMINAL LIABILITY FOR FRAUD.

Ch. XVI.

company, I fail to see on what principle the fact that he acted bond fide and with the approval of the majority of the shareholders can avail him as a defence to an action by the company to compel him to replace the money." This is a hard saying in cases where directors have honestly misinterpreted their powers under an ambiguous memorandum (London Financial Association v. Kelk, 26 Ch. D. 107); but it is the inexorable logic of the law. Such a case would be an eminently proper one for relief under sect. 279 of the Act of 1908.

Remedies against Directors.

The civil remedy of a company against a delinquent director, whether for negligence, fraud, misfeasance, or breach of trust, is, whilst the company is a going concern, by action. Joint Stock Bank v. Brown, 8 Eq. 381; Nant-y-glo, §c. Co. v. Grave, 12 C. D. 738. If the company is being wound up the remedy is, except where the parties are not amenable to the winding-up jurisdiction, under sect. 215 of the Act, commonly known as "misfeasance section," which gives power to the Court, in a summary way, to order any director or officer of the company who has been guilty of misfeasance to replace the moneys misapplied or to pay compensation.

An application under the section may be made by either the official receiver or the liquidator or a creditor or contributory.

Criminal Liability for Fraud.

By the Larceny Act, 1861, s. 84:

"Whosoever being a manager, director or public officer of any body corporate or public company shall make, circulate or publish or concur in making, circulating or publishing any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award any area.

The punishments "hereinbefore last mentioned" were "To be kept in penal servitude for any term not exceeding seven years and not less than three years, or to b[^] imprisoned for any term not exceedp.

14

ing two years with or without hard labour and with or without solitary confinement."

A prospectus is a "written statement" within this section. It was under this Act that the directors of Overend, Gurney & Co. were prosecuted. See the admirable summing-up of Cockburn, C. J., in this case (Queen v. Gurney, reported Finlayson, p. 254, extract of which is given in Company Precedents, Part I., p. 233); and there have been various other cases from time to time in which directors have been prosecuted and convicted. By sect. 217 of the Act of 1908 the Court may direct the liquidator of a company in winding-up by the Court to institute a prosecution against the directors, managers or officers, or members, for criminal offences committed by them, and a similar power of prosecuting is given to the liquidator in a voluntary windingup, with the sanction of the Court. (Sect. 217 (2).) Tho difficulty of working these sections lies in the fact that the costs of the proceedings come out of the assets, in other words, out of the pockets of creditors or shureholders, who are naturally indisposed to have public justice vindicated at their expense. The question was very carefully considered by Buckley, J., in Re London and Globe Finance Corp., (1993) 1 Ch. 728, and the test he there adopted was what would a good citizen feel to be his duty in the mattor-if to prosecute, then a prosecution ought to be directed by the Court, even against the wishes of the persons entitled to the assets. Other cases are Re Charles Denham & Co., 32 W. R. 921; Re Eupion Fuel and Gas Co., W. N. (1875) 10; and Re Northern Counties Bank, 31 W. R. 546.

Directors who pay dividends out of capital are not only civilly liable but may be liable in some cases for conspiracy. Burnes v. Pennell, 2 H. L. C. 487; R. v. Esdaile, 1 F. & F. 213.

The Act of 1908 also contains a peual section (sect. 281), where "auy person in any return, report, certificate, balance sheet or other document required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular knowing it to be false "—a provision designed to fortify the working of the Act; and offeuces against several of the sections are criminal. *Reg.* v. *Tyler*, (1891) 2 Q. B. 588.

Further, by sect. 216 of the Act (1908), "If any director, officer. or contributory of any company being wound up destroys, mutilates alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company, with intent to defraud or deceive any person," he is to be guilty of a misdemeanour, and liable to two years' imprisonment with or without hard labour.

ł

210

Criminal liability of

directors

for fraud.

INDEMNITY-CONTRIBUTION.

Ch. XVI.

Indemnity.

Directors, as agents, are by law entitled to indomnity in respect of Indomnity to all liabilities properly incurred by them in the management of the directors. company's business. Re German Mining Co., 4 De G. M. & G. 19; Re Norwich Yaru Co., 22 Beav. 143; James v. May, L. R. 6 H. L. 328; Walters v. Woodbridge, 7 C. D. 504; Re Financial Corporation, 28 W. R. 760; Hunt's Claim, W. N. (1872) 53; Hardoon v. Belilios, (1901) A. C. 118; Seton, 7th ed. 1131. This extends to costs incurred by a director in defending a libel action in connection with a report made by him for the company (Re Famatina Development Corporation, (1914) 2 Ch. 271); and no express provision for that purpose is necessary; but the articles commonly contain express provision on the subject, and where this is the case a right of indemnity may be and often is given more extensive than that implied by law. See Re Pyle Works (2), (1891) 1 Ch. 184. The right does not, of course, extend to indemnity for wrongful or ultra vires acts of the agent. Smith v. Duke of Manchester, 24 Ch. D. 611; and other cases.

As to the right of indemnity where a person's name has been inserted in a prospectus without his consent, see sect. 84 (3) of the

Directors who pay a dividend representing that it is paid out of profits cannot claim indennity, but where directors pay a dividend to members who know that it is paid out of capital, they may have a right of indemnity as against such members. Moxham v. Grant, (1900) 1 Q. B. 88; yet the directors will primarily be ordered to make good the amount to the company. Re Alexandra Palace Co., 21 C. D. 149; National Funds, 10 C. D. 118.

Directors are not entitled, unless the articles so provide, to be paid by the company their travelling expenses in attending board meetings. Young v. Naval and Military, Sc. Society, (1905) 1 K. B. 687. Such expenses are not expenses incurred in the execution of their office within an indemnity clause. Marmor, Limited v. Alexander (1908), S. C. 78, Ct. of Sess.; Brazilian Rubber, 27 T. L. R. 169.

Contribution.

Where directors incur liability, e.g., by engaging in some ultra vires Contribution transaction, they are all liable to contribute to meet the consequent of directors liability; that is to say, if one is sned for and has to pay the damages, money, he is entitled to call on the others, who are equally blameable, to for liability. inter scas to

14 (2)

contribute rateably to discharge the amount, for all directors who join in a misapplication of the company's property are jointly and severally liable. Ashurst v. Mason, 20 Eq. 225; Ramskill v. Edwards. 31 C. D. 100; In re Englefield Colliery Co., 8 Ch. D. 388; In re Anglo-French Society, 21 Ch. D. 501; and see Rules of Supreme Court, Ord. XVI. r. 55; and Ann. P. 1916, pp. 285, 299. See also the right of contribution under sect. 84 (4) of the Act of 1908, in relation to prospectus liabilities.

1 .

n o co

co ge the ma

det are to t paic in ; resp

CHAPTER XVII.

DIVIDENDS AND PROFITS.

Dividend paying incident to Trading.

THE Act of 1908, except in Table A., where applicable, does not contain No statutory any express provisions as to the payment of dividends, and although provisions the powers of a company are limited by its objects, the Act evidently Table A. atreats the power to pay dividends as an object of every company so dividends. obvious, so inherent, as not to need mention in the memorandum, but properly left to be dealt with and defined by the articles (Table A. Clause 95, and Companies Act, 1908, s. 39 (3)); and this is consonant with common sense, for the main object of the Act was, and is, to enable people to trade with limited liability, and the chief incentive to all such trading would be gone if the members of the company could not appropriate to themselves the profits derived from such

But there is no principle which compels a company while a going coucern to divide the whole of its profits among the shareholders. How the company shall deal with such profits is a matter of management and internal economy. The company may form a reserve fund, aud the reserve fund may, subject to the control of a general meeting, be invested in such securities as the directors may select, the matter being one of internal management. Burland v. Earle, (1902) A. C. 83; Bond v. Barrow Hæmatite Co., (1902) 1 Ch. 353.

Table A .- which is to apply to all companies limited by shares, unless excluded-provides, by Art. 95, for the payment of dividends out of profits. Where Table A. does not apply, the articles generally centain specific provisions as to the payment of dividends.

Power to declare Dividends.

In framing these provisions the usual plan is to provide that "the Powers in company in general meeting," or "the directors with the sanction of a regulation. general meeting," may declare a dividend. Occasionally, however. the power to declare dividends is vested in the directors alone, and in many cases they are given the power to pay interim dividends.

Proportion in which Dividends payable.

One of the most important points which the articles have to In what determine in reference to dividends is in what proportion the dividends dividends are to be made payable as between the members. The provision as payable. to this, contained in Table A. (of 1862), was that the dividend is to be paid "to the members in proportion to their shares." This means in proportion to the nominal amount of the capital held by them respectively. And the result of such a provision is to give the same

DIVIDENDS AND PROFITS.

dividend per share to shares of the same amount, even where more is paid up on so than on others. Oakbank Oil Co. v. Cruon, 8 App. Cas. 65.

Some persons consider this principle of distribution inequitable, and not without reason, and it is consequently very common, in the articles, to provide that the divide d shall be distributed among the members "according to the capital paid on the shares." Table A. (of 1908) so provides in Chusse 98. This gives a rateable dividend on the paid up capital; but this again fails to satisfy ideal justice, because it does not take account of t. outstanding liability on the shares. Thus, if there are 10,000 fully paid up shares of 1*l*, each, and 10,000 1*l*, shares on which only 5*s*, per share has been called and paid up, here the holders of the part-paid shares undoubtedly coufer a substantial benefit on the company by enabling it to trade on the credit of the uncalled capital represented by their names. And yet for this they get no corresponding advantage. They take only the same dividend as if their shares were 5*s*, shares.

To meet this unfairness it is sometimes provided that the profits shall be applied, first in paying a dividend at the rate of—say—5 per cent. per annum on the paid up capital, and that the surplus shall be divided among the members in proportion to their shares. This seems, in a great measure, to do justice all round.

If the articles do not specify in what proportion dividends are to be paid, they must be paid in proportion to the nominal amount of the shares, for members are *primid facie* entitled to participate in the profits of a company in proportion to their respective interests therein, and the nominal amount of capital held by each is the measure of such interest. Bridgicater Co., 14 App. Cas. 525; Oakbank Oil Co. v. Crum, supra.

When the articles expressly or impliedly provide for payment of dividends in proportion to the shares, the question sometimes arises whether, by altering the articles, provision can be effectively made for paying dividend in proportion to the capital paid up. Sect. 39 of the Act authorizes such payment, and the decision in *Andrews* v. *Gas Meter Co.*, (1897) 1 Ch. 361, makes it clear that such an alteration can be made.

Dividends on Preference or other Special Shares.

Dividends on preference or other special shares. The dividend on preference shares depends on the terms of issue. Such terms may be found in the memorandum (Ashbury v. Watson, 30 Ch. D. 376), or in the articles of association, or in the resolution creating the shares, or in some prospectus or other document offering them for subscription. Webb v. Earle, 20 Eq. 557.

The dividend on preference shares is usually at a fixed rate, e.g., 5 per cent. per annum on the capital paid ap thereon. In son e cases, as

PAYMENT OUT OF PROFITS.

appears above (p. 84), it is cumulative; in other cases it is non-cumulative.

Preference shares sometimes confer a right to participate also in surplus profits.

Besides preference shares there may be other classes of shares with special dividend rights attached thereto.

In decluring a dividend, the rights of all these different classes must be observed. Any infringement, or attempted infringement of their respective rights will give, to the members who are prejudiced, the right to apply for an injunction or other relief.

Payment out of Profits.

In declaring dividends certain important points have to be borne in Points to be mind, viz. :-

1. Dividends are only to be paid out of profits, not out of capital. declaring dividends. observed in In re Oxford Benefit Building Society, 35 Ch. D. 502; In re Profits, not National Funds Assurance Co., 10 Ch. D. 126; Fliteroft's case, capital 21 Ch. D. 519; Alexandra Palace Co., 21 Ch. D. 149; Leeds available Estate v. Shepherd, 36 Ch. D. 787; Re Sharpe, (1892) 1 Ch. 154. Except as permitted under sects, 39 or 91 of the Act. Foster v. New Trinidad Lake Asphalt Co., (1901) 1 Ch. 208; Fisher v. Black and White Publishing Co., (1901) 1 Ch. 174.

2. Payment out of capital is altra vires, for it amounts to a reduction 17/11/2 vires if

- of the puid-up capital, and no such reduction is allowable. 3. Even if such payment is expressly authorized by the memo- Even it randnm of association, or by the articles of association, or by authorized by special resolution, it is, except as aforesaid, equally altra vires, memoranda or articles. for these documents cannot repeal the Act. Trevor v. Whitworth, 12 App. Cas. 409.
- 4. Much less can the sanction of a general meeting justify it. Flit- Or by general
- 5. Directors who are parties to the payment of a dividend out of Civil liability capital, except as aforesaid, are prima facir jointly and severally of directors." liable to repay the amount. Flitcroft's case, supra.
- 6. Directors who are parties to the payment of a fictitious dividend Criminal in order to raise the price of the company's shares, may be liability of directors as to criminally linble for a conspiracy See per Lord Campbell, L. C., payment out Burns v. Pennell (1849), 2 H. L. C. 525, and Regina v. Esdaile of capital.

The fundamental rule prohibiting payment of dividend out of Modern capital as not only contrary to the Act, but commercially unsound, decided cases seemed at one time in no small danger of being relaxed or altogether against above explained away by certain startling decisions of the Court of Appeal, rule. as formerly constituted, of which the following are the most important :- Lee v. Nenchatel Co., 41 C. D. 1; Verner v. General

payment out of capital. memorandum

DIVIDENDS AND PROFITS.

Commercial Trust, (1894) 2 Ch. 268; Wilmer v. Macnamara, (1895) 2 Ch. 245; below referred to as the Lee v. Neuchatel series of decisions.

 Some of the remarkable conclusions to which these decisions, or the principles on which they were decided, pointed may be stated as follows:--

> Dividend pre-supposes profit of some kind; but it is for the company to determine, by its articles or by resolution, what sort of profits are available for dividends, and if they do so the Court will not, subject to what follows, interfere, however illusory or unsound the principle adopted for arriving at profits may be.

2. In determining what sort of profit is to be divisible, the company must conform to the rule that dividends must not be paid out of capital or out of borrowed money; but "capital" in this proposition means the capital paid up on the shares, and the capital assets acquired therewith.

- 3. To divide the net income arising from a company's property is not to be regarded as in any sense a return of capital, even when the income arises from a wasting property acquired by an expenditure of capital, for instance, from a lease of ten acres of coal, one acre of which is worked out each year.
- 4. Therefore, though an express power in the memorandum to return capital to shareholders can only be exercised with the sanction of the Court, a power in the articles to apply the proceeds arising from a wasting property in paying dividends, is free from objection, although the result is the same. Lee v. Neuchatel Co., 41 C. D. 1.
- 5. Loss or depreciation of "fixed" capital does not affect the profits available for dividend, or render it necessary to make good the same out of income. "Fixed capital" here is used in the sense in which the economists use the expression, and is not confined to property physically fixed. Thus, the ships of a shipping company and the rolling stock of a railway company are fixed capital. See Company Precedents, Pt. I. p. 884 et seq.; Verner v. General Commercial Co., (1894) 2 Ch. 268.

C. But in ascertaining profit for a particular period, loss or depreciation of "circulating" capital must be taken into account. Circulating capital means here capital which performs its whole office in the production in which it is engaged by a single use, e.g., the goods which the merchant has for sale, he sells out and out and gets the money in exchange; the goods which the tradesman uses up in doing repairs for a customer; the horses of a horse-dealer. Company Precedents, Pt. I. p. 884 et seq.

t

0

đ

Realised

Some conclusions from such cases,

The regulations are to be followed (subject to next paragraph).

Capital only means amount paid on shares and assets acquired therefrom.

Net income of wasting property is divisible as profits.

Express power in articles to apply such net income is equivalent to sanction of Court to reduce capital. Loss, &c. of "fixed capital" need not be made good out of income.

Otherwise as to ''circulating capital.''

7 Accretions to capital, when realised, may be brought into the

profit and loss account and dealt with accordingly. Lubback v. accretions of British Bank of S. A., (1892) 2 Ch. 198; Foster v. New capital are divisible of (1991) 1 Ch. 199 Trinidad Co., (1901) 1 Ch. 208. And see Spanish Prospecting profils. Co., (1911) 1 Ch. 92, where the meaning of the term "profits" is discussed.

- 8. A legal mode of ascertaining the profits of a particular period, if Legal mode of the articles so provide, is to take an account of the ordinary descriming outgoings, and in so far as the receipts exceed the outgoings, and in so far as the receipts exceed the outgoings, and des and the loss of circulating capital during such period, the same admit. may be treated as profit without making good previous losses even of eirenlating capital. Bosanquet v. St John del Rey (1897). 77 L. T. 207; National Bank of Wales, (1899) 2 Ch. 629.
- 9. A bulance sheet need not disclose the true position of the company. It deals, as regards the assets, not with existing facts but with past history. It shows what the particular assets cost, not what they are worth. Thus, if a company buys a property for 10,000%, and the value has fallen to 1,000%, it will still be prope 4; entered in the balance sheet as property that cost 10,000%, and it may remain at that figure even though each year, by consumption, user, wear and tear, or otherwise, it depreciates more and more.

The extraordinary laxity in regard to the ascertainment of profits Observations which some of these decisions countenanced, and apparently legalised, on the above went far to render the salutary rule, that dividends must not be paid decided eases. out of capital, illusory. The earlier cases pointed to the conclusion, that a dividend can only be paid out of profits ascertained by a proper profit and loss account and bulance-sheet, as commercial men generally ascertain profits, throughout the world. Helby's case, 2 Eq. 175; Stringer's case, 4 Ch. 475; Rance's case, L. R. 6 Ch. 104; Ebbu Vale Co., 4 C. D. 827; Davison v. Gillies, 16 C. D. 347; Oxford Building Society, 35 C. D. 502. This was the view of Jessel, M. R., as appears from the decision in Ebbic Vale Co., supra. And see per Stirling, J., Verner v. General Commercial, Sc. Co., (1894) 2 Ch. 268, and per Kay, L. J., in the same case, at p. 268, and per Chitty, J., in Lubbock v. British Bank of S. A., (1892) 2 Ch. 198. And the Act of 1877 was undoubtedly passed with a view to enabling a company which had lost capital to write it off, and thereby place it in a position to resume payment of dividend. But these views were in effect disregarded, if not treated as unsound, in the Lee v. Neuclatel series of

The criticisms of the Law Lords in Dorey v. Cory, (1901) A. (-1, 7), Doubts as to upon the Lee v. Neuchatel series of decisions, and the judicial dicta the Lee v. Neuchatel therein, have, however, severely shaken their authority as expositions series. of the law, and gone far to restore the authority of the earlier line of

DIVIDENDS AND PROFITS.

In Dovey v. Cory, supra, it was sought to make a director responsible in respect of dividends paid out of capital. The Court of Appeal had decided in his favour on two grounds: (1) that he had been deceived by those whom he was entitled to trust, and (2) that the dividends were not in fact paid out of capital; and in regard to the second ground of decision the Court reiterated the propositions laid down in the Lee v. Neuchatel series of decisions and acted thereon. But the House of Lords, during the argument before it, showed a marked disinclination to agree to those propositions, and ultimately, whilst affirming the decision on the first ground, declined in the most significant manner to express any opinion on the propositions thus laid down in the Court of Appeal; and more than one of the learned Lords dissented from or stated that he was not to be taken to assent to all those propositions. Had the propositions thus referred to been free from objection, the House would in the usual way have adopted them and treated them as a further ground for the decision ; but a reservation of opinion so pointed and nuusual in regard thereto is pregnaut with meaning and necessarily casts a shadow of donbt on the propositions laid down in the Lee v. Neuchatel series of decisions.

At all events, a solutary cantion has been administered to those who desire to act on that series of decisions, and further developments may be anticipated.

Following on the decision of the House of Lords above referred to came the case of Bond v. Barrow Hæmatite Co., (1902) 1 Ch. 353. Farwell, L.J. (then J.). That was a case of a steel manufacturing company which for the purpose of making steel had bonght collieries and mines and erected blast inruaces and cottages. By the surrender of the leases and otherwise a loss had been incurred, and it was contended for the plaintiff that, notwithstanding this loss, the company could apply its current income in paying dividends. But the learned judge held that the mines, blast furnaces and cottages were in the circumstances to be regarded as "circulating capital," and that, as this at any rate must be made good before dividends could be paid, the company was not in a position to pay divideuds. In referring to Verner v. General and Commercial Investment Trust, (1894) 2 Ch. 239, and to the propositions laid down therein by Lindley, L. J., that fixed capital may be sunk and lost and yet that the excess of current receipts over current payments may be divided, but that floating or circulating capital must be kept up, he said: "I do not understand his Lordship to be laying down a general and universal rule that in every company fixed capital may be sunk aud lost, but that there are companies in which that may be the case. All the authorities, however, agree, I think, that circulating capital must be kept up." And referring to the decision in Lee v. Neuchatel Co., supra, which was eited as an anthority for the proposition that no company ow ling wasting property need ever

Bond v. Barrow Hæmatite Co.

PAYMENT OUT OF PROFITS.

create a depreciation fund, his Lordship said: "In my opinion that is not the true result of the decision: the company's assets were larger theo at its formation, and the Court decided nothing more than . porticular proposition that some companies with wasting assets ,end have no depreciation fund. For instance, I cannot think that it on. The right t r the defendant company to purchase out of capital the resparse or three years of a valuable patent and distribute the whole of the receipts in respect thereof as profits without replacing capital expended in the purchase."

Meanwhile, in practice [notwithstanding the Lee v. Neuchatel series In practice of decisions], companies, as a general rule, ascertain their profit on profits are sound business principles, and, acting under the advice of competent tained on auditors, decline to avail themselves of the power, which the principles strict business haid down in the discredited decisions would allow, to inflate profits at and above

Generally, where capital has been lost or is unrepresented by avail- tage of. able assets, companies take steps to reduce their capital, and the Court never insists that reduction is needless, having regard to the Lee v. Neuchatel series of decisions. See Welsbuch Incandescent Co., 1904) 1 Ch. 87; Hoare & Co., (1904) 2 Ch. 208.

Shareholders who have, with full knowledge of the facts, received dividends paid out of capital cannot keep such dividends, and at the same time take proceedings against the directors to compel them to replace the amount of the dividend. Such a course would obviously

be most inequitable. Towers v. African Tug Co., (1904) 1 Ch. 558. But where dividends are paid on the representation of the directors that they are being paid out of profits, the shareholders are not

accountable or precluded from sning. Flitcroft's case, 21 C. D. 519. An arrangement between a vendor and the company to guarantee Guaranteed certain dividends for a specified period may be valid if it involves Dividends. neerely the personal liability of the vendor. Ex parte Jegon, 12 Ch. D. 503. But such an arrangement is void as against the creditors of the company if the dividends thus become payable directly or indirectly out of the purchase price. Re Menell et Cie., (1915) 1 Ch. 759.

Declaration of Dividends.

The articles commonly provide for the directors, with the sanction of a general meeting, declaring dividend; but sometimes, as in Table A., the clause runs that "the company in general meeting may declare

Where a dividend is declared and becomes payable it is a debt, and Dividend each shareholder is entitled to sue the company for his proportion, when declared Re Severn Rail Co. (1896) 1 Ch. 550 J. Lindler, Com. 541 ed. 25, 107 Re Severn Rail. Co., (1896) 1 Ch. 559; Lindley, Com., 5th ed. 35, 437. due from

Until declaration the shareholders' right to sue does not arise. Bond company. v. Barrow Hæmatite Steel Co., (1902) 1 Ch. 353.

cases not taken advan-

219

Ch. XVII.

DIVIDENDS AND PROFITS.

Limitation of time for suing company. If the sha cholder omits to sue for more than six years, his claim may be barred (In re Severn Rail. Co., (1896) 1 Ch. 564), unless the effect of the articles is to constitute the right to the dividends a specialty debt, when the shareholder has twenty years to recover Re Drogheda Steam Packet Co., (1903) 1 Ir. R. 512. And see Artizans' Land and Mortgage Corp., (1904) 1 Ch. 796. These decisions proceed on the footing that the dividends were specialty debts, because the certificates of title were under seal; but quære whether this is sound. Sometimes the articles of association (see clause 76 of the old Table A.) fix a shorter μ riod, and provide for forfeiture if not claimed within that period; but the London Stock Exchange Committee objects to such a clause, and the clause does not appear in Table A. of 1908.

A transfer of shares, after dividend declared, does not, as agains^t the company, carry the dividend even where the transferee has expressly bought cnm div.; but, as between a buyer and seller of shares, the buyer is entitled to all dividends declared after the date of the contract for sale, unless otherwise arranged. *Black* v. *Homersham*, 4 Ex. D. 24.

[As between tenant for life and remainderman, dividends, whenever declared, are apportionable nuder the Apportionment Act, 1870 (33 & 34 Vict. e. 35). *Re Oppenheimer*, (1907) 1 Ch. 399.

When a company declares a bonus or special dividend, the question whether it is to be treated as capital or income depends on the manner in which the company has elected to treat it. Some or all has been held to be dividend in *Price* v. Anderson, 15 Sim. 473; *Hopkins' Trusts*. 18 Eq. 696; and *Re Piercy*, (1907) 1 Ch. 289; and even though paid in shares, in *Malam* v. *Hitchens*, (1894) 3 Ch. 578, where the tenant for life was held entitled to the value of the dividend applied in acquiring the shares, the rest of the value of the shares being treated as capital.

Bonus shares have been treated as capital in Barton's Trusts, 5 Eq. 238; Bouch v. Sproule, 12 A. C. 385; Jones v. Evans, (1913) 1 Ch. 23.

If no dividend is declared by the company in respect of the period of the life of the tenant for life, nothing will be payable to him, even though the company has earned profits during that period. ReArmitage, (1893) 3 Ch. 337; Re Sale, (1913) 2 Ch. 697.]

Dividends are primd facie payable in cash only. In the absence of express authority in the articles, the company must pay dividends in each. It may not pay them by the distribution of, for example, shares in another company, or debentures. *Hoole* v. *Great Western Rail. Co.*, 3 Ch. 262; *Wood* v. *Odessa*, §c. Co., 42 C. D. 645. But it is very common, now, for the regulations to contain a clanse anthorizing the company to pay dividends in specie, *i.e.*, by the distribution of specific assets. See Company Precedents, Part I. p. 767.

Declared but unpaid dividend passing on transfer.

Apportionment of dividends between tenant for life and remainderman.

DIVIDENDS DURING CONSTRUCTION. Ch. XVII.

Sending a dividend warrant by post will discharge the company if payment by post is authorized. Thuirleall v. Great Northern Railway, (1910) 2 K. B. 509.

As to income tax on profits and dividends, see cases in Company Precedents, Part I. 11th ed. p. 97. As to dividends due to enemy shareholders, see p. 113, ante.

Capitalising Profits.

Cases often occur in which it is desired to capitalise undivided Capitalising profits. If the issued shares are only part paid up, this can be done profits. by declaring a bonus out of such profits and making a call payable at the same date. But more commonly what is desired is to issue paidup bonus shares to the members and at the same time to carry from reserve to capital account a corresponding amount. Such a transaction cannot be carried out exactly on these lines, for paid-up shares cannot be issued unless they are paid up by some one other than the company. Now, the reserve fund belongs to the company, and to issue shares on the footing that the company is to pay them up out of the reserve fund is irregular, for the payment is by the company. To do what is desired, it is therefore necessary to declare a bonus or dividend payable out of reserve (free of income tax', so that each member may have an individual right, and this can then be satisfied by the issue of paid-up shares. And see, furthor, Company Precedents, Part 1. 11th od. p. 1062.

Dividends during Construction.

bug since settled that a company could not pay dividends e t ... capital, and that the payment of interest out of capital during the construction of a company's works was within this principle. To do such a thing, whether directly or indirectly, was ultra rires. See Alexandra Palace Co., 21 C. D. 159, and Flitcroft's case, supra, p. 220. This rule occasioned great inconvenience; and at last, so far as regards Indian companies, the rule was relaxed by the Iudiau Railways A t, 1894. Thirteen years later-in 1907-the Legislature, in sect. 9 of the Companies Act, 1907, for which sect. 91 of the Act of 1908 has now been substituted, made the same concession in favour of companies under the Companies Acts.

The power, it will be observed, is carefully hedged round with conditions designed to provent any abuse.

Agreements for Remuneration by Share of Profits.

Similar rules apply for the ascertainment of profits for this purpose as for the purpose of dividend. Re Spanish Prospecting Co., (1911) 1 Ch. 92. Iucome tax should not be deducted for the purpose of ascertaining the amount of the profits for this purpose. Johnston v. Chestergate Hat Co., (1915) 2 Ch. 338.

CHAPTER XVIII.

ACCOUNTS.

Duty of Directors to keep.

Directors' duty to keep accounts. DIRECTORS are agents, and also in some sense trustees for the company. Supra, p. 178. This boing so, they are under the cloarost obligation to keep proper accounts of their receipts and payments, dealings and transactions on behalf of the company. It is one of the first duties of an agent, as Lord Eldon pointed out in White v. Lincoln (1803), 8 Ves. 363, to keep a clear account, and to communicate the contents of it to his principal. And see Freema: v. Fairlie, 3 Nev. 40; Pears v. Green, 1 J. & W. 135, 140; and, as to a cestui que trust's right to information, Re Tillott, (1892) 1 Ch. 86.

Provisions of Articles.

Provisions in articles.

The articles usually provide for the keeping of proper books of account in relation to the affairs of the company (cf. Taole A., Arts. 103-108), and it is the duty of the directors to see that these books are kopt; if they omit to do so, they commit a breach of duty, and are liable to the company in damages. The articles also usually provide that no member is to have a right of inspecting any account, or book, or document, of the company "except as conferred by statute, or authorized by the directors or by a resolution of the company in general meeting." A provision of this kind will not disentitle a shareholder to inspect the register of members, or the register of mortgages; for a member has a statutory right to inspect these under seets. 30, 100, 101 and 102 of the Act; but subject to these qualifications the provision is effective. Seo supra, p. 39. Oecasionally the articles give a wider right of inspection; but even where they provide that the books, wherein proceedings of the company are recorded, may be inspected, a member has no right to inspect the minute book of the proceedings of directors. Reg. v. Marquitta, sc. Co., 1 E. & E. 289.

The right of inspection includes a right to make extracts (Mutter v. Eastern, $\frac{9}{7}$ c. Co., 38 C. D. 92; Nelson v. Anglo-American Land Agency, (1897) 1 Ch. 130); and it is not necessary for the share-

RIGHTS OF INSPECTION.

Ch. XVIII.

holder seeking inspection to assign a reason (Holland v. Dickson, 37 C. D. 669); but the right to take extracts is impliedly negatived where the Acts give a right to have copies on payment (Balaghat Mining Co., (1901) 2 K. B. 665, C. A., ovorruling Boord v. African Consolidated Co., (1898) 1 Ch. 596). If need be the shareholder can obtain an injunction to onforce his rights.

A director is entitled virtute officii to inspect. Burn v. London and South Wales Coal Co., W. N. (1890) 209. A right of inspection given by the articles ceases on a voluntary

winding-np. Forkshire Co., 9 Eq. 650; 18 W. R. 541, approved by Court of Appeal in Kent Coalfields Syndirate, (1898) 1 Q. B. 751.

On a winding-up, compulsory or under supervision, the power of the Court to order inspection of the register of members (sect. 3θ), or of the register of mortgages and charges (sect. 101), comes to an end (Kent Coalfields Syndicate, supra; Somerset v. Land Securities Co., W. N. (1897) 29); but the Court is invested by sect. 221 with a discretionary power to permit aspection by creditors or contributories. See North Brazilian Sugar, 37 C. D. 83.

The articles generally provide that at the ordinary meeting in each year a profit and loss account for the past year, and a balance sheet, shall be submitted; and in the case of a public company, they generally go on to provide that copies of the account and balanco sheet shall be sent to the members heforehand. In private companies it is commonly provided that the documents are not to be printed or circulated.

The books of account are usually to be kept at the registered office of the company. This has the advantage of protecting them against a lien. Capital Fire Association, 24 C. D. 408; as to which see Uawkes Ackerman v. Lockhart, (1898) 2 Ch. 1. In Rapid Road Transit Co., (1909) 1 Ch. 96, a solicitor's lien was preserved in a winding-up.

Statutory Rights of Inspection to Holders of Preference Shares and Debentures.

Sect. 114 of the Act of 1908 confers new rights in this respect. The section runs thus :---

114.-(:) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the first day of July nineteen hundred and

This is a statutory recognition of what was becoming a common and very proper practice with companies.

ACCOUNTS.

Fraudulent Accounts.

Under 25 & 26 Vict. c. 96, s. 84, directors keeping fraudulent accounts or publishing fraudulent statements incur criminal liability.

As to falsification of books and papers in winding-up, see sect. 216 of the Act.

As to false returns, &c. under the Act of 1908, see sect. 281 of that Act.

Inspectors.

Under sects. 109, 110, provision is made for the appointment of inspectors by the Board of Trade or by a company to investigate the affairs of the company.

a F

This is a power which has been very rarely used.

CHAPTER XIX.

AUDIT.

The articles of a company usually provide for the appointment of Audit auditors and a periodical audit of the accounts. But this matter is one of so much importance, both to the public and to shareholders. that it has been deemed advisable by the legislature no longer to leave it to a voluntary arrangement between the shareholders but to regulate the matter by statute, thus acting on the principle adopted nearly thirty years ago in the case of banking companies' accounts. See special provisions by the Companies Act, 1879. The regulations dealing with this matter are now contained in sects, 112 and 113 of the Act of 1908, and are very commonly incorporated by references in

Duties of Auditors.

An auditor who accepts office pursuant to the articles of a company is bound to conform to the terms of such articles. "Auditors," said Lindley, L. J., in Kingston Cotton Co. (No. 2), (1896) 2 Ch. 284 (C. A.), "are, in my opinion, bound to see what exceptional duties, if any, are cast upon them by the articles of the company whose accounts they are called upon to audit. Ignorance of the articles and of exceptional duties imposed by them would not afford any legal justification for not observing them."

An auditor is also bound to make himself acquainted with his duties under the Companies Acts. Republic of Bolivia Exploration Syndic ite,

In another leading case on the subject. In re London and General Bank, (1895) 2 Ch. 673, the same learned judge made some important observations on the general duties of auditors. " It is no part of an anditor's duty," he said, "to give advice either to directors or shareholders as to what they ought to do.

"An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of a company is being conducted prudently or impradently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he dischargehis own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that. But then comes the question : How is he to ascertain that position? The answer is : By examining

AUDIT.

the books of the company. But he does not discharge his duty by doing this without inquiry and without taking any t puble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his nudit would be worse than idle farce. Assuming the books to be so kept as to show the true position of a campany, the auditor has to frame a balance sheet showing that position according to the books, and to certify that the balance sheet presented is correct in that sense. But his first duty is to examine the books not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company. This is quite in accordance with the decision of Stirling, J., in Leeds Estate Building and Investment Co. v. Shepherd 36 Ch. D. 787). An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position of the company's affairs : he does not even guarantee that his balance sheet is accurate according to the books of the company. If he did, he would be responsible for an error on his part, even if he were himself deceived without any want of reasonable care on his part-say, by the fraudulent concealment of a 1 ok from him. His obligation is not so onerous as this. Such I to us be the duty of the auditor : he must be honest-i.e., he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true. What is reasonable care in any particular case must depend upon the circumstances of that ease. Where there is nothing to excite suspicion, very little inquiry will be reasonably sufficient, and, in practice. I believe, business men select a few cuses ut haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused, more care is obviously uccessary; but, still, an auditor is not bound to exercise more than reasonable care and skill even in a case of suspicion, and he is perfectly justified in acting on the opinion of an expert where special knowledge is required. But an auditor is not bound to be suspicious as distiagaished from reasonably careful." And Lopes, L. J., in In re Kingston Cotton Mills Co. (No. 2), supra, p. 225, added : "Auditors must not be made liable for not tracking out ingenious and carefully laid schemes of fraud when there is nothing to arouse their suspicion, and when those frauds are perpetrated by tried servants of the company and are undetected for years by the directors. So to hold, would make the position of au anditor intolerable." In accordance with these principles, it was held in the above case, that auditors who, without any ground for suspiciou, had accepted and acted on the certificate

ę,

THE CONSOLIDATION ACT OF 1908.

of the manager of the company as to the amount and value of the company's stock, such manager having been long in the service of the company, and being a man of high character and unquestioned competence and trusted by everyone who knew him, was not under any liability, though the valuation proved to have been false to the knowledge of the manager. "The question," said Lindley, L. J., p. 237, "is whether, no suspicion of anything wrong being entertaized, there was a want of reasenable care on the part of the auditors in relying on the returns made by a competent and trusted expert relating to matter on which information from such a person was essential. I cannot think there was. The manager had no apparent conflict between his interest and his duty. His position was not similar to that of a cashier who has to account for the cash which he receives, and whose own account of his receipts and payments could not reasonably be taken by an auditor without further inquiry."

Though the auditors are agents of the company, constructive notice of facts coming to their knowledge is not imputed to the shareholders. Spackman v. Ecans, L. R. 3 H. L. 171.

An auditor who commits a breach of his duty may be sued by the company iv an action (Leeds Estate, Sc. Co. v. Shepherd, 36 Ch. D. 787), or may be proceeded against in a winding-up for misfeasance under sect. 215 of the Act, replacing sect. 10 of the Winding-up Act, 1890. In re London and General Bank, (1895) 2 Ch. 673 (C. A.); Kingston Cotton Mills Co. (No. 2), (1896) 2 Ch. 279 (C. A.). But to be open to attack under the section an auditor must be an officer of the company. An anditor who is merely called in to audit the accounts pro hac vice is not an officer. Western Counties Steam Bakeries, (1897) 1 Ch. 617 (C. A.). An auditor may set up the Statute of Limitations. Leeds Estate Building Co. v. Shepherd, supra.

Directors are entitled to presume that auditors, like other officials of the company, are doing their duty, and are not bound to supervise or test the auditor's work. Dorey v. Cory, (1901) A. C. 477.

An auditor will be ordered to deliver up books and papers to the liquidator without prejudice to his-the auditor's-lien. Findlay v. Waddell (1910), S. C. 670, Ct. of Sess.

The Consolidation Act of 1908.

The provisions of the Companies (Consolidation) Act. 1908, as to

112.-(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual

227

Ch. XIX.

15 (2)

AUDIT.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remaneration to be puid to him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring anditor, shall not be capable of being appointed auditor at an annual general meeting nuless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shalt send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purjoses thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previor. Oved by a resolution of the shareholders in general meeting, in w. cas the shareholders at that meeting may appoint auditors.

(6) The directors may fill any casmil vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or anditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

113.—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vonchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before

¢

the company in general meeting during their tenure of office, and the

- (a) whether or not they have obtained all the information and explanations they have required ; and
- (b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

3) The balance sheet shull be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance shoet, or there shall be inserted at the foot of the balance sheet is reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by

Any shareholder shall be entitled to be furnished with a copy of the bahance sheet and auditors' report at a charge not exceeding sixpence

1) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published withont either having a copy of the auditors' report attached t or containing such reference to that report as is required by is section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty

5) In the case of a banking company registered after the lifteenth day of Angust eighteen hundred and seventy-nine-

a) if the company has branch banks beyond the limits of Europe, it shall be sufficient if the anditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom; and

(b) the balance sheet must be signed by the secretary or manager

(if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the

Referring to para, (b) of sub-sect, (2) of the above section, it is to be noted that the auditors' report is to state whether, in their opinion, the balance sheet is properly drawn up so as to exhibit a true and correct view, &c. In forming their opinion, the auditors must exercise

Ch. XIX.

AUDIT.

their own judgment, and if they do in fact entertain the opinion they express, they will, in reporting it, have performed their statutory In forming their opinion they may take into account the daty. advice of lawyers and other experts, but auditors cannot shelter themselves under an expert's opinion. They cannot successfully plend that in reporting they expressed the opinion of some expert-not their own opinion. And it is to be borne in mind that whether an anditor did in fact entertain the opinion he reported or concurred in reporting is a question of fact. Edgington v. Fitzmaurice, 29 C. D. 183. Hence, if an auditor is sued for reporting matruly, in breach of his statutory duty, or prosecuted for a false statement (sect. 281), it will be for the tribunnl, whether judge or jury, that tries the question to determine the fact.

The words "books and accounts and vonchers," it is apprehended, mean all the books, not merely the books of account of the company. Hence they include the minute book and letter books. And see the interpretation section, sect. 285.

Where the anditor's requirements are not complied with, the anditor should specify in his certificate in what respects they have not been complied with; and if there is no balance sheet on which to indorse the certificate, then the anditor should so specify in his report. But if the specification of the instances of non-compliance be lengthy, thereseems no objection to the certificate stating that all the requirements have not been complied with, without specification of details, provided that it refers to the report for the details.

If the statutory meeting referred to in sect. 112(5) means the meeting referred to in sect. 65, as it is submitted it does, it should be observed that that section only applies in the cases of companies limited by sharos, and registered after the 31st of December, 1900. Except, therefore, in the case of such a company, the articles ought to expressly unthorize the directors to fix the remuneration of the first anditors.

With reference to the words in sect. 113 (2) (b), "as shown by the auditor bound books of the company." it is generally considered that these words do not impliedly exempt the auditor from travelling outside the books. With reference to the same words in the Companies Act, 1879, Lindley, L. J., said that the auditor must take reasonable care to ascertain that the books themselves show the company's true position. London General Bank, (1895) 2 Ch. 683.

That this is the meaning is emphasized by the preceding words in sect. 113 (2) (b), "according to the best of their information and the explanations given them."

The auditor's right of access to the books of the company can be Auditor's right to enforced in a proper case by mundatory injunction; but not where inspect books.

How far by the books.

SECRET RESERVES.

Ch. XIX.

litigation is pending between the company and the anditors, and the company may desire to appoint other anditors. Caff x London and County Land Co., 4.3(2) + Ch. (10)

Secret Reserves.

Companies occasionally desire to have secret reserves of undivided profits so as to conceal the large amount made in prosperous years and to furnish the directors with a special fund with which to mask losses, to augment the divisible profits in lean years, or provide for an expected contingencies. Not a few successful companies create what is, in substance, equivalent to such a reserve by writing down excessively the value of some of their assets, but there are also a few cases where the articles expressly provide for a secret reserve and anthorize the directors, in addition to the ordinary disclosed reserve, to establish a secret reserve and carry thereto so much of the annual profits as they think fit, and to apply such reserve us they deem expedient in the interests of the company without bringing it into the annual accounts and balance sheet. When such an authority is acted on and a secret reserve fund created, but not disclosed in the company's balance sheet, the question arises whether an auditor, provided he refers to the reserve fund as an "undisclosed asset." is justified under the provisions of sect. H3 of the Act in reporting that "in his opinion the balance sheet is properly drawn so as to exhibit a tr-e and correct view of the company's attains." According to dicta in Newton v. Birmingham Small Arms Co., (1906) 2 Ch. 378, he may be so justified on the ground that the purpose of a balance sheet is primarily to show that the financial position of the company is at least as good as there stated, not to show that it is not or may not be better. But is this view reconcileable with the words of sect. 143, supra, p. 2293 Can "true and correct view" be construed to mean "a view not less favourable than the true and correct view " \mathbb{P} . No doubt if the auditor reports in accordance with his "opinion" he will have discharged his duty, but whether the auditor did in fact honestly entertain the opinion stated is a question of fact (see supra, p. 230), and herein

Section 281 must be borne in mind, for it makes it a misdemeanour to make a statement false in any material particular, knowing it to be false, in any *report* . . . *balance sheet*, or other document required for the provisions of the Act relating to . . . " the uppointment, and remaneration, and powers and duties of auditors."

CHAPTER XX.

NOTICES.

A COMPANY in the course of its business has frequent occasion to give notice to its members (e.g., of calls, forfeiture, general incetings, &c., see supra, p. 166), and it would be impossible in most cases to give a personal notice. The articles therefore almost always provide in more or less detail for a more practical mode of serving such notices. They commonly provide that a notice may be given either personally or by post, and that in the latter case the notice is to be deemed to be served either "when it is posted," or "on the day following that on which it is posted." This is found more satisfactory than to provide (as in Table A., clause 97, of 1862) that the notice shall be deemed to be served when the letter containing the same would be delivered in the ordinary course of post; for it relieves the company from considering how many hours or days it will take for a letter, in the ordinary course of post, to reach the most distant of its members. Some articles, and Table A. of 1908, provide that "unless the contrary is proved, service is to be treated as effected at the time when the letter would be delivered in the ordinary course of post," but this form is not to be recommended; the presence of the words in italics may lead to disputes and doubts. and be productive of great inconvenience.

Shareholders resident Abroad.

Table A. (of 1862) made no special provision as to a shareholder who was abroad. If, then, it became necessary to serve a shareholder resident, say, in the South Sea Islands, it might, according to the words of that Table, be requisite to give several months' notice of a general meeting. This, of course, would be intolerable, and might paralyse the company's proceedings, but it was long since held in Union Hill Silver Co., 22 L. T. 400, that it was not necessary in such circumstances to serve notice on shareholders resident outside the United Kingdom. This rule, being entirely consistent with common sense and common convenience, has been acted on ever since. It accords, too, with the view taken by the House of Lords in Smith v.

AUTHENTICATION.

Darley, 2 H. L. C. 789; see also Halifar Sugar Co., 62 L. T. 564. However, for many years past it has been usual (see first edition of Company Precedents, published in 1877) to make special provision as to service on members resident abroad, e.g., by providing in the articles that a member so resident may notify to the company an address in England at which notices for him may be served, and Table A. (of 1908) contains a provision (clause 110) to that effect, but qualified by an extremely inconvenient elause (111). under which notice to a member who has no registered address or address for service in the United Kingdom must be given by advertisement. There is no need for any such provision where a notice is to be deemed to be served when it is posted, or on the day following, for such a provision applies to all members, and a member resident abroad must take his chance of getting the notice in time.

Notices to Executors of Deceased Members.

When notice of a general meeting is to be given to "the members," it is not necessary to give it to the executors of a deceased member, nuless they too are members. Allen v. Gold Reefs of West Africa, But the states of the second sec

But the articles may provide for notice to the executor or administrator \cdot decensed member, and if they do, it must be given. Clauses 113, 114 of Table A. (of 1908) so provide, but the provision is open to objection.

Framing and Construing Notices. See supra, pp. 166, 167.

Authentication.

A document or proceeding, including a notice, requiring authentication by a company, may be signed by any director, secretary, or other authorized officer of the company, and it need not be under the company's common seal, and may be in writing or in print, or partly in writing and partly in print. See sect. 117. And it is to be borne in n.'nd that the expression "in writing" in an Act "shall, unless the contrary intention uppears, be construed as including reference to printing, lithography, photography, and other modes of representing or reproducing words in a visible form." (Sect. 20 of the Interpretation Act, 1889.)

NOTICES.

Notices to the Company.

The Act, in sect. 116, provides that "a document may be served ou a company by leaving it at or sending it by post to the registered office of the company," and under sect. 285 the term "document" includes summons, notice, order, and other legal process, and registers.

It was held long since that the words "other documents" in the Act of 1862 included a writ of summons. White v. Land, §c. Co., W. N. (1883) 174. See also Pearks v. Richardson, (1902) 1 K. B. 91, iu which it was held that service of a summous for an offence punishable summarily *must* be at the registered office.

Sect. 116 of the Act above referred to must be read in conjunction with sect. 26 of the Interpretation Act, 1889, which runs thus :---

26. Where an Act passed after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Verbal Notice.

Verbal notice.

A verbal notice to a company is effective. Such a notice should be given to the secretary at the office or, in his absence, to a clerk. *Truman's case*, 1894) 3 Ch. 272. Notice to a managing director, in that character, on a matter affecting the business of the company under his management, is notice to the company. *Jaegen*, §c. Co. v. *Vallen*, 77 L. T. R. 180.

Constructive Notice.

A company is subject to the rules in regard to constructive notice; that is, notice which, though not actual notice, is in a Court of law or equity imputed to a person. Hence, notice to the company's agent in any particular matter is notice to the company (*Rolland* v. *Hart*, 6 Ch. 681; *Blackburn* v. *Vigers*, 12 App. Cas. 531, 543), unless the agent is acting in fraud of his principal (*Care* v. *Cave*, 15 C. D. 639), for in such a case the presumption, of course, is that he will not disclose his own fraud. So notice may be imputed where the company has knowledge of a fact which in common prudence should have led to further

CONSTRUCTIVE NOTICE.

inquiry. Jones v. Smith, 1 Ha. 43; Ware v. Lord Eymont, 4 D. M. & G. 460; A. W. Hall & Co., 37 C. D. 712. See further, Company Precedents, Part III., p. 158, and sect. 3 of the Conveyancing Act, Karala, 1

Knowledge of a fact by a single director is not necessarily notice to the company. Hampshire Land Co., (1896) 2 Ch. 743; Marseilles, §c. Co., L. R. 7 Ch. 161; Young v. David Payne § Co., (1904) 2 Ch. 609; and a company is not to be taken to have notice of all its secretary knows, e.g., of matter communicated to him as secretary of another company, for he is under no duty to pass the knowledge on. Fenwick, Stobart § Co., (1902) 1 Ch. 507.

A director is not necessarily affected with constructive notice in the absence of actual knowledge of the facts which appear in the books of the company. *Coasters Limited*, (1911) 1 Ch. 86.

235

Ch. XX.

CHAPTER XXI.

RESOLUTIONS OF GENERAL MEETINGS.

THERE are various kinds of resolutions submitted to general meetings. Of these the most common are :---

1. Ordinary resolutions.

2. Extraordinary resolutions.

3. Special resolutions.

And to these may be added.

4. Resolutions requiring under the company's regulations a specified majority.

1. Ordinary Resolution.

An ordinary resolution is one which merely requires upon a show of hands a simple majority of the voters present, or, if a poll be duly demanded, a simple majority of the votes given thereat, whether in person or by proxy, where proxies are allowable. See, further, Company Precedents, Part I., p. 1100 *et seq*.

2. Extraordinary Resolution.

An extraordinary resolution is defined by sect. 69 (1) of the Act thus :—

69.-(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

z t

d

n

8,

CO

To pass an extraordinary resolution requires, therefore, only one meeting, but the notice convening the meeting must specify the intention to propose the resolution "as an extraordinary resolution," *e.g.*, that the meeting "is convened to consider and, if thought fit, pass an extraordinary resolution that, etc." The words "as an extraordinary resolution" are new; they were not contained in sect. 129 of

SPECIAL RESOLUTIONS.

the Act of 1862, which defined "extraordinary resolution"; but it has been usual to use the words, and it was, under the Act of 1842. necessary to use them, or their equivalent, in the notice. New Bridport Co., L. R. 2 Ch. 194; and Company Precedents, Part II. p. 834. See also sub-sects. (4) and (5) of sect. 69, infra.

3. Special Resolutions.

Nature of.

What is a special resolution is defined in sect. 69 (2) of the Act thus :--

- (2) A resolution shall be a special resolution when it has been-
 - (a) passed in manner required for the passing of an extraordinary (b) confirmed by a majority of such members entitled to vote as

are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the

A special resolution is a most useful part of the mechanism of a Nature of company. It is by and through the instrumentality of such a special resolution-

RESOLUTIONS OF GENERAL MEETINGS.

"special resolution" that many of the most important things which a company is, by the Companies Acts, empowered to do are ordained to be done. In defining the requisite steps for such a resolution, the aim of the legislature seems to have been to secure that every important change shall be only made after due deliberation, and with the sanction, active or passive, express or tacit, of the great body of the shareholders of the company.

Acts for which requisite.

The following are some of the various things that a company may do by special resolution :---

- (1) Change the name of the company, subject to sanction of Board of Trade. Sect. 8.
- (2) Alter its objects, subject to sanction of Court. Sect. 9.
- (3) Increase, or take power to increase, its capital where there is no power in the regulations. Sect. 41.
- (4) Subdivide its shares into shares of smaller amounts. Sect. 41.
- (5) Reorganise its capital. Sect. 45.
- (6) Reduce its capital. Sect. 46.
- (7) Convert any portion of its capital, uncalled, into reserve capital. Sect. 59.
- (8) Alter its articles. Sect. 13.

Proceedings by.

Proceedings.

The following points should be noted in regard to a special resolution :--

- (a) It requires two meetings at an interval of uot less than fourteen clear duys (Railway Sleepers Co. (1885), 29 Ch. D. 204), and not more than one calendar month.
- (b) Each meeting must be duly convened in accordance with the articles of the company. If none, then as per Table A. If the articles so provide, the two meetings may be convened by the same notice. North of England Steamship Co., (1905) 2 Ch. 15 (C. A.); supra, p. 168.

e l

р (1

al

80

se wi

m

fol 2 (

(c) It was ut one time considered doubtful, by reason of the wording of sect. 69, whether the notice of the first meeting should not state the intention to propose the resolution "as an extraordinary resolution," and the intention to submit it for confirmation as a special resolution to a further meeting. It has now, however, been decided that these words are not necessary. *Re Penarth Pontoon Co.*, (1911) W. N. 240. The notice of the second meeting must specify the intention to submit the resolution for confirmation. See further as to notices, *supra*, p. 232.

238

Acts for which requisite.

- (d) The meetings must be duly constituted, that is to say, a quorum
- (e) The resolution must be passed at the tirst meeting by a threefourths majority of the members present in person or by proxy.
- (f) At the second meeting it must be confirmed by at least a simple majority of the members present in person or by proxy.
- (g) At the first meeting, amendments within the notice muy be made, but the resolution confirmed at the second meeting must be in the same form as that passed at the first meeting. Torbock v. Lord Westbury, (1902) 2 Ch. 871.
- (h) At either meeting a poll may be demanded by such number of members not exceeding five as the articles fix, or in default by
- (i) At each meeting, unless a poll is duly demanded, a declaration of the chairman that the resolution has been carried is to be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against
- (j) Upon a show of hands, hands only can be connted, not proxies. (k) At a poil the number of votes which each voter is by the articles entitled to is to be taken into account, and votes by proxy are (if the articles permit) to be allowed. The proxy

It is important to note that a quorum is essential (Cambrian Co., 23 W. R. 405); that voting is, in the first instance, by a show of hands (Re Horbury Bridge Co., 11 C. D. 109); that proxies are only to be counted on a poll (Ernest v. Loma Co., (1897) 1 Ch. 1); that at the second meeting no amendment can be put. Wall v. London and Northern Assets Corporation, (1898) 2 (h. 469.

Declaration of Chairman-Conclusiveness.

The section, it will be observed, says that the deelaration of the Chairman's chairman (if no poll be demanded) is to be "conclusive"; and, in declaration. pursuance of this provision, the Conrt of Appeal, in Re Gold Co. (1879), 11 Ch. D. 719, held a declaration by a chairman conclusive, although out of seventeen present only cleven voted for and two against, and four abstained from voting. The word "conclusive" seems clear enough, and it is made still elearer when contrasted with the words used in sects. 23 and 33, where the legislature has made certain things primá facie evidence only. This decision was followed by Cozens-Hardy, J., in Hadleigh Castle Gold Mines, (1900) 2 Ch. 419. And the Court of Appeal subsequently approved the case

RESOLUTIONS OF GENERAL MEETINGS.

hast mentioned and overruled Young v. South African, &c. Syndicate. (1896) 2 Ch. 268, in which Kekewich, J., had decided that "conclusive" meant "primd facie." See Arnot v. United African Lands, (1901) 1 Ch. 518.

But a chairman's declaration will not be conclusive where in making it he states the figures for and against, and those figures show that he erroneously declares that the resolution has been duly passed. R_{ℓ} Caratal (New) Mines, Limited, (1902) 2 Ch. 498.

4. Resolution requiring Special Majority.

Occasionally the regulations provide that something may be done by or with the sanction of a resolution passed by a majority of a special character—for instance, a majority of the members present in person or by proxy and entitled to three-fourths of the votes to which all the members are collectively entitled.

Notice to Registrar of Special and Extraordinary Resolutions.

A copy of every special and extraordinary resolution has to be printed and forwarded to the Registrar, and a copy is to be annexed to or embodied in the articles, and there are penalties for default. See sect. 70 of the Act.

> tto Puthh (1

CHAPTER XXII.

MAJORITY RIGHTS OF MEMBERS.

It is a cardinal rule of corporation law that *primd facie* a majority of Majority generally to control its operations.

Where no special provision is made by the constitution of a corporation, the whole are bound by the acts not only of the major part but of the major part of those who are present at a regular corporate meeting, whether the number present be a majority of the whole or not. Bacon, Abridgment, II, 269.

"It cannot be disputed," said Lord Hardwicke in *Att.-Gen. v. Dary.* 2 Atk. 212, "that whenever a certain number of persons are incorporated, a major part of them may do any corporate act, or if all be summoned and part appear, a major part of those that appear may do a corporate act though nothing be mentioned in the charter of the major part."

This rule is equally applicable to a company nuder the Act of 1908, save so far as its constitution or articles, or the Act itself, exclude or modify the rule.

The Act does, however, modify the primary rule in certain cases. It requires, for instance, for the passing of a special resolution (sect. 69 (2)), or of an extraordinary resolution (sect. 69 (1)), n majority of three-fourths of those present at the meeting in person or by proxy, and, accordingly, where the Act, or the memorandum or the articles, require a special or an extrao dinary resolution, a threefourths majority is necessary ; a bare maj sity is insufficient. Again, where the articles vest in the directors certain specific powers, e.g., to make calls, forfeit shares, &c., the power, being delegated, resides with the directors exclusively, and a majority of the members cannot exercise the power, though it may sanction and approve of the exercise by the directors of such powers on any specific occasion. Hampson v. Price's Patent Candle Co., 24 W. R. 754. Besides such cases of exclusive powers it often happens that the articles, whilst investing the directors with general powers, do not give them all the powers of the company ; or it may be that, though they have all the powers of the company, they are, nevertheless, nuable to exercise them in regard to some particular transaction by reason of their being themselves personally interested in such transaction. Where this is the case, the matter can be submitted to a general meeting, and the resolution of the meeting will sanction or not, as the case may be, what the directors have done or propose to do. Grant v. United Switchback Rail. Co. (1889), 40 Ch. D. 135. Р.

MAJORITY RIGHTS OF MEMBERS.

The principle that the majority of members is childed to control the company is the basis upon which rests the well-kuown

Rule in Foss r. Harbottle (2 Ha. 461).

Rule in Foss. v. Harbattle,

In that case two members of an incorporated company took legal proceedings against the directors and others to compel them to make good lossos sustained by the company by reason of the fraudulent acts of such directors, and the Coart held that as the acts were capable of confirmation by the majority of the members the Court would not interfere; that is to say, it was left to the majority to complain or to condone as they hight think best. See also Mozley v. Alston, 1 Ph. 790; and McDougall v. Gardiner, 1 Ch. D. 13, where a single shareholder complained of breach of the articles, and it was held that the litigation ought to be in the name of the company, for that it was for the majority to say whether they wished to complain or not. " In my opinion," said Mellish, L. J., "in that case, if the thing complained of is a thing which, in substance, the majority of the company are entitled to do, or if something has been done irregularly that the inajority of the company are entitled to do regularly, or if something has been done illegally which a majority of the company are entitled to do legally, there can be no use in having litigation about it. The ultimate eud, no doubt, is, that a meeting has to be called, and then altimately the majority gets its wishes." See also Harben v. Phillips, 23 C. D. 14; Duckett v. Gover, 6 C. D. 82 (as to further proceedings, 25 W. R. 554); Exeter and Crediton Rail. Co. v. Buller, 5 Ry. Cas. 211; Normandy v. Ind, Coope & Co., (19' - 1 Ch. 84; Ving v. Robertson & Woodcock, Ltd., 56 S. J. 412 (r) directors voting in their own interests). But this supremacy ... he majority must be received with the following qualifications-(1, 'hat no majority of sharoholders can sanction that which is ultru vives the company (supra, p. 63; Barland • Earle, (1902) A. C. 83); (2) that a majority is not entitled to commit a fraud on the minority (Menier v. Hooper's Telegrauh Works, 9 Ch. 350; Burland v. Earle, supra); (3) that a minority can prevent the company from acting on a special resolution obtained by a trick (Paillie v. Oriental Telephone Co., (1915) 1 Ch. 503); (4) that an ordinary resolution inconsistent with the articles is not effectual. Quin & Axtens v. Salmon, (1909) A. C. 443. [In these four cases the minority can commence proceedings in the name of the company, In other cases, if the minority purport to do so, the action may be stayed and the name of the company struck out, and the solicitor may be ordered to pay the costs personally. Marshall's Value Gear Co. v. Manning, (1909) 1 Ch. 267; West End Hotels Syndicate v. Bayer 1912), 29 T. L. R. 92.] See further Company Precedents, Pt. I., 11th ed., p. 1357.

ti

a

R,

1.12

re

Ch. XXIII.

CHAPTER XXIII.

REGISTERED OFFICE.

Every company under the Act of 1908 is bound (see sect. 62 of the Act Registered of 1908) to have a registered office to which all communications and office. notices may be addressed. If a company carries on business without having such an office it incurs n penalty. The situation of the registered office fixes the domicile of the company. A company registered in England is not an "alien enemy," though all its members are alien enemies. Continental Tyre Co. v. Daimler Co., (1915) 1 K. B. 893. The company's memorandum of association states, as we have seen, in what part of the United Kingdom the office of the proposed company is to be situate. This, once declared, becomes an unalterable condition of the company's constitution, which nothing short of nu Act of Parliament ean ehange. But though confined to that part of the United Kingdom---England, Scotland, or Ireland-which it has chosen by its memorandum, the company may, subject to that limitation, tix its office nnywhere it likes within the chosen area, and change it from time to timo provided it gives notice of each change to the registrar. See sect. 62 of the Act. The company is to paint or uffix, and is to keep painted or affixed, its name on the outside of every office or place in which the business is entried on, in a conspicuous position in letters ensily legible. See sect. 62; and under that section there is a penalty for default.

There are various provisions of the Act in relation to the registered office; thus sect. 30 of the Aet provides that the register of members is to be kept at the registered office, and the right of inspection is to he exercised there. Again, under sects. 100, 101, 102, the register of mortgages and copies of registered documents are to be kept at the registered office, and the right of inspection is to be exercised there. No, too, by sect. 103, which provides for the publication, in case of banking and insurance companies and of certain other concerns, of a balance sheet, it is provided that a copy of such statement shall be put up in a conspicnous place in the registered office of the company, and in every branch office or place where the business of the company is enried on; and seet. 116 provides for the service of any notice, summons, order, and other document on the company at the registered office. See further, supra, p. 234. Where in an action or other legal proceeding it appears that the writ, petition, or other document ennnot be served by reason of there being no registered office, the Court will make an order for substituted service.

CHAPTER XXIV.

MINUTES.

Minutes.

Not the only evidence.

As to putting minutes in evidence.

SECTION 71 of the Act provides that minutes are to be made and kept of all proceedings of general meetings and of directors or managers, and makes such minutes, if signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, evidence of the proceedings, *i.e.*, *primd facir* evidence of the matters therein stated. The section, moreover, provides that until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had. The protection as well as convenience ufforded to a company by these privileges is very great, and the atmost care should be used to keep the minutes in correct form and make them complete.

There is no rule, however, which makes minutes the only admissible evidence, and a bargain or transaction may, therefore, be made out and established as against the company though not recorded in the minute book: Re Pyle Works (No. 2), (1891) 1 Ch. 184, where a contract to give security by way of indemnity to directors was made out though not entered. So a person may be proved to be a member although no allotment is entered in the minutes. Re Great Northern Salt Co. (1890), 44 C. D. 483. The Conrt, notwithstanding the minutes are made conclusive by the articles, may look and consider the regularity of the notice. Betts & Co. v. Macnaghten, (1910) 4 Ch. 430.

Minutes being only prima facie evidence, they may be contradicted by other evidence. Tothill's case, L. R. 1 Ch. 85. But if signed by the chairman they are to be taken prima facie to be correct. Re Indian Zoedone Co. (1884), 26 C. D. 70; and see Southampton Dock Co. x Richards, 1 Man. & Gr. 448.

Where a notice is taken as read it must be treated as part of the res gesta. Betts & Co. v. Macnaghten, (1910) 1 Ch. 430.

A director who is present at a meeting at which the minutes of proceedings at a prior board are read and confirmed as correct is not thereby mude responsible for what was done at such prior board Lands Allotment Co., (1894) 1 Ch. 616; National Bank of Wales (1899) 2 Ch. 629; Burton v. Bevan, (1908) 2 Ch. 240. See, howeve: Asharst v. Mason, 20 Eq. 225.

FORM OF MINUTES-ORDINARY GENERAL MEETING. Ch. XXIV.

Omnia rite acta præsumuntur.

Entries in the company's books, which would be irregular unless based on resolutions of the board, afford, on the above principle, prima facie evidence of the resolutions, even though no minut- thereof is forthcoming. Re Knight (1867), L. R. 2 Ch. 321 : Great Northern Salt Co., 44 C. D. 483; and see Lane's case, 1 D. J. & S. 509.

Thus, a letter written by the secretary of the company will be assumed prima facie to have been written with the anthority of the directors although no minute appears to that effect. Johnson v. Lyttle's Iron Agency (1877, 5 Ch. D. 687, p. 691. The absence, however, of any minute of an alleged transaction is material when the party who alleges the transaction was a director. Re Rotherham Co. (1884), 25 C. D. 109. "Directors," said Kekewich, J., "ought to place on record, either in formal minutes or otherwise, the purport and effect of their deliberations and conclusions ; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right." Re Liverpool Household

Statute of Frauds.

The chairman's signature of the minutes stating the terms of a As to Statute contract may be sufficient to satisfy the Statute of Frands. Jones v. of Frand-Victoria Graving Dock Co., 2 Q. B. D. 314: and see Gibson v. Barton. L. R. 10 Q. B. 332, for an instance in which the minute book was

Form of Minutes-Ordinary General Meeting.

The following will give some idea of the mode in which minutes Specimen of are entered :-

The Fourth Ordinary Meeting of the ---- Compare . Limited, meeting. held the ---- day of ---- [at the agistard of the - o'clock. Mr. ---- in the chair.

The Notice convening the Meeting was read by the Secretary. The Minutes of the General Meeting of the Company held the -- th ultimo were read by the Secretary, and signed by the Chairman.

It was resolved unanimously that the Report of the Directors, and the Accounts annexed thereto, he taken as read.

Upon the motion of the Chairman, seconded by Mr. -

it was resolved unanimously [or as the case may be]-That the Report of the Directors, and the Accounts

annexed thereto, he, and the same are heroby. adopted.

minutes of

MINUTES.

Upon, &c., it was resolved that a dividend, &c.

Upon the motion, &c., it was resolved that Mr. — be. and he is hereby, elected a director in the place of Mr. — . Upon, &c. [vote of thanks].

A. B., Chairman.

If an amendment be moved, the minutes will run thus :---

It was moved by the Chairman, and seconded by Mr. —— That, &c.

An amendment was thereupon moved by Mr. —, and seconded by Mr. — [here set it out], e.g.

"That the Report be received, but not adopted; and that a committee of five shareholders be appointed, with power to add to their number, to inquire into the formation and past management of the Company, and with power to call for books and documents, and to obtain such legal and professional assistance as may be necessary, such committee to report to a meeting to be called for —day the —th of —…."

The amendment was put to the Meeting and negatived. The original question was then put to the Meeting and declared by the Chairman to be carried.

Form of Minutes-Extraordinary Meeting.

Extraordinary General Meeting of the —— Company, Limited, held the —th day of ——, at, &c.

Mr. — in the Chair.

The Notice convening the Meeting was read by the Secretary. The Minutes of, &c.

Upon the motion of the Chairman, seconded by Mr. ----,

It was resolved unanimously that the capital of the Company be increased to \pounds — by the creation of — new shares of \pounds — each.

A resolution moved by Mr. —, and seconded by Mr. —— That, &c., was negatived.

Mr. --- moved--

That, &c.

Mr. — seconded this motion.

A show of hands having been called for, the Chairman declared [that — hands were held up in favour of, and — against the resolution, and] that the motion was [consequently] carried [or lost, as the case may be].

A poll was then demanded and taken, the numbers being as follow:—For the motion, 128 votes; against the motion, 72.

Specimen of minutes of extraordinary meeting.

Ch. XXIV.

[The minutes may distinguish the number of personal votes. and of votes by proxy. The scrutineer's report (if any' will

The Chairman then declared that the resolution was carried.

Form of Minutes-Board Meeting.

The minutes of a meeting of the directors will be as follows :----

At a Meeting of the Directors held the --th day of ----- at, &c. minutes of board Present, Mr. ----, Chairman of the Board; Mr. ----, meeting. and Mr. ----

The Minutes of the Meeting of the -th were read and signed.

Upon the motion, &c., it was resolved, &c.

The proposed contract with A. B. for the purchase of, &c. was read, and it was resolved that the same be sealed, and tho same was sealed accordingly.

The Secretary was directed to, &c.

A letter from, &c., addressed to the Secretary, having been re: 1, and the Board being of opinion, &c., the Secretary was directed to reply, &c., and the manager was desired to, &c.

Mode of taking Minutes.

The usual plan adopted is for the secretary to make notes at each Mode of taxmeeting of what passes, and subsequently to enter the particulars in ing minutethe proper minute book ready for reading and signature by the chairman after they have been read and confirmed at the next succeeding generally.

Sometimes, e.g., in the case of legal proceedings, it may be requisite Signing of to put the minute book in evidence, but the minutes of the last meeting minutes as have not been signed. In such ones the obvious for the signed for the second sec have not been signed. In such case the chairman can sign, for though evidence. it is usual for him to sign at the next succeeding meeting (Southampton Dock Co. v. Richards, 1 Man. & G. 448), he is not bound to wait. Minutes once made and signed ought never to be altered by striking

out or adding anything. Re Cawley & Co., 42 Ch. D. 226. As to the conclusive effect of the chairman's declaration in case of a special resolution, see supra, p. 239.

CHAPTER XXV.

NAME OF COMPANY.

The memorandum of association of every company under the Act must,

Company's name to be affixed outside office, and on notices, advertisements, &c.

as we have seen, state, amongst other things, the proposed name of the company, with "Limited" us part of it in cases where the company is limited, and the certificate of incorporation when given will then incorporate the company by such name. To this name the company must closely adhere. The name must be painted up or affixed to the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible. Sect. 63. The name must also be mentioned (at the risk of heavy penalties for neglect to the company and the directors, sect. 63) in legible characters in all notices, advertisements, and other official publications of the eompany, in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of the company, and in all bills, parcels, invoices, receipts, and letters of credit of the company. Sect. 63.

Object of the legislature.

Why this solicitude on the part of the legislature as to publication of a company's name? The answer is, that the legislature, whilst allowing limited liability, desired by this means to make the company itself continually bring to the notice of those who dealt or might deal with it the fact that it was "limited." This policy it has fortified by pecuniary penalties; but it is not this only which makes neglect dangerous to directors. Seet. 63 provides that if any director, manager, or officer of a limited company, or any person on its behalf, signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, &c., wherein the name of the company is not mentioned in manner specified, he shall be personally liable to the holder of any such bill of exchange, &c., for the amount thereof unless the same is duly paid by the company. See Atkin & Co. v. Wardle & Others, 61 L. T. 23, in which the South Shields Salt Water Baths Co., Limited, was misdescribed in a bill as the Salt Water Bat's co., Limited, and it was held that the directors were personally liable on the bill. See also Dermatine Co. v. Ashworth, 21 Times L. R. 510.

r v N L

3

1

 $\langle 1$

SIMILARITY OF NAMES.

Ch. XXV.

Similarity of Names.

In choosing a name for a company, promoters must use care to Must not take avoid adopting a name which is too like that of another company, for another comthe Act (by sect. 8) provides that no company is to be registered nnder a name identical with that by which a company in existence is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where the company in existence is in Exception course of being dissolved, and signifies its consent in such manner as to rule. the Registrar requires. In view of this provision the Registrar is very particular as to names in registering companies, and it not unfrequently happens that, when the memorandum of association is taken in for registration, it is found that the name selected has already been adopted by some other company, or that it too nearly resembles the name of some other company already on the register. Hence delay and vexation. Even if the Registrar passes a name, this will not prevent the proprietors of any concern, whether registered or not, if prejudiced by the registration, from taking legal proceedings.

The principle on which the Court interferes is such eases (see supra, Principle on p. 27) is, not that there is a property in the name (Du Boulay v. Du which Court Boulay, L. R. 2 P. C. 441), but that one person is not to be permitted to represent himself as carrying on the business which is carried on by another. The leading cases on this point, illustrating the principles on which the Coart acts, are Croft v. Day, 7 Beav. 84 : Lee v. Haley, L. R. 5 Ch. 155. See further cases, supra, p. 27. And as prevention is always better than cure, not only may a registered company be restrained from earrying on business as above, but promoters may be restrained from registering a company with a namo calculated to deceive. See Hendricks v. Montagu, 17 C. D. 638, where the registration of a company as the Universe Life Assurance Association, Limited, was restrained, at the instance of an unregistered company known as the Universal Life Assurance Society.

In cases like these, where the name adopted is merely descriptive of the character of the defendant's business, the Court has sometimes great difficulty in interfering. London and Provincial Law Assurance Society v. London and Provincial Joint Stock Life Assurance Co., 17 L. J. Ch. 37; Colonial Life Assurance Co. v. Home and Colonial Assurance Co., Limited, 33 Beav. 548; London Assurance Corporation v. London and Westminster Assurance Corporation, Limited, 9 Jur. N. S. 843. But see now Reddaway v. Banham, (1896) A. C. 199; and British Vacuum Cleaner Co. v. New Vacuum Cleaner Co., (1907) 2 Ch. 312: Electromobile Co. v. British Electromobile Co., 98 L. T. 258; and North Cheshire and Manchester Brewery Co. v. Manchester Brewery Co., (1899) A. C. 83. If the Registrar exercises his discretion in the

pany's name.

NAME OF COMPANY.

mattor, a mandanus will not lie against him. Rex v. Registrar of Companies, (1912) 3 K. B. 23.

A company purchasing the goodwill of an existing business purchases the right to the name under which it is carried on as part of the goodwill. Lery v. Walker, 7 Beav. 84.

If by inadvertence a company is registered with a name identical or closely resembling that of another company, sect. 8(2) enables the firstmentioned company, with the sanction of the Registrar, to change its name.

Change of Name.

A company may by special resolution change its name, but only How company with the conseut of the Board of Trade. Sect. 8 (3) of the Act. The proper course in such cases is to ascertain from the Registrar that there is no objection to the proposed name, apply to the Comptroller of Companies, Board of Trade, Whitohull Avenue, S.W., stating the circumstances which have rendered the change desirable, and requesting him to obtain the sanction of the Board to the proposed change. In due course this will be brought before the Board, and, if the requisite consent is obtained, notice will be given to the applicant, and the company will pass a special resolution carrying out the alteration. Thereupon the Registrar will issue a new certificate, as provided in the section, and the change of name will be completely effected. See Shackleford, Ford & Co. v. Dangerfield, L. R. 3 C. P. 407.

Companies to promote Art, Commerce, &c.: Word "Limited" dispensed with.

Omission of " limited " in name of company where to be formed for promoting commerce. arts, &c., without intention of paying dividends. Licence of Board of Trade.

Where an association is about to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and the founders are willing to form it on the footing that its profits or income shall be applied in promoting its objects only, and that no dividend shall be paid to its members, the Board of Trade may grant a licence authorizing registration of the association with limited liability, but without the addition of the word "limited" to its nume. See sect. 20 of the Act of 1908. Many associations have been registered under this section. At first the applications came almost exclusively from Law Societics, Chambers of Commerce, and Trade Protectiou Societies. but the advantages offered by the section are now better appreciated, and associations of all kinds apply. Examples are given below.

An association desirous of being incorporated with limited liability but without the word " limited " as part of its name, and of obtaining for that purpose a licence from the Board of Trade pursuant to sect. 19 of the Act, should, according to the rules now in force, make a written application to the Board for a licence, and with such application should transmit for the Board's consideration a draft in duplicate of the proposed memorandum and articles of association. A cheque for

1 02 02

250

may change

its name.

COMPANIES TO PROMOTE ART, COMMERCE, ETC. Ch. XXV.

five guineas must also be sent to cover counsel's fee for perusal of the draft documents. See further Company Precedents, Part I., pp. 498,

The advantages of incorporation for such associations is great. Advantages The association gains in stability, public estimation, and credit. It of such combecomes a body corporato with perpetual succession, just as if it were the members, incorporated by Royal Charter or special Act of Parliament. It can adopt in lieu of "company" a more suitable name, such as chamber, club, college, guild, association. It can have a common seal; it can hold property* in its own name without the intervention of trustees; it can contract und take and defend legal proceedings in its own name; its affairs can be conducted much more efficiently, and-finally --- its officers and members are freed from personal liability.

Associations obtaining the licence register, in almost all cases, as companies limited by gnarantee. See infra, Appendix. The guarantee varies from 1s. to 10/. Generally, membership is constituted by election or by application in writing accepted by the governing body. Sometimes (e.g., in charitable associations) a candidate for election must make a donation. The governing body is not infrequently called the committee or the council. When, as is often the case, the association is formed to absorb and coutinue some existing association of the same name, the members of this all join the registered association, and the property, if any, is transferred to it, and the incorporated association thus silently takes the place of its predecessor. See further as to the formation of such companies, Company Precedents, Part I., pp. 498, 499, where the elauses which the Board of Trade require to be inserted in the memorandum will be found.

The following are some examples of companies which have been so Examples registered :-BENEVOLENT. of existing companies of the kind.

Birmingham Hospital Saturday Fund. Clergy Pensions Institution.

CHAMBELS OF COMMERCE.

London Chamber of Commerce. Associated Chambers of Commerce.

CLUBS

Huddersfield Carlton Club. Manningham Football Club. Newcastle Junior Liberal Club. St. Pancras Reform Club. Smithfield Club.

COLLEGES.

Cheltenham Ladies' College. University College, Bristol.

EXCHANGES. Birmingham Exchange. Manchester Coal Exchange.

HOSPITALS.

Dalrymple Home for Inebriates. Home Hospitals Association for Paying

LAW SOCIETIES.

(A great many.)

• By sect. 19 of the Act a company "formed for the purpose of promoting art, By sect. 19 of the Act a company formed for the parpose of producting the sectors, religion, charity or other like object not involving the acquisition of gain by the company or the individual members there d_i is not to hold more than two acres of land, but by licence of the Board of Trade it may hold more.

NAME OF COMPANY.

Church Army.

Philological Society.

MISCELLANEOUS.

RELIGIOUS.

Mission to Deep Sea Fishermen.

Philosophical Society of Glasgow.

Incorporated Council of Law Reporting. Meteorological Council. Pulestine Exploration Fund. Royal School of Art Needlework.

PROFESSIONAL. Birmingham Medical Institute. British Dental Association. College of Organists. Incorporated Society of Musicians. Institution of Mechanical Engineers.

Physical Society of London.

SCIENTIFIC.

Sonools. Clifton High School for Girls. Glusgow School of Art.

Under sect. 20(4) of the Act the Board of Trade has power to revoke its licence after due notice, and thenceforth the word "limited" must be used.

A company thus registered without the word "limited" can alter its objects with the sanction of the Court (see sect. 9 of the Act, and supra, pp. 77-80), but it may be requisite to obtain the consent of the Board of Trade. St. Hilda's College, (1901) 1 Ch. 556. Primá facie, a company thus registered can pay a pension to an outgoing secretary. Cyclists Touring Club v. Hopkinson, (1910) 1 Ch. 179.

When use of Word "Limited" prohibited.

Sect. 282 of the Act provides that if any person or persons trade or carry on business under any name or title of which the word "Limited" is the last word, that person or persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding 5*l*. for every day upon which that name or title has been used.

CHAPTER XXVI.

CONTRACTS.

In regard to contracts by companies, three leading rules must be borne. Three parti-

- 1. A contract ultra vires the company is wholly void and cannot be 1. Contract enforced or ratified. See supra, pp. 60-63.
- 2. A contract, not ultra vires the company, but ultra vires the 2. Contract directors, may be ratified by the shareholders (Grant v. United altra view Switchback Co., 40 C. D. 135), and without such ratification directors but may, under certain circumstances, he hinding on the company. may, under certain circumstances, be binding on the company by virtue of the Rule of estoppel recognized in Royal British Bank v. Turquand. Supra, p. 44.

cular rules as to contracts.

3. A contract made before the incorporation of a company by some 3. Contracts person professing to act on its behalf cannot be ratified by the made for comcompany after its incorporation. Kelner v. Baxter, L. R. 2 incorpora-C. P. 174; Empress Engineering Co., 16 C. D. 125; Natal Land tion. pany before Co. v. Pauline Colliery Syndicate, (1901) A. C. 120; North Sydney Investment Co. v. Higgins, (1899) A. C. 263; Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co., (1902)

But there is nothing to prevent the company, when incorporated, from entering into a new contract to carry into effect the terms of the preincorporation contract. Howard v. Patent Ivory Co., 38 C. D. 158; In re Dale and Plant (1889), 61 L. T. 206; Natal Land Co. v. Pauline Colliery Syndicate, sapra. Sometimes the contract is made before incorporation with some person purporting to act as trustee for the company. In this case also it is usual to make a fresh contract after incorporation. Mere acting on the old contract does not make it binding on the company (Re Northumberland Hotel Co., 33 C. D. 16), though it may give the trustee the right to indemnity. Hardoon v. Belilios, (1901) A. C. 118. Merely taking the benefit of a pre-incorporation contract does not bind the company to fulfil the obligations of that contract. Re Northumberland Hotel Co., supra; Rotherham Alum, &c. Co., 25 C. D. 103; Clinton's Claim, (1908) 2 Ch. 515, overruling English and Colonial Produce Co., (1906) 2 Ch. 435.

CONTRACTS.

On these general rules the legislature has now engrafted a fourth, viz. :--

4. That a company cannot make a binding contract until it is entitled to commence business. See *supra*, p. 58.

This provision is contained in sect. 87 (3) of the Act of 1908, replacing sect. 6 (3) of the Companies Act, 1900, and runs as follows :---

(3) "Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding."

"Provisional" here means that the contract is to be read as if it contained a provision that it shall not be binding on the company unless and until the company becomes entitled to commence business. *Re Otto Electrical Manufacturing Co., Jenkin's case*, (1906) 2 Ch. 390.

Companies registered prior to Jannary 1, 1901, and companies registered before 1st July, 1908, which do not invite the public to subscribe their shares, and private companies, are exempt from this provision. (Sect. 87 (6).)

The words of sect. 87 (3) are very wide and appear to include all contracts, including contracts of membership.

The words "shall be binding" do not give any statutory sanction to the contract, but mean that the contract is no longer provisional but complete: but it is only good for what it may be worth, e.g., it may still be liable to be avoided for frand, misrepresentation, &c.

As to the conditions with which a company must comply to entitle it to commence business, see p. 58.

Contracts by, or by agents of, company.

Form of Contracts.

According to the old common law rule a contract to bind a corporation had to be under its common seal. Modern decisions have relaxed this rule to some extent (see South of Ireland Co. v. Waddell, L. R. 4 C. P. 617); but the exigencies of business rendered a further relaxation of the rule desirable, and this was done by sect. 37 of the Companies Act, 1867, which is re-enacted in sect. 76 of the Act of 1908. The result of the enactment contained in that sections is that a company can, as a general rule, contract without seal. It is a cient if the contract is made by some person acting under the expressor is multiple authority of the company; nor need the contract, as a general rule, be in writing even: it is sufficient if it is made by word of mouth, provided that the person who makes it has authority to make it on the company's behalf. Who is a person acting on the implied authority of the company, must depend on the articles of the company. Usually the directors have express authority to act on the company's behalf, and they can.

SIGNED CONTRACTS.

therefore, on the company's behalf, make contracts. So, too, if they appoint a manager or other official, he may be given authority by some resolution of the board, or by an instrument under the company's seal. See Beer v. London and Paris Hotel Co., 20 Eq. 412; Bryon v.

Great Central Mining Co., 5 H. & N. 856; Land Credit Co., 4 Ch. 460. But the mere appointment of a manager by directors, under a power for that purpose, will only operate as a delegation to such manager of the ordinary commercial business of the company. Cartmell's case.

In contracts by a company acting by its agonts, the better form is for the company to be made a party by its corporate name, the contract being signed by the agents on behalf of the company. No personal liability under the contract can attach to the agents where they sign "on behalf" of the company. Gadd v. Houghton, 1 Ex. D. 357, and see p. 199.

Contracts under Seal.

As to the form which a contract to be sealed ou behalf of a company Contracts should take, such a contract will be expressed thus: An agreement under seal. made this ---- of ----- between The ---- Company, Limited, of the one part, and A. B., of the other part, and it will provide that "the said company shall [do so-and-so] and that the said A. B. shall [do so-andso]" and will conclude, As witness the common seal of the company and the hand [and seal] of the said A. B., the day and year first

Signed Contracts.

As to the form which a contract to be signed on behalf of a company Contracts, should take, the company by its corporate name should be made a where to be party to it thus: "between the — Company, Limited of the one signed only. party to it thus: "between the ---- Company, Limited, of the one part, and A. B. of the other part," or it may be "between N. of on bohalf of the ---- Company, Limited, of the one part, and A. B. of

In any case care must be taken to show on the face of the contract that the person who signs it is acting for, or on account or on behalf of, the company, by inserting words to that effect in the description of the parties, or in the body of the agreement, or in connection with the signature. Any of these places will do. See Gadd v. Houghton, 1 Ex. Div. 357. If the words "for the company" are written or printed immediately above or below or opposite the signature, that is

Presumption of Regularity.

Contracts where presumed to be intra vires of the company (supra, p. 73), and where presumed to be intra vires of the directors (p. 44).

Ch. XXVI.

CONTRACTS.

Oral Contracts.

Where it is desired to make an oral agreement the person who is make it on behalf of the company must have an express or implicaauthority, and then a contract made by word of mouth between him and the other party will bind the company, subject, of course, to the provisions of the Statute of Frands and the Sale of Goods Act, 1893. which require that certain agreements shall be in writing signed by the party to be charged. Sect. 4 of the former Act is, in this connection, the most material section. It deals with various agreements, and, in particular, guarantees, contracts for sale of lands or may interest in or concerning the same, and agreements not to be performed within the space of a year from the making thereof. In such cases no action is to be brought unless the agreement on which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto authorized. It may be noted, however, that "the statute in this part of it does not say that unless these requisitions are complied with such agreement shall be void, but merely that no action shall be brought upon it." Per Jervi-. C. J., Leroux v. Brown (1852), 12 C. B. 801; Hoyle v. Hoyle, (1893) + Ch. 84. Accordingly, an agreement in relation to such matters is not void because it is not in writing, and it can be enforced against the company if, by any means, an admission of the terms of the agreement signed by some duly authorized agent of the company can be produced in evidence. Thus, a proposal in writing accepted orally is a sufficient memorandum as against the proposer (Reuss v. Picksley, L. R.) Ex. 342); so a letter from the company to its own solicitor mentioning the terms of the contract made is sufficient (see Gibson v. Holland. L. R. 1 C. P. 1); or a letter to an agent of the person sought to be charged. Bailey v. Sweeting, 9 C. B. N. S. 843. A record of the terms of the contract in the minutes signed by the chairman may also suffice (see Jones v. Victoria Graving Dock (1877), 2 Q. B. D. 314; Queensland, Sec. Co., (1894) 3 Ch. 181), or part performance unequivocally referable to the contract. Wilson v. West Hartlepand Rail. Co., 2 D. J. & S. 492; Howard v. Patent Ivory Co. (1888), 38 Ch. D. 163. "The Court," as Bowen, L. J., said (Hoyle v. Hoyle. (1893) 1 Ch. 99), "is not in quest of the intention of the parties, but only of evidence under the hand of one of the parties to the contract that he has entered into it."

As to disclosure of contracts in a prospectus, see *infra*, Chapter XXXV.

As to filing particulars of an oral contract for the issue of paid-up or partly paid-up shares for a consideration other than cash, see sect. 88 of the Act, and *supra*, p. 119.

256

Oral contracts.

CHAPTER XXVII.

THE COMMON SEAL.

To have a common seal is incidental to a corporation (Sutton's Hospital The right to a case, 10 Rep. 30 b); but sect. 16 of the Act of 1908 expressly declares common seal. that a company incorporated under that Act is to hav a seal, and, by sect. 63 of the same Act, the company is required to have its name

" engraven in legil... characters on its seal."

The right to use the seal of the company for the purposes of its Who can use. business is usually vested in the directors. Occasionally the power is vested in them by express words, but, more usually, their power arises from the terms of a general clause enabling them to exercise all the powers of the company (see, for example, Clause 71 of Table A.). It has been laid down that the executive of the company is, prima facie, entitled to use the common seal. Barned's Banking Co., 3 Ch.

As to contracts under seal, sect. 76 of the Act enables a company, Contracts not as a general rule, to contract without seal; it need only contract under under seal. seal where a private person would have to do so, e.g., in the case of a covenant or of a hond.

As to conveyances, densises, sur orders, certificates, &c., the section Conveyances. above referred to does not touch these instruments, and the ordinary &c. rale prevails, namely, that where in the case of an individual a seal 18 requisite, it is requisite in the case of a company.

Thus, to convey freehold property, and to assign or surrender leasehold property, or to give a power of attorney, a se ... s requisite. And a seal is requisite for some instruments in order to obtain certain statutory advantages, c.g., in the case of a certificate of title to shares (sect. 23 of the Act); in the case of a share warrant (sect. 37 of the Act . and see the Conveyancing Acts, 1881 and 1882, for various cases in which statutory incidents are annexed to deeds.

Where the articles contain special provisions as to the affixing of Regulations the sent, e.g., that the instrument must also be signed by two directors, as to use of

those who deal with the company are bound to see that the deed on the face of it accords with the articles. See supra, p. 44. seal.

But if the instrument is on the face of it regular, they have a right Presumption 17 of validity.

THE COMMON SEAL.

to presume that the seal so affixed has been duly affixed, that the directors were duly appointed and their signatures duly made (County Life Assurance Co., L. R. 5 Ch. 288; Mahoney v. East Holyford Mining Co., L. R. 7 H. L. 869); and the barden of proving the contrary rests with those who allege it. Clark v. Imperial Gas, Sc. Co., 4 B. & Ad. 315; Hill v. Manchester, &c. Co., 5 B. & Ad. 866.

This is a corollary from the rule in Royal British Bank v. Turquand. supra, p. 41. See County of Gloucester Bank v. Rudry, Sc. Co., (1895) 1 Ch. 629. In the latter case the seal had been irregularly affixed to an instrument, but the company was held boand by it, for the instrument appeared to be in accordance with the articles, and the irregularity was only in regard to the "indoor" management, with which an ontsider cannot be acquainted. On the other hund, it has been held in a later case, distinguishing County of Gloucester Bank v. Rudry, &c. Co., that if the seal is affixed fraudalently by the sceretury for his own private ends, the company is not estopped (Ruben v. Great Fingall Co., (1906) A. C. 439). Where the presumption does not apply. as in the case of a non-trading corporation, an instrument to which the seal has been irregularly affixed is inoperative. Bank of Ireland v. Evans' Trustees, 5 H. L. C. 389; Mayor of the Staple v. Bank of England, 21 Q. B. D. 160; and see London Freehold Land Co. v. Suffield, (1897) 2 Ch. 608.

Delivery of deed : not required from

A deed to be effective must be sealed and delivered ; but, in the case of a corporation, the affixing of the seal imports delivery. "Le fait a corporation. d'un corporation ne besoign ascun delivery mes l'apposition del common seale done perfection al ces sans ascan deliverie." Rol. Abr. 23 (1), 50; and see Comyns' Digest, Faet A (3), that "a common seal fixed to the deed of a corporation is tautamount to a delivery." Craise's Digest, 4th ed., 28, is to the same effect. Accordingly, whilst in the case of a private individual it is usual to add an attestation clause to the effect that the instrument was "signed, scaled, and delivered" in the presence of the witness, in the case of a company the clause merely states that "the common seal was affixed hereto in the presence of — and —."

> Primá facie, therefore, if the common seal is daly affixed to a deed it becomes operative (London Freehold, Sc. Co. v. Suffield, (1897 2 Ch. 608), and it rests with those who allege the contrary to establish the fact.

> Nevertheless a corporation can execute a deed in escrow, i.e., can seal it subject to a condition suspending its efficacy.

a

A

96

of

K

As Lord Cranworth said in Xenos v. Wickham, L. R. 2 H. L. 310: "The efficacy of a deed depends on its being sealed and delivered by the maker of it, not on his ceasing to retain possession. This, as a general proposition of law, cannot be controverted. It is not affected

THE COMMON SEAL.

by the circumstance that the maker may so deliver it as to suspend or qualify its binding effect. He may declare that it shall have no effect antil a certain time has arrived, or until some condition has been performed; but when the time has arrived, or the condition has been performed, the delivery 1 comes absolute, and the maker of the deed is absolutely bound by it, wiether he has parted with the possession or not. Until the specified time has arrived, or the condition has been performed, the instrument is not a deed. It is a mero escrow.

I know of nothing intermediate between a deed and an escrow." Whother a docu cent scaled by a company was or was not intended to operate as a complete and operative i strament, or as an escrow, depends on the interior. The parties expressed or implied. See Derby Canal Co. v. Bland, is First, mer 360, where the company's seal was affixed to a conversion ; but the clerk was directed to retain it antil certain accounts were not preceded Lord Ellenborough, C. J., and the rest of the Conrt, held " at, " in order to give the instrument effect, the uffixing of the seal must be done with intent to puss the estate. Otherwise it operates no more than a feoffment would do without delivery of possession, whereas here, though the seal was directed to be and was affixed to the instrument for form, yet it as with a reservation of any present effect to pass the title out of the company, us they do not choose to deliver over the possession of $\pm e$ conveyance till the accounts were settled between them und purchaser." See, too, Mowatt v. Castle Steel, yc. Co., 34 C. D. o. which the Court found as a fact that debentures to bearer scale. " the company had not in fact been delivered, and held them void it. consequence. It is quite consistent with this, however, that the company may be estopped from setting up non-delivery where an instrument under the seal is taken in good faith. County of Gloucester Bank v. Rudry, (1895) 1 Ch. 629. And see Roberts v. Security Co., (1897) 1 Q. B. 111, and London Freehold, Sc. Co. v. Suffield, supra, that the onus of proving that a deed duly sealed was only executed in

escrow rests with those who so assert. A document to which the seal is affixed is not necessarily a deed; Whether thus a certificate of title to shares is not a deed (The Queen v. Morton, sealed docu-L. R. 2 C. C. R. 22); but it would seem that every contract under the seal is a deed, save only that, by the Bills of Exchange Act, 1882,

ment a dead.

s. 91, a corporation is empowered to seal, instead of signing, acceptances, indorsements and the like.

Besides its common seal, a company may, under sect. 75 of the Foreign Sears Act, obtain power to have an official seal for use abroad; and, under Act. sect. 78 of the Act, it can authorize any person, as the attorney of the company, to execute, under his seal, deeds outside the United

259

th. XXVII.

17 (2)

CHAPTER XXVIII.

SECRETARY AND OTHER OFFICIALS.

Appointment and Remuneration of Secretary.

Appointment. ALMOST every going company has its secretary. The articles sometimes contain a clause declaring who shall be the first secretary. In any case a resolution is usually passed appointing a secretary and stating his remuneration, and if the terms of appointment are special the agreement in regard thereto is generally put in writing.

A secretary is generally remnnerated by a fixed salary.

Duties.

Duties.

The duties f the secretary vary with the size and nature of the company and the terms of the arrangement made with him. But in the ordinary course he is present at all meetings of the company, and of the directors, and makes proper minutes of proceedings thereat: issues, under the direction of the board, all necessary notices to members and others; conducts all correspondence with shareholders in regard to calls, transfers, forfeiture and otherwise, and keeps the books of the company, or such of them as relate to the internal business of the company, e.g., the register of members, the share ledger, the transfer book, the register of mortgages, certifies transfers, &c., &c. He also makes all necessary returns to the Registrar of Joint Stock Companies.

Where the same person is secretary to two companies, A. and B. knowledge acquired elsewhere by him as secretary of A. Company is not to be treated as knowledge by him as secretary of B. Company, unless there is a duty to communicate the knowledge. *Re Fenvick.* Stobart § Co., Deep Sea Fishery Co.'s Claim, (1902) 1 Ch. 507, and see p. 234.

A

fe

0]

tie

ar

all

H

COL

Bu

to

Powers.

Powers.

A secretary, as such, has no authority to bind the company by contract or to make representations as to the company's affairs to induce people to take shares so as to bind the company (*Barnett* v.

LIABILITY.

Ch. XXVIII.

South London Tramways Co., 18 Q. B. D. 815); or to register a transfer until passed by the directors (Chida Mines, Limited v. Anderson, 22 Times L. R. 27); he can "certify" a transfer, but if he does so fraudulently the company will not be liable. George Whitechurch, Limited v. Cavanagh, (1902) A. C. 117. The secretary of the company there, in pursnance of a fraudulent scheme to benefit himself and an accomplice, certified that share certificates had been produced to him on a transfer when in fact they had not, and the House of Lords decided that the secretary's representation did not operate as an estoppel against the company; nor will the company be liable if the secretary forges the directors' signatures to a share certificate, and fraudulently affixes the company's seal thereto. And even where a secretary is held out as a person to answer certain inquiries the company, on the same principle, incurs no liability for untrue answers if unade by the secretary for his own private ends. British Matual Bank v. Charnwood Forest Rail., 18 Q. B. D. 714.

In a subsequent ease of Ruben v. Great Fingall Consolidated, (1906) A. C. 439, the House of Lords held the same principle to be applicable to a share certificate to which the secretary had fraudulently, for his private ends, affixed the seal of the company and forged the names

See also as to cheques with forged signatures of directors, Kepitigalla Rubber Estates v. National Bank of India, 25 T. L. R. 402. A secretary, as such, has no power to convene a general meeting (see p. 164), or to strike a name off the register of members (Wheatcroft's case, 29 L. T. 326), or to pass and register a transfer not approved by the directors. Chida Mines v. Anderson, 22 T. L. R. 27. In that case the secretary registered the transferee, and afterwards the directors refused to pass the transfer.

Liability.

A company's secretary is liable to heavy punishment for falsifying Liability. any books or documents of the company. Seet. 216 of the Act. And he may incur liability and penalties under the Act in the following cases amongst others: Sect. 17 (2) (statutory declaration to obtain certificate of incorporation); sect. 87 (1) (c) (statutory declaration for company commencing business); sect. 26 (4) (signing the annual list of members and summary); and sect. 88 (3) (return of allotments). See also as to enemy shareholders, Appendix, p. 631. He is also liable for misfeasance if he receives an improper commission. Barrow's case, 28 W. R. 341; McKay's case, 2 Ch. D. 1. But a secretary is in a very different position to directors, and is not to be fixed personally with liability for a misapplication of the com-

SECRETARY AND OTHER OFFICIALS.

pany's funds, though he may have known all about it. Joint Stock Discount Co. v Brown (1869), 8 Eq. 396.

A secretary sned for negligence may set up the Statute of Limitations Municipal Freehold Land Co. v. Pollington (1890), 63 L. T. 243.

A secretary who acts fraudulently or conspires with others is liable to prosecution.

Appointment of Officers and Agents generally.

Appointment of officers and agents.

An appointment of an officer or agent by a company is commonly made by instrument in writing pursuant to sect. 76 of the Act of 1908, and this course is a better one than placing reliance for the purpose, as is sometimes done, on the articles of association, for an appointment made by the articles is not, it seems, a contract in writing by the company at all, though it may be held to evidence the terms on which the company has agreed to employ the officer or agent. *Eley* v. *Positive Government*, §c. Co., 1 Lx. D. 88; *Rotherham Co.*, 25 C. D. 103; and see *supra*, pp. 41, 42. Moreover, special stipulations are usually required on such appointment, and they cannot be so conveniently inserted in the articles as in a formal agreement for employment.

Specific performance.

It is a cardinal doctrine of equity that specific performance of a contract for personal service will not be ordered. Stocker v. Brocklebank, 3 M. & G. 250; Mair v. Himalaya Tea Co., 1 Eq. 411. Service under coercion can never be satisfactory. But where there is a negative stipulation that an employee will not engage elsewhere, the Court will grant an injunction to restrain a breach thereof. Lumley v. Wagner, 1 D. M. & G. 604. To found this remedy by injunction, however, the company must put in the contract a clear negative covenant, or words amounting thereto. Whitwood Chemical Co. v. Hardman, (1391) 2 Ch. 416.

Dismissal.

In the absence of express provision—that is, unless he has consented to forego it—an employee is entitled to reasonable notice of dismissal, or to compensation in lieu thereof (*Green* v. Wright, 1 C. P. D. 592); but there are certain things—going to the root of the contract—for which an employce may be dismissed summarily and without notice; for instance, wilful disobedience to any lawful order of the company (*Shaw* v. Arnott, 2 Stark. 256; Amor v. Fearon, 9 A. & E. 548), misconduct (*Pearce* v. Foster, 17 Q. B. D. 536; Boston Deep Sea v. Ansell, 39 C. D. 339), incompetence or permanent disability (Hermer v. Cornelius, 5 C. B. (N. S.) 236), speculating on the Stock Exchange (Pearce v. Foster, 17 Q. B. D. 556), or even an act of forgetfulness by an employee, if it has, or is calculated to have, serious results, may justify dismissal without notico. Baster v. London and County Printing Works, (1899) 1 Q. B. 901.

APPOINTMENT OF OFFICERS GENERALLY.

Ch. XXVIII. An order for winding-up is equivalent to dismissal (Chapman's case, 1 Eq. 346), and so is the appointment by the Court of a receiver and manager in a debenture action (Reid v. Explosives, 19 Q. B. D. 264); and it has long been considered that a resolution for voluntary winding-up operated in like manner. See, however, Midland Counties

District Bank, (1905) 1 Ch. 357, adversely commented on in Company Precedents, Part I., p. 444. Where power is reserved to the company at its absolute discretion to determine the engagement at an earlier date than that fixed, proper uotiee of the company's intention to terminate must be given. African Association and Allen, (1910) 1 K. B. 396. An officer who accepts an incompatible office, by doing so prima facie vacates his original office.

Where an appointment is made for a fixed period, there may be an Winding-up. implied term on the company's part that it will not discontinue its business so as to disable itself from continuing the employment. Ogdens v. Nelson, (1905) A. C. 109; and compare with this Rhodes v. Forwood, 1 App. Cas. 256; Railway and Electric Co., 38 C. D. 597; Handyn v. Wood, (1891) 2 Q. B. 488; Turner v. Goldsmith, (1891) 1 Q. B. 544; Chapman's case (1866), 1 Eq. 346.

At all events, if a company by winding up disables itself from carrying out its bargain to continue an employee in its employment, it cauuot hold him to his share of the burgain not to compete in business with the company. Measures Bros., Limited v. Measures, (1910) 2 Ch.

An employee or ex-employee may generally be restrained by Trade secrets. injunction from revealing trade secrets. Merryweather v. Moore, (1892) 2 Ch. 518; Robb v. Greeu, (1895) 2 Q. B. 315.

Where a servant is wrongfully dismissed from his employment, the damages for dismissal eannot include compensation for the manner of the dismissul. So a majority of the Law Lords held in Addis v. Gramophoue Co., (1909) A. C. 488.

CHAPTER XXIX.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

Company's Power to Issue.

Express and implied powers.

WHETHER a company can make, accept, indorse, or issue bills of exchange, promissory notes, and other negotiable instruments depends on its objects; it cannot issue such instruments unless it has an express or implied power given to it by its memorandum. In the case of a trading company there is an implied power to accept and issue bills and notes as there is to borrow—business convenience requires it and there are other commercial concerns which may also have an implied power. See *Re Peruvian Rail. Co.* (1866), L. R. 2 Ch. 623. But usually the memorandum of association contains express power. The following are cases in which it has been held that companies had no such implied power:—*Bramah v. Roberts*, 3 Bing. N. C. 963 (a gas company); *Dickinson v. Valpy*, 10 B. & C. 128 (a mining company : *Steel v. Harmer*, 14 M. & W. 831 (a cemetery company); *Bateman v. Mid-Wales Rail. Co.* (1865), L. R. 1 C. P. 499 (a railway company).

Acceptance by Director in Name of Company.

How bills accepted, &c. Sect. 77 cf the Act enacts that a bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on bchalf of a company if made, accepted, or endorsed in the name or by or on behalf or on account of the company, by any person acting under its authority.

Thus, in order to accept a bill, all that is necessary is to authorize one of the directors, or the secretary, or someone else, to sign the acceptance on behalf of the company and then let the acceptance be in these terms :—

Accepted.

For the — Company, Limited, and by its authority: payable at, &c.

Countersigned : N. Secretary.

A. Directors.

o n

m

pe

di

ACCEPTANCE BY DIRECTOR IN NAME OF COMPANY. Ch. XXIX.

A bill may be :--

£. s. d. London, 1st March, 1878. Three months after date, pay to -----, or order, one hundred pounds, value received.

For the ---- Company, Limited. To Mr. -

A. | Directors.

A bill drawn on a company ought to be addressed to the company thus: "To the ---- Company, Limited," not "To the Directors of the - Company, Limited."

A promissory note may be :--

Three months after date, Tho --- Company, Limited, promises to pay to ----, or order, the sum of ----, value

An indorsement may bo :---Pay to ____, or order.

For, &c. [as above].

For, &c. [as above].

A cheque can be signed in tho same way.

A bill, note, eheque, or indorsement may be accepted, drawn, or mado on behalf of a company, by any person who has the necessary authority.

Under sect. 91 of the Bills of Exchange Act, 1882, it is provided : Acceptances "That in the case of a corporation where a bill, note, cheque, indorse- under seal. ment, &c., is required to be signed, it is sufficient if the document bo sealed with the corporate seal." Accordingly, if preferred, an acceptanco can be in this form :----

Accepted.

Payable at the ---- Bank, Limited.

As witness the common seal of the ---- Company, Limited. A promissory note runs in this form :-

The ---- Company, Limited, hereby promises to pay to - of --- on the --- day of --- next, the sum of £_

As witness the common seal of the said company this ----day of ----.

In relation to bills of oxchange and promissory notes the provisions Danger of of sect. 63 of the Act must be borne in mind, and accordingly the true unitting the name of the company must appear, and particularly the word "limited" "binited," must not be omitted. Any breach of this enactment involves heavy or not stating the name penalties, and, what is more, may impose personal liability on the correctly. directors. See the concluding words of the section. Atkin v. Wurdle

BILLS OF EXCHANGE AND PROMISSORY NOTES.

(1889), 61 L. T. 23, is an instance in which directors were held personally liable on a bill which did not state the name of a company correctly; and see *Penrose* v. *Martyr* (1858), E. B. & E. 490, in which a bill addressed to a company onitted the word "limited" in describing it. It was accepted by "J. M., Secretary to the company," and it was held that he was personally liable. See also *Nassau Steam Press* v. *Tyler*, 70 L. T. 376, where the directors described the company by a wrong name and were held personally liable. But where a promissory note was framed thus, "I, —, promise to pay, &c. to A. B. C., Limited," and was signed "A. B., Managing Director," it was held that A. B. was not personally liable. *Chapman* v. *Smethurst*, (1909 1 K. B. 927, C. A., reversing (1909) 1 K. B. 73. And directors were held not personally liable where, owing to the length of the rubber stamp employed, the word "limited" overlapped the paper and did not appear. *Dermatine Co.* v. *Ashworth*, 21 Times L. R. 510.

As to the importance of using the words " for " or " on account of "

the company, see supra, pp. 254, 255, and sect. 26 of the Bills of

Exchange Act, 1882. A note in the form "We, the directors of the A. Company, Limited, promise to pay," &c., signed by the chairman and three other directors, with the seal of the company in the corner, was held to bind the directors personally. Dutton v. Marsh, L. R. 6 Q. B.

"For" the company.

361.

CHAPTER XXX.

CONVEYANCES, ASSIGNMENTS, LEASES, RELEASES, DEEDS OF COVENANT, ETC.

WHEN the directors, in pursuance of an agreement for sale or other- Conveyances. wise, desire to convey or assign property of the company to a purchaser &c. by or some other person, and also when they desire to grant a lease of, or to mortgage, the company's property, the company must be made n party to the deed by its corporate name, -not the directors, -and the company, not the directors, must thereby grant, or assign, or demise, as the case may be, and enter into such covenants as may be necessary. Thus, a conveyance of land will be to the effect following :-

This Indenture made the ---- day of ---- between The - Company, Limited, of the one part, and A. B., of, &c., of the other part. Whereas, &c.

Now This Indenture Witnesseth that in pursuance of the said agreement, and in consideration of, &c., The said company, as beneficial owner, hereby grants unto the said A. B., all and singular [description of the land]: To hold the same unto and to the use of the said A. B. in fee simple. And the said company hereby covenants with the said A. B. that, &c.

As witness the common seal of the said company and the hand and seal of the said A. B. the day and year first above written.

In like manner where the directors have agreed to purchase or take Conveyances. In like manner where the arrectors have agreed to putchase of take &c. to on lease property, e.g., land, buildings, letters patent, concessions, &c., &c. to company ou behalf of the company, the property will be couveyed, assigued, or demised respectively to the company, not the directors, unless in some special case it is desired to vest the property in the directors as trustees for the company. Accordingly, the company will be party to the deed, and the conveyance, assignment, or lease will be expressed to be made "to the said company and its assigns," and the covenants will be "with the said company and its assigns."

Some persons in deeds use the expression "the said company, its successors and assigns ": but the word "successors " is unnecessary

company.

CONVEYANCES, ASSIGNMENTS, LEASES, ETC.

(Co. Litt. 94 b), and, accordingly, may be, and generally is, omitted with advantage.

The above rules apply not only to conveyances, &c., but to releases and other deeds. Such instruments should all be made in the name of the company.

Notice.

So, too, a notice by the company, *e.g.*, to dismiss an officer, will be given in the name of the company.

The ---- Company, Limited, hereby give you notice, &c.

In witness whereof the company hath caused two of its directors to affix their signatures hereto this — day of —.

For the company,

A. B. Directors.

Writ.

Again, in a writ of summons the company is named, as the party suing or being sued, thus :---

The —— Company, Limited, Plaintiffs. against A. B. and C. D., Defendants.

Petition.

The humble petition of the ---- Company, Limited, showeth as follows, &c.

CHAPTER XXXI.

BORROWING POWERS.

Most companies, like individuals, require to borrow from time to Where power time for the exigencies of their business. To entitle a company to to borrow exists. borrow it must have power to borrow given to it by its constitution. Whether a company under the Act has or has not such a power will depend on the objects specified in its memorandum of association. If these objects comprise, as they usually do, an express power to borrow, there is of course no question; but it is not necessary to find an express power. It is sufficient if there is an implied power. An implied power arises whenever the objects are such that a power to borrow may fairly be regarded as incidental to the company's objects. This is the case with a trading company. It has-it must have-as incidental to carrying on its business, un implied power to borrow (Bryon v. Metropolitan, Sc. Co., 3 De G. & J. 123; Ex parte City Bank, L. R. 3 Ch. 758; General Auction, &c. Co. v. Smith, (1891) 3 Ch. 432); but in regard to non-trading companies, there must be something in the memorandum or articles to show expressly or inferentially that the company is to have power to borrow; for a company, as we have seen already (p. 60), under the Act, is a statutory corporation with limited powers. In the case of The Queen v. Sir Charles Reed, 5 Q. B. D. 483. Cotton, L. J., observed : "It was said that every corporation, unless restricted by its act of incorporation, has the same power as an individual to enter into contracts, including that of borrowing money. In our opinion this contention cannot be maintained. The power of a corporation established for certain specific purposes must depend apon what those purposes are, and except so far as it has express power given to it, it will have such powers only as are necessary for the purpose of enabling it in a reasonable and proper way to dischargo the duties, or fulfil the purposes for which it was constituted. A trading corporation stands, as regards an implied power of borrowing, in a very different position." See also Baroness Wevlock v. River Dee, 10 App. Cas. 359. If a com- How power pany has no power by its constitution to borrow, it can now remedy may be the defect by applying to the Court under sect. 9 of the Companies (Consolidation) Act, 1908, to sanction its taking such a power, or obtained.

BORROWING POWERS.

extending it if its existing power is unduly limited. In re Reversionary Society, (1892) 1 Ch. 615; In re Empire Trust, 64 L. T. 221; see also P. Phipps' Northampton and Towcester Breweries, 1897; Midland Educational Co., 30 April, 1892; Union Rolling Stock Co., January, 1894.

Limit of Borrowing Powers.

How borrowing powers limited.

Sometimos, though rarely, the memorandum of association limits the borrowing powers to a specific sum, or to a sum not exceeding the paid-up capital; but in ninety-nine cases out of a hundred there is no limit in the memorandum, and there is nothing whatever in the Act itself to limit borrowing powers. If, therefore, the company has express or implied power to borrow, it may from time to time borrow as much as it wants, subject to any restrictions in its articles.

Bound by regulations. Usually the articles authorize the directors to exercise the company's borrowing powers. This authority may be given in two ways: either generally by a clause empowering the directors to exercise all such powers as may 'se exercised by the company, and are not by the articles or by statute xpressly directed or required to be exercised or done by the company in general meeting (see Clause 71 of Table A., or by a special clause empowering the directors to borrow or raise monoy; but it is not uncemmon to provide that the directors shall not borrow more than a specified sum without the sanction of a general meeting. In considering the powers of the directors to borrow; it is sufficient if the company has power, and the articles contain a clause like Clause 71 of Table A., vesting in the directors the general powers of the company. See Patent File Co., L. R. 6 Ch. 83; and Angle-Daubian Co., 20 Eq. 339, supra.

Security.

Pewer to give security. Where a company has power to borrow, it has, as incidental thereto, power to secure the repayment of borrowed money by mortgage or charge of all or any of its property, real or personal, present or future. Australian, &c. Co. v. Mounsey, 4 K. & J. 733; Bryon v. Metropolitan, &c. Co., supra; Patent File Co., L. R. 6 Ch. 83.

u n n

B

in

Power to Mortgage uncalled Capital.

Uncalled capital, mortgage of, At one time it was thought that this did not include a right to mortgage or charge uncalled capital (*Stanley's case*, 4 D. J. & S. 407); but in 1875, Jessel, M. R., decided that a mortgage of uncalled capital

MORTGAGING UNCALLED CAPITAL. Ch. XXXI.

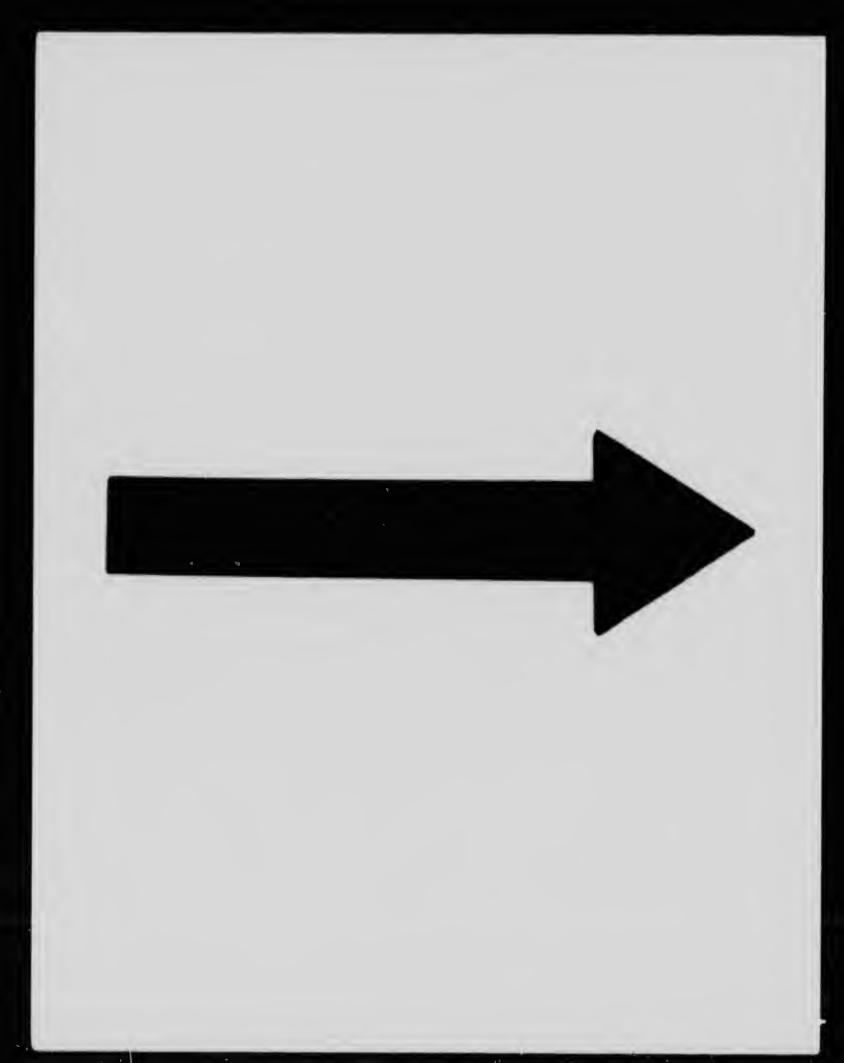
was allowable where the company's articles of association gave the power, and there was nothing in the memorandum of association to the contrary (Re Phanix Bessemer Co., 44 L. J. Ch. 683; 32 L. T. 854); and accordingly, in the first edition of the author's work on Company Precedents, published in 1877, and in all subsequent editions, the anthor, after referring to this decision, gave forms of debentures charging the company's undertaking and its uncalled capital for the time being. Doubts having been raised as to the validity of such a mortgage, the matter was considered in the Court of Appeal in Re Pyle Works, 44 Ch. D. 534, and it was held that Re Phanix Bessemer Co. was well decided. Subsequently the same question came before Validity the Judicial Committee of the Privy Conneil, and it was again held established. that if there is power in the memorandum, or power in the articles and nothing in the memorandum to the contrary, uncalled capital can be effectually charged. Newton v. The Debenture Holders of Anglo-Australian, Sc. Co., (1895) A. C. 244. But "if the memorandum, when anthorizing certain charges, has omitted to unthorize a charge on uncalled capital, the omission may imply a prohibition." Per Lord

And it is not essential that such a power to mortgage uncalled What words capital or future calls should be given in terms by the articles; some- allow. thing less may be sufficient; thus a power in the memorandum to Sach power mortgage the property and rights of the company is sufficient. Howard may also be v. Patent Irory Co., 38 Ch. D. 156. So, too, a power to mortgage the implied in the memocompany's "assets" appears to be sufficient (Page v. International, &c. randum) Co., 68 Law Times, 435); or to raise money "in various modes," or " in such other manner as the company may determine" (Jackson v. Rainford, (1896) 2 Ch. 340); or to raise money on "any security of the company." Newton v. Debenture Holders of Auglo-Australian, Se. Co., supra. But a power to borrow on the property of the company will not authorize a charge on the company's uncalled capital, for uncalled capital is only "property" potentially, that is to say, when called up (Irvine v. Union Bank of Australia, 2 App. Cas. 366); and even the words " property both present and future" are insufficient. Streatham Estates Co., (1897) 1 Ch. 15; In re Russian Spratts, Limited.

Can capital which, under sect. 58 or 59 of the Act of 1908 (sub- As to mortstituted for sect. 5 of the Act of 1879), is "not capable of being called gaging up except in the event and for the purposes of the company being capital. wound np," be charged by the company under a power in its memorandum or articles to charge its uncalled enpital?

The Court of Appeal has answered this question in the negative. Bartlett v. Mayfair Property Co., (1898) 2 Ch. 28. Lindley, L. J., in his judgment in that case, said it was plain that sect. 5 of the

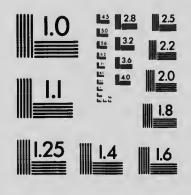
sofficient to

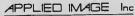


MICROCOPY RESOLUTION TEST CHART

1

(ANSI and ISO TEST CHART No. 2)





1653 East Main Street Rochester, New York 14609 USA (716) 482 - 0300 - Phone (716) 288 - 5989 - Fax

BORROWING POWERS.

Act (of 1879, now sect. 59) was framed, *inter alia*, "to preserve for the general creditors of the company" the reserve capital, and the learned judge considered that any mortgage of such reserve capital would defeat this object, and that to apply any part of the reserve capital to paying off such a mortgage "is not to apply the reserve capital for the purposes of the company being wound up within the true meaning of that expression as used in sect. 5, but to prevent such application."

But do the words of the Act justify the conclusion thus arrived at, for it is only from the words it has used that the intention of Parliament can be gathered. "I can only find the true intent and meaning of the Act from the Act itself." Per Lord Halsbury, L. C., Selomon v. Salomon § Co., (1897) A. C. 22,* infra, Chapter XXXVI. Now, looking to the words of the Act, it is to be observed that, whilst the company is prohibited from calling up the reserved capital, there are no words prohibiting a mortgage or charge thereof.

If it had been intended by the legislature to prohibit any mortgage or charge, it would have been easy to say so; but the Act observes a significant silence. Why, then, depart from the well-settled rule of construction (*Powell* v. *Main Colliery Co.*, (1900) A. C. 366), by reading into the enactment words not contained in it, and thus deprive a company of the power of utilizing its reserve capital in times of special pressure? Take, for instance, the case of a bank with reserve capital, and suppose some sudden financial pressure caused by a money crisis or panic. Is the bank deprived by the Act of the power to obtain temporarily, ou the security of its reserve capital, funds sufficient to enable it to tide over the crisis, or must it succumb simply because, with ample resources, it cannot at the critical moment make use of them? Such a conclusion would be most unfortunate.

Lindley, L. J., bases his judgment to a great extent on the fact that reserve capital, created upon the re-registration under the Act of an unlimited company, represents a liability which, before such re-registration, could not have been mortgaged, and from this he infers that. in the absence of express authority in the Act to mortgage, it cannot have been intended to remove this disability; but surely the answer is that the Act renders the reserve capital *part of the capital* of the company, though it is to remain uncalled; that uncalled capital is *primal facie* capable of being mortgaged; that this had been decided

• "We must construe the statute by what appears to have been the intention of the legislature. But we must ascertain that intention from the words of the statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute." Per Lord Brougham, L. C., Fordyce v. Bridge, 1 H. L. C. 4.

PROPERTY SITUATE ABROAD.

Ch. XXXI.

(see supra, p. 271) in 1875; that the legislature must be taken to have known the law, and to have intended the logical consequences of its enactment, save so far as a contrary intention is expressed; and that it must be taken, therefore, to have known that the reserve capital would prima facie be capable of being mortgaged, and yet it only thought fit to provide that it should not be called up. The learned judge referred to Heydon's case, 3 Co. 7; but the cardinal rule of interpretation laid down in that case is that the Court is to consider what remedy Parliament has appointed, and the decisions in Salomon v. Salomon & Co., (1897) A. C. 22, and Wright v. Horton, 12 App. Cas. 371, show clearly that it is not for the Court to supplement the

As to the argument that the payment of secured creditors is not one of "the purposes of the winding-up," this, it is submitted, is unsound. The payment off of secured creditors was clearly one of the purposes of a winding-up under the Act of 1862, and is not less clearly one of the purposes of a winding-up under the Act of 1908. A secured creditor can petition for a winding-up (Western of Canada Co., 17 Eq. 1; Moor v. Anglo-Italian Bank, 10 C. D. 689; Borough of Portsmouth Tramways, (1892) 2 Ch. 362), and can apply in a winding-up to have his security realized (Marine Mansions Co., 4 Eq. 601; Fowler v. Broads Patent, §c. Co., (1893) 1 Ch. 724), and he can prove in a winding-up, although, if the company be insolvent, he must, if he proves, either value his security or give it up. Lastly, there are the remarks of Lord Macnaghten in Newton v. Anglo-Australian, s.c. Co., (1895) A. C. 244, at p. 250. The decision in that case supports the view that to prohibit the calling up of capital does not impliedly prohibit a mortgage thereof. No doubt what the Court had to construe in the case last mentioned were articles of association, not an Act of Parliament; but the same principles of interpretation apply to both. Gray v. Pearson, 6 H. L. C. 106. Upon the whole it is submitted that there is nothing in the Act of 1879 sufficient to show that it was intended to negative the company's power to mortgage or

Property situate Abroad.

When the company desirous of borrowing holds property abroad, as is very commonly the case, it may have to consider how such property can best be made available as security. The leading principle to be borne in mind with regard to this is that immoveable property is governed by the lex loci rei sila, and therefore to perfect the title of the mortgagee or chargee upon property situate abroad the local law must be complied with. Unless it is, the title of the mortgagee or chargee may be intercepted by a local mortgage charge, lien, or execution. It would be impossible here to detail the various peculiar conditions of the

18

BORROWING POWERS.

lex loci in different countries : sometimes the local law does not permit land to be vested in aliens, or in a foreign corporation; sometimes it does not recognize trusts or a floating charge; sometimes it does not allow concessions to be charged or chattels to be mortgaged unless possession is at once taken by the mortgagee. In cases like these the company should perfect as far as possible the security it offers according to the requirements of the local law. If it is unable to do this it may yet through its articles give constructive notice to all persons dealing with it of the charge, and so disentitle them to ignore it. Even without complying with the formalities required by the local la a relation to mortgages or transfers, it is still competent to a company to create an effective churge on property belonging to it in a foreign country; for the Court, sitting in Chancery in virtue of its jurisdiction in personam, enforces equities in regard to foreign land where the mortgagor company is within the jurisdiction (Penn v. Lord Baltimore, 1 Ves. Sen. 144; W. & T. L. C., 7th ed., 755; Cranstown v. Johnston, 3 Ves. 170; Mercantile, Sc. Co. v. River Plate, Sc. Co., (1892) 2 Ch. 303; Westhake, 1. L. (1912). p. 230 ; Duder v. Amsterdamsch Trustees Kantoor, 1902 2 Ch. 132; British Sout? Africa Co. v. De Beers, (1910) 1 Ch. 354: (1910) 2 Ch. 502); and in determining whether there is an equity the Court regards English, not foreign, law, and if according to English law there is an equity, e.g., if for vuluable consideration a company agrees to give a charge on foreign property, the Court will enforce it, although the equity may be one not recognized by the lex loci rei sitæ (Ex parte Pollard, 4 Deac. 27; Coote v. Jecks, 13 Eq. 597; Hicks v. Powell, L. R. 4 Ch. 741; Ex parte Holthausen, L. R. 9 Ch. 722); but-and this is the danger of the situation-it will only enforce it subject to any rights which may in the meanwhile have been rightfully acquired under the local law of the foreign country. This is illustrated in Maudsley v. Maudsley, Sons and Field, (1900) 1 Ch. 602. There the debenture holders of an English company had a floating charge on its assets which included a French debt due to the company. A creditor of the company in France attached this debt by legal process in France, and the Court in England held that the title of the French creditor must prevail against a receiver for the debenture holders subsequently appointed. See further Company Precedents, Part III., pp. 74 et seq.

Mode of Borrowing.

How money raised.

A company which has power to borrow may borrow in such manner as it thinks fit. It can therefore raise money on a legal mortgage of any specific portions of its property, or by equitable mortgage, e.g., deposit of title deeds, or by a floating charge on the whole undertaking of the company (see further, *infra*, pp. 308 *et seq.*), or by bonds, or by promissory notes, or by debentures or debenture stock. See as to these, *infra*, p. 283 *et seq.* Overdrawing the company's banking

h

Mortgage of

foreign

property.

ULTRA VIRES BORROWING.

account is borrowing. Cunliffe, Brooks & Co. , Blackburn Benefit

Ultra vi s Borrowing.

Where a company has no forrowing power or where the memo- Borrowing randum of association fixes a limit to the borrowing powers of the when rives the company-a very rare thing-any borrowing in the one easo and any borrowing in excess of such limit in the other case is ultra vires the company, and securities givon for the same are inoperative. In such company. cases the contract is not merely voidable, it is absolutely void and incapable of ratification, even if every member of the company purports to ratify the same; nor can the company make good an altra vires borrowing by obtaining enlarged powers of borrowing

So, too, if the company has unlimited powers of borrowing, but the 17004 core directors, having only limited powers, exceed them. In such a case the the directors. borrowing, being ultra vires the directors, is irregular and the securities are inopcrative, unless the company is estopped from alleging their invalidity under the rule in Royal British Bank v Turquand, p. 44; or unless the shareholders clect, as they may do, to ratify the

directors' act. Irvine v. Union Bank of Australia, 2 App. Cas. 366. Where there is an ultra vires borrowing, the lender has no right of Ultra vires action in respect of the loan against the company itself, but he has borrowing rights of certain rights in respect of the moneys received by the company under lenders. the transaction. He has, that is to say, if he intervenes before the Subrogations. money has been spent, a right to follow his money and to obtain an injunction restraining the company from parting with it. And even if the company has spent it he may be entitled, if it has been applied in paying off just debts owing to creditors of the company, to stand in the place of and to be subrogated to the rights of such creditors as simple contract creditors (Blackburn Building Society v. Cunliffe Brooks, 22 Ch. D. 61; 9 App. Cas. 857; In re Cork and Youghal Rail. Co., L. R. 4 Ch. 748; In ve German Mining Co., 4 D. M. & G. 56; Baroness Wenlock v River Dee (No. 2), 19 Q. B. D. 155; Neath Building Society v. Luce, 43 C. D. 158; Re Harris Colculating Machine Co. (1914) 1 Ch. 920; and Sinclair v. Brough u, 1914) A. C 398); but not to any securities for their debts held by such creditors. Re Wrexham, Mold and Connah's Quay Rail. Co., (1899) 1 Ch. 440 (C. A.). As to the rights of a depositor in a bank, where the whole banking business was ultra vires, as against the shareholders, see Sinclair v. Brougham (Birkbeck Building Society), (1914) A. C. 398, where it was held that the surplus assets after payment of valid debts must he distributed pari passu among the depositors and the shareholders in proportion to the amounts paid or subscribed by them.

18 (2)

BORROWING POWERS.

Where several companies—each of which had power to borrow but no power to borrow jointly—borrowed jointly on debentures, each company was held chargeable for what it received. Johnston Foreign Patents, (1904) 2 Ch. 234.

Nor is this all. The lender of ultra vires borrowed money has in some cases a right against the directors of the borrowing company personally for breach by them of their implied warranty of authority (Firbank v. Humphreys, .8 Q. B. D. 54; Weeks v. Propert (1873, L. R. 8 C. P. 427; Chapleo v. Brunswick, &c. Society, 6 Q. B. D. 696); and it makes no difference as to the liability of the directors in such a case that they did not know that they were exceeding their powers. Weeks v. Propert, supra.

Constructive Notice of Borrowing Limit.

Constructive notice. As to how far a person lending to a company is bound to see that the internal regulations as to borrowing have been observed, see Royal British Bank v. Turquand, 5 El. & Bl. 248; 6 El. & Bl. 327; Chapleo v. Brunswick Building Society, 6 Q. B. D. 715; Howard v. Patent Ivory Co. (1888), 38 C. D. 156; Irvine v. Union Bank of Australia, 2 App. Cas. 366; and Bryant v. La Banque du Peuple, (1893 A. C. 170, and supra, p. 44.

But the benefit of the rule is reserved for persons dealing with a company in honest ignorance of the irregularity. A lender with notice of the irregularity cannot claim the protection of the rule. Thus where directors had only power to borrow in excess of 1,000/. with the assent of a general meeting, and without having obtained such assent had issued debentures for 2,5001. to themselves in respect of money lent to the company, it was held that, as they must be taken to have known that the internal regulations had not been complied with, the debentures could only stand good for 1,0001. Howard Patent lvory Co., 38 C. D. 156; Tyne Mutual v. Brown, 74 I. T. 283. And the mere fact that the directors propose to do something in excess of their powers under the articles will not entitle a person dealing with them to assume that their powers have been extended by a special resolution, for such a resolution requires registration. He must take the articles to be such as appear at the office of the Registrar of Companies to be in force. Irvine v. Union Bank of Australia, 2 App. Cas. 366.

Registration of Mortgages and Charges.

This is dealt with by two sections, sect. 100 and sect. 93.

Registration under Sect. 100.

Substituted for sect. 43 of the Act of 1862.

Sect. 100.

This section requires every limited company to keep a register of all mortgages and charges specifically affecting property of the company, and enter in it a short description of the property mortgaged

276

Personal

directors.

liability of

Ch. XXXI.

or charged, the amount of the mortgage or charge, and the names of the persons entitled to it.

Non-registration under this section does not affect the validity of the charge, even though the person entitled to it is a debenture holder. The sole penalty is the statutory fine of 50%, and that only when the omission to register is wilful. Re General South American Co., 2 C. D. 337; Wright v. Horton (1887), 12 App. Cas. 371.

The defect of sect. 43 was that under it inspection of the register was only given to any "credite, or member of the company," not to a person who might contemplate dealing with the company and would naturally wish to know the financial position of the company. But sect. 101 of the Act of 1908 now opens the register to the public on payment of a fee not exceeding 1s., and the section below mentioned ensures a still greater measure of disclosure.

Registration under Sect. 93 of the Companies Act, 1908.

Sect. 93 of the Act (which takes the place of sect. 14 of the Act of 1900 and sect. 10 of the Act of 1907) provides for the registration in a public register at Somerset House of a company's mortgages and charges, and avoids, as agaiust creditors and liquidators, mortgages and charges not duly registered within twenty-one days after their creation. The section runs as follows :----

93.-(1) Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England er Ireland and being either-

- (a) a mortgage or charge for the purpose of securing any issue of debentures [or debenture stock]; or
- (b) a mortgage or charge on uncalled share capital of the company; or (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
- (d) a mortgage or charge on any land, wherever situate, or any interest therein; or
- (e) a mortgage or charge on any book debts of the company; or

(f) a floating charge on the undertaking or property of the

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under

BORROWING POWERS.

this section the money secured thereby shall immediately become payable:

Provided that-

- (i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twentyone days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar ; and
- (ii) where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and
- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and
- (iv) the holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect ' every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charge, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall be sufficient if there are delivered to or received by

REGISTRATION UNDER SECT. 93.

the registrar within twenty-one days after the excention of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series the following particulars :---

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined ; and
- a general description of the property charged; and (1

(d) the names of the trustees, if any, for the debenture holders; ogether with the deed containing the charges or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under t¹ is section shall include particulars as to the amount or rate per cent of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section is to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by ... a mpany, and the

payment of which is secured by the mortgage or charge so registered : (See Yolland Husson and Birkett, (1908 | 1 Ch. 152, and Canard Steamship Co., (1908) 2 Ch. 564.)

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

Ch. XXXI.

BORROWING POWERS.

(7) It shall be the duty of the con., any to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under his section, but registration of any such mortgage or che ge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or chargo requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

With reference to this section the following observations occur-

- A mortgage or charge is "created" when the deed or agreement is executed or entered into, even though the advance is made subsequently. Watson & Co. v. Spiral Globe Co., (1902) 2 Ch. 209; Re Harrogate Estates, Ltd., (1903) 1 Ch. 498; Appleyard v. New London and Suburban Co., (1908) 1 Ch. 621; Esberger & Son, Ltd. v. Capital and Counties Bank, (1913) 2 Ch. 366.
- (2) Paragraphs (d) and (e) of sub-sect. (1) are new: they were first introduced in sect. 10 of the Act of 1907.
- (3) The word "charge" includes an equitable charge whether created or evidenced by deed or instrument in writing or created by oral communication, express or implied, e.g., by deposit of title deeds or by an agreement to deposit.
- (4) The mortgage or charge is void as against the hquidator and exeditors only. It is good as against the company, and the company may give a subsequent valid mortgage to secure the same debt. But if a subsequent creditor, even with a lice of the first charge, takes a registered charge before the first charge is registered, he obtains priority. Re Monolithic Co., (1915) 1 Ch. 643.
- (5) "Book debt." are debts entered, or commonly entered, in books. See Shipley v. Marshall, 14 C. B. N. S. 566; Tailby v. Official Receiver, 13 App. Cas. 523; Dawson v. Isle, (1906) 1 Ch. 633; Law Car, &c. Corporation, W. N. (1911) 91. Any assignment of a book debt is within the section if it is intended to be a security for a debt. Saunder-

REGISTRATION UNDER SECT. 93. Ch. XXXI.

son & Co. v. C? rk (1912), 29 T. L. R. 579; and see Ladenburg & Co. v. Goodwin, Ferreira & Co., (1912) 3 K. B 275.

(6) As to sub-sect. (3), this provides for an alternative mode of registration (Harrogate Estates Co., (1903) 1 Ch. 498), and it is applicable both to debentures and debenture stock. Cunard Steamship Co. v. Hopwood, (1908) 2 Ch. 564.

(7) A mortgage of substituted property reade pursuant to the pro-(Cornbrook v. Law Debenture Corporation, (1904) 1 Ch. 103), unless the company is not a party (Bristol United Breweries v. Abbott, (1908) 1 Ch. 279), or unless the debeutures or debenture stock have been registered under sub-sect. (3). See Cnnard Steamship Co. v. Hopwood, (1908) 2 Ch. 564. As to a separate charge on profits, securing . bonus to debenture holders, see Hoare v. British Columbia Association, (1912) W. N. 235; 107 L. T. 602.

The section only applies to the specified classes of mortgages and charges. A simple mortgage or charge not for the purpose of securing an issue of debentures or debenture stock, and not within paragraphs (b), (c), (d) or (e) of sub-sect. 1, is not within the section : e.g., a mortgage or charge on a concession, patent, or copyright, or a mortgage by deposit of dock warrants, bills of exchange, or other mercantile

As to what is a bill of s. le, see s. 4 of the Bills of Sale Act, 1878. A pledge of goods accompanied by delivery of possession to the pledgee is not a bill of sule (Er parte Hubbard, (1896) 17 Q. B. D. 690) ner is an oral agreement give agreement followed by possession (Charlesworth v. Mills, 1892) 231: Ramsay v. Margrett, (1894) 2 Q. B. 18); nor prima facie as aventories of goods with receipt attached (Ramsay v. Margrett supro ; nor sale and hiring agreements.

As to paragraph (i), "floating -oo inf-a, pp. 308 et seq. If the security is under the security is und matures at once. See sect. 93 (1).

The section does not apply to a corge given for the purpose of ootaining any loan guaranted by the to rament in pursuance of any war obligation. 5 Geo. V. c. 11.

By sect. 96 of the Act provision is 1 for re-fificati n of the register by a Judge of the High Court ing satisfied that the omission to register a montgage or charge with time required by the Act, or that the omission or misstatemer respect to such mortgage or charge "was ac-

North Central Waggon Co. v. Mer ester Rail Co., 13 App. Cas. 554. See further Company Precedent - T 1.p. 616 et seq.

company to repay the money lent is as an unsecured limbility, and

pur ular with in inad-

BORR VING POWERS.

vortence or to some other sufficient cause, or is not of a nature to projudice the position of creditors or shureholders of the company or that, on other grounds, it is just and equitable to grant relief " may extend the time for registration ϵ a such terms and conditions as seem to the judge just and expedient. The words here, "necidental or due to inadvertence," have a very wide meaning. Re Jackson y Co., (1899) 1 Ch. 348. In exercising this discretionary power of granting relief on terms, it has become the practice to insert in the order the following words:—"This order to be without prejudice to the rights of parties nequired prior to the time when such debentures shall be actually registered." Re Jophin Brewery Co. (1902) 1 Ch. 79; Re Spiral Co., (1902) 1 Ch. 396; Re Abrahams & Soux, (1902) 1 Ch. 055; Ehrmann Bros., (1906) 2 Ch. 697; Cordiff Wackmen's Cottage Co., (1906) 2 Ch. 627.

The words probably go forther than they should. The proviso, as the Court of Appeal explained in Re Ehrmanon Bros., Ltd. (supra), is merely designed to protect rights acquired against the property of the company in the interval between the expiration of the twenty-one days for registering and the extended time allowed by the order. It does not protect the existing unsecured creditors who have not obtained any security or charge upon the property subject to the debentures. See I. C. Johnson & Co., (1902) 2 Ch. 101 (C. A.), and pp. 199-201 of Pa * III. of Company Precedents. It does prote t a secured creditor whose security is registered between the expiratif the twenty-one days and the extended time allowed by the order. on though he has notice of the prior unregistered charge. Re Monolithic Co., 1915. 1 Ch. 643. Where an order extending the time is made, and these words appear in it, and before actual registration a winding-up commences, the mortgage or charge, if subsequently registered, is not effective as against the general body of the creditors. So held by Buckley, J., in Anglo-Continental Carpet Co., (1903) 1 Ch. 914.

An order for extension will not be made after a winding-up commences. Re Abrahams & Sons, supra.

Sometimes, in cases where an extension of time is not obtainable, the company, in fied increased, may call in and cancel the debentures and issue new debentures, to be registered in due course. Bower v. Defries & Co., (1904) 1 Ch. 37.

Sect. 97 provides for entering satisfaction, sect. 98 for an index to the register, and sect. 99 for penalties for default in complying with the Act as to registration.

The Court has power to extend the time even where the default was made before 1st January, 1909. Sect. 38 of the Interpretation Act. 1889; *Herts and Essex Waterworks Co.*, (1909) W. N. 48; *Re Lush & Co.*, (1913) W. N. 39; 108 L. T. 450.

CHAPTER XXXII.

DEBENTURES AND DEBENTURE STOCK.

Meaning of "Debenture."

The term debenture is not a technical term. "I cannot find," said What is a Chitty, J., in Lery v. Abercorris Co. (1888, 37 Ch. D. 264, "any detention" precise legal definition of the tern. It is not either in law or commerce a strictly technical term, or what is called a term of art." It is, however, a word which h. een in use for many centuries, and is mentioned in the Partiament 2's us early as the time of Henry V., 1414. The term is used also in the Paston Letters, 1455, and in 12 & 13 Edward IV., 1472, provision was made in regard to debentures under the seal of the staple of Culais. From thenceforth, the term appears from time to time in the statutes. It is a very wide term, but it is now generally used to signify a security for money, called on the face of it a debenture, and providing for the payment of a specified sum-say 1007 .- at a fixed date, with interest meantime half-yearly. It usually gives a charge by way of scenrity, and in most cases is expressed to be one of a series of like debentures. But the term, as used in common parlance, is of an extremely elasticharacter: for (a) it is sometimes used, both by lawyers and commercial men, to describe an instrument which is not called, on the face of it, a debenture, e.g., a railway mortgage or bond. See Gardner v. London, Chatham and Dover Rail., 2 Ch. 201. (b) It is used of an instrument which is not one of a spries. Levy v. Abercorris Co., supra. " You may have a single debenture issued to one man." Robson v. Smith. (1895) 2 Ch. 118. (c) It is not contined to instruments issued by companies; clubs sometimes issue debentures, and, occasionally, individuals, e.g., the Tieldborne Bonds. (d) It is not the less a debenture because it is not under seal. British India, &c. Co. v. Commissioners, 7 Q. B. D. 165, in which case a debenture was merely signed by two directors. (e) Or because it does not provide for payment at any fixed date, but only in the event of winding-up, or in some contingency. (f) Or because there is no personal liability on the company to pay, but the security is to be as against the property of the company only. (g) Or because it does not contain any charge. The term

debenture is used in several Acts of Parliament in addition to the Companies Acts, *e.g.*, the Stamp Acts. 1870 and 1891, and the Bills of Sale Act, 1882.

Distinguished from "Debenture Stock."

What is debenture stock?

Classes of

debentures.

Debenture stock is a much more modern term than debenture. In substance the holders of debenture stock and the holders of debentures generally stand very much in the same position. The term debenture stock, in common parlance, is used to describe a debt owing by the company, payable at a fixed date, or in the event of winding-up, or some other contingency, and in the meantime carrying interest at a specified rate, and secured usually by a trust deed on the property of the company. The debt is generally made payable to trustees, and the beneficial interest thereof is represented by certificates held by the debenture stock holders. Sect. 92 makes provision for the prompt issue of the certificates. The difference between debentures and debenture stock-apart from the fractional sub-divisibility of the latter-is, that "a debenture" is the description of an instrument, whereas "debenture stock" is the description of a debt or sum secured by an instrument. It is, to use Lord Lindley's words, "borrowed capital consolidated into one mass for the sake of convenience."

Classes of Debentures.

The principal kinds of debentures are the following :--

- I. Debentures payable to registered holder.
- II. Debentures payable to bearer simply.
- 111. Debentures payable to registered holder, but with interest coupons payable to bearer.
- IV. Debentures payable to bearer, but with power for bearer to have them placed on a register and to have them at any time withdrawn therefrom.

In each case the debentures are usually secured by some mortgage or charge on property of the company, whether by trust deed, or in the debentures themselves, or in both ways.

A debenture, though one document, consists usually of two parts, (1) the body of the instrument containing the bond or covenant and charge, and (2) the indorsed conditions.

DEBENTURES TO REGISTERED HOLDER. Ch. XXXII.

Class I.-Debentures to Registered Holder.

The object of this form of debeuture is to meet the requirements of I. Debenthe money market, and to facilitate and simplify dealings. It may be tures to register convenient to go through the various provisious of the usual forms, holder. registered and explain briefly their object and operation.

The -- Company, Limited.

Form of.

Issue of 100,0001. of debentures of 1001. each, carrying interest at 4 per cent. per annum.

DEBENTURE.

1. The --- Company, Limited (hereinafter called "the Payment of company"), will, on the ---- day of ----, or on such earlier day principal. as the principal moneys hereby secured become payable in accordance with the conditions indorsed hereon, pay to A. B. of or other the registered holder for the time being hereof, the sum of [100]l.

The registered debenture has many advantages :----

No. -

1. The title of the debenture holder is recorded in the books of the company, and is consequently not exposed to the risks of loss or damage incident to a debenture to bearer passing from hand to hand.

2. The registered holder is the only person recognized by the company as entitled to the debentures. This simplifies dealings with

3. The company having the names and addresses of the registered holders can more easily communicate with them where it wishes to do so for purposes of redemption, compromise, or reconstruction.

4. The registered debenture is a species of security well understood on Stock Exchanges and favoured by investors.

It will be observed that clause 1 does not express the consideration. Consideration. In the case of a deed there is no need to do so; but if the instrument be under hand only, then the consideration should be stated, and even in the case of a debenture by deed, there is, perhaps, some advantage in showing, on the face of it, that it was, in fact, issued for valuable consideration. In such a case, where it is desired to be more explicit, the clause can begin with the words "For valuable consideration already received," or, if desired, "In consideration of the sum of \pounds —already received."

The clause uses the term "will pay." This is a perfectly simple, "Will pay." intelligible and effective expression, and it is more suitable for an ordinary business document than the expression "covenants." there is no magic in the term, and occasionally the words "undertakes." But "promises," "covenants," or "binds itself," are substituted. Ex parte City Bank (1867), L. R. 3 Ch. 758; Norton v. Florence Land Co. (1877), 7 Ch. D. 332.

Time for payment. A debenture usually fixes a date for payment as above, e.g., at the end of five, ten, twenty, or thirty years; but sometimes it is framed as a perpetual debenture, and in that case the clause runs "will, as and when the principal moneys hereby secured become payable in accordance, &c.," the intention being that the principal shall only become payable in the events specified in the conditions 8 and 9, *infra*, pp. 293, 294.

Occasionally, where there is a temporary loan on debentures, they are made payable on demand, and then the clause runs "will, on demand in writing," or "will, at the expiration of seven days after demand in writing, &c." Such debentures are often issued to a company's bankers as security for an overdraft.

The object of making the debenture payable to the registered holder is to simplify the title, and enable the company to look to some specified person as the holder to whom it can make payments, and whose receipt will be a sufficient discharge to the company.

In the absence of provisions as to register and ancillary clauses, the company would have to take notice of any number of assignments, charges, and claims that might he brought to its notice.

Payment of interest.

Why payment to

registered

bolder?

Carrency of interest.

pay to such registered holder interest thereon at the rate of ______ per cent. per annum by half-yearly payments on the _____ day of _____ and _____ day of _____ in each year, the first of such half-yearly payments to be made on the _____ day of _____ next. A debenture almost always provides for payment of interest as in

2. The company will, during the continuance of this security,

clause 2; but sometimes the interest is made payahle quarterly. Very commonly the expression used is "will in the meantime pay," but there is some ambiguity in this expression. It may mean "until the date fixed for payment" or "until the date of actual payment." The latter construction would seem to accord best with the intention; and, as the words are ambiguous, should he preferred. Should, however, the former construction prevail, subsequent interest would only be recoverable by way of damages. Goodchap v. Roberts (1880), 14 Ch. D. 49; Cook v. Fowler (1874), L. R. 7 H. L. 27; Gordillo v. Weguelin, 5 C. D. 303.

How judgment affects interest. Moreover, if the holder should obtain judgment on the debenture, the interest would thenceforth cease to be payable under the debenture, for the contract would merge in the judgment, which carries interest at 4 per cent. only. *Re European*, §rc. Co. (1876), 4 Ch. D. 33; *Ex parte Fewings* (1884), 25 Ch. D. 338. By using, however, the words "during the continuance of this security" both these difficulties are avoided. Sometimes interest is made payable only out of profits. See Company Precedents, Part III., p. 309. *Heslop* \mathbf{v} . Paraguay Central, 54 S. J. 234.

DEBENTURES TO REGISTERED HOLDER. Ch. XXXII.

See Popple v. Sylvester (1883), 22 C. D. 98, and the observations thereon in the last-mentioned case.

As to payment by uncashed cheque, see Defries § Sons, (1909) 2 Ch. 423.

> 3. The company hereby charges with such payments its under- Charge. taking, and all its property, present and future [including its

A mortgage debenture generally contains a charge as in clause 3. Charge in Sometimes the charge, however, is effected by a trust deed (see trust deed. pp. 313, 314); but even where there is a true deed, a general charge as above is very commonly inserted in the debenture. The word "charge" creates a good equitable mortgage; but equity is not particular as to the terms used, and the word "bind" or "mortgage" is equally effective. So, too, if it is stated that the property shall stand as a security, or shall be a security for payment, &c., that is sufficient. All that equity requires is a sufficient indication of the intention to charge. In re Strand Music Hall Co., 3 D. J. & S. 147; In re New Durham Salt Co. (1891), 2 Meg. C. R. 360.

As to the operation of a charge on the "nudertaking," see infra, Floating p. 308 et seq. A general charge as given in clause 3 is, by the Courts, security. treated as a floating security, as to which see infra, pp. 308 et seq.

Sometimes, instead of a charge in general words as above, the Charge on debenture charges some specific property, e.g., the company's brewery specific at ---- or the company's patents, &c. Or the charge may be on some property. portion only of the property, e.g., the book debts, present and future. of the company.

As to the words "including the uncalled capital." These words are Uncalled very commonly inserted where the company has power to mortgage its ^{capital}. uncalled capital. See supra, p. 270. The words "property, both present and future," do not cover the uncalled capital. Johnson v. Russian Spratts, (1898) 2 Ch. 149.

The inclusion of uncalled capital adds additional security, and, at the same time, does not prevent the company from calling up and dealing with its capital as and when required.

4. This debenture is issued subject to, and with the benefit of, Reference to the conditions indorsed hereon, which are to be deemed part of it. indorsed conditions.

The effect of these words in clause 4 is to import the indorsed con- Are part of ditions into the contract, and make them part of it. The rule "verba debenture. relata inesse videntur " applies. See Broom's Legal Maxims.

Sometimes the above clause is omitted and the conditions are set out on the face of the debenture. This is an alteration merely in form, not in substance. As to the conditions themselves, see infra, p. 288.

Sealing.

Given under the common seal of the company this — day of —.

The common seal of the above-named company was affixed hereto in the (1.8.) presence of —.

Not always necessary.

A debenture is almost always under seal, but it need not be so; it may be under hand, and occasionally is. See *British India*, §c. Co. v. Commissioners, 7 Q. B. D. 165, where the debentures were merely signed by two directors on behalf of the company.

If the articles contain any special provisions as to affixing the seal, they must, of course, be observed. See *supra*, p. 257.

Indorsed Conditions.

On the back a series of conditions are indorsed as follows :---

" Pari passa" clause.

The conditions within referred to.

1. This debenture is one of a series of 1,000 debentures, each for securing the principal sum of 100l. issued, or about to be issued, by the company. The debentures of the said series are all to rank pari passu in point of charge without any preference or priority one over another, and such charge, save as regards the hereditaments comprised in the indenture below mentioned, is to be a floating security [but so that the company is not to be at liberty to create any mortgage or charge on its freehold and leasehold land in priority to the said debentures].

Where the debenture is one of a series, the first condition usually gives particulars as to the series, as above.

INDORSED CONDITIONS.

y

īŧ

e

Ch. XXXII.

the debenture paid off alive, whereas under the section the company must, in order to be able to re-issue, "purport" to keep alive. See further as to priorities, infra, p. 319.

The condition, however, is not in all respects as efficacious as the section, for the condition only operates as between the company and the holders of debentures of the series, whereas the section operates as between the company and the holders of the debentures of the series and the subsequent incumbrancers. Thus, if the company pays off a debenture without purporting to keep it alive, and afterwards, under the condition, issues a debenture as one of the scries, that debenture will not obtain priority over the then subsequent incumbrancers.

The object of the above pari passu provision is to place all the Why express debentures on the same level as to security; so that, if the security is to be enforced, whatever is realized from it shall be divided amongst them rateably, in propertion to the amounts paid up by each debenture (Re Smelting Corporation, (1915) 1 Ch. 472); and if more interest is in arrear on some of the debentures than on others, in proportion to the total amount due to each debenture holder for capital and interest. Midland Express, Ltd., (1914) 1 Ch. 41. But for some such provision the debentures would rank in point of security according to their dates of issue; and, accordingly, the first issued would rank as a first charge, and the next issued as a second charge, and so on. New Clydach. Sc. Co., 6 Eq. 514. This would be entirely destructive of the marketable character of the security. Where there is a pari passu clause, a debenture holder, who seeks to enforce the security, must sue on behalf of himself and the other debenture holders. ef a pari passu clause does not, however, prevent a debenture holder, The presenco whose debt is due, from getting judgment and obtaining payment from the company if he can, and so, too, if, without judgment, he can obtain payment from the company, he cannot be called on to hand back what he has received for the benefit of the other debenture

[Where a holder of debentures of a series, containing a pari passu Effect as to clause, owes money to the company, he cannot, on a distribution of the set off. proceeds of sale of the company's assets, set off his debt against the amount due to him on his debentures. The principle to be applied is that where a person entitled to participate in a fund (viz., the proceeds of sale) is also bound to make a contribution (viz., his debt) in aid of that fund, he cannot be allowed to participate unless and until he has fulfilled his duty to contribute. Cherry v. Boultbee, 4 My. & Cr. 442; Re Brown & Gregory, Ltd., (1904) 1 Ch. 627; and cf. Peruvian Rail.

"Such charge is to be a floating security." See further as to this, Floating infra, p. 308. It is, and has been for many years, usual to state charge.

provision?

expressly that the charge is a "floating security," although the presence of the word "undertaking" in the debentures imports this. And even where the word "undertaking" is not used, the fact that the charge is a general charge on all the property of the company as a going concern is regarded by the Court as a sufficient indication of intention that the charge is to be a floating security morely; for, otherwise, the business of the company would be paralysed. *Re Florence Land Co.* (1878), 10 Ch. D. 530; *Re Colonial Trusts* (1880). 15 Ch. D. 473.

In the above form the floating character of the charge is largely qualified; for one of the most important features of such a charge is that it leaves the company at liberty to create specific mortgages or charges ranking in priority thereto. The condition, as above framed, restricts this power. Occasionally the prohibition is not confined to the freehold and leasehold iand, but is general. Such a general prohibition, however, is often found extremely inconvenient.

The prohibition, though good, is not absolutely protective; for, if the company disregarding it creates a legal mortgage or charge on the property in favour of a person who takes for value without notice of the character of the debenture holders' charge, such person, in accordance with the ordinary rules, obtains priority by virtue of the legal estate. See *English and Scottish*, §c. Trust v. Brunton, (1892) 2 Q. B. (C. A.) 700. And it has been held that an equitable mortgagee who obtains the title deeds and takes without notice of the debentures obtains priority. Re Castell § Brown, Limited. (1898) 1 Ch. 315. See also, as to a solicitor's lien, Brunton v. Electrical Engineering Co., (1892) 1 Ch. 434. Where the clause expressly allows the company to uortgage its property, this does not authorise the company to create a further floating charge pari pass" with the existing charge. Re Beniamin Cope § Sons, (1914) 1 Ch. 800.

Register to be kept. 2. A register of the debentures will be kept at the company's registered office wherein there will be entered the names, addresses and descriptions of the registered holders and particulars of the debentures held by them respectively, and such register will at all reasonable times during business hours be open to the inspection of the registered holder hereof, and his legal personal representatives and any person authorized in writing by him or them.

Shows title

The provision as to keeping a register is to simplify the title, and afford both to the company and the debenture holder, and those who may deal with the latter, a simple mode of ascertaining who is for the time being the proprietor of the debenture. Coupled with the next condition it has greatly facilitated dealings with debentures.

Effect of, as to later specific charges.

Later legal mortgage.

INDORSED CONDITIONS.

Ch. XXXII.

3. [Save as in these conditions provided] the registered holder, Registered or his legal personal representatives, will be regarded as exclusively entitled to the benefit of this debenture, and all persons may act accordingly ; and the company shall not be bound to enter in the register notice of any trust, or, save as herein provided, and except as by some Court of competent jurisdiction ordered, to recognize any trust or equity affecting the title to the debentures or the moneys thereby secured.

The object of condition 3 is to fortify the titlo of the registered holder How such by making the company agree to recognize him exclusively. There is clause operates. nothing illegal in such a provision; the latter part of the condition is intended to relieve the company, as far as is practicablo, from the obligation to take notico of trusts or equities. Such a provision cannot. of course, reliovo the company from its duty to recognize an order of the Court (Binney v. Ince Hall, §c. Co., 35 L. J. Ch. 363); but where there is snch a conditiou, it is apprehended that a mero notice of an equity may be disregarded ; for one who claims under a debenture must be bound by the terms of the contract, and cannot be allowed both to approbate and reprobate. See Société Générale v. Walker, 11 App. Cas. 20; New London and Brazilian Bank v. Brocklebank (1882), 21 Ch. D. 302; De Mattos v. Gibson, 4 De G. & J. 276; Werderman v. Société Générale d'Electricité (1881), 19 Ch. D. 246; Borland's Trustee v. Steel Brothers & Co., (1901) 1 Ch. 279; and supra, p. 156. In Bradford Banking Co. v. Briggs, 12 App. Cas. 29, there was no clause excluding the recognition of equities.

4. Every transfer of this debenture must be in writing under Transfer. the hand of the registered holder or his legal personal representatives. The transfer must be delivered at the registered office of the company with a fee of 2s. 6d., and such evidence of title or identity as the company may reasonably require, and thereupon [if this debenture remains registered in the name of the transferor the transferee will be recognized as having become entitled to the benefit of this debenture free from any equities, set-off or cross-claims which, but for this provision, the company would be entitled to set up against the transferor or transferee, and] the transfer will be registered and a note of such registration will be indorsed hereon. The company shall be entitled to retain the transfer.

The principal object of this clause also is to simplify the title to the Working of debenture by providing for the delivery of every instrument of clause. transfer to the company, so that if any question as to the title arises the company will have the requisite documents in its possession. In

19(2)

holder only recognized.

the absence of some such provision, the company would only receive a notice of the transfer which might or might not be authentic. In practice the condition is found extremely useful. The clause suys nothing about a debenture holder's trustee in bankruptcy. He has power to transfer under sect. 48 of the Bankruptcy Act, 1914.

A company is bound to exercise considerable care in regard to the registration of transfers, for if it registers a forged transfer it may incur serious responsibility. See *supra*, p. 143. The company (even in liquidation) is bound by the conditions. Farmer v. Goy § Co., (1900) 2 Ch. 149. (Cozens-Hardy, J.)

Joint holders.

5. In the cose of joint registered holders, the principal moneys ond interest hereby secured shalt be deemed to be owing to them on a joint account.

Condition 5 is commonly inserted, but having regard to sect. 61 of the Conveyancing Act, 1881, it is probably needless.

Closing of register 6. No transfer shall be registered during the seven days immediately preceding the day by this debenture fixed for payment of interest.

Object of.

Condition 6 is inserted in order to prevent the great inconvenience that may arise if thensfers come in just when the half-year's interest is being calculated. Most con pauces like to send out the interest on the day it becomes due, and it is practically impossible to do this if a number of transfers come in during the calculations.

Exclusion of equities. 7. The principal moneys and interest hereby secured will be paid [and such moneys are to be transferable free from and] without regard to any equities between the company and the original or any intermediate holder hereof, or any set-off or cross-claims, and the receipt of the registered holder for such principal moneys and interest shall be a good discharge to the company for the same.

Law as to equities.

Condition 7 is one of the most important conditions in the debenture. Primá facie a debenture, being a chose in action, is only assignable subject to all equities between the company and the original subscribers. Mangles v. Diron, 3 H. L. C. 702; Ryall v. Rowles (1748), 1 Ves. 348: Judicature Act, 1873, sect. 25 (6). Thus, in Athenaum, §c. Soc. v. Pooley (1858), 3 De G. & J. 294, debentures had been issued to A. as part of the consideration for property sold by him to the company. The price was excessive, and A. had bribed the company's manager who arranged the sale. A. afterwards transferred the debentures to B., who sold in the market to C., who bought without any notice of the

INDORSED CONDITIONS.

Ch. XXXII.

circumstances relating to their issue. C subsequently sought to enforce them as against the company. Held, that though C. was a prechaser bond fide without notice, yet being only a purchaser of a chose in action he could stand in no better position than A., and therefore that his claim failed. "Mr. ---- appears to have bought these debentures innocently, but very imprudently, in the belief, probably, that they were good securities, and without notice of anything to the contrary. Unfortunately, however, he bought what the English law calls a chose in action, and it is too clearly settled to admit of question or argument that a person baying a chose in action, which can only be put in sait in the name of the original holder, cannot in general stand in a better position than the original holder." Per Knight Bruce, L. J., at p. 298.

But this "is a rule which must yield when it appears from the nature or terms of the contract that it "-the chose in action-" must have been intended to have been assignable free from and unaffected by such equities " (per Lord Cairns, L. J., Re Agra, &c. Bank (1235), L. R. 2 Ch. 397); and it is now a matter of course to insert such a provision in a debenture unless the circumstances are very special; for investors long since discovered the extreme inconvenience of dealing with a security which was liable to be defcated or depreciated by the

unexpected interven on of some latent equity being sprung upon them. The efficacy of the condition is exemplified by the decision of Cozens-Hardy, J., in Farmer v. Goy § Co., (1900) 2 Ch. 149, which may be contrasted with Re Taunton, Delmard § Co., (1893) 2 Ch. 175, and Rhodesia Goldfields, Ltd., (1910) 1 Ch. 239.

In the absence of the bracketed words in this condition and in condition 3 the company can set up equities against an unregistered transferee of the debenture. Palmer's Decoration and Furnishing Co., (1904) 2 Ch. 743; Andrews v. Brown and Gregory, (1904) 2 Ch. 448. The bracketed words go far to nullify this power.

The latter part of the condition is useful as fortifying the position of the registered holder, and relieving the company from going into the question of title. Such a stipulation is in point of law free from objection. See also as to excluding equities, Crouch v. Crédit Foncier, L. R. 8 Q. B. 385; Re Natal Inv.stment Co., 3 Ch. 355; also In re Blakely Ordnance Co. (1867), I. R. 3 C., 154; Higgs v. Northern Assum Tea Co. (1869), 4 Ex. 387; In re Northern Assam Tea Co. (1870), 10 Eq. 458; In re South Essex Estuary Co. (1870), 11 Eq. 157.

8. The company may at any time give notice in writing to the Notice by registered holder hereof, his executors or administrators, of its company to intention to pay off this debenture, and, upon the expiration of eix calendar months from such notice being given, the principal moneys hereby secured shall become payable.

This is a condition commonly inserted. Sometimes the words ""after the — day of — next" are inserted before the words "give notice," so that the holder may h — at any rate, a term of five, or ten, or sometimes twenty years' quiet enjoyment of the security; but in hrge numbers of cases the clause is left as it stands above.

9. The principal moneys hereby secured shall immediately

(a) If the company makes default for a period of six calendar

(b) If an order is made or an effective resolution is passed for

months in the payment of any interest hereby secured, and

the registered holder hereof, before such interest is paid, by notice in writing to the company, calls 1. such principal

As to the mode of giving notice, see infra, p. 297.

the winding-up of the company.

become payable :---

moneys; or

Immediate payment where default as to interest or windingup.

Re sayment if default in interest.

Repayment on windingap. It is now usual to provide as above. As to paragraph (a), it is more satisfactory to the investor to know that if his interest gets largely into arrear he can call up his principal, as in the case of an ordinary mortgage, and such a provision is valid. It is not regarded as a penalty against which equity can relieve. Thompson v. Hudson (1869), L. R. 4 H. L. 1; Wallingford v. Mutual Society (1879), 5 App. Cas. 685.

As to paragraph (b), it was long since settled that where a winding-up ensues, the debenture holder is entitled to enforce his charge and obtain immediate payment, even though his debenture has not Hodson v. Tea Co. (1880), 14 Ch. D. 859; Wallace v matured. Universal, &c. Co., (1894) 2 Ch. 547 (C. A.). Accordingly, the clause does not prejudice the position of the company, while, at the same time, it serves to make clear the position of the debenture holder-a position which otherwise would have to be ascertained from a study of the authorities. A clause such as 9 above enables the company to insist on paying off debenture holders in the event of the winding-up of the company. Consolidated Goldfields v. Simmer and Jack East. (1913) W. N. 41; 108 L. T. 488. On the happening of any other event in clause 9 the company cannot pay off a debenture holder and require him to release his security without satisfying him that all the debentures are paid off. Re General Motor Cab Co., 56 S. J. 573, as explained in Consolidated Goldfields v. Simmer and Jack East (above).

Warrant for interest. 10. In respect of each half-year's interest on this debenture a warrant on the companies payable to the order of the registered holder hereof some is case of joint holders, to the order of that one ichose new stands first in the register as one

INDORSED CONDITIONS.

Ch. XXXII.

of such joint holders, will be sent by post to the reg stered address of such registered holder, and the company shall not be responsible for any loss in ransmission. The payment of the warrant, if purporting to be duly indorsed, shall be a good discharge to the company.

Until payment of the warrant, the debt is not & Son, (1909) 2 Ch. 423.

Re Defra

e liver.

10A. At any time after the principal . hereby secured wer to become payable, or after the security const. If the in Conture & Doint below mentioned becomes enforceable, in versel has ler of this debenture may from time to time, the consent in writing of the holders of the majority in sadar , the mutatanding debentures of the same series, appoint by us any person or nersons approved by the trustees of the same indentive to be a receiver at receivers of the property charged by the der as (and not comprised in such indenture), and may use they ke consent remove any such receiver, and every such as utment or removal shall be as effective as if all thes holders of internations of the same issue had concurred there i, and a receiver so appointed shall have power (1) to take pressession of. He and get in the proverty charged by the mentures, a that purpose to take all proceedings in th same of the any or otherwise as may seem expedient; (2 =0 carry on (consur in carrying on the business of the company, and for 7 se to raise mon y on the premises charged in priorie to tures or otherwise; (3) to sell or concur in selling harn property charged by the debentures after giving to the con prany at least seven days' notice of his intention to sell, a to carry any such sule into effect by conveying in the name une on behalf of the company or otherwise; (4) to make any arrangement or compromise which he or they shall think expedient in the interest of the debenture holders, and all moneys received by such receiver or receivers shall, after providing for the matters spreified in the first three paragraphs of clause 8 of sect. 24 of the Conveyancing Act, 1881, or such of them as may seem proper and for the purposes aforesaid, be applied in or towards satisfaction pari passu of the debentures, and the foregoing provisions in this condition shall take effect as and by way of variation and extension of the provisions of sects. 19 and 24 of the said Act, which provisions so varied and extended shall be regarded as incorpo-

Receiver

Such a provision as above is effective. Henry Pound, Son and Hutchings (1882), 42 Ch. D. 402 (C. A.). The power may be vested in a third party, but in such case is in the nature of a trust. Maskelyne British Typescriter, (1898) 1 Ch. 133. In the absence of such a clause, the provisions of the Conveyancing Act, 1881, as to the appointment of receivers, do not apply, at any rate to a debenture which 10 01 a series, charging the undertaking of the company. See Blaker v. Herts, &c. Waterworks Co. (1889), 41 Ch. D. 399. One of the most important objects usually intended to be obtained by the incorporation of these provisions is to make the receiver the agent of the company, so that the debenture holders shall not be liable for his default. But in Deyes v. Wood, (1911) 1 K. B. 806, the receiver was held to be the agent of the debenture holders in spite of a clause similar to clause 10A above. This case may be capable of explanation on the ground that the numbers of the sections to be incorporated were omitted by mistake : but the judgments were not apparently based on this omission, and throw doubt on the effectiveness of the clause. I. future the clause should expressly provide (if so desired) that the receiver shall be the agent of the company. See also Bissell v. Ariel Motors, 27 T. L. R. 73.

Where there is such an express provision the receiver ceases to be the agent of the company after the commencement of a winding-up; but he does not thereupon become the agent of the debenture holder. *Gaskell*, (1897) A. C. 595.]

An important advantage gained by the insertion of such a clause is as to the appointment of a receiver in winding-up. See In re Henry Pound, Son and Hutchings, supra.

Trust deed referred to 11. The holders of the debentures of this issue are and will be entitled pari passu to the benefit of, and subject to the provisions contained in, an indenture dated the — day of and made between the company of the one part and — and — of the other part, whereby certain property was vested in trustees for securing the payment of the principal moneys and interest payable in respect of the said debentures.

Where there is not to be any trust deed, the above clause is, of course, omitted.

The insertion of words as above imports into the debenture the provisions of the trust deed, and renders the security subject to the obligations of such trust deed, and entitled to the benefit of it. See p. 313, infra.

As to the advantages of a trust deed, see Company Precedents, Pt. III. p. 93.

DEBENTURES TO BEARER.

Ch. XXXII.

12. The principal moneys and interest hereby secured will be Place of paid at the --- Bank, Linited, No. -, --- Street, Loudon, Payment. ar at the registered office of the company.

It is usual to insert a clause as above. In the absence of some such provision, the ordinary rule prevails, and the company is bound to search out its creditor and pay him. Where a clause is framed in the alternative as above, it rests with the debenture holder to elect at which place payment shall be made, and he must communicate his election to the company. Saunderson v. Bowes, 14 East, 508; Thorn v. City Rice Mills (1889), 40 Ch. D. 357.

> 13. A notice may be served by the company upon the holder of Service of this debenture by sending it through the post in a prepaid letter notices on addressed to such person at his registered address. Any notice served by post shall be deemed to have been served at the expiration of twenty-four hours after it is posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

It is a matter of great convenience to the company to have some special mode like this of serving notice provided by the debenture. In the absence of such a provision, it is for the company, if it desires to give notice, e.g., for the purpose of redemptiou, to find out the address of the debenture holder, and to take care that notice is effectually served on him. The above clauses relieve the company from this difficulty, or, at any rate, simplify the position very much.

Class II.-Debentures to Bearer.

In framing a debenture to bearer the object is to endow it with II. Debenthe characteristics of a negotiable instrument, and in particular tures to (a) to make it transferable by delivery; (b) to make it transferable free from equities; (c) to render the delivery of the debenture and any interest coupon a good discharge to the company; (d) to enable the bearer to sue the company in his own name, if necessary; and (e) to insure a good title to auy person who acquires the debenture bond fide for valuable consideration, notwithstanding any defect in the title of the person from whom he acquires it.

The following are the clauses usually inserted. As to the uegotiability of such instruments, see infra, p. 302.

Form of.

DEBENTURE TO BEARER.

The ---- Company, Limited.

Issue of --- debentures of \pounds ---- each carrying interest at the rate of ---- per cent. per annum.

No. -

DEBENTURE.

£-

Payment of principal.

1. The —— Company, Limited (hereinafter called "the company"), will, on the —— day of ——, or on such earlier day as the principal moneys hereby secured shall become payable in accordance with the conditions indorsed hereon, pay to the Bearer of this debenture on presentation of the debenture the sum of \pounds —.

Negotiability. In making the instrument payable to bearer the object is to make the security negotiable by the law merchant (see p. 302, *infra*), or, if not, then as far as practicable by contract, or estoppel. There is no objection in point of law to making the instrument payable to bearer without the production of any assignment. Per Rolt, L. J., In re Blakely Ordnance Co. (1868), L. R. 3 Ch. 159; In re Natal Investment Co. (1868), L. R. 3 Ch. 355.

Payment of interest.

2. The company will, during the continuance of the security, pay interest thereon at the rate of — per cent. per annum, by equal half-yearly payments on every — day of — and day of — in accordance with the coupons annexed hereto.

Coupons.

In the case of a debenture to bearer it is necessary to provide for payment of interest in accordance with coupons annexed, for otherwise it would be necessary to insist on production of the debenture for payment of interest, and make some indorsement thereon of the payment. Where the payment is not to be made till a distant date, or the debenture is what is known as a perpetual one, it is usual in the first instance to issue with the debenture only a limited number of coupons providing for the payment of interest, say, for 10 or 20 years. In such case provision is made for the issue of further coupons when the original coupons are exhausted.

3. The company hereby charges [as above, p. 287].

Charge.

As to the validity of a general charge as above, see p. 308. This clause is usually framed on the same lines as clause 3 in Form, supra, p. 291.

INDORSED CONDITIONS.

Ch. XXXII.

4. This debenture is issued subject to, and with the benefit Reference to of, the conditions indorsed hereon, which are to be deemed part indorsed conditions.

See supra, p. 287.

Given under the common seal of the company this ---- day of -

The form of coupon is as follows :-

The ---- Company, Limited. Debenture No. ----. Form of Interest Coupon No. coupon. For - pounds. Half-year's interest due on the - day of ---- and payable at the ---- Bank or at the registered office of the company (less income tax). --- l.

--- Secretary.

Indorsed Conditions.

The conditions within referred to :---

1. This debenture is one of a series of, §c. [as above, p. 288]. Pari passu

2. Annexed to this debenture are --- coupons, each providing Coupons. for the payment of a half-year's interest. Such interest will be payable only on presentation and delivery of the coupon

There is no doubt as to the validity of such a stipulation as that in condition 2. Crouch v. Crédit Foncier of England (1873), L. R. 8 Q. B. 389; Re Natal Investment Co. (1868), L. R. 3 Ch. 355.

3. The principal moneys and interest hereby secured will be Exclusion of paid without regard to any equities between the company and equities. the original or any intermediate holder hereof.

As debentures to bearer are now negotiable by the law merchant, condition 3 is implied and might be omitted. See infra, pp. 302 et seq.

4. If the principal moneys hereby secured shall become payable Surrender of before the --- day of --- the person presenting this debenture outstanding coupons on for payment must surrender therewith the coupons representing redemption subsequent interest, the company nevertheless paying the interest of debentures. for the fraction of the current half-year.

The provisions of condition 4 probably only express what would otherwise be implied, but the condition is inserted in order to make the contract perfectly clear. It is obvious that a company could not allow future coupons to remain outstanding on the ground that they were to be treated as waste-paper. If presented, as they might be, and refused payment, it would damage the credit of the company.

5. The delivery to the company of this debenture and of each

of the said coupons shall be a good discharge for the principal

moneys and interest therein respectively specified, and the company shall not be bound to inquire into the title of the respective bearers of such instruments or to take notice of any trust affecting such moneys or be affected by express notice of the right, title, or claim of any other person to such moneys or instruments. Condition 5 is-or was-beneficial both to the company and the debenture holders. It simplified and protected the position of both. That it is effective is unquestionable. Crouch v. Crédit Foncier (1873), L. R. 8 Q. B. 385; Re Natal Investment Co. (1868), L. R. 3 Ch. 355. Now, however, that the negotiability of debentures to bearer is established (infra, p. 302) the condition might safely be dispensed with.

Delivery of coupon good discharge.

Notice by

London daily newspaper of its intention to pay off this debenture, and upon the expiration of six calendar months from such notice being given, the principal moreus hereby secured shall become payable. See supra, pp. 293, 294.

6. The company may at any time after the ---- day of --

give notice by advertisement in the "Times" and one other

7. The principal moneys hereby secured shall immediately become payable-

- (a) If the company makes default, &c. [as at p. 294, substituting "bearer" for "holder"]; or
- (b) If an order is made or an effective resolution is passed for the winding-up of the company.

[8. This debenture is to be treated as negotiable, and all persons are invited by the company and the owner for the time being hereof to act accordingly.]

The object of condition 8 was to fortify the title of the debenture holder for the time being by enabling him, if necessary, to establish direct privity of contract with the company, and to endow the instrument with the most important characteristic of a negotiable instru ment, namely, that a person who acquires the instrument for value

advertisement to pay off.

Immediate payment on default as to

interest or winding-up

Debenture to be treated as negotiable.

NEGOTIABILITY OF BEARER DEBENTURES. Ch. XXXII.

obtains a good title notwithstanding any defect of title in the persou from whom he takes it. The words of invitation are in the nature of an offer held out to all the world, requesting them to act thercon; and it seems probable that any person who does act on that invitation by altering his position is entitled as against the company to rely on his having so acted as an acceptance of the offer, and as therefore constituting a direct contract by him with the company. See Agra and Masterman's Bank (1867), L. R. 2 Ch. 397; and Carlill v. Carbolic Smoke Ball Co., (1893) 1 Q. B. 256. But here again the negotiability of debentures to bearer now established (infra, p. 302), makes the condition superfluous.

> 9. The principal moneys and interest hereby secured will be Place of paid at the --- Bank, Limited, No. --, --- Street, London, payment. or at the registered office of the company.

10. [Reference to trust deed, if any; as at p. 296, suprn.]

11. [Provision that notice may be given by advertisement, and Notice by deemed to be served on the day following that on which it is advertise-

Trust deed referred to. ment.

Class III.-Debentures to Registered Holder with Coupons to Bearer.

These are framed on the basis of the registered debenture above set Form of forth (pp. 285-296), but condition 2 (p. 298) of the bearer debenture is substituted for clause 10 at p. 294, and the conditions are modified so as to provide for interest coupons.

Class IV .- Debenture to Bearer capable of being registered.

This form of security may be said to combine the advantages of the registered debenture and the debenture to bearer. Those investors who prefer a debenture to bearer get it, and those who-like trusteeswish to avoid the risk incidental to the possession of an instrument to bearer can safeguard themselves by registering. The drawback is the stamp duty. As debentures to bearer they are charged with a stamp duty of 10s. per cent. on issue.

The form adopted for this convertible debenture usually provides Form of for payment "to the bearer, or, when registered, to the registered holder of the debenture," and the conditions empower the bearer at any time to take it in to be registered in his name, and provide that thenceforth, whilst registered, the registered holder is to be regarded

as the owner, and shall alone be entitled to give receipts for the principal moneys, and to transfer; and a further provision enables the registered holder at any time to have the registration cancelled and the instrument liberated and made again "to bearer."

Negotiability of Bearer Debentures or Instruments by Mercantile Custom.

Negotiability by law merchant. From being ordinary choses in action debentures to bearer have now, after a somewhat prolonged controversy, been admitted into the select circle of negotiable instruments by virtue of the general custom of merchants.

It is a well-established common law rule that when a general custom is proved to exist as a fact, it is adopted by the common law and becomes part of it. The negotiability of bills of exchange, of bank notes, of cheques, of circular notes, of exchequer bills, and of foreign bonds to bearer, has been established in this way; but until recently there was no judicial decision recognizing a similar negotiability in the case of debentures to bearer. The contrary was indeed held in Crouch v. Crédit Foncier (1873), L. R. 8 Q. B. 374. In that case the debenture in question had been stolen, and the plaintiff derived title from the thief; he was therefore not entitled to recover unless the debenture was negotiable. It was tacitly admitted at the trial that such instruments were treated as negotiable, and it was proved that the plaintiff gave value for the debenture without notice, and the jury found a verdict in his favour. This verdict the Court, Blackburn, Bramwell, Quain, and Archbold, JJ., set aside and entered a verdict for the defendants on the ground, amongst others, that as the debenture was an English instrument made in England, it could not be rendered negotiable by custom; "for as the instruments themselves." said the Court, "are of recent introduction, it can be no part of the law merchant, that is to say, of the ancient law merchant which forms part of the law, and of which the lav takes notice." Per Blackburn, J., who delivered the judgment of the Court.

Views of Blackburn, J.

Contrary view of Exchequer Chamber and House of Lords. This view of the law was manifestly unsound, and it was not long (1875) before it was emphatically disclaimed in the Exchequer Chamber (Goodwin v. Robarts, 10 Ex. 337), the Court consisting of Cockburn, C. J., Mellor, Lush, Brett, and Lindley, JJ. I. that case, the instrument under consideration was scrip to bearer for a foreign government bond. It was proved that it was by custom treated as negotiable, but it was argued, on the authority of the last-mentioned case, that, as the custom was modern, it could not have effect. The Court, however, held that the c tom, though modern, was effective, and the scrip 1 statistical effective is a state of the following luminous passage from

NEGOTIABILITY OF BEARER DEBENTURES. Ch. XXXII.

the judgment delivered by Cockburn, C. J., deals with, and effectually disposes of, the line of argument above referred to. "Having," said the Chief Justice, "given the fullest consideration to this argument, we are of opinion that it cannot prevail. It is founded on the view that the law merchant thus referred to, is fixed and stereotyped and incapable of being expanded and enlarged, so as to meet the wants and requirements of trade in the varying circumstances of commerce. It is true that the law merchant is sometimes spoken of as a fixed body of law forming part of the common law and, as it were, coeval with it. But, as a matter of legal history, this view is altogether incorrect. The law merchant thus spoken of with reference to bills of exchange and other negotiable securities, though forming part of the les mercatoria, is of comparatively recent origin. It is neither more nor less than the usages of merchants and truders in the different departments of trade, ratified by the decisions of courts of law, which, npon such usages being proved before them, have adopted them as settled law with a view to the interests of trade and the public convenience, the Conrt proceeding herein on the well-known principle of law that, with reference to transactions in the different departments of trade, courts of law, in giving effect to the contracts and dealings of the parties, will assume that the latter have dealt with one another on the footing of any custom or usage prevailing generally in the particular department. By this process, what before was usage only, unsanctioned by legal decision, has become engrafted upon or incorporated into the common law, and may thus be said to form part of it." "When a general usage hus been judicially ascertained and established," says Lord Campbell, in Brandao v. Barnett, 12 Cl. & Fin. 787, "it becomes a part of the law merchant which courts of justice are bound to know and recognize."

This decision was affirmed by the House of Lords (1 App. Cas. 476), partly on the ground that negotiability was established, and partly on

The principles laid down by Cockburn, C. J., are so obviously sound that they have never since been questioned. No doubt the instrument with which the learned judge was dealing was not an English instrument. It was issued and stood in the place of a foreign bond, but it would be strange logic if the law merchant were competent from time to time to add foreign instruments to the list of negotiable instruments, and yet not competent to add to the list English instruments made in England, especially as the negotiability of foreign instruments depends entirely on the mercantile custom here, not on any foreign law or custom. Picker v. London and County Banking Co. (1887), 18 Q. B. D. 515. Upon what ground is such an irrational Power to add distinction to be supported, and the growth of the law merchant to be further Eng-

ments to list of negotiable

instruments.

suddenly arrested? and why should it be held that the law merchant, which for centuries I ast has been competent to render English instruments, bills of exchange, bank notes, cheques, exchequer bills, &c. negotiable, is no longer operative? As Cockburn, C. J., said in the case referred to : "Why is it to be said that a new usage, which has sprung up under altered circumstances, is to be less admissible than the usages of past times? Why is the door to be now shut to the admission and adoption of usage on a matter altogether of cognate character, as though the law had been flually stereotyped and settled by some positive and peremptory enactment?" There has been no such enactment, and there is no answer to this question; and this being the case, there can, it is submitted, be no doubt that the law merchant, as part of the common law, is at liberty now, no less than in the past, to enrich itself by impressing with the qualities of negotiability, where the convenience of commerce requires it, not only foreign instruments but also English instruments. The decision in Rumball v. Metropolitan Bank (1876), 2 Q. B. D. 194, is a clear authority that the list of English negotiable iustruments is not closed. Nevertheless it was not until August, 1898, that the High Court had an opportunity of reconsidering the question whether debentures to bearer of English companies are or are not negotiable by the law merchant.

The question arose in Bechuanaland Exploration Co.v. London Trading Bank, (1898) 2 Q. B. 658; the instruments in that case being debentures to bearer issued by an English company—the Beira Junction Railway Company—in England. The debentures in question had been fraudulently taken from the plaintiff company and pledged with the defendant bauk, which took them for value, in good faith, without notice. Evidence was given that by the custom of merchauts in England, similar debentures to bearer were, and for some twenty years and upwards had been, dealt with as negotiable instruments; and it was held on this evidence by Keunedy, J., that the custom was efficacious; that the debentures, notwithstanding their being modern English instruments, were negotiable and, accordingly, that the plaintiff's claim failed.

"It appears to me," said the learned judge, "that upon the vital question of the effect of modern mercantile usage, such as I think has been sufficiently proved in the present case, it is impossible to treat the reasoning of the Court of Queen's Bench in *Crouch* v. *Crédit Foncier of England*, L. R. 8 Q. B. 374, and the reasoning of the Exchequer Chamber in *Goodwin* v. *Robarts*, L. R. 10 Ex. 337; 1 App. Cas. 476, as capable of reconciliation. I read the judgment of the Exchequer Chamber in the later case as plainly disapproving of the reasoning of the judgment in the carlier case. It canuot, I think, be maintained

NEGOTIABILITY OF BEARER DEBENTURES.

er-

ish

ler

J.,

ge. 088

he

ter

Ŋу

2 "

his

ibt

no

ies

iot

on

ar ed.

ad to

117

nq

11 -

on

ad

th

ut

in

rs

it

a -

rn. 10

al

18

it

2-

r

б,

٠r

if đ

Ρ.

that the judgment in Goodicin v. Robarts upon the effect of modern mercantile usage was unnecessary to the decision, nor, I think, can it be maintained that the two judgments are capable of reconciliation on the ground that the instrument in question in the earlier case was an English instrument, and the instrument in question in the later case was, though issued by a London agent, to all intents and purposes the serip of a foreign government. In the first place, not only is there po hint in the judgment of the Exchequer Chamber, so far as it deals with the effect of modern mercantile usage, of an intention to confine it to the case of the scrip issued by a foreign government, or to exclude from the operative effect of modern mercantile usage an English instrument, but the Court of Exchequer Chamber prefaces this portion of the judgment by saying We think it innecessary to enter upon the question whether the contract thus entered into is to be considered as a Russian or an English contract.' In the second place, it seems to me impossible to suppose that if Crouch v. Crédit Foncier of England was thought by the Exchequer Chamber to be still outstanding and capable of support on so clear and definite a ground as this would be, their jndgment would (as the only ground of support for the decision in that case) have expressly stated that it might well be supported on the ground that in that case there was substantially no proof whatever of general usage. . . . Lastly, in the case of Rumball v. Metropolitan Bank, a Divisional Court of the Queen's Bench Division in the year 1877, treated Goodwin v. Robarts as decisive of an action in which a similar question arose upon an English instrument. The Court, it may be noted, consisted of Coekburn, C. J., and Mellor, J., the former being the judge who had delivered the judgment of the Exchequer Chamber in Goodicin v. Robarts, and the other one of the judges who took part in the decision of that case. It is impossible to suppose that they were not fully aware of all that could possibly be held to distinguish, if anything could, the two decisions, and Crouch v. Crédit Foneier of England was eited to them in argument. But in their considered judgment they held the matter of the effect of usage in conferring negotiability npon an English instrument, although not negotiable by statute or by the ancient law merchant, as settled by the judgment of the Exchequer Chamber in Goodwin v. Robarts. It appears to me that, having regard to the decisions of the Exchequer Chamber in Go dwin v. Robarts und of the Queen's Bench Division in Rumball v. Metropolitan Bank, if I have come, as I have, to the conclusion that there has been a sufficient proof of a mercantile usage to treat the debentures in question in this case as negotiable, I cannot refuse to follow these decisions, and these decisions appear to me practically to overrule the decision in Crouch v. Crédit Foncier of England,

Ch. XXXII.

305

Thus, at last, was the sterilizing and retrograde doctrine laid down in *Crouch* v. *Crédit Foncier* disposed of, and the negotiability by the law merchant of debentures to bearer recognized and finally established. In a recent case, *Edelstein* v. *Schuler & Co.*, (1902 2 K. B. 144, Bigham, J., iu following the decision in *Bechnanoland Exploration Co.* v. *London Trading Bank, snpra*, said: "Iu my opinion the time has passed when the negotiability of bearer bonds, whether Government bonds or trading bonds, foreign or English, can be called in question in our Courts. The existence of the usage has been proved so often, and its convenience is so obvious, that it must be taken now to be part of the law."

This satisfactory termination of a long-standing controversy renders the draftsman's task in framing a debenture to bearer a comparatively simple one. All that is necessary is to make the instrument in terms phynhleto bearer, and to take care that no conditionor stipulation appears which is repugnant to or inconsistent with the nature of a negotiable instrument. See, further, Company Precedents, Part III., p. 31 et seq.

Proof of Negotiability.

Having regard to the decisions in Bechuanaland Exploration Co. v. London Trading Bank and in Edelstein v. Schuler & Co., supra, the High Court, it is presumed, will now take judicial notice of the negotiability of debentures to bearer, for "when a general usage has been judicially ascertained and established it becomes part of the law merchant which Courts of justice are bound to know and recognize, and justice could not be administered if evidence were required to be given toties quoties to support such usages, and issue might be joined upon them in each particular case." Per Lord Campbell in Brandao v. Barnett, 12 Cl. & Fin. 787. However, it may be well to bear in mind that iu order to prove negotiability it is only necessary to prove that the instrument is in form negotiable, e.g., payable to bearer, and that it is in fact by general custom treated as negotiable. See London Joint Stock Bank v. Simmons, (1892) A. C. 201; Venables v. Baring Brothers, (1892) 3 Ch. 527; and Picker v. London and County Banking Co. (1887), 18 Q. B. D. 515. Nor does the Court require the custom to be proved by a cloud of witnesses. Thus, in the first of the abovemeutioned cases, the instruments in question-Argentine Cedulaswere to bearer, and their negotiability was established by the evidence of a bank manager. Lord Watson said (p. 212): "Each bond, according to its tenor, appears to me to represent that the document will pass from hand to hand, and that any bond fide holder will be entitled to claim fulfilment of its terms. . . . Then there is

306

Proof of negotiability,

PROOF OF NEGOTIABILITY.

Ch. XXXII.

direct testimony to the effect that, on the London Stock Exchange, the bonds do pass from hand to hand by delivery only, and are treated as negotiable securities, and no attempt was made to shake that testimony oither by cross-examination or by adducing ovidence to the contrary." And Lord Macnaghten said (p. 224): "The Cedulas in question are foreign bonds, with coupons attached, payable to bearer. Admittedly, they pass from hand to hand on the Steek Exchange, and, according to the ovidence of the bank manager, who was not crossexamined on the point, they are dealt with as negotiable instruments. I do not see on what ground they are to be denied the quality of

So, in Venables v. Baring Brothers & Co., (1892) 3 Ch. 527, 539, American railway bonds to bearer were held to be negotiable, on the evidence of business men that such bonds were here always treated as negotiable. "The only question," said Kekewich, J., "I have to consider is, whether they-the railway bonds in question-are negotiable according to the law merchant as part of the common law of England. On this point I have had the evidence of several gentlemen competent to speak, and they say that they have no doubt about the matter at all." See also Bentinck v. London Joint Stock Bank, (1893) It is not necessary to show a custom in relation to the securities of the particular company. It is sufficient that instruments of a like character issued by other companies are treated as negotiable. See Venables v. Baring Brothers & Co., supra. Nor, again, is it necessary to show that the instrument fulfils the conditions of a promissory note. Rumball v. Metropolitan Bank (1876), 2 Q. B. D. 194; Goodwin v. Robarts (1875), 1 App. Cas. 476.

An idea at ono timo prevailed that an instrument under seal could not by the law merchant acquiro the character of negotiability, but there appears to be no substantial foundation for this view. In (rouch v. Crédit Foncier, supra, the Court no doubt regarded Glyn v. Baker, 13 East, 509, as a strong authority that a promissory note could not be under seal, but in that case no evidence of negotiability by custom was adduced, and in Venables v. Baring Brothers & Co., (1892) 3 Ch. 527; and Bechuanalana Trading Bank, (1898) 2 Q. B. 658, where such evidence was adduced. the instruments were held to be negotiable, though under seal.

By sect. 106 of the Act of 1908 the doubt as to the validity in Scotland of dobentures to bearer is removed.

20(2)

own the tah-102 land nion ther lled red w to

lervelv mis ears ible srg.

. V. the

oti-11-1-1 nerand ven pon5 v. ind that hat don ring king tom ves the ach the

der e is

Floating Charge.

Validity and nature of floating charge.

The validity and effect of what is now called a "floating charge" on the property, both present and future, of a company was first recognized in Re Panama, Sc. Co. (1870), L. R. 5 Ch. 318, by Giffard, L. J. In that case the company had issued debentures, and thereby charged its "undertaking" with the payment thereof. It was held that the word "undertaking" meant all the property, present and future, of the company, and that the charge thereon was effective and was to operate by way of floating security. Giffard, L. J., said : ") take the object and meaning of the debenture to be this, that the word 'undertaking' necessarily infers that the company will go on, and that a debenture holder could not interfere until either the interest which was due was unpaid, or until the period had arrived for the payment of his principal and that principal was unpaid. I think the meaning and object of the security was this, that the company might go on during that interval, and, furthermore, that during the interval the debenture holder would not be entitled to any account of mesne profits or of any dealing with the property of the company in the ordinary course of their business. I see no difficulty or inconvenience in giving that effect to this instrument, but the moment the company comes to be wound up and the property has to be realized, that moment the rights of these parties beyond all question attach. My opinion is that, even if the e-mpany had not stopped, the debeuture holders might have filed a bill to realise their security. I hold that under these debentures they have a charge upon all property of the company, past and future, by the term 'undertaking,' and that they stand in a position superior to that of the general creditors who can touch nothing until they are paid."

This decision was of the ntmost importance, not merely because it put this construction on the word "undertaking"—a word which had been largely used in debentures—but because it recognized clearly what many other nations do not recognize—the legal validity of a general charge on all the property of a company, both present and future, by way of floating security. Long previously it had, no doubt been decided that in equity future property, or even possibilities, could be effectually charged. *Row* v. *Dawson* (1749), 1 Ves. 331; *Townshend* v. *Windham* (1750), 2 Ves. 1; *Bennett* v. *Cooper* 1845. 9 Beav. 252 (subsequently recognized in *Tailby* v. *Official Receiver*, 13 App. Cas. 523). And *Holroyd* v. *Marshall* (1862), 10 H. L. C. 191, was sufficient to show that a charge ou all the property, present and future, of a company was not too indefinite to take effect, and these principles being established there was, of course, no difficulty

. holding that such a charge—provided the intention was sufficiently expressed—could be made subject to the company's power to deal with the property notwithstanding the charge.

FLOATING CHARGE.

ł

ł

l

1

h

t

3

11

p

v

1

y ł

v

e

t

ŧ 4

٢

ti

1

v

1

Ch. XXXII.

It is not necessary, however, to the creation of a floating charge that the word "undertaking" should be employed. Any words charging all the property of a going company will be construed as meant to give a floating charge only, and for the very good reason that unless so construed such a charge would paralyze the company's business. See Wheatley v. Silkstone Co., 29 C. D. 715; Florence Land Co., 10 C. D. 530; Colonial Trusts Corporation, 15 C. D. 465. A charge on part only of the property where necessary to effectuate the intention, expressed or implied, will be treated as a floating Re Yorkshire Woolcombers' Association ; Houldscorth v. Yorkshire Woolcombers' Association, (1904) A. C. 355.

A charge on furniture and plant " which now are or may be placed on the premises" has been held to be a floating charge. National Provincial Bank v. United Electric Theatres, (1915) W. N. 397.

The nuture of a floating charge has been elucidated still further in Some subsesubsequent cases, and the following points have been settled :----

quent cases,

- (1) A floating charge operates us an immediate and continuing charge on the property charged subject only to the company's powers to deal with the property in the ordinary course of its business. Florence Land Co., 10 C. D. 541; Re Standard Manufacturing Co., (1891) 1 Ch. 627; Hubbuck v. Helms, 56 L. T. 232; Foster v. Boras Co., (1901) 1 Ch. 326; Nelson & Co. v. Faber § Co., (1903) 2 K. B. 367.
- (2) A floating charge, unless otherwise agreed, leaves the company at liberty to create specific mortgages ranking in priority to the floating charge. Wheatley v. Silkstone Coal Co. (1885), 29 C. D. 715; Government Stock, &c. Co. v. Manila Rail. Co., (1897) A. C. 81; Re Castell & Brown, Limited, (1898) 1 Ch. 315. And by dealings with debtors to give them a right of set- " Biggerstaff v. Rowatt's Wharf, (1896) 2 Ch. 93; Nelson v. F. supra.
- (3) Notice of the floating charge does not postpone the subsequent specificmortgages. Re Hamilton's Windsor Ironworks, 12C. D. 712.
- (4) But a floating charge is valid as against execution creditors. In re Opera, (1891) 3 Ch. (C. A.) 260; Taunton v. Sheriff of Warwickshire, (1895) 2 Ch. 319; Re Standard Manufacturing Co., (1891) 1 Ch. 627; Davey & Co. v. Williamson & Sons, (1898) 2 Q. B. 194; Simultaneous Colour Printing Syndicate v. Foweraker, (1901) 1 K. B. 771; Duck v. Tower Galvanizing Co., (1901) 2 K. B. 314; London Pressed Hinge Co. (1905), 21 T. L. R. 322. Save that if the execution creditor takes property in execution, and completes the execution, e.g., by seizure and sale by the sheriff, or a garnishee order absolute (but not a garnishee order nisi : Norton v. Yates, (1905) W. N. 175) whilst

the charge floats, he obtains, it has been held, priority. Evans v. Rival Granite Quarries, (1910) 2 K. B. 979.

- (5) It is also valid as against the general creditors, whether in a winding-up or otherwise. General South American Co., 2 C. D. 337.
- (6) But sect. 212 of the Act has qualified its operations to some extent where debentures carrying a floating charge are issued within three months of winding up. By this section a floating charge created within three months of the commencement of a winding up is invalid unless it is proved that the company was solvent immediately after the creation of the charge, except to the amount of any cash paid to the company at the time of or after the creation of, and in consideration for, the charge, with interest at 5 per cent. (Sect. 212.) Money puid a few days before and in reliance on the charge is cash paid "at the time" within this section. Columbia Fireproofing Co., (1910) 2 Ch. 120. As to the meaning of "cash," see Re Orleans Motor Co., (1911) 2 Ch. 41.
- (7) A floating charge, unless otherwise agreed, retains its floating character until a receiver is appointed or a winding-up commences. Re Florence Land Co., supra; Government Stock, sc. Co., supra; Foster v. Borax Co., supra; Nelson & Co. v. Faher & Co., supra; Evans v. Rival Granite Quarries, (1910) 2 K. B. 979. The charge censes to be a floating charge on a winding-up even though the debentures are not repayable under the express terms of the debentures. Re Crompton & Co., Ltd., (1914) 1 Ch. 954.
- (8) [A landlord can distrain for rent before the appointment of a receiver. Afterwards he can still distrain at common law, but not as against a receiver appointed by the Court, without leave of the Court, and not on lands not comprised in the lease. *Re Roundwood Colliery Co.*, (1897) 1 Ch. 373.]

The best general description of a floating security is that given by Lord Macnaghten in *Government Stock Co.* v. *Manila Rail. Co.*, (1897) A. C. at p. 86.

"A floating security," said his Lordship, "is an equitable charge on the assets for the time being of a geing concern; it attaches to it subject charged in the varying condition it happens to be the time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to intervene may of course be suspended by agreement. But if there is no agreement for suspension, he may exercise his right whenever he pleases after default." See also Houldsworth v. Yorkshire Woolcombers, (1904) A. C. 355.

FLOATING CHARGE.

thes:

11

D.

ne

ed

ng

a 11 1

ter

er

th

38 1 39

h.

'n.,

ng

11-

11.

her

₿.

սթ

in N

1)

a

n†

ve.

4.

by

7

121

8 +++-10

ns

n,

S.

ut

ht

k-

Pending any such intervention, the company has a free hand Subsequent to deal with and dispose of the property charged in the ordinary dealings by course of the company's business. It may do so by way of property sale, lease, exchange, specific mortgage, or otherwise, as it deems subject floating most expedient. Thus, an assignment by the company of arrears of charge. rent made before the appointment of a receiver gives the assignees a good title as against debenture holders having only a floating charge ; but if the land is specifically charged by the debentures, the debenture holders can claim the rents, Re Ind. Coope & Co., (1911) 2 Ch.

This power to create a specific mortgage ranking on the property charged in priority to the debenture charge, was clearly not at first contemplated; for tiitfard, L. J., in Re Panama, se. Co., supra, in stating that the company might, notwithstanding the charge, deal with its property, added : " I do not rofer to such things as sales or mortgages of property"; but the law of debentures, like all branches of a living law, is constantly growing; and it was held in Re Florence Land Co. (1878), 10 Ch. D. 530, and in Re Colonial Trusts (1880), 15 Ch. D. 465, that the floating charge left the company at liberty to create specific mortgages or charges in priority to such floating charge. In the latter case it was laid down (at p. 472) that it would be a monstrous thing to hold that a floating security prevented the making of specific charges, or specific alienations of property, because so to hold would destroy the very object for which the money was borrowed-the carrying on the business of the company.

lu a subsequent case it was urged that where the subsequentlycreated charge was only an equitable security, it ought not to have priority over the equitable charge of the debenture holder; but this, too, was overruled. See Wheatley v. Silkstone Co. (1885), 29 Ch. D. 715, where the company, after creating a theating charge on its undertaking, had created a subsequent equitable charge in favour of its baukers by deposit of title deeds, and North, J., after referring to the authorities, said : "Those authorities furnish a very clear and intelligible principle to be followed in this case. I find that the debenture is intended to be a general floating security over all the property of the company as it exists at the time when it is to be put in force; but it is not intended to prevent, and has not the effect of in any way preventing, the carrying on of the business in all or any of the ways in which it is carried on in the ordinary course, and inasmuch as I find that in the ordinary course of business, and for the purpose of the business, this mortgage was made, it is a good mortgage upon, and a good charge upon, the property comprised in it, and is not subject to the claim created by the debentures."

This decision is a specially strong one, because the debeutures m

company with matojen t tes

question were expressed to be by way of *first charge* on the undertaking: but in regard to this the learned judge said: "I find also that the "first charge" r ferred to in the debentures is fully satisfied by being a.e. here the against the general property of the company at the time when the claim nuder the debentures arises, and can have effect given to it. There will be a declaration, therefore, that the charge of the plaintiffs is prior to the debentures." See also *Ward y. Royal Exchange Shipping Co.*, 58 L. T. 174.

In balancing equities between dobenture holders under a floating charge and subsequent specific incumbrancers, it must not be forgotten that the debenture holders are presumed to be cognizant of the above-mentioned decisions and to have contracted on the footing thereof.

The extreme elasticity of a floating charge, and the wide powers

Prior mortgages, prohibition of.

which it thus allows to the company of dealing with the debenture holders' property, are in some cases considered excessive, and, accordingly, it is not uncommon to insert in the instrument creating the charge words to the effect that the floating charge is not to anthorize the company to create any mortguge or charge ranking in priority to or pari passu with the debentures, and this qualification is for the most part effective. Thus, if the company creates a mortgage in favour of any person who has notice of the floating charge and qualification, such person ranks after the floating charge. But a person who obtains a legal mortgage, and makes out (a) that he was not aware of the existence of the floating charge; or (b) that though he was aware of the charge he was not aware of the qualification, is entitled to priority by virtue of the legal estate. English, Scottish, Sc. Co. v. Brunton, (1892) 2 Q. B. 700; Coveney v. Persse, (1910) 1 Ir. R. 194. Such a qualification, too, in a floating charge is to be strictly construed. See Brunton v. Electrical, &c. Corporation, (1892) 1 Ch. 434, where it was held that the qualification did not prevent the company's solicitor from acquiring a licn in priority to the debentures; and see Robson v. Smith, (1895) 2 Ch. 118. Nor will the prohibition prevent a subsequent equitable mortgagee who obtains the title deeds of property comprised in the debenture holder's security and takes without notice from obtaining priority. Castell & Brown, Limited, (1898) 1 Ch. 315; Standard Rotary Machine Co., 95 L. T. 829. Nor will it prevent a mortgage to a veudor of after-acquired property to secure purchasemoney (Wilson v. Kelland, (1910) 2 Ch. 306), or a mortgago to secure an advance of part of the purchase-money by a third party. Re Connolly Bros., Ltd., (1912) 2 Ch. 25. Where a specific charge is made expressly subject to a floating charge, the specific charge is postponed as from the date when the floating charge becomes crystallised by the appointment of a receiver. Re Robert Stephenson § Co., Ltd., 107 L. T. 33.

PERPETUAL DEBENTURES AND DEBENTURE STOCK. Ch. XXXII.

Uncalled Capital.

As to mortgaging this, see supra, p. 270.

•r-

ad

ι,γ

vē

10

v.

ig r-

of

g

 \mathbf{rs}

r.

S.

to

g

m

а

ç0

a

ιt

18

d

۶.

ł.

1.

it ar

y

e

a

....

0

8

8

It is nearly always included in the security for debentures and debenture stock. *Primá facie* it does not prevent the company from forfeiting shares for non-payment of calls. *Agency Land and Finance* Co., 20 T. L. R. 41.

Perpetual Debentures and Debenture Stock.

For many years it has been quite common to issue debentures or debenture stock described as "perpetual" or "irredeemable," ueaning that such debentures were made payable only in the event of a winding-up or some serions default by the company. Sometimes, also, debentures and debenture stock were made payable at a remote period, such as fifty or a hundred years after issue. In cases like these, doubts often arose whether the securities were effective, or whether the indefinite or prolonged postponement of the right of redemption was not in effect a "clog on the equity," and, as such, void. See Company Precedents, Part III., p. 122 et seq. To quiet these doubts, and to bring the law into accord with what it has commonly been taken to be, sect. 103 of the Act of 1908 enacts as follows :—

103. A condition contained in any debentures or in any deed for securing any debentures [or debenture stock], whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debontures [or debenture stock] are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Trust Deeds.

Debentures and debeuture stock are constantly secured by a trust or Trust deeds. covering deed, conveying property of the company to trustees in favour of the debenture holders, charging other property and containing a number of ancillary provisions regulating the respective rights of the company and the debenture holders. Whether there should be a trust deed or not must depend on the circumstances; where the debentures are issued only for a temporary purpose, e.g., to bankers as security for an overdraft or to other persons for a short term, or are to be taken up by the directors, a deed may be dispensed with; but iu transactions of any magnitude there is a growing disposition to supplement the debentures by a trust deed, as improving the security.

Its advantages may be briefly summarised as follows :---

- 1. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders.
- 2. The debenture holders can by these trustees of thoirs enter and soll the property comprised in the security.
- 3. The legal estate is vested in the trustces with the protection which it carries with it.

As regards the frame of it, a trust deed usually contains a legal mortgage of the principal properties, *e.g.*, in the case of a brewery, the brewery and tied houses, and a general charge by way of floating security on the rest of the assets and undertaking. Following on the conveyance and charge comes a clause specifying the various events on the happening of which the security is to become enforceable.

1. Default in payment of principal or interest.

- 2. Winding-up.
- 3. Breach of covenant.
- 4. Appointment of a receiver.

Other events are sometimes added.

The trust deed then provides that when the security becomes enfr to ble, the trustees may at their discretion and shall, at the rect specified proportion of the debenture or debenture stockhol, the mortgaged premises, and apply the net proceeds in payi.g off the debentures or debenture stock and hand the balance to the company.

The deed also empowers the trustees to appoint receivers to carry on the business; provides for the trustees' indemnity, for meetings of the debenture holders, giving large powers to majorities, and imposes on the company certain obligations as regards insurance, repairs, furnishing in rmation, further assurance, &c. In the case of debenture stock, the trust deed, in addition to the above provisions, usually constitutes the stock by a covenant therein contained—on the part of the company—to pay the amount of the stock, and the interest, or by an acknowledgment of indebtedness to the trustees for the amount thereof. The trustees are commonly given remuneration by the deed. but, unless otherwise provided, this ranks after the debenture or debenture stock holders. *Hodyson* v. Accles, 51 W. R. 57; W. N (1902) 164. The deed usually provides otherwise, and gives the trustees a lien, which is effective. *Re Piccadilly Hotel, Ltd.*, (1911) 2 Ch. 534.

The trustees are not usually entitled to remuneration after the appointment of a receiver unless they reuder appreciable services after such appointment. Re Locke §: Smith, Ltd., (1914) 1 Ch. 687.

See further Company Precedents, Part III., pp. 93 et seq. and 323 et seq.; and as to application of compensation money for refusal to

REGISTRATION OF DEBENTURES. Ch. XXXII.

renew licences of public-honses, see Noakes v. Noakes, (1907) 1 Cb. 64; Dawson v. Braine's Tadcaster Brewerics Co., (1907) 2 Ch. 359; Bentley's Yorkshire Breweries, (1909) 2 Ch. 609. As to inconte-tax on distribution, see Smith v. Law Guarantee and Trust Society, (1904) 2 Ch. 569.

e

d

H

ıl

¢,

5

e

n

as

10

š -

'n

to.

٢V

of

29

s,

re

ly

of

)Ţ

nt

d,

or

ľ

1e

1)

10 er

23

to

Registration of Debentures under Bills of Sale Acts.

In Standard Manufacturing Co., (1891) 1 Ch. 627 (C. A.), it was Bills of Sale held that the Bills of Sale Acts, 1878 and 1882, did not apply to Acts. companies under the Act of 1862. The principle of the decision (Lord Halsbury, L. C., being a party to it) was expressed by Bowen, L. J., who delivered the judgment of the Court, in these words: "We think that this appeal should therefore be allowed with costs, both here and below, on the ground that the mortgages or charges of any incorporated company, for the registration of which other provisions have been made by the Companies Clauses Act, 1845, or the Companies Act, 1862, are not within the Bills of Sale Act, 1878." The Companies Act, 1908, gives in effect a legislative recognition to this decision as good law. Debentures, not being bills of sale within the Bills of Sale Acts, are accordingly not void as against execution ereditors for want of registration under those Acts. See Standard Manufacturing Co., supra : Taunton v. Sheriff of Warwickshire, (1895) 2 Ch. 319; Robson v. Smith, (1895) 2 Ch. 118; and Re Opera Co., (1891) 3 Ch. 260. Nor are debentures in any way invalidated by those Acts as against the liquidator of the company as representing ereditors of the company (Marine Mansious Co. (1867), 4 Eq. 601; Asphaltie Wood Co. (1878), 49 L. T. 159); and the fact that the debenture holders' chattel property remains at the date of winding-up in the possession of the company as reputed owner makes no difference; for sect. 10 of the Judicature Act, 1875, has not introduced the order and disposition clause into winding-up with other bankruptcy rules. Crumlin Viaduct Works Co. (1879) 11 C. D. 755; Gorringe v. Irwell, §c. Works (1886), 34 C. D. 129.

But now any mortgage or charge to secure debentures, or in the nature of a bill of sale, must be registered under sect. 93 of the Act of 1908, as to which see p. 277, *ante*. This is the substitute, in the case of eompanies, for registration by individuals under the Bills of Sale Acts.

Transfer of Debentures.

A debenture to bearer is transferable by delivery. So is a Transfer of debenture-stock certificate to bearer. A debenture to registered debentures.

holder is transferable in the manner specified therein; and, if no mode of transfer is specified, sect. 25 (6) of the Judicature Act. 1873, applies, and enables the owner to transfer by instrument in writing; and, after notice thereof to the company, the transferee can sue in his owu name. Primá facie, a transferee of a debenture not to bearer takes subject to all equities. Supra, p. 292. But, as appears above, the instrument usually excludes equities. As to forged transfers. see p. 136. After a resolution to wind up voluntarily a debenture of the company in the hands of a shareholder can only be assigned subject to future calls. In re China Steamship Co., 7 Eq. 240; and see Re-Taunton, Delmard, Lane & Co., (1893) 2 Ch. 175, and Partridge v. Rhodesia Goldfields, (1910) 1 Ch. 239. It is otherwise where the debenture is by its terms to be transferable free from equities. Supra, p. 292. But even there the terms of the debenture may be such that the transferce cannot, until registration, maintain his title to the benefit of the provision. In practice, a transfer is generally framed very much on the lines of the transfer of shares given in Table A. and is signed both by the transferor and the transferee, and is taken in to the office of the company to be registered. Thereupon the company's official registers the transfer, and a note of registration is endorsed.

It was held in *Driver* v. *Broad*, (1893) 1 Q. B. 744, that debeutures creating a floating charge on the undertaking of a company which included land created an interest in land, and that a contract for the sale of such a debenture was a contract for the sale of an interest in land within the 4th section of the Statute of Frands, and therefore not enforceable unless in writing signed by the vendor or his agent. This would seem to apply to debentures to bearer charged on land as well as to registered debentures; but the solution of the difficulty is that once delivery of a debenture to bearer is effected pursuant to the contract, the bearer is brought into direct privity with the company under whose seal the debenture is given, and his title is evidenced by writing.

Blank transfers, Where by the conditions a registered debenture is only transferable by deed, it must be borno in mind that a blank transfer—that is, a deed executed by the transferor with a blank for the name of the transferee—is, as a deed, void (*Hibblewhite* v. *McMorine*, 6 M. & W. 200), and the person with whom such a blank transfer is deposited cannot fill up the blank and re-deliver the instrument without a powor of attorney under seal. This is very inconvenient. But where a deed is not required, a transfer in blank, though inchoate, can be made operative by filling up the blank, and the authority so to fill if up may be oral or may be implied. Sce sup.a, p. 133.

Under the Forged Transfer Acts, 1891 and 1892, a company is now

DEPOSIT OF DEBENTURES OR CERTIFICATES. Ch. XXXII.

empowered to make compensation to persons who have suffered loss from accepting in good faith forged transfers of the company's stock. shares, or securities or transfers executed nuder a forged power of

The stamp duty on a transfer of a debenture on sale is upon an ad valorem scale, fixed by sect. 122 of the Stamp Act, 1891, and on a contract note on a varying scale from 6d, to £1 fixed by the Finance (1909-10) Act. 1910, s. 77. See Customs and Inland Revenue Act.

The stamp on snrrender or discharge is 6d. per 1007.

Discount.

Debentures may be issued at a discount where the directors have the general powers of the company, and there is nothing in the regulations or memorandum to prevent issue at a discount. Re Anglo-Danulian Co. (1875), 20 Eq. 339; Re Regent's Canal, &c. Co. (1876). 3 Ch. D. 43; Campbell's case (1876), 4 Ch. D. 470. The cousiderations which render the issue of the shares of a limited company at a discount illegal have no application to debentures debenture stock. But where a debenture issued at a discount contains a clause enabling the holder to call for the allotnient in satisfaction of fully paid up shares equal to the full nominal amount of the debenture, that clause. it has been held, is objectionable. Moseley v. Koffyfontein Mines, Limited, (1904) 2 Ch. 108.

See also Bury v. Famatina Development Co., (1910) A. C. 439. affirming the Conrt of Appeal. In this case bonus certificates payable out of profits were issued with debentures, and it was held that to satisfy such certificates by the issue of paid-up shares was ultra vires. See supra, p. 69.

Deposit of Debentures or Certificates.

Sometimes money is raised by the deposit by the directors of debentures or certificates of debenture stock which they have power to issue. There is no objection prima facie to such a mode of raising money. If the instrument deposited is negotiable the depositee gets the legal title, and if the instrument is to registered holder the depositee obtains a good equitable title, even though the debentures deposited are only in blank. Re Regent's Canal Ironworks Co. (1876), 3 Ch. D. 43; Re Strand Music Hall, 3 De G. & S. 147; Hampshire Land Co., (1896) 2 Ch. 743. If the company is insolvent, the person with whom the debentures are deposited can claim a dividend on the deposited debentures pari passu with the other debentures of the series, until the whole of the debt as security for which the debentures were deposited has been paid. Re Reyent's Canal Ironworks, 3 Ch. D. 43.

Debentures agreed to be Issued.

Effect of agreement only to issue debentures. Where money is advanced to a company upon the terms that debentures charged upon the undertaking, or upon any specified property of the company, shall be issued by way of security, the lender at once obtains a charge in equity; for equity treats that as done which ought to be done. Levy v. Abercorris Slate Co., 37 C D. 264; New Durham Salt Co., 7 T. L. R. 13; Tailby v. Official Receiver, 13 App. Cus. 523. The deposit by way of security of debentures containing a blank for the payee's name affords evidence of an agreement to give security by complete debentures in the form of those so deposited. Re Strand Music Hall, 3 De G. J. & S. 147; Re Queensland Land and Coal Co., (1894) 3 Ch. 181; Re Hampshire Land Co., (1896) 2 Ch. 743; Pegge v. Neath District, Syc. Co., (1898) 1 Ch. 183; Simultaneous Colour Printing Syndicate v. Foweraker, (1901) 1 K. B. 771.

Thus, where a prospectus offered for subscription 20,000*l*, worth of mortgage debentures "to be secured on the entire property of the company," and S. applied for debentures "upon the terms of the company's prospectus," and a resolution to allot was passed by the directors and notified to S., but no allotment took place, and afterwards a trust deed was executed charging certain property specified "in the schedule" in favour of the debenture holders, but no schedule was annexed; the Court in the winding-up held S. entitled to a charge on the entire property of the company. *Re New Durham Salt Co.* (1891), 2 Meg. 360; 7 T. L. R. 18.

The operation of these cases is, however, to some extent modified by sect. 93 of the Companies Act, 1908, requiring particulars of every mortgage or charge for securing debentures or debenture stock to be registered "within twenty-one days after the date of its creation," and in default avoiding the charge as against creditors. Hence it is apprehended that where there is an agreement for a ebarge, as in the case last mentioned, the equitable charge must be registered; even where. as in the case of debentures executed in blank and deposited by way of security, there is no accompanying memorandum of deposit. But although the Court would be unable to treat an unregistered agreement in writing to give a mortgage or charge as a subsisting charge (Ex parte Mackay, 8 Ch. 643), it would in some cases be able to compel the company to specifically perform the agreement by creating the requisite securities (Ex parte Homan, Re Broadbent, 12 Eq. 598; Ex parte Hauxwell, 23 C. D. 627), and might in such a case, if the company was solvent, allow an extension of the time for registration. See sect. 96.

Scrip certificates for debentures or debenture stock, where the

PRIORITIES OF DEBENTURE HOLDERS.

-11-

rty) erer

tit

Im

23. for

by

nd

0.,

19e

nr

ъť $h_{\rm P}$

he

he

۲-T

ied

ale

92 °0.

Ъy

rγ

he

nd

re-

150 re,

ay

lut

nt

ŀ:x

)el

he Es

<u>n</u>-

ee

he

Ch. XXXII.

dehentures or trust deed are not to be issued or excented for some time, are occasionally registered so as to afford interim protection.

Priorities of Debenture Holders.

Questions as to the priority of different series of debentures do not Priorities of often arise, but it may be well to indicate how they arise and how they debenture holders.

The priorities of debentures depend on various considerations-on Unpaid the true construction of the instrument or instruments creating them, vendor, on the rule that the legal estate primo facie gives priority, or the rule that prima fucie he who is first in time has the better equity, and on (1910) 2 Ch. the registration or non-registration under sect. 93 of the Act, er under ³⁰⁶; Hageneter v. Bounton. sect. 14 of the Act of 1900, or sect. 10 of the Act of 1907. As a (1910) 1 Ch. general, almost invariable, rule, debenture holders of the same series are made to rank pari pussu inter se; even if it is not so expressed the Court will, from slight indications, infer equality. Where such equality exists, no individual debenture holder is allowed to get an advantage for himself. If he gets judgment, the judgment enures for the benefit of all the debenture holders (Bowen v. Brevon Rail. Co., L. R. 3 Eq. 541): if he obtains a collateral security he holds it as trustee for all. Small v. Smith, 10 App. Cas. 131; Landowners v. Ashford, 16 C. D. 411. The series constitutes, in fact, one great contributory mortgage. Whether a company can redeem some of the debentures of a series and re-issue them to rank pari passu with those left nuredeemed is a nice question, which must be determined on construction of the language of the debenture, and the terms of sect. 104 of the Act. The object of this section is to override the principle laid down by the Court. George Routledge & Co., (1904) 2 Ch. 474; W. Tasker & Sons, (1905) 1 Ch. 283; Perth Electrical Tranways. (1906) 2 Ch. 216; Russian Petroleum Co., (1907) 2 Ch. 540, according to which a debenture once paid off was extinguished, and could not be re-issued, and it appears to have in a great measure done this. Fitzgerald v. Persse, (1908) 1 Ir. R. 279. Though the construction of the section presents many points of difficulty.

The issue of part of a series of debentures which are all to rank pari passu does not by implication restrict the company's power as regards the terms on which the rest of the issue may be dealt with. Regent's Cunal, 3 C. D. 43. The company may even issue the balance of such debentures, although a debenture holders' action has been commenced, at any time before a receiver has been appointed in the action. Hubbard v. Hubbard, 68 L. J. Ch. 54; and see Geisse v. Taylor, (1905)

Where two or more series of debentures are issued giving a floating

519,

DEBENTURES AND DEBENTURE STOCK.

charge, they will rank according to the date of issue, in the absence of anything to show that they are to rank pari passu. James v. Boythorpe Colliery Co., 2 Meg. 55; Gartside v. Silkstone Coal Co., 21 C. D. 762; and see Lister v. Henry Lister & Son, 41 W. R. 330. Hence, where mortgage debentures of a specific series are to rank pari passu, the company cannot issue debentures of some further series to rank pari passu with the original series, nuless the terms of the last-mentioned series have reserved such a power to the company, either expressly or impliedly. *Ibid.* The reservation of a power to create mortgages is not sufficient for this purpose. *Re Renjamin Cope & Sons*, (1914) 1 Ch. 800.

Specific Property charged.

Where a company issues a series of debentures, themselves charging, or accompanied by a trust deed charging, *specific* property of the company, such a charge ranks *primit facie* in priority to any subsequent charge on the same property by the company on the principle *qui prior est tempore potior est jure*; but this rule yields to that reverence with which the law always regards the legal estate and the *bond fide* purchaser for value, and if, consequently, the company creates a subsequent charge, whether in favour of debenture holders, or otherwise, and the persons in whose favour such charge is created advance their money in good faith, without notice (actual or constructive) of the prior debenture charge, and get the legal estate; theu, by virtue of such legal estate, they take priority over the prior charge of the debenture holders. It is to prevent this danger that the legal estate is usually vested in trustees to secure the debenture holders. See Company Preceden 5, Part 111, p. 93.

Floating Charge.

As to property comprised in a floating charge, we have already seen that debenture holders having a charge thereon may be postponed to subsequent specific mortgages (p. 312), and this, in some cases, even though the conditions of the charge prohibit the creation of prior mortgages (p. 312). If there is no such prohibition, the subsequent specific mortgage takes priority, by virtue of the fact that the floating security is a floating security, and, by its very nature, therefore, permits the company, in carrying on its business, to create charges in priority to it. If there is such a prohibition, then the subsequent mortgage takes priority—in cases where he does so —by virtue of his good faith and the legal estate or a better equity. Bower v. Foreign Gas Co., W. N. (1877) 222; Branton v. Electrical Engineering Co., (1892) 1 Ch. 434; Castell & Brown, (1898) 1 Ch. 315; Valletort Sanitary Steam Laundry, (1903) 2 Ch. 654; and see Company Precedeuts, Part 111, p. 142 et seq.

SPECIFIC PERFORMANCE.

đ

1

÷ £2

1

Ņ

ıt

h

1. T

T

đ

1

0

f

υ 1 Ch. XXXII.

Sect. 209 (2) (b) of the Act of 1908 gives local rates, clerks' and servants' salaries and workmen's wages priority in a winding-np over debenture holders with a floating charge. See p. 410, post, and Ann.

Majority Clauses.

Debenture trust deeds commonly, and sometimes debentures, con- Majority tain provisions enabling the majority-say three-fourths-of the clauses holders of the debentures or debenture stock at a meeting, to assent to modifications of the rights of the holders as a class. The object ef such a power is, of course, to prevent a perverse or unreasonablo minority from obstructing a beneficial arrangement, e.g., where it may be necessary to give the company time for payment of interest or to allow rendering the rate, or enable it to raise further funds by a fresh is: ae of debentures to rank pari passu. The operation of such a clause has been discussed in a number of cases (Follit v. Eddystone, (1892) 3 Ch. 75; Mercantile Co. v. International Co. of Mexico, (1893) 1 Ch. 484, n. (C. A.); Mercantile Trust Co. v. River Plate Co., (1894) 1 Ch. 578; Re Dominion of Canada Freehold Estate Co., 55 L. T. 347; Sneath v. Valley Gold Co., (1893) 1 Ch. 477 (C. A.); Walker v. Elmore's German Metal Co., 85 L. T. 767 (C. A.); Kent Collieries, 23 T. L. R. 559; Cox-Moore v. Peruvian Corporation, (1908) 1 Ch. 604); Shaw v. Royce, Limited, (1911) 1 Ch. 138; Northern Assurance, Ltd. v. Farnham United Breweries. (1912) 2 Ch. 125; and the result of Return of these cases may be summed up by saying that the powers of the guarantee. meeting depend entirely on the true construction of the provision $\therefore L, J, 21$ Jan. meeting depend entirely on the true construction of the provisions in 1911, p. 716: meeting depend entirely on the true construction of the provisions in Meelop v. question. And each class of persons may vote in accordance with Meelop v. Paraguagy their own interests, provided that the whole scheme is fair. Goodfellow Central v. Nelson Line, Ltd., (1912) 2 Ch. 324. In several cases, the provisions 54 L. J. 235. of the clause were held sufficient to enable the majority to bind the class to accept shares of a new company in satisfaction of the securities of the existing company, but they have been held not to enable the company to sell its assets and distribute them among those of the debenture holders who were willing to accept the lowest price for their debentures. New York Taxicab Co., (1913) 1 Ch. 1. See further

Specific Performance.

Specific performance of a contract to take or to subscribe for Specific perdebentures could not under the old law be enforced. Thus, if A. formance. agreed to take up debentures of the company, and failed to pay, he could not be forced to pay up, the theory of law being that the company could get the loan elsewhere and did not need to invoke the

21

DEBENTURES AND DEBENTURE STOCK.

special jurisdiction of equity to aid it. All that the company could do was to sue the defaulter for the damages (if any) it had sustained. South African Territories, Limited v. Wellington, (1897) 1 Q. B. 692 (C. A.); (1898) A. C. 309. By sect. 105, however, of the Act. "A contract with a company to take and pay for any debentures of the company may be enforced by an order for specific performance."

Where debentures are issued payable by instalments, and the company has declared the debentures forfeited, the company cannot recover calls made before the forfeiture under this section. *Knala Pahi Estate* v. *Mowbray*, (1914) W. N. 321.

Books.

The books of the company may be a very important part of the The words "all the property of the debenture holders' security. company" in the debenture holder's chargo, though, prima facie, amply sufficient to cover them, have been held not to extend to the company's books. See Clyne Tin Plate Co. (1882), 47 L. T. 439 ; Engel v. South Metropolitan Co., (1892) 1 Ch. 442. The generality of this proposition seems, however, to require some qualification, at least, to render it reconcileable with Re Capital Fire Insurance Association (1883), 24 C. D. 408. That case-which was one of solicitor's lie draws a distinction between different kinds of books. There a. books which, by the provisions of the Companies Acts, are to be kept at the office of the company, such as the register of members and the register of mortgages; and for the directors to mortgage or charge these would, as Cotton, L. J., points out, be to deal with the property of the company in a way inconsistent with its objects and constitution; and the same principle applies to books which, by the articles of the company, are to be kept at its office-such, for instance, as the directors' minute-book ; but these obviously reasonable restrictions seem the only just limit on the company's power of creating a charge over its books.

Debenture Stock.

In the matter of security, of payment of interest, and of transfer, debenture stock differs hardly at all from dobentures; as to the time of payment it differs in being generally made payable only in the event of a winding-up, and not at a fixed date. It is in its divisibility that debenture stock differs mainly from debentures. A debenture is always for a fixed sum, say 100*l*, and this sum is only transferable as an entirety; whereas debenture stock, unless the regulations otherwise provide, can be transferred in any amounts, e.g., 550*l*., or 71*l*., or 13*l*., and several small holdings can be consolidated into one larger holding, a single certificate being

Books,

DEBENTURE STOCK.

do

ч. 11-2 1. he

11-

101

ila

the

the

rie,

the

lv.

his

, tu

ion

а.

ept the rge rty

oli :

i ot

the em

ver

fer. to

able

It

rotti

)01.,

ture

d in

ings eing Ch. XXXII.

obtained for the aggregate amount. But, to prevent complications, the articles commonly make the stock transferable in amounts of

Constitution.

Debenture stock, as mentioned above, is generally constituted by Constitution a trust deed. The deed contains a covenant for the payment, either by trust deed. at a fixed date or in certain events (e.g., a winding-up), of a specified capital sum-say 100,0002 .- which is to be called the stock, and for the payment of interest, and gives to the trustees security, by way of mortgage or charge, as in a debenture trust deed. It contains also provisions for the keeping of a register of the beneticial owners of the stock, and for transfers and transmissions thereof, and for the issue to such owners of certificates of title, and for meetings of the stock-holders, &c., and it usually reserves to the company power to redeem at a premium before muturity.

Debenture stock of a company under the Companies Act, 1908, is essentially different from debenture stock issued by milway and other companies under the Companies Clauses Act, 1863.

Under the terms of the deed, there is not usually any direct contract by the company with the stock-holder; but ho is a beneficiary, and, as such, the Court will recognize and protect his title. Re Empress Engineering Co. (1878), 16 Ch. D. 128; Gaudy v. Gaudy (1885), 30 C. D. 57. It is not easy to reconcile with this, Dunderland Iron

Stock Certificate.

The stock certificate issued to the owners usually runs as follows :- Form of stock "This is to certify that ---- of ----- is the registered proprietor of certificate. \mathfrak{L} — debenture stock of the above-named company," and is under seal.

As to the danger of giving an incorrect certificate, see supra, pp. 143, 144.

Remedies of Debenture and Debenture Stock-holders.

Where Debenture carries no Charge.

Where the debenture is not secured by any mortgage or charge, Remedies. the remedy of the holder is either to bring an action to enforce the debenture and obtain judgment and then levy execution on the property of the company; or he may, either before or after judgment, present a petition for the winding-up of the company, or, if there be a winding-up in progress, he can prove in the winding-up for the amount due to him, but, not having any security, he has no priority

21(2)

DEBENTURES AND DEBENTURE STOCK.

either in the winding-up or otherwise; he ranks merely with the ordinary creditors.

Debentures or Debenture Stock carrying a Mortgage or Charge.

In this case, the remedies open to the dehenture holder or debenture stock-holder necessarily depend on the terms of the security, and these terms must be scrutinised accordingly. Ordinarily, the remedy of a debenture holder, when the company is in default as regards principal or interest, is to bring an action against the company to obtain payment and to enforce his securities. Where a debeuture holder is required to give notice to the company prior to action he must do so *Rogers §: Co. v. British, etc. Association, 68 L. J. Q. B.* 14 he such an action, the debenture holder plaintiff sues on behalf of himself and the other members of the class, and the Court usually appoints a receiver (if necessary a manager also), and by its judgment declares the debentures to be a charge on the property, directs inquiries as to who are the holders, and the amount duo, and either orders a sale of the property or gives liberty to apply for a sale. See Company Precedents, Part III., pp. 481 and 720 *et seq.*

As a rule the undertaking of a company carrying on some service to the benefit of the public cannot be sold. The Crystal Palace is not, however, exempt from sale as a public undertaking. Crystal Palace Co., 130 L. T. N. 483.

Where Trust Deed.

Where there is a trust deed, whether for securing debentures or debenture stock, the trustces can be plaintiffs in an action for enforcing the charge; but, commonly, the action is brought by a holder of the debentures or debenture stock, and the company and the trustees are made defendants. In such an action, similar relief is usually granted. See Company Precedents, Purt III., p. 481.

Appointment of Receiver.*

Receiver.

In an action to enforce the security, the Court has power to appoint a receiver, and is usually asked to exercise it; and this power is not confined to cases in which the principal or interest on the debenture or debenture stock is in arrear. A receiver may be appointed whenever the security is in danger. Thus, where a company had become iusolvent and closed its works, a receiver was appointed. *McMahon v. North Kent Iron Works*, (1891) 2 Ch. 148. So, where a winding-up of the company takes place or is imminent. *Victoria Steamboats Co.*, (1897) 1 Ch. 158; *Hodson v. Tea Co.*, 14 C. D. Sar. *Wallace v. Universal Co.*, (1894) 2 Ch. 547. Or, where a company is

· See generally Riviere on Receivers.

DEBENTURE STOCK.

the

tite

heime Vol

ru -

hiifi

1.18

- su Lu

ne It

ints

I FATH

n to e ut

11/14-

e to not.

luce

s or

for

1 11

and dief

tu-

the

te

nny teil.

re a

orin

y is

disposing of its undertaking in violation of the terms of the security (Habback v. Helms, 56 L. T. 232; but see Faster v. Borar Co., (1901) i Ch. 326); or where there are judgments against the company. Edwards v. Standard Rolling Stock Syndicate, (1893) 1 Ch. 574. See also Victoria Steamboat Co., Smith v. Wilkinson, (1897) 1 Ch. 158, in which it was held that the power to appoint a receiver included, also, power to appoint a manager in such cases; and in such cases the Court, after appointing a receiver, can enforce the scenarity. Carshalton Park Estate, (1908) 2 Ch. 62 The mere fact that the assets would, if realised, be insufficient to pay the debenture holders in full is not a valid ground for the appointment of a receiver. New York Tatteab Co., 1913) 1 Ch. 1. But see Re Braunstein and Marjolaine, Ltd., (1914) W. N. 335; 58 Sol. J. 755; and where the company proposed to distribute among its members a reserve fund which was its only remaining asset, a receiver was appointed. Re Till Care Copper Co., W2

Where the company is registered in this country, it is no objection to the appointment of a receiver that the property is abroad. Exparte Pollard, 4 D. & C. 27: Coole v. Jecks, 13 Eq. 597. See Company Precedents, Part III., p. 444.

The appointment of a receiver by the debenture holders under their debenture does not necessarily prevent the Court from appointing a receiver Re = Slogger "Automatic Co., (1915) 1 Ch. 478.

Leave of the Court under the Courts (Emergency Powers) Act. 1914, is not necessary. Re Farnol, Eades, Irvine & Co., (1915) 1 Cb. 22. See further Appendix, p. 634.

If a receiver is appointed "upon his giving security," he is not entitled to take possession until he has given security, and until then he is not to be deemed to be in possession as against third parties. Edwards v. Edwards, 2 C. D. 291. But if the order appoints the receiver cut and ont, and orders him to give security, the appointment takes effect at once, and he is entitled to take possession before security given, and as against third parties is to be deemed to be in possession as from the time the order is perfected. Marrison v. Skerne Ironworks Co., 60 L. T. 588, in which case the appointment was held good as against execution creditors; and Ex parte Evans, 11 C. D. 691; 13 C. D. 252. So, a landlord who distrains after the making of a receivership order, but before it is drawn up, will not be disturhed. When the Colliery Co., (1897) 1 Ch. 373

When the Court appoints a receiver of property, it in effect takes the custody of the property into its own hands—for the receiver is an officer of the Court—and thus assumes the protection and safe keeping of it for the benefit of the parties interested in it. The receiver being an officer of the Court, any interference with him, whether hy a party to the action or by a stranger, is a contempt of Court and punishable

Ch. XXXII.

DEBENTURES AND DEBENTURE STOCK.

accordingly. Thus, proceedings for recovery of possession cannot be commenced by a first mortgagee without leave of the Court. Re-Metropolitan Amalgamated Estates, Ltd., (1912) 2 Ch. 497. See, however, as to independent actions by debenture holders, Cleary v. Brazil Rail. Co., (1915) W. N. 178. [This decision may be supported on the ground that thore was no interference with the company's assets until execution.]

The duty of a receiver as such is confined to taking possession and protecting the property over which he is appointed. Manchester and Milford Rail. Co., 14 C. D. 645. And see, as to the powers of a receiver, Swaby v. Dickon, 5 Sim. 629, 631; Bristow v. Needham, 2 R. 629; Parker v. Dunn, 8 Beav. 497; Ireland v. Eade, 7 Beav. 55; Moss Steamship Co. v. Whinney, (1912) A. C. 254 (as to giving a lien on the company's goods); and Company Precedents, Part III., p. 150 et seq.

As to the power of a receiver to disregard contracts made by the company, see *Re Newdigate Colliery*, (1912) 1 Ch. 468; *Thames Ironworks*, 28 T. L. R. 273; (1912) W. N. 66; *Re Great Cobar*, *Ltd.*, (1915) 1 Ch. 682.

The quest' whether a receiver shall take proceedings in the name of the comparison of the Court. The plaintiff in the debenture holders' action cannot insist on proceedings by the company against him being dropped. Viola v. Anglo-American (v, (1912) 2 Ch. 305.

When a receiver and manager is appointed by the Court, he "accepts the appointment on the terms that he will be personally responsible to the creditors of the business, whilst he will be indemnified out of the estate." Per Rigby, L. J., Owen v. Cronck, (1895) 1 Q. B. 265; Burt v. Bull, (1895) 1 Q. B. (C. A.) 276; and Gosling v. Gaskell, (1897) A. C. 575. But as to his indemnity when in default, see British Power Traction Co., (1910) 2 Ch. 470; Re British Tea Table, 101 L. T. 707.

A receiver carrying on a company's business may be personally liable to compensate workmen under the Workmen's Compensation Act, 1897.

But a receiver in a debenture holders' action will not, at the instance of a landlord, be ordered to pay the rent of leasehold premises mortgaged by sub-demise to the trustees for the debenture holders, there being no privity in such a case between the lessor and sub-lessees. *Hand* v. *Blow*, (1901) 2 Ch. 721; and see *Re J. W. Abbott § Co.*, (1913) W. N. 284; 30 T. L. R. 13 (where the receiver was in posseesion).

Where the security comprises leasehold property and fixtures, and the company by passing a voluntary resolution to wind up forfeits the lease, the receiver may remove the fixtures within a reasonable

DEBENTURE STOCK.

) E I

ir

÷ -

il

เค

il

d d

8

2,

5;

'n

i0

1e

4.

l.,

10 ff 10

۶,

10

ly

d

3

ll,

ee

e,

ly

)[]

c0

t-

re

8.

).,

ş.

ıd

t8

time.

Re Glasdir Copper Mines; English Electro-Metallurgical Co. v. Glasdir Copper Mines, (1904) 1 Ch. 819.

A receiver is bound (sect. 107) to pay forthwith out of the first assets coming to his hands creditors entitled to preferential payments (see p. 410, post). If he distributes the assets or uses them up in carrying on the business without providing for these preferential payments, he renders himself liable. Woods v. Winskill, (1913) 2 Ch. 303. As to rates see National Provincial Bank v. United Electric Theatres,

The appointment of a receiver and manager, if of a permanent character, operates as a discharge of the company's servants. Reid v. Explosives Co. (1887), 56 L. J. Q. B. 388.

A receiver or receiver and manager may be appointed in proceedings commenced by originating summons. Re Francke, 57 L. J. Ch. 437; Gee v. Bell, 35 C. D. 160; Ann. Pr., notes to Ord. LV. r. 5a.

A director appointed receiver and manager in a debenture holder's action is not thereby disentitled to be paid his fees as director. Re South Western of Venezuela Rail. Co., (1902) 1 Ch. 701.

Under sect. 94 of the Act the appointment of a receiver must be registered, see p. 478; and as to filing his accounts, see sect. 95 of the

Leave to Borrow.

In debenture holders' actions the business of the company is com- Borrowing. monly the most valuable asset, and in order to protect and preserve it as a going concern, and for this or other pressing exigencies, the Court has jurisdiction-which it frequently exercises-to authorize the receiver to borrow money in priority to the debentures or debenture stock. Greenwood v. Algeçiras (Gibraltar) Rail. Co., (1894) 2 Ch. 205; Lathom v. Greenwich Ferry, 72 L. T. 790. The receiver should keep within the limits allowed. Glasdir Copper Mines, (1906) 1 Ch. 365; British Power Traction Co., (1906) 1 Ch. 497.

The jurisdiction to raise a salvage loan of this kind is beneficial to all persons interested, and has saved many a well-known concern from destruction. See as to this power, In re Regent's Canal Works (1876), 3 Ch. D. 411; Ex parte Izard (1883), 23 Ch. D. 75; Securities Investment Corp. v. Brighton Alhambra (1893), 68 L. T. 249; In re Ormerod, W. N. (1890) 217; Milward v. Avill & Smart, 4 Mans. 403; Re Glasdir Copper Mines, (1906) 1 Ch. 365; Robinson Printing Co. v. Chic, Limited, (1905) 2 Ch. 123.

The expenses of realization rank before securities given by the receiver and manager. Strapp v. Bull, (1895) 2 Ch. 1; Re Glasdir Copper Mines, W. N. (1905) 57; Re London United Breweries, (1907) 2 Ch. 511.

DEBENTURES AND DEBENTURE STOCK.

Foreclosure.

This is a remedy which is occasionally available in debenture holders' actions. See Sadler v. Worley, (1894) 2 Ch. 170; Elias v. Continental, &c. Co., (1897) 1 Ch. 511. But not, generally speaking, where debentures and debenture stock are secured by trust deed. Schweitzer v. Mayhew, 31 Beav. 37. As to the necessary parties, see Wallace v. Evershed, (1899) 1 Ch. 891; Elias v. Continental Co., supra.

Remedy by Winding-up Petition.

Winding-up

A debenture holder or debenture stock-holder, to whom the company is indebted in a sum presently payable, can demand payment, and, if default be made, can petition for the winding-up of the company, and this, whether he be the registered holder c' the security, or the holder of a security to bearer. Re Olathe Silver Co. (1884), 27 Ch. D. 278; Re Uruguay Central Rail. Co. (1879), 11 Ch. D. 372. And the mere fact that he has obtained the appointment of a receiver does not preclude him from applying for a winding-up order. Borough of Portsmouth Tramways, (1892) 2 Ch. 362. As against the company he is eutitled to a winding-up order ex debito justitiæ, but not so as against the wishes of the majority of the creditors. Western of Canada Co. (1873), 17 Eq. 1; Chapel House Colliery Co., 24 C. D. 259. The holder of a mortgage debenture, who applies for a winding-up order, is not bound to give up his security. Moor v. Anglo-Italian Bank (1878), 10 Ch. D. 681. Where there is nothing presently due to the debenture stockholder, he had formerly no locus standi to present a winding-up petition. Re Melbourne Brewery Co., (1901) 1 Ch. 453 (Wright, J.). But if the company is insolvent his position is, in this respect, altered by sect. 137 of the Act of 1908.

Action by debenture holder.

Remedies without aid of Court.

A debenture holder is not bound to come in and enforce his rights in a winding-up. He may excress such powers of realization as are given him by his securities, e.g., appointment of a receiver or sale, and, where it is necessary to bring an action, he can apply to the Court and the Court will give liberty to bring or proceed with the action as a matter of course, winding-up notwithstanding. Lloyd v. David Lloyd §. Co. (1877), 6 Ch. D. (C. A.) 339; Joshua Stubbs, Limited, (1891) 1 Ch. 475; Strong v. Carlyle Press, (1893) 1 Ch. 268.

A receiver may be appointed under a trust deed or debenture and may, if so provided, be responsible as the agent of the company, supra, p. 296.

328

Foreclosure.

DEBENTURE STOCK.

Ch. XXXII.

Proof by Debenture Holders.

In the case of a solvent company a debenture or debenture stock- Proof. holder can prove for his principal and interest (In re Colonial Trust Corporation (1879), 15 Ch. D. 473), and is not bound to value his security before proving (Kellock's case (1867), L. R. 3 Ch. 769). But if the company is insolvent, which it is taken primd facie to be if in winding-up (Re Milan Tramways Co. (1884), 25 Ch. D. 587), sect. 10 of the Judicature Act, 1875, applies, and the holders of secured debentures who want to prove must value their securities, or must realize them and then prove for the balance; and for the purpose of ascertaining the balance for which he can prove, the debenture holder can only apply the proceeds of his security in payment of interest accrued up to winding-up. He may then prove as an unsecured creditor for the balance of the principal and interest due at the commencement of the winding-up after deducting the amount arising from realization of his security. Quartermaine's case, (1892) 1 Ch. 639.

Where a debenture is not payable and a winding-up commences, the holder can nevertheless prove for the full amount of the principal subject to a rebate of interest and also value and prove the liability to pay future interest to maturity where, by the terms of the instrument, the principal carries such interest to maturity. Re Browne and Wingrove, ex parte Ador, (1891) 2 Q. B. (C. A.) 574.

Debenture holders and debenture stock-holders are entitled as against their securities, whether the company be solvent or insolvent, to take principal, interest up to date of payment, and costs. Cotterell v. Stratton (1872), L. R. 8 Ch. 302; Re Talbot (1888), 39 C. D. 567.

As to interest after judgment, see Re European Central Rail. (1876), 4 Ch. D. 33; Re Sneyd (1884), 25 Ch. D. 338; Re Agriculturist Cattle Co., 4 Ch. D. 34, n.; and Popple v. Sylvester (1883), 22 Ch. D. 98. As to set-off, see Re Taunton, Delmard & Co., (1893) 2 Ch. 175; Re

Smith & Co., (1901) 1 Ir. R. 73; and Rhodesia Goldfields, (1910) 1 Ch. As to income tax, see Smith v. Law Guarantee and Trust Society,

(1904) 2 Ch. 569.

As to adding costs to the security, see Johnstone v. Cox (1881), 19 Ch. D. 17, 19.

As to costs in a representative debenture holder's action, see Wright v. Kirby, 23 Beav. 863; Ford v. Earl of Chesterfield, 21 Beav. 426; Batten v. Dartmouth Harbour Commissioners, 45 C. D. 612; Carrick v. Wigan Tramways Co., W. N. (1893) 98; Re New Zealan' Midland Railway, Smith v. Lubbock, (1901) 2 Ch. 357; Re Clayton Engineering and Electrical Construction Co., 90 L. T. 283; Mortgage Insurance Co. v. Canadian Agricultural Coal Co., (1901) 2 Ch. 377. [These cases

DEBENTURES AND DEBENTURE STOCK.

establish the rule that where the assets are insufficient to pay in full the series of debentures on behalf of which the plaintiff sues, the plaintiff is entitled to solicitor and client costs out of the fund. Where, however, the assets are sufficient to pay this series in full, but insufficient to pay any subsequent series in full, the plaintiff can only get party and party costs out of the assets. See also Re W. C. Horne & Sons, Ltd., (1906) 1 Ch. 271.]

The company and the subsequent incumbrancers, though necessary parties (*Wilcox & Co.*, W. N. (1903) 64) mu't, where sued by the first debenture holders, look to the surplus for their costs. *Clayton Engineering Co.*, W. N. (1904) 28; 90 L. T. 283. [They are, however, sometimes allowed costs where their presence has been beneficial to the realization of the assets.]

A debenture holder, though suing on behalf of himself and others. is *dominus litis*, and accordingly can stop the action when he chooses, *e.g.*, on his claim being satisfied. *Ward* ∇ . *Alpha Co.*, (1903) 1 Ch. 203.

As to the position of non-claiming debenture holders, see Ashley v. Ashley, 4 C. D. 757, and Saragossa and Mediterranean Rail. Co., (1904) A. C. 159.

Where a debenture is guaranteed by a guarantee company, both companies being insolvent, the holder can prove in the winding-up of the guarantee company for the balance remaining after realizing his security; but he is not directly entitled to the benefit of any re-insurance effected by the guarantee company. *Re Law Guarantee and Trust Society*, (1915) 1 Ch. 340.

CHAPTER XXXIII.

ıll 10 đ. ut ly ne

ry st on

r,

to

8.

s.

h.

ν.

4)

th

of

is

r-

ıd

PROMOTERS.

The promoters of a company are those who form or float it, that is to Typical say, the leading spirits of the enterprise, or principal actors, for not promoterevery member of the dramatis persona, or every subordinate employed business. by the promoters, is to be regarded as " promoter The typical promoter-the promoter in the fullest sonse of the term-starts the scheme of forming the company, negotiates with the vendors (if any), gets together the board of directors, retains brokers, bankers, and solicitors for the company, has the memorandum and articles of association prepared, provides the registration fees, drafts the prospectus, pays for the expense of issuing it, &c.; in a word, undertakes-to use the language of Cockburn, C. J.-to form a company with reference to a given project, and to set it going, and to take the necessary steps to accomplish that purpose. C. P. D. 469; Bagnall v. Carlton, 6 C. D. 371; Emma Co. v. Lewis, Twycross v. Grant, 2 40 L. T. 68; 4 C. P. D. 396; Lydney and Wigpool Co. v. Bird, 33 Ch. D. 85; Whaley Bridge v. Green, 5 Q. B. D. 109; Gluckstein v. Barnes, (1900) A. C. 240; Re Sale Hotel and Botanical Gardens, 78 L. T. 368 (C. A.); Olympia, Limited, (1898) 2 Ch. 181; Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate, (1899) 2 Ch. 392; Leeds and Hanley Theatre of Varieties, (1902) 2 Ch. 809.

But a person may be a promoter who has taken a much less active Construcpart in the promotion proceedings. Anyone who assists in the pro- tively. motion, e.g., by obtaining a director, or agreeing to place shares, or negotiating an agreement, for a special fee or consideration payable if the company is floated, may find himself held to be a promoter. Persons who are engaged in the promotion of a company are sometimes extremely sensitive in regard to being termed promoters. A., for example, may really be taking an active part in the promotion, yet he will altogether disclaim the status of a promoter, and declare that B. is the real promoter. Promotership is, however, a question of acts, not words or names; and if a man takes part-though only a subordinate part-in the promotion, he must not be surprised to find himself saddled with the responsibility attaching in law 'o the promotera responsibility of a most onerous character.

is usual

PROMOTERS.

The Fiduciary Relation of Promoters.

Fiduciary position of promoters.

No secret profite permitted.

The promoters of a company, as Lord Cairns said in Erlanger v. New Sombrero, 3 App. Cas. 1236, "stand undoubtedly in a fiduciary position. They have in their hands the creation and moulding of the company. They have the power of defining how, and when, and in what shape, and under what supervision, it shall start into existence and begin to act as a trading corporation;" and Lord Blackburn, in the same case, after pointing out the extensive powers possessed by promoters, said: "I think that those who accept and use such extensivo powers are not entitled to disregard the interest of the corporation altogether. They must make a reasonable use of the powers which they accept from the legislature; and, consequently, they do stand, with regard to that corporation, when formed, in what is commonly called a fiduciary relation to some extent." This doctrine is now well established. See the cases below mentioned. The importance of the rule, which thus creates a fiduciary relationship between the promoter and the company he brings into existence, will be at once seen when we consider its consequences -the corollary which the law deduces from it-namely, that a promoter, being in a fiduciary position, may not make, either directly or indirectly, any profit at the expense of the company he promotes, without the knowledge and consent of the company, and that if he does make a secret profit in disregard of this rule, the company can compel him to account for it. Thus, in Emma Mining Co. v. Grant, 11 C. D. 918; Bagnall v. Carlton, 6 Ch. D. 371; Gluckstein v. Barnes. (1900) A. C. 240; Whaley Bridge Co. v. Green, supra; Mann v. Edinburgh Northern Trams Co., (1893) A.C. 69; and Leeds and Hanley Theatre of Varieties, Limited, supra, promoters were compelled to surrender secret profits; and the fact that the promoter is acting as agent for the vendors, or for other promoters, will not exonerate him from accounting to the company, when formed, for any secret profit made by him. Lydney and Wigpool Iron Ore Co. v. Bird, 33 Ch. D. 85. The same principle applies where a promoter desires to sell his own property to the company. He is quite entitled to do so; but he is bound to protect the company he has createdso at least Lord Cairns held-by furnishing it with an independent and competent board of directors, and by disclosing his interest in the property to such directors, so that they can exercise an intelligent judgment on the transaction. Erlanger v. New Sombrero Phosphate Co., 3 App. Cas. 1236.

The proposition of Lord Cairns must, however, be accepted with some qualification in view of the remarks of Lindley, M.R., in Lagunas Nitrate

THE FIDUCIARY RELATION OF PROMOTERS. Ch. XXXIII.

Co. v. Lagunas Nitrate Syndicate, (1899) 2 Ch. 302, 422. "Notwithstanding," he says, "all that has been said in Erlanger v. New Sumbrero Phosphate Co. about the duties of the promoters of a company to furnish it with an independent board of directors, that decision does not require, or iudoed justify, the conclusion that if a company is avowedly formed with a board of directors who are not independent, but who are stated to be the intended vendors or the agents of the intended vendors of property to the company, the company can set aside an agreement entered into by them for the purchase of such property simply because they are not an independent board. After Salomon's case I think it impossible to hold that it is the duty of the promoters of a company to provide it with an independent board of directors if the real truth is disclosed to those who are induced by the promoters to join the company." A promoter-veudor cannot ovade this liability of disclosure by putting in a nominee-vendor to sell to the company (Glasier v. Kolls (1889), 42 C. D. 442), or by making disclosures merely to a board of directors who are under his influence or in his pay. "It is," said Lord Halsbury, L. C., in Gluckstein v. Barnes, (1900, A. C. 247, "too absurd to suggest that a disclosure to the parties to this transaction is a disclosure to the company of what these directors were the proper guardians and trustees. They were there to do the work of the syndicate, that is to say, to cheat the shareholders; and this, forsooth, is to be treated as a disclosure to the company, when they were really there to hoodwink

"Disclosure," said Lor: Macnaghten in the same case, "is not the most appropriate word to use when a person who plays many parts announces to himself in one character what he has done and is doing in another. To talk of disclosure to the thing called the company when as yet there were no shareholders is a mere farce."

So, too, a mere constructive disclosure will not do: that is, a promoter of a company whose duty it is to disclose what profits he has made does not perform that duty by making a statement not disclosing the facts, but containing something which, if followed up by further investigation, will enable the inquirer to ascertain that profits have been made and what they amounted to. *Re Olympia, Limited*, (1898) 2 Ch. 153 (C. A.); *Gluckstein* v. *Barnes*, (1900) A. C. 240.

Accordingly, to be effective, disclosure must be to the shareholders as a body, not to a select circle of the promoters' nominees. Supposing, however, all the members of the purchasing company are by the articles of association and prospectus or otherwise made aware of the real facts of the case, the want of an independent board will not invalidate the agreement. Volenti non fit injuria Salomon v. Salomon, (1897) A. C. 22; British Seamless Paper Box Co., 17 Ch. D.

PROMOTERS.

467; Lugunas Nitrate Co. v. Lagunas Syndicate, (1899) 2 Ch. 392; Re Sale Botanical Gardens, 78 L. T. 368.

Where a promoter in selling his property to the company does not comply with his obligations as regards disclosure and otherwise, the sale may be set aside at the instance of the company. See Erlanger v. New Sombrero Co., supra. And if for any reason rescission has become impossible, the company is entitled to damages against the promoter, and the measure of such damages is the difference in value between the price paid by the company and the actual value of the property at the date of the purchase. Leeds and Hantey Theatre of Varieties, (1902) 2 Ch. 809 (C. A.).

When a promoter acquires property after he has commenced to promote and sells it to the company, a question of fact is raised as to whether or not he acquired it as trustee for the company. There is no presumption of law that he did. Omnium Electric Palaces v. Baines, (1914) 1 Ch. 332.

In relation to disclosure it must be borne in mind that a half disclosure is sometimes worse than none; for example, if the prospectus states that the promoters are making 30,000*l*., whereas they are really making 50,000*l*., the partial concealment falsifies the statement made. *Gluckstein* v. Barnes, (1900) A. C. 240.

The Act of 1908 now provides in sect. 81 for the fullest disclosure by vendors to the company. See pp. 344 et seq.

Remuneration of Promoter.

Remuneration.

"The services of a promoter are very peculiar. Great skill. energy and ingenuity may be employed." as Lord Hatherley, L. C., suid (Touche v. Metropolitan, &c. Co., L. F 6 Ch. 671), "in constructing a plan and bringing it out to the best advantage." This is quite true; and, accordingly, when a company has obtained the benefit of such services, no one is disposed to complain of the promoters getting some substantial advantage out of the promotion. The misfortune is that promoters are rarely satisfied with a reasonable remuneration. The modes in which promoters obtain their remuneration vary considerably. Sometimes the promoters agree with the owner of a going business or some other property that they will form and float a company to acquire the same, and the vendor in consideration of their doing so agrees to pay them a commission or part of the consideration for the sale when received. Sometimes the plan resorted to is for the promotors to purchase the business, concession, patent or other property, which the proposed company is formed to acquire, and then to resell to the company at a profit. In other cases the promoters form the company with part of its share capital in founders'

REMUNERATION OF PROMOTER. Ch. XXXIII.

shares, or deferred shares, and then take these founders' or deferred shares credited as paid up, in consideration of their paying the expenses of forming and floating the company.

In such cases, that is, of shares allotted as fully paid but not for cash, a contract or particulars must still be filed (though sect. 25 of the Companies Act. 1867, is repealed) under sect. 88 (1) (b), and the shares must be entered as fully paid in the return of allotments required by the same section of the Act. In other cases the promoters are content to accept as their remuneration the privilege of subs.ribing for a certain number of shares of small amount carrying valuable rights, e.g., founders' or deferred shares, and paying for the same in cash, relying for their profit on the likelihood of such shares largely increasing in value in the near future.

Sometimes promoters take an option to subscribe within a year for a certain portion of the company's unissued shares at par. If the shares in the company are likely to go to a premium, such an option may be of considerable value. As to the effect of a voluntary winding-up on such option, see In re South African Trust Co., Exparte Hirsch (1896), 74 L. T. 769.

Under the enabling power in sect. 89 of the Act such an option may be given as the consideration for subscribing for, underwriting or placing shares. *Hilder* v. *Dexter*, (1902) A. C. 474.

Sometimes the articles of association provide for the directors paying a specified sum to the promoters in respect of their services in promoting the company; but a clause of this kind gives, it must be remembered, merely an authority to the directors to pay such expenses, and does not constitute a contract on which the promoter can sue the company. *Rotherham Alum*, §c. Co., 25 C. D. 103. Nor will the presence of such a clause justify the directors in paying out money without due inquiry. Engletield Co., 8 C. D. 388. March 100

inquiry. Englefield Co., 8 C. D. 388; Marzetti's case, 28 W. R. 541. Whatever be the nature of the remuneration, it must be disclosed in the prospectus if paid within two years. See sect. 81 (1) (j).

A promoter can only recover from the company what he has paid in preliminary expenses where he proves a contract by the company to pay. English and Colonial Produce Co., (1906) 2 Ch. 435. According to that decision, however, the promoter can, without proving a contract, recover the registration fees, but this has since been overruled. See National Motor Mail Coach Co., (1908) 2 Ch. 515, C. A., affirming Swinfen Eady, J.

Statute of Limitation and Bankruptcg.

A promoter who has abused his fiduciary position is generally held hable as a constructive trustee, and upon the footing that he has been

PROMOTERS.

guilty of fraud; but a claim against him will be barred by a delay of six years after the discovery by the company of the facts. Metropolitan Bank v. Heiron, 5 Ex. Div. 325; Company Precedents, Part I., p. 140. In case of bankruptcy of a promoter, an order of discharge does not release him from any liability incurred by fraud or fraudulent breach of trust. See Emma Silver Co. v. Grant, 17 C. D. 122, and Bankruptcy Act, 1914, s. 28 (1). See also as to bankruptcy, Re Kent County Gas Co., (1913) 1 Ch. 92.

Liability of Promoters in respect of Prospectuses.

Liability.

Promoters who take part in the issue of prospectuses offering shares, debentures or debenture stock for subscription may incur serious liabilities in regard thereto. They may, if the prospectus omits to give the information required by sect. 81 of the Companies Act, or makes any untrue statement, be held liable to compensate subscribers for any damage sustained by them. See further, Chapter XXXV., infra.

CHAPTER XXXIV.

UNDERWRITING.

Object of.

BUSINESS men now-a-days like, and quite properly, to eover all the commercial risks they can. Hence the spread of insurance in modern times. Underwriting is only au application of the same principle to company formation. It is a safeguard-a precaution ; the object being to insure against the risk that shares, debentures, or debenture stock offered for subscription may not be taken up. The investing public is variable and capricious; it cannot be always relied on to appreciate even the best and soundest undertakings. It is easily alienated or put off. A very trifling circumstance will at times render an appeal to the public to subscribe abortive. For instance, some enemy of the concern writes a letter to the newspapers containing untrue statements about the company. This may be sufficient to stop subscriptions, even though the directors at once contradict the statements; so, too, if, just at the time that the prospectus is issued, some other more attractive concern is appealing to the public, or if the mouey market happens to be depressed, the public may decline to subscribe. In order to meet contingencies like these, it is extremely common now to get the shares, debentures, or debenture stock underwritten before they are offered for public subscription.

Special circumstances, too, often demand that the success of an issue should be assured: for instance, a company may have put its "minimum subscription" at 50,0007.; if the public does not come in and take up shares to that amount, the directors cannot go to allotment, and the enterprise is ruined. Or a firm may be converting its business into a company, and a large part of its assets consist of loans, deposits and other capital left in the concern by a deceased partuer, and these liabilities the proceeds of the issue are intended to clear off; here, again, the failure of the issue would be disastrous. Or a going company may wish to raise further funds by the issue of new shares or debentures or debenture stock ; but, owing to the state of the market or other special circumstances, a risk attends the issue.

337

P.

UNDERWRITING.

Non-success would seriously damage the credit of the company. In such cases underwriting is found of great use.

Form of Underwriting Agreement.

Generally, the underwriting is done by a number of persons, but at times the whole of an issue is underwritten by a company or be one or two persons. The modus operandi is as follows :- The underwriter writes a letter addressed to the vendor or promotor or to the company agreeing to underwrite a specified amount of what is to be offered, upon the footing that he is only to be bound to take up his rateable propertion of what the public does not take up; and that in any event he is to Le paid a commission, either in cash or paid-up shares, or an option. or in some other shape. Such a letter is generally expressed in the form of an agreement, "I agree to underwrite," &c., but in law it operates only as an offer; and, to become binding-to be converted into a contract-it must be accepted by the other party, and notice of such acceptance given to the underwriter. Re Consort Derp, &c. Co., 1897. 1 Ch. (C. A.) 575. The acceptance may be in writing or oral North Charterland Co. (1896), 13 T. L. R. 80), und it is primá facie no objection that the notice of acceptance is not given until after the list has closed (Hemp Cordage, &c. Co., (1896) 2 Ch. (C. A.) 121), for the Court is not disposed to import into underwriting contracts implied conditions in derogation of the express terms of the contract. Comm Lease Proprietary Co., 14 T. L. R. 47. Where the agreement is to underwrite on the terms of a specified prospectus, a serious variation of the terms of the prospectus may vitiate the contract, even though the agreement expressly allows for variations in the prospectus. Warner International Co., Ltd., (1914) W. N. 61; 110 f. T. 456. The underwriting letter usually provides that if the underwriter makes default in applying, the other party to the underwriting agreement may apply for the shares on his behalf. This authority, if properly framed, is effective and irrevocable where there is a complete outract, as above; for, in such cases, it is one of the terms of the ontract that the authority shall subsist, and it is not open to one party to a contract by any notice to the other to revoke what is a term of the contract. Carter v. White, 25 Ch. D. 666; In re Hannan's Empress Mining Co., Carmichael's case, (1896) 2 Ch. (C. A.) 643. The executors of a deceased underwriter are liable on the underwriting contract. Warner Engineering Co. v. Brennan, 30 T. L. R. 191; Ex parte Pathi Frères, (1914) 2 K. B. 299.

Conditions Precedent.

It happens sometimes, however, that such an authority is expressed

PAYMENT OF UNDERWRITING COMMISSION. Ch. XXXIV.

in contingent terms, as, for instance, "I will, if called on by you, subscribe, &c.," or " If I make default you are to be at liberty, &c." Where this is the case, the authority does not arise until after condition performed, that is, after the underwriter has been called on to subscribe; and, accordingly, if the other party exercises the authority before that has been done, the allotment will be ineffective. Ormerod's case, (1894) 2 Ch. 474; Brussels Palace of Varieties v. Prockter, 10 T. L. R. 72; and see Sangster v. Netter, 9 T. L. R. 441.

Even where the underwriting letter has not been accepted by the person to whom it was addressed, and there is, therefore, no contract, the underwriter may, in some cases, be held bound by an application made by the other party in professed exercise of the authority conferred by the letter in his possession. Henry Bentley & Co., 69 L. T. 201 ; Ex parte Harrison, 69 L. T. 204 ; In re Bultfontein San Diamond Mine (1896), 12 T. L. R. 461.

The principle of this is that the applicant has an apparent authority from the underwriter to apply, and the underwriter is therefore, as against the company accepting the application in good faith and without notice of any qualification or condition affecting the authority. estopped from denying the validity of the authority. Ex parte Harrison, supra, is a good instance, where the collateral condition qualifying the underwriting agreement was contained in a separate letter not shown to the company by the applicant for shares.

The principle would, of course, not apply if the company knew from the form of the letter or aliande that the authority was qualified or

An agreement to take shares must be distinguished from an agreement to place shares. Gorrissen's case, L. R. 8 Ch. 507. One who merely agrees to place does not underwrite, and is not bound to take

Formerly the Court had no jurisdiction in the case of a contract underwriting debentures or debenture stock to compel the underwriter to specifically perform the contract. The company's remedy-and it was a very inadequate one-was to sue the underwriter for damages. South African Territories v. Wallington, (1898) A. C. 309. But this antiquated technicality has now been put an end to by sect. 105 of the Act of 1908, which provides as follows : "A contract with a company to take up and pay for any debentures [or debenture stock] of the company may be enforced by an order for specific performance," i.e., in the particular case of underwriting that the underwriter shall pay over to the company the purchase-money of the debentures or debenture stock

he takes, and shall receive the debentures or debenture stock in return. An underwriting contract, if under hand, requires a 6d. stamp; if under seal, a 10s. stamp. The fact that the contract contains an

22 (2)

UNDERWRITING.

authority to apply for shares on the underwriter's behalf does not render a power of attorney stamp requisite. Walker v. Remmett. 15 L. J. Ch. 8, 174.

Payment of Underwriting Commission by Company.

Prior to 1st January, 1901, tho great mass of the underwriting was done by arrangement between the promoters or vendors, or persons ejusdem generis, and the underwriters. Companies were not much in the habit of themselves entering into direct relations with underwriters owing to the existence of grave doubts as to whether a company could properly pay an underwriting commission for getting its capital subscribed. See Faure Accumulator Co., 40 C. D. 141: and Ooregum Co. v. Roper, (1892) A. C. 125. And although in Metropolitan Coal Consumers' Association v. Scrimgeour, (1895) 2 Q B 604, the Court of Appeal was of opinion that the payment of a small commission, e. g., 2½ per cent., by a company to brokers for their envices as such was not ultra vires, this decision did not by any means remove all doubts and difficulties.

The Compani S Act, 1900, s. 8, however, made important alterations in the law as to payment by a company of a commission for the underwriting of its share capital. It made it lawful for a company. upon any offer of shares for public subscription, subject to certain conditions, to pay such commission, and at the same time it prohibited all payments or allotments of shares by way of commission, whether direct or indirect, other than those expressly sanctioned, and it in effect deprived vendors and promoters of the power to pay such commissions. This section was amended by sect. 8 of the Companies Act. 1907, which relaxed the restrictions imposed by the Act of 1000, and not only allowed commissions to be paid when there was not offer of shares to the public, but relieved vendors and promoters from the prohibition against paying such commissions out of funds coming to them from the company. Sect. 89 of the Act of 1908 has now taken the place of these enactments. It runs as follows:—

Ast of 1908.

89.—(1.) It shall be lawful for a company to pay a commissiou to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorized by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(a) In the case of shares offered to the public for subscription. disclosed in the prospectus; or

PAYMENT OF UNDERWRITING COMMISSION. Ch. XXXIV.

ot

15

as

ns

in

r-

a

ng

1:

in

B.

ıll

•ir

ns

 $\mathbf{n}\mathbf{s}$

he

ıy.

in

e41

er

in

m-

et.

nd

of

he

10

 $+ \Omega$

ny

hP,

١ÿ,

O

hê o**r**

ed.

મુધી

)II.

(b) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form* signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and, where a circular or notice, not being a prospectns, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2.) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3.) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Thus at last the vexatious restrictions imposed by the Act of 1900 on the payment of underwriters' commission have to a great extent been removed, and reasonable facilities have been given for securing the placing of unissued shares.

On a reconstruction the new company may now pay a commission to contractors to buy from the liquidator the balance of shares required to carry through the reconstruction. Barrow v. Paringa Mines, (1909) 2 Ch. 658.

It may still, however, be convenient to refer to a few of the decisions on the repealed sect. 8 of 1900.

1. "Offer . . . to the public." (Burrows v. Matabele Gold Reefs, (1901) 2 Ch. 23; Booth v. New Afrikander Gold Mining Co., (1903) 1 Ch. 295.

An offer by a promoter to a few of his friends, relations or customers was held not to be an offer to the public. Sleigh v. Glasgow and Transvaal Options, G. F. 420, Ct. of Sess. See also Shewell v.

* This applies to private companies.

UNDERWRITING.

Combined Incandescent Mantles Syndicate, 23 L. T. R. 482. But a distribution of 3,000 copies of a prospectus among the members of certain gas companies was held to be an offer to the public. South of England Natural Gas Co, (1911) 1 Ch. 573.

It was held that articles authorizing payment of commission at a certain rate per cent. did not authorize payment of a lump sum by way of commission. Booth v. New Afrikander Gold Mining Co., supra.

As against these disabling decisions it was held that this section did not prohibit the common and convenient practice in the City of remmnerating underwriters by giving them the call of shares at par or at a premium. *Hilder* v. *Dexter*, (1902) A. C. 474. But it required all the wisdom and good sense of the House of Lords to arrive at this conclusion in the face of the unfortunate wording of the section.

Payment of a commission out of profits is not prohibited by the section.

The restrictions of sect. 8!) apply to a private company, though it does not issue a prospectus. Dominion of Canada Syndicate v. Brigstocke, (1911) 2 K. B. 648.

Paragraph (3) must be read by the light of *Metropolitan Coal* Consumers' Association v. Scrimgeour, (1895) 2 Q. B. 604. It covers a reasonable commission, say, as in that case, a commission not exceeding 21 per cent. for brokerage to a broker.

Disclosure in Annual Summary and Balance Sheets.

Further provision for disclosure is made in sects. 26 and 90.

Sect. 26 of the Act requires that the annual summary shall state, inter alia, (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last return.

Sect. 90 further provides for commission and discount appearing in the company's balance sheet: "Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off."

Misrepresentation in Prospectus.

An underwriter who takes up shares on the faith of a prospectus containing untrue statements has the same right to repudiate these shares as any other subscriber for shares. Karberg's case, (1892) 3 Ch. 1 (O. A.).

Ch. XXXV.

CHAPTER XXXV.

ii if if

it.

y

d

a

1

Я

e

l

ŗ

PROSPECTUSES.

WHEN a company is desirous of raising money^{*} by a direct appeal to Prospectus. the public, the usual course is for the company to issue a prospectus offering for public subscription shares in the company or debentures or debenture stock of the company.

For a time the stringent provisions of the Companies Act, 1900, in regard to prospectuses largely diminished the number of cases in which such an appeal was made, but the prospectus is now returning into favour, and its advantages as a mode of appealing to the general public are too great and obvious for it to be likely that it will be replaced for long by any other method of appeal.

Filing Prospectuses.

The Companies Act, 1908 (re-enacting with modifications sect. 9 of the Companies Act, 1900), makes provision for filing prospectuses as follows :---

Prospectus.

80,—(1.) Every prospectus issued by or on behalf of a company or in Filing of relation to any intended company shall be dated, and that date shall, prospectus.

(2.) A copy of every such prospectus signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed for registration with the Registrar of Companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3.) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in mannel required by this section.

(4.) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5.) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue

• As to iresh issues of capital during the war, see the Treasury Regulations, Appendix, p. 632.

PROSPECTUSES.

of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

In reading the above requirements, it must be borne in mind that under sect. 285 of the Act, prospectus means any prospectus, notice, circular, advertisement, or other invitation offering to the public, for subscription or purchase, any shares or debentures [or debenture stock] of a company.

The object of sect. 80 is twofold: (1) to preserve an authoritative record of the terms on which the public are invited by the company to subscribe for shares or debentures, and (2) to secure that the directors of the company accept responsibility for the statements in the prospectus.

Form of Prospectus.

Heading.

Terms

Rules for

framing.

The prospectus usually states by way of heading the date of filing, the name of the company, the amount of the capital, the names of the directors and other officials, what is offered for subscription—whether shares, debentures, or debenture stock—and the terms of issue. This heading is followed by a concise narrative of the circumstances in which the company is formed, and the prospects it has of success. The prospectus also states where application forms can be obtained, and offers the memorandum and articles, the contracts, and the form of debenture and trust deed (if any) for inspection.

Statements in Prospectus.

In framing the prospectus the following rules must be borne in mind :---

- (1.) The prospectus should not contain any misrepresentation of any material fact, or any deceptive or misleading statement, or any ambiguous statement which is not true in every sense in which it might be reasonably ut derstood.
- (2.) It should disclose every material fact and contract, subject to the qualifications below mentioned.
- (3.) The prospectus should comply with the requirements of sect. 81 of the Act. See p. 347.
- (4.) Sect. 72 of the Act—as to the appointment of directors—should be borne in mind.
- (5.) The provisions of sect. 84 (substituted for sects. 3 and 5 of the Directors' Liability Act, 1890) should also be borne in mind, and all due precautions taken accor lingly.

FILING PROSPECTUSES.

Ch. XXXV.

Neglect of these precautions may give the allottee-

ds

8

uit

٠Ρ,

io**r**

re

V.0

ny

he

in

C È

he

h-

he

of

ts

ns

10

or

y

y

h

0

1

d

- (a) The right to rescind the contract and repudiate the allotment. (b) The right to sue for damages or compensation, those who have issued the prospectus, and others who are, by statute or common law, responsible.

The obligation of those who issue prospectuses inviting application The golden for shares was long since laid down by Vice-Chancellor Kindersley in rule as to framing Brunswick, &c. Co. v. Muggeridge (1361), 1 Dr. & Sm. 383, in words prospectuses. which Page Wood, V.-C., described as a "golden legacy." Henderson v. Lacon (1867), 5 Eq. 249. "Those," said the Vice-Chancellor, "who issue a prospectus, holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertnking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstnin from stating as fact that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality, of the privileges and advantages which the prospectus holds out as inducements to take shares." And in Central Kailway of Venezuela v. Kisch. L. R. 2 H. L. 123, Lord Chelmsford said that no misstatement or concenhnent of nny material facts or circumstances ought to be permitted; that the public who were invited by a prospectus to join in any new venture ought to have the same opportunity of judging of everything which has a material bearing on the true character of the adventure, as the promoters themselves possessed, and that the utmost candour ought to characterise their public statements; and his Lordship referred with approval to the rule hid down by Kindersley, V.-C., as above mentioned.

This "golden rule" is, perhaps, somewhat of a "counsel of perfection"; at all events, it has been qualified by subsequent decisions, not, indeed, ns regards any active misstatements in tho prospectus, but as to the effect of mere non-disclosure. Thus, in Peek v. Gurney, L. R. 6 H. L. 403, it was held that, to support nn netion of deceit, there must be some active misstatement of fact, or, at all events, such a partial or fragmentary statement of fact as that the withholding of that which is not stated makes that which is stated absolutely false. This, it will be observed, was snid in regard to an action of deceit, in which fraud is of the essence of the action, and which differs essentially from one brought to obtain rescission on the ground of misrepresentation of n material fact (per Herschell, L.C., Derry v. Peek (1889), 14 App. Cas. 359); but Romer, J., in McKeown v. Boudard, Everard & Co. (1896), 74 L. T. 712, has held that, even in an action for rescission, proof of mere non-disclosure of material facts is not enough to entitle the plaintiff to relief; for the duty of disclosure in the case of a prospectus inviting

PROSPECTUSES.

share subscriptions, as Lord Watson said in Aaron's Reef v. Twiss, (1896) A. C. 273, is not the same as in the case of a proposal for marine insurance. Thus, a prospectus not stating that the directors have been presented with their qualification by the company's contractor will not entitle a person who has taken shares on the faith of the prospectus to rescind his contract. Heymann v. European Central Rail. Co., 7 Eq. 154. The suppressio veri must be such as to falsify the prospectus. A half truth, for instance, represented as a whole truth may be tantamount to a false statement. Aaron's Reef v. Twiss, (1896 A. C. 276. "I do not care," said Lord Chancellor Halsbury in that case, " by what means it is conveyed-by what trick or device, or ambiguous language; all these are expedients by which fraudulent people scom to think that they can escape from the real conditions of the transaction. If, by a number of statements, you intentionally give a false impression, and induce a person to act on it, it is not the less false, although, if one takes each statement by itself, there may be a difficulty in showing that any specific statement is untrue." Note also the observations of Lord Watson in that case, at p. 287, and see Greenwood v. Leather Shod Wheel Co., (1900) i Ch. 421 (C. A.), where the same principle was acted on. The legislature plainly, however, recognized, in sect. 38 of the Companies Act, 1867, the duty of disclosure (see infra, p. 350), so far as dates and parties to material contracts are And although the Companies Act, 1900, repealed that concerned. section, it was only to substitute for it a still wider statutory duty-to disclose a great number of material facts which should or may throw light on the character of the undertaking. See the section below

Company not necessarily responsible for prospectus.

A company is not responsible for the statements in a prospectus unless it is shown that the prospectus was issued by the company or by someone with the authority of the company-by the board of directors, for instance. If it is, the company is responsible, and cannot keep a contract for shares obtained by it if the statements contained in it were false or misleading. National Exchange Bank v. Drew, 2 Macq. 124; Houldsworth v. City of Glasgow Bank, 5 App. Cas. 317. The company is also responsible if, though the prospectus is issued by the promoters, the board ratify and adopt the issue, for the prospectus is the basis of the contract for shares. Pulsford v. Richards, 17 Beav. 97; Jennings v. Broughton, 17 Beav. 234. Hence, if the company, acting by the board of directors, allot shares knowing that they have been subscribed on a particular prospectus or statement of facts, the company is responsible. Henderson v. Lacon, 5 Eq. 249; Ross v. Estates Investment Co., 3 Ch. 682; Lynde v. Anglo, &c. Co., (1896) 1 Ch. 178; Karberg's case, (1892) 3 Ch. 1. Where a company publishes an abridged prospectus abroad, a foreigner who subscribes on the faith of it may be entitled to relief. Roussell v. Burnham, (1909) 1 Ch. 127.

DISCLOSURE UNDER THE COMPANIES ACT, 1908. Ch. XXXV.

Disclosure under the Companies Act, 1908.

Section 81 of the above Act provides as follows :-

iss.

for

ors

onof

ral

the

ith

96

SP.

нв

em

199¹-1:0

al-

in

erν.

me ed,

ee

re

iat

-to

uw.

ilis.

oľ

of

nd

p.

ye

91C if.

fv

iet

n,

of

a

le. h.

2)

d, f.

81.-(1.) Every prospectus* issued by or on behalf of a company, or by or on behalf of any person who is or has been ongaged or interested in the formation of the company, must state-

- (a) the contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and
- (b) the number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and
- (c) the names, descriptions and addresses of the directors or pro-
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second c. subsoquent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if nny, paid on the shares so allotted; and

(e) the number and amount of shares and debentures which within the two proceeding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so puid up, and in either occe the consideration for which those shares or deba tures i we been issued or are proposed or

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purehased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the

* By section 285 of the Act, it is enacted that unless the context otherwise requires, "Prospectus means any prospectus, notice, circular, advertisement or other invitation offering to the public, for subscription or purchase, any shares or

PROSPECTUSES.

vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and

- (g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for good-will; and
- (h) the amount (if any) paid within the two preceding years, or pnyable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission : Provided that it shall not be necessary to state the commission payable to sub-underwriters; and
- (i) the amount or estimated amount of preliminary expenses; and
- (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and
- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or inteuded to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and
- (1) the names and addresses of the auditors (if any) of the company: and
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in each or shares or otherwise by any person either to induce him to become, or to qualify him us, a director or otherwise for services reudered by him or by the firm in connection with tho promotion or formation of the company; and
- (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred ou the holders of the several classes of shares respectively.

(2.) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or condi-

DISCLOSURE UNDER THE COMPANIES ACT, 1908. Ch. XXXV.

er

10

of

ed

h,

d,

or

1-

or

of

ry

ta

ch

11-

рÿ

111

ry

on

an

V i

W)

T()-

est he

te-

he

to

OF

111

iy ;

BI

ny

res

el

di.

2

tional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where---

- (a) the purchase money is not fully paid at the date of issue of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3.) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "subpurchaser" included a sub-lessee.

(4.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6.) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he

- (a) as regards any matter not disclosed, he was not cognisant thereof; or
- (b) the non-compliance arose from an honest mistake of fact on his part : Provided that in the second

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of sub-sect. (1) of this section no director er other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7.) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons; but, subject as aforesaid, this section shall apply to any prospectus, whether issued on er with reference to the formation of a company or subsequently.

(8.) The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply

PROSPECTUSES.

in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9.) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart trom this section.

The daty to be candid.

Here we have the intest of a series of enactments in which the legislature has songht to compol candour on the part of directors in dealing with the public; and there is good reason for insisting on such candonr. The directors know all about the intended company, the public knows only what the directors choose to tell it. At first the law contented itself, as we have seen, by declaring directors to be under a general obligation of bona fides in dealing with the public, but this having proved insufficient, the Companies Act, 1867, was passed, requiring disclosuro in a prospectus of the dates and names of the parties to any contract entered into by the company; ... default the prospectus was to be & ented fraudulent. Then came the Directors' Linbility Act, 1890, further penalizing careless statements; then the Companies Act, 1900; then the Companies Act, 1907; and now, in the Companies Act, 1908, we have all this legislation consolidated and culminating in the above elaborate scheme of statutory particulars As a rule, there is no great difficulty in complying. at any rate, as regards a new company, with paragraphs (a) contents of memorandum, (b) directors' qualification and remuneration, (c) directors' names and addresses, (d) the minimum subscription, (h) the amount of underwriting commission, (i) the amount of preliminary expenses, (i) the amount paid to any promoter, (l) the names of the auditor-, (m) the interest of the directors in the promotion or property of the company-although in some cases this is not an easy thing. The chief difficulty is connected with (f), as to he company's vendor and the amount payable to him in cash, shares and debentures, having regard to the very wide meaning given to the word "vendor" in sub-sect. (2). The object clearly is to strip off the mask-as Lord Davey saidwhich often conceals the real vendor, and to get at the truth of who is the person really profiting by the promotion and what amount of profit he or the successive vendors are making between the at the expense of the company. But the aim of the clause, laudable as it may be, is one thing, and its operation is another. The conscientious director is much embarrassed by it; the unserupulous director can easily comply with the letter, and yet, by a multiplicity of details, baffle inquiry and throw dust in the eyes of investors.

Moreover, the paragraph contains no qualifying words like paragraph (k). It does not exclude particulars of purchases in the ordinary course of business. In terms it requires the disclosure of particulars as to transactions which may be wholly immaterial, and the disclosure of

DISCLOSURE UNDER THE COMPANIES ACT, 1908. Ch. XXXV.

:1

y

rt

0

n

n

٢.

+t

-

Ø

Ϊ.

14

lt

41

P

u

đ

4

۰,

)-

t

٩,

۰,

67

t

ρ

-

8

ł

0

ţ

8

a

ι.

Ģ

which may seriously projudice the company. But it would seem that the non-disclosure of immaterial matter would not involve substantial risks, seeing that a subscriber, in such a case, would be puzzled to prove that, had there been disclosure, he would not have subscribed. See *infra*, p. 360. The paragraph does not require that the prospectus should, in the case of a completed purchase, disclose the amount of the purchase money paid by the vendor upon his acquisition of the property. Brookes v. Hansen, (1906) 2 Ch. 129.

Soveral of the other paragraphs of the section as existing in the Acts of 1900 and 1907 were found very objectionable—that is, vexations—in some cases. Thus the concluding part of paragraph (d) was, in the case of companies which had been in existence for some years, difficult to comply with. So, also, paragraphs (h) and (j) involved going into matters which occurred many years ago, for there was no limit as regards time. Paragraph (m), again—with reference to directors' interests in the promotion or property of the companyin some cases involved great difficulty.

So onerous and exacting has the law been found that it has not been uncounter for companies to dispose of their shares and debentures privately, leaving their purchaser to offer them to the public. This, if he is not and has not been "engaged or interested in the formation of the company," he can do without troubling himself about the section.

A person who took shares in a company on the faith of a prospectus might he lebarred by a waiver clause in the prospectus from pursuing his remedy under sect. 38 of the Companies Act, 1869, for non-disclosure of a contract in the prospectus, provided the waiver clause was honestly made. Cackett v. Keswick, (1902) 2 Ch. 456; Greenwood v. Leather Shod Wheel Co., (1900) 1 Ch. 421; Macleay v. Tait, (1906) A. C. 24. But a waiver clause is not available so far as sect. 81 of the Companies Act, 1908, is concerned. See sub-sect. (4).

No penulty is imposed for non-compliance with the section, and the inference seems to be that anyone aggrieved by the neglect of the statutery duty has a right of action for damages against the directors or promoters or other the persons responsible for the neglect. See us to this Atkinson v. Newcastle Waterworks Co., 2 Ex. D. 441; Cowley v. Newmarket Local Board, (1892) A. C. 345; Municipality of Picton v. Geldert, (1893) A. C. 524; Saunders v. Holborn District Board of Works, (1895) 1 Q. B. 64; Johnston v. Consumers Gas Co. of Toronto, (1898) A. C. 447; South of England Natural (ias Co., (1911) 1 Ch. 573.

Paragraph (9) preserves the liability of directors and others to be sued for misrepresentation under sect. 84, or in an action of deceit.

PROSPECTUSES.

Rescission of Contract.

Rescission of contract to take shares, debentures, &c. where prospectus faulty. Where shares, debentures or debenture stock are subscribed for on the faith of a prospectus containing a misrepresentation, the allottee is entitled to repudiate the shares and claim his money back, for it is a general rule that a contract in accod by a material misrepresentation is volcable, and may, at the option of the party deceived, be rescinded, and it makes no difference that the misrepresentation was an innocent one. Smith's case, 2 Ch. 604, 615; Reese River, §c., L. R. 4 H. L. 79; London & Staffordshire Co., 24 Ch. D. 149. The same principle applies to misrepresentations made by agents of the company and not contained in a prospectus – Hilo Manufacturing Co. v. Williamson (1912), 28 T. L. R. 134.

When right to reseind lost. Though voidable, the contract is valid shuft rescinded, and a consequence of this principle is that an allottee of shares who discovers that he has been deceived as bound at case to make up his mind—to elect—whether he will rescind has contract or not, for his name being on the register he is being held out as a member and a contributor to the assets. Supra, p. 126.

"It is impossible," as Lord Cairns said, in *Re Cuchar Co.*, L. R. 2 Ch. 417, "to disembarrass these cases of the effect which a man's name being on the register has in inducing other persons to alter the position."

Hence, a very short delay after discovery, say a fortnight or so deprive him of the right to rescind. See Scottish Petroleum, 23 C. 4 413; Taite's case, 3 Eq. 795; Peel's case, 2 Ch. 674; Skelton's 68 L. T. 210. And the principle applies where he has the means of knowledge as well as actual knowledge. Thus, even if he has no absolute proof of misrepresentation he may lose his right to rescind if. after being told that there has been a misrepresentation, he stands by inactive and takes no steps to look into the matter. Ashley's case, 9 Eq. 269; Scholey v. Central Rail. Co. of Venezuela, 9 Eq. 266, n. And if so, it is doubtful whether he can rely on other misrepresentations discovered during the trial of the action. Christineville Rubber Estates, (1911) W. N. 216; 81 L. J. Ch. 63.

So, too, he may lose his right to rescind by an implied ratification; if, that is, after discovering that he has a right to rescind, he treats the contract as subsisting, for instance, by endeavcuring to sell the shares (*Ex parte Briggs*, 1 Eq. 483), or by executing a transfer (*Crawley's case*, 4 Ch. 322), or by paying calls or receiving dividends (*Scholey* v. *Central Rail. Co.*, 9 Eq. 266, n.; *Re Dualop-Truffault Cycle Co.*, *Shearman's case*, 66 L. J. Ch. 25), or by attending and voting at a general noteting in person or by proxy (*Sharpley* v. *Louth*, §c. Co., 2 C. D. 663); but

DISCLOSURE UNDER THE COMPANIES ACT, 1908. Ch. XXXV.

he is allowed a reasonable time to obtain evidence before taking action. Central Rail. Co. v. Kisch, 2 H. L. 99. Acting as a member is not a bar when the shareholder has proviously issued a writ claiming reseission, for that is a definitive election to rescind. Tomlin's case, (1898) 1 Ch. 104; Company Precedents, Part I., p. 180. Negotiations may also excuse delay. Tibbatts v. Boulter (1895), 73 L. T. 534. A transfer of part of the shares before discovery does not preclude relief as to the rest. Re Mount Morgan, sec. Co., 56 L. T. 622.

A fortiori, is winding-up a bar to rescission, for, on winding-up, the Wonding-up rights of the whole body of the company's creditors have intervened, a bar to Where, therefore, an allottee of shares waits until after the commencement of the winding-up, his right to rescind is gono. Oakes v. Tur-Permeringiages. quand, L. R. 2 H. L. 325. If on the register at the commencement of the winding-up, though under a voidable contract, he cannot escape unless he has commented legal proceedings to enforce rescission before the date of the winding-up. Oakes v. Turguand, supra ; Burgess' case, . O C. D. 507; Reese River Co. v. Smith, L. R. 4 H. L. 64.

An allottee, where the allotment is irregular under sect. 86 of the Companies Act, 1908, is in a different position. It is enough that he gives notice of avoidance, within the month allowed, without taking legal proceedings. Re National Motor Mail Coach Co., (1908) 2 Ch.

1.4 allottee who repudiates is safe if the company gives in and Prompt ... s his name from the register, and au order of Court in such a repudiation of Wright's case, L. R. 7 Ch. 55), for the company effective.

shares, when

353

it are the shareholder is suing for rescission, the Court can on Injunction. the e path a forfeiture of the shares pending the hearing. Lamb

Where a contract is rescinded for misrepresentation, it is rescinded Rescission ab initio, and accordingly the shareholder cannot, in a winding-up, be retrospective placed on the list of contributories even us a past member. Wright's case, supra.

A misrepresentation, to entitle an ullottee to relief, must be one of Misrepresen-Just. Eaglesfield v. Marquis of Londouderry, 4 C. D. 702. It must tation to be be material, and the applicant for shares must have relied upon it. entitle share To give a few instances. Where it was stated that more than holder to one-half the first issue of shares had already been subscribed for, when in fact such subscription was a sham one, this was held a misrepresentation entitling the applicant to rescission. Ross v. Estates Investment Co., L. R. 3 Ch. 682; Kent v. Freehold Land Co., 3 Ch. 493; Henderson v. Lacon, 5 Eq. 249; Arnison v. Smith, 41 C. D.

So where it was falsely stated that the surplus assets as appearing

23

ere in IN SE tim ded. rent I. I., ipie 1 not nson

r on

times. vers ---to eing m to

.. R. nh's h. .

 $= \Theta_{*}^{2}$

4 (10)

d if.

, by

se. 9 And

ion-

Hes.

ioh ;

the

ares

ase,

tral

asr. ting

but

PROSPECTUSES.

by the last balance sheet amounted to upwards of 10,000*l*. Re London and Staffordshire Bank, 24 C. D. 149.

So where it was stated that a particular mine was in full operation and making large daily returns when it was, iu fact, unproductive and worthless. *Reese River* v. *Smith*, L. R. 4 H. L. 64.

So where it was falsely represented that patented articles were a commercial success and beyond the experimental stage. Greenwood v. Leather Shod Wheel Co., (1900) 1 Ch. 421.

So where a promoter who was to got part of the purchase money was untruly put forward as one of the vendors. *Capel* v. *Sims*, 58 L. T. 807.

So where it was stated untruly that the vendor was to pay all the preliminary expenses. *Re Liberian Government Concessions*, 9 T. I. R. 136.

So where it was stated untruly that the company was the sole manufacturer of asbestos in France and had a practical monopoly. *Hyde* v. New Asbestos Co., 8 T. L. R. 121.

So where it was stated untruly that the company's process was a commercial success. Stirling v. Passburg Grains, 8 T. L. R. 71.

So where it was stated that no promotion money was to be paid. whereas there was in truth a large sum to be so paid. Lodwick v. Earl of Perth, 1 T. L. R. 76.

So where it was stated that the vendors of nitrate grounds had obtained, brought to them in pipes, a supply of water, and that the company would have the right of using a certain part of the water. whereas in truth the water supply was insufficient. Logunas Nitrate Co. v. Lagunas Nitrate Syndicate, (1899) 2 Ch. 392, 397, 429.

A statement in a prospectus as to the persons who are to be directors is a material statement, and, if untrue, a person subscribing on the fuith thereof is primd facie eutitled to rescind. Re Scottish Petroleum Co., 23 Ch. D. 413; and see Anderson's case, 17 Ch. D. 373; Smith v. Chadwick, 20 Ch. D. 50; Wainwright's case, 62 L. T. 30; Kent County Gas Co., 95 L. T. 756.

Where a company was formed to buy a mine, and extracts from the report of an expert were set forth which gave a mislcading impression of that report and induced the belief that the mine was similar to ε rich adjacent mine, it was held that a subscriber was entitled to relief. *Re Mount Morgan Co.*, 56 L. T. 622.

It is a misrepresentation to state in a prospectus that share capital has been "subscribed" when it has only been allotted in fully paid shares to the company's contractor (*Arnison* \mathbf{v} . *Smith*, 40 Ch. D. 567), or that the company has contracted for the purchase of a property when, in fact, there is only negotiation. *Ross* \mathbf{v} . *Estates Investment Co.* L. R. 3 Ch. 682.

DISCLOSURE UNDER THE COMPANIES ACT, 1908. Ch. XXXV.

A prospectus often refers to reports. In such a case, if the company Effect of will take upon itself to assume the authenticity of the reports and reports referred to in referred to in these reports, it must take the referred to in represent as facts the matters stated in those reports, it must take the prospectus. consequences should they prove false. In re Reese River Silver Mining Co., L. R. 2 Ch. 611; Rawlins v. Wickham, 3 De G. & J. 304; Mair v. Rio Grande Rubber Estates, (1913) A. C. 853. If the company does not intend to issue the shares on the basis of the facts stated in the report, it must dissociate itself from the report in clear and unambiguous terms. Calculations of profits based on statements in the report may amount to a misrepresentation. Re Pacaya Rubber Co., (1914) 1 Ch. 542. But if the persons issuing a prospectus merely refer to the report, e.g., of a mine, as telling all they know, and propose to send out someone to test it, they will not be treated as guaranteeing its truth. In re British Burmah Lead Co., 56 L. T. 815. Under the Companies Act, 1908, s. 84, infra (re-enacting the Directors' Liability Act, 1880), directors who make untrue statements in a prospectus, purporting to be extracts from reports or valuations by engineers, valuers, accountants or other experts, must be prepared to show that the statements fairly represent the expert opinion.

Other instances of misrepresentation may be found in Jackson v. Turquand, L. R. 4 H. L. 305; Denton v. Macneil, 2 Eq. 352; Moore v. Explosives Co., 56 L. J. Q. B. 235; Wright's case, L. R. 7 Ch. 55; Lyon's case, 35 Beav. 646; Bellairs v. Tucker, 13 Q. B. D. 562; New Brunswick Co. v. Conybeare, 9 H. L. C. 724; Nicol's case, 3 De G. & J. 387; In re Devala Provident Gold Mining Co., 22 Ch. D. 593; Araison v. Smith, 41 Ch. D. 348; Drincybier v. Wood, (1899) 1 Ch.

The statement that something will be done is not a statement of an existing fact within the rule. Beattie v. Ebury, 7 Ch. 804 ; Alderson v. Maddison, 5 Ex. Div. 293; 8 App. Cas. 467; Bellairs v. Tucker, supra. But a representation of belief, opinion, expectation, or Statement intention is a representation of fact, for "the state of a man's mind only of belief, is as much a matter of fact as the state of his digestion." Per Bowen, 1. J., Edgington v. Fitzmaurice, 29 C. D. 483.

Nor is there any safety in ambiguous statements, which, in one Ambiguous sense, are true, though in another, not true, "which keep the word statements. of premise to the ear and break it to the hope": for the rule is that the applicant is entitled to put any reasonable construction ou such a statement, and if, according to that construction, it is untrue, he is entitled to relief. Hallows v. Fernie, 3 Ch. 476; Arkwright v. Newbold.

17 Ch. D. 322; Smith v. Chadwick, 9 App. Cas. 187. One thing is clear ou the authorities, and that is, that if a prospectus Reliance of contains statements of fact, the recipient is entitled to rely thercon. applicant on statement of

He is not bound to verify them. Thus, if the prospectus states the fact without statement of

re a

d v.

nev

, 58

idon

the . R. sole

oly.

is a nid. k v.

had

the te**r**. rale 079 the

(4M

. v.

nty

the

ion

3 0

ef.

tal

rid

7),

ty

U.,

opinion, &c.

PROSPECTUSES.

effect or terms of a document, or purports so to do, and offers it for

inspection, he is not bound to inspect it. He is entitled to assume in

either case that the prospectus is true, "for when men issue a

prospectus in which they make statements of the contracts made

before the formation of the company, and then state that the contracts

may be inspected at the office of the solicitors, it has always been held that those who accepted these false statements as true, were not deprived of their remedy merely because they neglected to go and look at the contracts." Per Jessel, M. R., Redgrave v. Hurd, 20 Ch. D. 14; and Smith v. Chadwick, 20 Ch. D. 57; 9 App. Cas. 187; Re Mount Morgan West Gold Mine Co., 56 L. T. 622. The answer is, "You put me off my guard" (per Lord Chelmsford); see also .Aaron's Reef v. Twiss, (1896) A. C. 273, in which Lord Watson said : "It was argued for the company that, inasmuch as the contracts for the purchase of the concession were generally referred to towards the end of the prospectus, the respondent must be held to have notice of their contents. This appears to me to be one of the most audacious pleas that ever was put forward in answer to a charge of fraudulent misrepresentation. When analyzed, it means simply that a person. who has induced another to act upon a statement made with intent to deceive, must be relieved from the consequences of his deceit if he has given his victim constructive notice of a document, the perusal of

trying to verify. Notice of contents of documents by prospectus offered for inspection.

Whether noncompliance with sect. 81 of the Act of 1908 gives right to rescind. The question whether breach of the requirements of sect. 81 of the Companies Act, 1908, will give a subscriber the right to repudiate the allotment made to him, and to compel rescission of the contract, remains for consideration. When the breach involves the misstatement of a material fact, there will, of course, be a right of reacission under the general law, as above, pp. 352, 353, and in this connection it must be borne in mind that the statement of a half truth may amount to a misstatement. But where the breach consists in the mere omission to state some fact which ought under this section to be stated, and the omission to make that statement does not falsify that which is stated, it will probably be contended, and it has been recently held, that the section gives no right of rescission. *Wimbledon Olympia. Limited.* (1910) 1 Ch. 630, followed by Swinfen Eady, J., in South of England Natural Gas, &c. Co., W. N. (1911) 80. This accords with Gover's case. 1 C. D. 191.

which would expose the fraud."

Prospectus to be deemed addressed to all who apply on strength of it. The proper office of a prospectus is to invite the public to take shares in the new company, and it is to be treated as addressed exclusively to those who subscribe for shares in response to it, and net to other persons who may read it and buy shares in the market on the faith of it. Those persons, therefore, who buy in the market cannot, as a general rule, sue upon it. Nor will a false report made by

SECT. 84 OF DIRECTORS' LIABILITY ACT, 1890.

t for

ne in

ue a

made

racts

held

not

and 1, 20 187; swer.

ron's

was

hase

t the

their

pleas

ilent

rson.

at to

has

1 of

the

e the

ains

of a

the

t be

to a

sion

the

ited.

that

iled.

land

ase.

ake

ssed

not

the not.

hr

directors to a general meeting entitle a person who buys shares on the faith of it from a shareholder (as distinguished from taking them from the company) to rescind his contract. Ex parte Worth (1859), 4 Drew. 529; Peek v. Gurney, L. R. 6 H. L. 403; Nicol's case, 3 De G. & J. 387. But this rule does not apply where it is shown that the prospectus was intended and used to induce purchasers in the market to buy the shares. Andrews v. Mockford, (1896) 1 Q. B. 372; and see Duranty's case (1858), 26 Beav. 268.

Sect. 84 re-enacting the provisions of the Directors' Liability Act, 1890.

The Directors' Liability Act, 1890 (now incorporated in the Directors' Companies Act, 1908, s. 84), was passed with a view to strengthen the supposed inadequacy of the law as declared in Peek v. Derry, 14 App. Cas. 537, in respect of directors' liability. In that case it was finally decided that in order to obtain, in an action of deceit, any personal remedy in damages against directors who issued a prospectus containing untrue statements, it was necessary for the plaintiff to prove affirmatively that the statements were made fraudulently, that is to say, either with knowledge that they were false, or recklessly, i.e., uot caring whether they were true or falso, or not believing them to be true. To discharge this obligation-to prove a psychological factwas in mauy cases a matter of impossibility. It was not enough to prove that the director sued had been guilty of the grossest negligence, or that he made the statement without any reasonable grounds for believing it to be true. The question was, had he made it fraudulently-did he or did he not believe it to be true? The Act of 1890 altered this, and shifted the onus, and sect. 84 of the Act of 1908 has adopted the same rule, and under the law as it now stands, if an allottee once proves that a material statement in the prospectus is untrue, and that he took shares on the faith of the prospectus and sustained damage, he is entitled to sue every director and every person who has authorized the issue of the prospectus, and to compel them to pay compensation for his loss. The statement once proved untrue in such an action, the director is primá facie made liable. To escape, he must prove affirmatively that he had reasonable grounds to believe the statement to be true, and that he did, in fact, believe it to be true, or as an alternative, he must prove that the statement, if made on the authority of an expert, was, in fact, made ou the authority of such expert and fairly represented his opinion. See the words of the

Thus a director makes a statement which is untrue within the

Liability Act, 1890. 357

Ch. XXXV.

PROSPECTUSES.

meaning of sect. 84 of the Act of 1908 if he states in a prospectus that the company has acquired a specified property, when in fact it has not at the time acquired it, though the director honestly believes that it has been acquired. The uncorroborated statements of a vendor, still less of a vendor-promoter, afford no reasonable grounds for believing that his statements are true. *Adams* v. *Thrift*, C. A., (1915 2 Ch. 21.

When a director knows that a prospectus is being issued inviting persons to take, e.g., debentures, and abstains from asking to see it until after action brought on account of misrepresentations therein, it is too late for him to give "reasonable public notice that it was issued without his consent," under Directors' Liability Act, 1890, s. 3 (Companies Act, 1908, s. 84 (1) (c) (ii)). Drincybier ∇ . Wood, (1899 1 Ch. 393.

As to the contribution from co-directors given by sect. 5 of the Directors' Liability Act, 1890 (Companies Act, 1908, s. 84 (4)), see Gerson v. Simpson, (1903) 2 K. B. 197; Shepheard v. Bray, (1907 2 Ch. 571.

It is not at all clear what is the period of limitation for bringing an action under the Act. The Civil Procedure Act, 1833 (3 & 4 Will. 4. c. 42), appears to fix two years, but dealing with the corresponding provisions in the Act of 1890, the Court of Appeal in *Thomson v. Lord Clanmorris*, (1900) 1 Ch. 718, disregarding the words of the Act, held it inapplicable, and seemed inclined to think that six years was the period under 21 Jac. 1, c. 16.

The eause of action first arises for the purposes of the Act when the plaintiff sustains damage by reason of the breach of statutory daty. Presumably—the action being for a statutory debt—a deceased director's estate is liable. Frankenburg v. Great Horseless Carriage Co., (1900) 1 Q. B. 504. As to proof in bankruptcy, see Bankruptcy Act, 1914, s. 30; and Greenwood v. Humber § Co., W. N. (1898) 162.

As to the measure of damages, see McConnell v. Wright, (1903 1 Ch. 546.

Action of Deceit.

emedy by action

The old remedy by action of deceit has now to a large extent been superseded—so far as directors are concerned—by the easier and more efficacious remedy under the Directors' Liability Act, 1890, and sect. 84 of the Act of 1908, which has taken its place. To maintain an action of deceit, as already mentioned, actual fraud had to be proved against the defendant—that he knowingly made an untrue statement of a fact in the prospectus. *Peek* v. *Derry*, 14 App. Cas. 337.

In such an action mere non-disclosure of facts was not and is not

Old remeay

by action of

deceit.

SECT. 38 OF THE COMPANIES ACT, 1867. Ch. XXXV.

sufficient, unless the non-disclosure is such as to make the statements in the prospectus false. Peek v. Gurney, L. R. 6 H. L. 403; Aaron's Reef v. Twiss, (1896) A. C. 273.

tun

it

145

or.

for

5

ug

it

it

ed

3

1

he ee 2

an

4.

nœ

 \mathbf{v}

et.

as.

he

v.

ч÷.

u.,

ct,

1

en

re

84

on

st

ct

υt

The defendant in an action of deceit has various defences, though some once open are now elosed to him under the Directors' Liability Act, 1890, and sect. 84 of the Act of 1908. Thus, he may escape if he can prove that he did believe the fact stated, even though his belief was not based ou reasonable grounds, for if he believed the statement frand is negatived (Derry v. Peek, 14 App. Cas. 337); or, again, he may escape if he can prove that the plaintiff was not, in fact, misled, e.g., that he knew the statement to be false when he applied for the shares, but he cannot avail himself, as we have seen above, of the "audacious plea" that the plaintiff might easily, by inquiry or otherwise, have ascertained that the statement was untrue. Aaron's Reef v. Twiss, (1896) A. C. 273.

Sect. 38 of the Companies Act, 1867.

This section was repealed by the Companies Act, 1900; but it is desirable to refer to some of the decisions, as the repeal is without prejudice to any right of action acquired nuder the section, and the views taken by the Coarts may throw much light on the corresponding provisions of sect. 81 (1) (k) of the Act of 1908 (supra, p. 348).

Section 38 was expressed in the widest possible terms; so wide, that Statement the Courts, in order to make it workable, have been obliged to imply in prospectus some limitation; for it would be practically impossible to specify in a prospectus, at any rate in some cases, all the various contracts that Companies have been made by the directors or promoters of a company. Accordingly, after much litigation and difference of judicial opinion (see Sullivan v. Mitcalfe, 5 C. P. D. 465 ; and Gover's case, 1 Ch. D. 200), it was settled that what the section in effect required was, that the prospectns should state the date and parties to every material contract made by the company, or by the directors or promoters thereof, meaning by material every contract which would be likely to influence the judgment of an intending applicant as to whether he should or should not take up shares (Sullivan v. Mitcalfe, supra, followed; Cackett v. Keswick, (1902) 2 Ch. 456). If material it makes no difference whether the contract not disclosed is executed or executory. Broome v. Speak, (1903) 1 Ch. 586 (C. A.); 71 L. J. Ch. 716; 72 L. J. Ch. 251. escape liability for non-disclosure of a material contract, of the Nor can a director existence of which he was aware, by professing ignorance of the contents or materiality of the contract, or by alleging that he left the matter to his legal advisers. Watts v. Bucknall, (1903) 1 Ch 766;

of contracts Act, 1867).

PROSPECTUSES.

Tait v. Macleay, (1904) 2 Ch. 631; Shepheard v. Broome, (1904 A. C. 342. The importance of complying with the requirements of the section was great; for if not complied with the prospectus was to be deemed frandulent on the part of the promoters, directors, δv_{ij} , knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus, unless he had notice of such contract, that is, the undisclosed contract.

The omission to specify the contract may have been perfectly innocent; the director may have been acting under the advice of an experienced solicitor; he may, in the exercise of au houest judgment, have come to the conclusion that the contract was not material; all these things availed and avail him nothing. If he has, in fact, not complied with the section, he is to be deemed the anthor of a fraudulent prospectns.

To exonerate himself from this discreditable imputation he must show that he was not responsible for the prospectns; in other words, that he was defrauded or deceived into giving his sanction to it. *Watts* v. *Bucknall*, (1902, 2 Ch. 628; (1903) 1 Ch. 766; *Hoole* v. *Speak*, (1904) 2 Ch. 732.

Nor was it possible to escape the section by making the contract a merely verbal one, for it was held that a verbal contract was as much within the section as a contract in writing (*Capel* v. *Sims Composition Co.*, 36 W. R. 689; *Arkwright* v. *Newbold*, 17 C. D. 301), and where a contract is rescinded by another contract the latter and perhaps both may have to be specified. London and Northern Bank, Maddock's case W. N. (1902) 84.

There is, however, this saving element in the situation, that in order to obtain relief under the section the plaintiff must show that but for the omission to disclose the contract he would not have subscribed. This essential condition was not fully appreciated until the House of Lords recognized it in *Macleay* ∇ . *Tait*, (1906) A. C. 24.

The expression "knowingly issue" in sect. 38 means issuing with knowledge of the existence of the omitted contract. It is no defence, as mentioned above, that the director or premoter homestly considered the contract not to be material. *Twycross* v. *Grant.* 2 C. P. D. 542.

The section applied not only to a full prospectus or notice but also to an abridged prospectus, even though the abridged prospectus stated where a full prospectus can be obtained. Army, §c. Society v. Craig. 8 T. L. R. 227. But the section was confined to a prospectus offering shares for subscription, and did not apply to one offering debentures or debenture stock. Cornell v. Hay, L. R. 8 C. P. 328.

The extreme difficulty of determining in many cases whether a

DEBENTURE PROSPECTUSES,

Ch. XXXV.

particular contract which had been made did or did not fall within the section, and the desire in other cases of persons to escape from the performance of the obligation imposed by the section, led to the adoption of what was commonly known us a "waiver clause," that is to say, to a condition in the prospectns followed by a corresponding clause in the form of application to the effect that the applicant waived any claim he might have for non-compliance with the section. Such waiver clauses had been in use even before 1877, as witness the evidence of the late John Morris before the Select Committee on the Companies Acts in that year, and prior to the Act of 1900 had become almost

The view of the Court of Appeal in the more recent cases on the subject (Cackett v. Keswick, (1902) 2 Ch. 456, following Greenwood v. Leather Shad Wheel Co., (1900) 1 Ch. 421, and Watts v. Bucknall, supra) was, that a person who takes shares in a company, on the faith of a prospectus, may be debarred by a waiver clause from pursning his remedy under sect. 38 of the Companies Act, 1867, for non-disclosure of a contract in the prospectus, provided the waiver clause was honestly made and directed the attention of the intending shareholder to the nature of the contract in question. At last, in Macleay v. Tait, (1906) A. C. 24, the House of Lords came to the same conclusion that an honest waiver clause was valid. In excluding waiver clauses in the future, for the purposes of the Companies Act, 1908 (see sect. 81 (4), substituted for sect. 10 of the Act of 1900), the Legislature has no doubt been actuated, not so much by any intrinsic objectionableness in the clause, as by a consideration of its liability to

Non-compliance with sect. 38 did not give an allottee a right to Non-comrepudiate his shares, or any right of action against the company. pliance with Gover's case, 1 C. D. 182. The remedy given by the section was, by no right to implication, an action for damages against the directors or others who repudiate have issued what is "to be deemed to be" a fraudulent prospectus. marcs, remedy In order to succeed in such an action the plaintiff must prove (1) that against directhe prospectus omitted to state the date and parties to some contract; for or others, for damages. (2) that such contract was material in the sense above mentioned; (3) that the applicant took shares in the company on the faith of such prospectus; and (4) that he has sustained damages--e.g., by reason of the shares turning out to be worthless or being otherwise

Attention should be called to the concluding words of the section, What is "unless he had notice of such contract." It seems that to be effective "notice of contract." the notice must be of the material contents of the contract, not merely sect. 38. of its existence. Watts v. Bucknall, (1903) 1 Ch. 766. contract

And according to a decision (Nash v. Calthorpe, W. N. (1905) 100)

sect. 38 gives tors or others

361

904 S of

is to See. n in 1 of

etly f an ent, ; all Det f a

nust rdit. e v

ct a

meh tion вчте uthdar

rder for hed. e of

no stly ant.

also

iter? aiy.

ing

ne.

r a

ing

PROSPECTUSES.

the applicant for the purposes of (3) or (4) must prove that had he known of the omitted contract he would not or might not have taken the shares.

Debenture Prospectuses.

Debenture prospectuses. As to prospectuses offering debentures, debenture stock, and other securities for subscription, the rules above stated apply for the most part, but subject to the following qualifications :---

- (1.) Mere delay after discovering unisrepresentation is not so dangerous as in the case of shares, for there is no holding out as in the case of shares (see pp. 126, 352); nevertheless, any act shewing an election to affirm the contract destroys the right of resgission; thus, if a debenture holder, entitled to repudiate, after discovering the facts giving such right to repudiate, acts as a debenture holdor, e.g., by voting at a meeting or otherwise, he thereby disentitles himself to relief.
- (2.) Sect. 84 of the Act of 1908, replacing the Directors' Liability Act, 1890, is applicable to debenture prospectuses.
- (3.) An action of deceit is available where there is a *fraudulent* misrepresentation.
- (4.) Sects. 80, 81 of the Companies Act, 1908, are also applicable.

A prospectus offering debentures or debenture stock is headed with the name of the company, states the nominal and issued capital of the company, the number and description of the debentures or debenture stock offered, the nature of the security, the terms of issue, the names of the directors, bankers, solicitors, brokers, auditors, and secretary, the objects and prospects of the company, the facts required by sect. 81 of the Act of 1908 to be stated, how applications are to be made, and where copies of the prospectus, of the memorandum and articles of association, and of the debentures and debenture stock deed may be inspected.

CHAPTER XXXVI.

ad vo

+r ist

90

ut

et

of

÷.,

ts

ŧ,

ty

nt

h

16

ne.

18

٧,

ŧ.

е,

-74

N

STATEMENT IN LIEU OF PROSPECTUS.

The onerous and indefinite obligations as to disclosures imposed on directors and promoters by sect. 10 of the Companies Act, 1900, to a great extent checked the use of the prospectus for company promotion, and augmented the number of companies floated by other means, e.g., by obtaining subscriptions on forms of application accompanied by oral statements, or by selling shares in the company in the stock market through financiers and others, or by means of a pooling syndicate, or otherwise.

To rectify this unfortunate result the legislature, in sect. 82 of the Act of 1908 (replacing sect. 1 of the Act of 1907) requires, where a prospectus is not issued [and the company is not a private company, sect. 82 (2)], the filing of a statement in lieu of prospectus. The 82 A company and the company of the sect.

82. A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures [or debenture stock] unless before the first allotment of either shares or debentures [or debenture stock] there has been filed with the Registres of Companies a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in the Second Schedule to this Act.

(2.) This so, ion shall not apply to a private company or to a company which has alberted any shares or debentures before the first day of July massioen band of and eight.

"Prospectus" in this pretion means as provided by seet. 285, any prospectus, notice, circular, advertise a out, or other invitation offering to the public for outs ription or purchase any shares or debentures [or debenture stock] of a company.

The statement in lieu of prospectus is to be framed in accordance with the form set forth in the Sound Schedule to the Act (see *infra*, p.536), and on referring to that form it will be seen that the disclosure required is almost as extensive as that required in the case of a prospectus inviting subscriptions for shares in a new company.

STATEMENT IN LIEU OF PROSPECTUS.

Accordingly, in filling up the form of statement the observations in Chapter XXXV. as to the contents of a prospectus may be referred to in illustration and explanation. The statement is to be signed by every person who is named in it as a director or a proposed director of the company, or by his agent authorized in writing.

The statement is, amongst other things, to state the "minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment." These words refer to sect. 85, which provides, in para. (7), that—

"(7.) In the case of the first allotment of share capital, payable in each, of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription, that is to say,

- "(a) The amount (if any) fixed by the memorandum or articles, and named in the statement in lieu of prospectus, us the minimum subscription upon which the directors may proceed to allotment; or
- "(b) If no amount is so fixed and named, then the whole uncount of the share capital other than that issued, or ugreed to be issued, as fully or partly paid up otherwise than in eash.

has been subscribed, and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

"This sub-section shall not apply to a private company, or to a company which has allotted any shares or debentures [or debenture stock] before July, 1908."

In this counection it is also necessary to bear in mind sect. 86, making allotments in contravention of the above provision voidable, and rendering directors liable; and sect. 87, which prohibits the company from commencing business, or exercising its borrowing powers, until the conditions therein specified have been complied with; and sect. 83, which prohibits a company from varying before the statutery meeting any contract referred to in the statement in lieu of prospectus, except subject to the approval of the statutory meeting.

A person who applies for shares on the faith of statements contained in a statement in lieu of prospectus has apparently the same right of rescission, if they are false, as if they were contained in a prospectus. But such misstatements or emissions in a statement in lieu of prospectus, if not relied upon, do not render subsequent allotments void. Blair Open Hearth, (1914) 1 Ch. 390.

The statement is clearly a document required by or for the purposes of the Act, specified in the Fifth Schedule (*riz.*, to comply with sect. 82, and accordingly if any person wilfully makes in it a statement false in

STATEMENT IN LIEU OF PROSPECTUS. Ch. XXXVI.

any material particular, knowing it to be false, he is guilty of a misdemeanour, and liable on indictment to imprisonment for a term not exceeding two years with or without hard labour, and on summary conviction to imprisonment for not exceeding four months with or without hard labour, and in either case to a fine (not exceeding 100%). in lieu of or in addition to such imprisonment. See sect. 281.

s in L to

by

• of

nu

HI-

+-=+

in da the

ud uito

int be

he nd

a ire

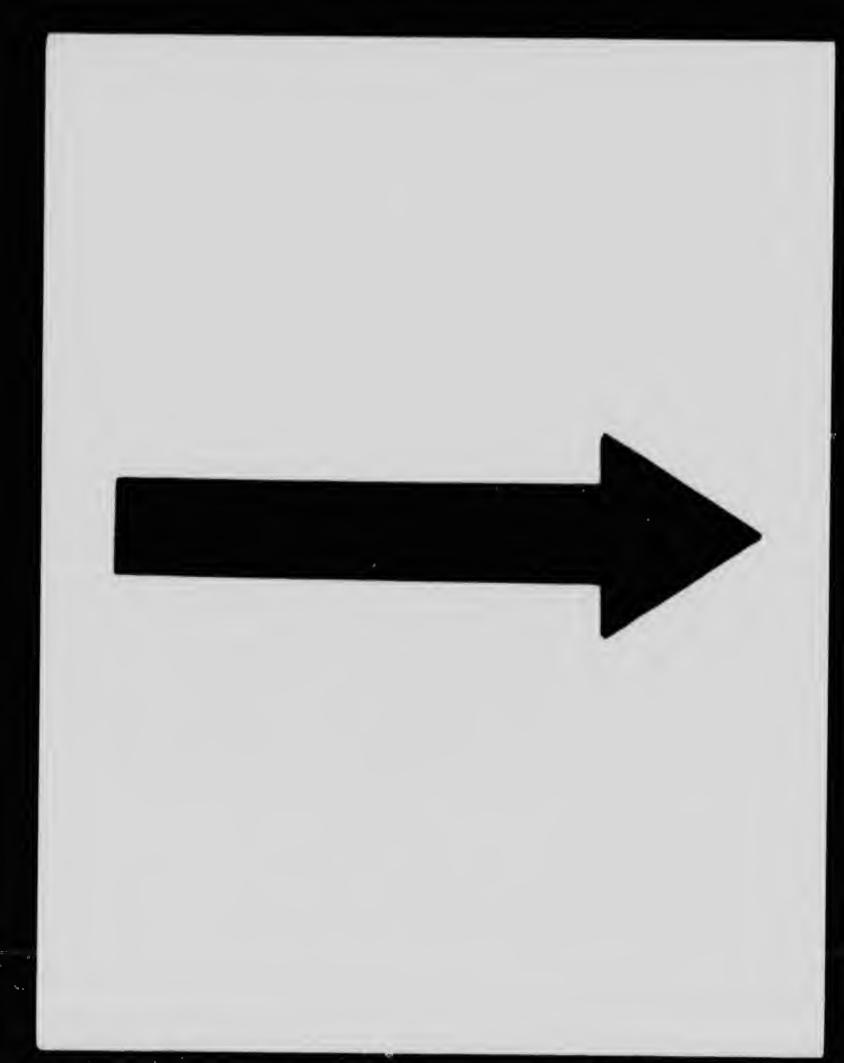
s6, le, mrs, nd ry is,

na in in

in in

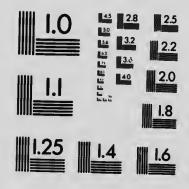
0

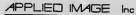
Sect. 72 also (as to appointment of directors), where applicable, must be borne in mind. See pp. 181, 182.



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)





1653 East Main Street Rochester, New York 14609 USA (716) 482 - 0300 - Phone (716) 288 - 5989 - Fax

Ch. XXXVII.

CHAPTER XXXVII.

PRIVATE COMPANIES.

SECTION 37 of the Companies Act, 1907, gave at last, what had long been desired, a definition of a Private Company. This definition, now re-enacted by sect. 121 of the Act of 1908, as amended by the Companies Act, 1913, runs thus:—

121.-(1.) For the purposes of this Act the expression "private company" means a company which by its articles-

(a) restricts the right to transfer its shares; and

- (b) (Act of 1913, s. 1 (2) (b)) limits the number of its members (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) to fifty; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures [or debenture stock] of the company.

(2.) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the Registrar of Companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(3.) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

But though the private company has now received statutory recognition and an authoritative definition, it must not be supposed that the private company —either the name or the thing—was first brought into use by the Companies Act, 1907; for both the name and the thing with substantially the same incidents and signification have been well known for upwards of thirty years. The term was already in use though only to a limited extent—when the author's work on "Private

Companies" was first published some thirty years ago, and the twenty-nine editions of that work which have appeared in the interval may not have been without their effect in familiarizing the public with this useful form of company association. Certain it is that private companies, or incorporated partnerships as they may be called, constitute more than a third nowadays of the whole number of companies registered.

Many judicial references to the private company may be cited. As long ago as 1881, in *British Seamless Paper Box* (1881), 17 Ch. D. 467, Cotton, L. J., said "when the company was formed it was intended to be a private company, that is, it was intended to carry it on without calling in the public, or issuing any shares except to then existing shareholders." And Lindley, L. J., in *In re George Newman § Co.*, (1895) 1 Ch. 685, observed : "It is true that this company was a small one, and is what is called a private company." Lord Macnaghten also, in *Salomon v. Salomon & Co.*, (1907) A. C. 22, said "that among the principal reasons which induce persons to form private companies . . . are the desire to avoid the risk of bankruptcy, and the increased facility afforded for borrowing money."

But the term "private company" having now been appropriated by the legislature to a company with precisely defined incidents, it will, no doubt, in the future be used exclusively in its technical sensein the sense attached to it by the Act.

Not only does the legislature recognize the private company: it may be said to bestow its benediction upon it. It grants it special privileges and immunities. In particular, it gives no countenance to the absurd prejudice which has at times prevailed against the so-called "one-man" companies. So far from doing so it permits a private company to consist of any two persons instead of seven, as in the case of a public company, and thus facilitates, in no small degree, the formation and working of small private companies. Moreover, the Act goes still further. In particular—

1. Exceptional facilities are granted in regard to the formation of a private company. Other companies have to comply with a whole series of preliminary conditions before they can commence business, including the filing of a prospectus, or of a detailed statement in lieu of a prospectus. But a private company is formed in the simplest way, by delivering to the registrar a memorandum and articles of association and paying the requisite fees; whereupon the certificate of incorporation is issued, and the company can commence business at once. See sect. 82 (2) and sect. 72 (3) as to filing consents and contracts by directors.

2. Another important exemption is conceded to private companies by sect. 26. That section requires every company, other than a

private company, to file with the registrar annually "a statement in the form of a balance-sheet, audited by the company's auditors, and contailing a summary of its capital, its liabilities, and its assets, and giving such particulars as will disclose the general nature of such liabilities and assets, and how the values of the fixed assets have been arrived at." These requires ents do not apply to a private company.

3. A private company is exempt from the provisions of sect. 65. which requires the filing with the registrar of the report as to the position of the company, which has to be sent to the members seven days before the statutory meeting in accordance with the section. The company is, however, bound to convene a statutory meeting. *Gardner* v. *Iredale*, (1912) 1 Ch. 700.

4. A private company is exempt from the provisions of sect. 114, which gives to the holders of preference shares, debentures and debenture stock the same right to receive and inspect the balancesheets of the company and the reports of the auditors, and other reports, as are possessed by the holders of ordinary shares in the company.

5. Lastly, sect. 89 modifies the law in respect of the payment of commissions to persons for subscribing, or underwriting, or placing shares. Under sect. 8 of the Act of 1900, such commissions could only be paid "upon an offer of shares to the public" for subscription, but now private companies will be able to pay such commissions without making any such offer. A statement in prescribed form must then be filed for the purpose of disclosing the amount or rate of commission. Sect. 89 (1) (b), and see the prescribed form, W. N. 11th July, 1908, p. 223.

Regard being had to these privileges and immunities-

1. Existing concerns hitherto worked as private companies will, no doubt. as a general rule, where practicable, desire to bring themselves within the definition of a private company under the Act of 1908, and with a view thereto will pass the requisite special resolution.

2. Companies hereafter formed and intended to be worked as private companies will, as a rule, be registered as private companies under the Act of 1908, and their articles of association will be framed accordingly.

3. Existing public companies (whether formed before or after 1st April, 1909), which can conveniently be worked as private companies. will in like manner alter their regulations by special resolution.

In order to convert an existing company into a "private company" within sect. 121 of the Act of 1908, it is necessary to pass a special resolution altering the company's articles so as to limit the number of members, to prohibit any invitation to the public to subscribe for its shares, debentures, or debenture stock, and impose restrictions ou the transfer of its shares. These alterations will satisfy the statutory

Ch. XXXVII.

definition, but they are not the only alterations requisite. The articles generally must be considered, for there may be other provisions inconsistent with those indicated, and they must be altered accordingly. For example, power to issue share warrants to bearer must be struck

The private character of such a company may at any time be terminated in the manner indicated in sect. 121 of the Act, or by any alteration of its articles, so as to remove any of the restrictions required by sect. 121, or by default in complying with any of those restrictions. Prior to the Companies Act, 1913, there was no prohibition in the Companies Acts against disregarding the articles in so far as they bring the company within the definition. Thus, where the number of members in fact exceeded fifty, it was held that the company had not ceased to be a privato company. Park v. Royulties Syndicate, Ltd., (1912) 1 K. B. 330.

But now by the Companies Act, 1913-

Sect. 1(1). Where the articles of a company include the provisions which, by sect. 121 of the Companies (Consolidation) Act, 1908, as amended by this Act. are required to be included therein in order to constitute the company a private company for the purposes of that Act, and default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions of that Act mentioned in the schedule to this Act, and thereupon the said provisions shall apply to the company as if it were not a private company :

(The schedule refers to sect. 26 (3) as to annual return in form of balance sheet; sect. 114 as to tho right of preference shareholders to inspect balance sheets; sect. 115 and sect. 129 (iv) as to minimum number of members of a company.)

Provided that the Court on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or # person interested and on such terms and conditious as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

(3) Every private company shall send with the annual list of members and summary required to be sent under sect. 26 of the Companies (Consolidation) Act, 1908, a certificate signed by a director or the secretary that the company has not since the date of the last return, or in the case of a first return since the date of the incorporation of the company issued any invitation to the public to subscribe for any shares or debentures of the company ; and, where the list of members discloses the fact that the number of members of the company exceeds

Р.

ł

e

e

it

٩,

• 1

ıl

 \mathbf{f}

ts

ie

Y

24

fifty, also a certificate so signed that such excess consists whole of persons who under sect. 121 of that Act as amended by this section are to be excluded in reckoning the number of fifty.

Instances of Conversion.

Many of the most successful trading concerns of the day have been, and are being daily, converted into private companies; in factaccording to the Registrar's estimate-fully one-third of the whole number of companies registered are private companies. The following are a few examples: -

Crosse & Blackwell, Limited (preserve makers).
De la Rue & Company, Limited (printers).
W. & A. Gilbey, Limited (wine merchants).
Henry Blacklock & Co., Limited (publishers of "Bradshaw").
Huntley & Pahner, Limited (biscuit makers).
J. J. Colman & Sons, Limited (mustard).
Marshall & Snelgrove (drapers).
Merryweather & Sous, Limited (fire engineers).
Mudie's Select Library, Limited (circulating library).

Peter Robinson & Company, Limited (drapers, etc.).

The "Moruing Post," Limited (newspaper).

Different Objects sought by Conversion.

Various objects of conversion.

One man company. Although a large number of private companies are thus formed to take over existing businesses, the main object of conversion in many cases may be of a different character. Hundreds of companies and syndicates are formed every year for the purpose of establishing and carrying on some new business or to carry out some contemplated undertaking, entroprise, or transaction, which can best be carried out by means of the formation of a private company.

In these private companies, as already mentioned, it has in the past been common for one, two, or three members to hold the preat bulk of the capital, whilst a few extra members held one share each, and were merely nominees of the principal shareholder or shareholders. These extra members were added whilst the Act required, as a condition of incorporation, that there should be seven members, each holding at least one share apiece, and it was necessary to provide for these extra subscribers, but now two persons are sufficient to constitute a private company, and thus the extra subscribers can be dispensed with

Thousands of companies have been formed in the last quarter of a century in this way—*i.e.*, with extra or nominee subscribers—

370

Instances of conversion of concerns into private companies.

ADVANTAGES.

and it was not until the year 1894 that any doubt was entertained as to the regularity of such companies. In that year, however, in the case of Broderip v. Salomon, the regularity of a limiterpy. company constituted on these lines was impeached in the High Court Salonen, and of Justice. When the matter came before the Conrt of Appeal Side was δt_{in} ((1895) 2 Ch. (C. A.) 323), the learned judges were of opinion that the Act contemplated the incorporation of seven independent bond fide members who had a mind and will of their own, and who were beneficially and substantially interested in the concern, and not mere nominees or trustees for some one or more principal shareholders; and they accordingly held a company not so constituted an abuso of the Companies Acts, and the principal shareholder liable for the debts of the company. This view, however, of the requirements of the section was erroneous and unsound, and it was decisively rejected by the House of Lords on appeal. See supra, p. 56, and the report; Salomon v. Salomon & Co., (1897) A. C. 22. The House of Lords there held that the company whose legal status was challenged was regularly and properly constituted, inasunch as there were seven membors, each of whom held at least one share, and that this was the condition, and the sole condition, imposed by the statute; and it declared that there was no foundation for the notion that such a company was irregular because some or one of the seven members happened to hold a relatively small, or relatively large, number of shares, or held them in trust for the other member or members. The same principlo applies to private companies under the new Act.

Advantages.

The inducements to such conversion are :---

(1.) The protection of limited liability which the members obtain. of conversion This alone is the greatest possible boon to traders. "If," says the into private companies. ordinary law, "you want to trade, you must risk all you have-every farthing." This is bad enough in the case of an individual trac. r, but it is worse still in the case of a partner, for partnorship is based on mutual confidence, and if one partner abuses that confidence-nay, if he is guilty only of indiscretion or want of judgment, without fraudhe may commit his co-partner to ruinous liabilities by reason of the doctriue of English law that each partner, so far as the outside world is concerned, is the unlimited agent of the other partner or partners in all watters within the scope of the partnership business. This risk is eliminated by conversion. For not only the amount at stake is limited, but the agency of the directors is restricted by articles of which all the world has notice.

24 (2)

into private

371

Ch. XXXVII.

The Limited Partnerships Act, 1907, now allows a member of a firm to acquire the privilege of limited liability, but the privilege is qualified by statutory conditions, which put the "limited partnership" at a great disadvantage as compared with the private company.

(2.) The advantages incident to incorporation, particularly in respect of the holding of property and the continuance of the concern notwithstanding deaths, bankruptcy, transfer of shares, or other change of interest or title. Take the case of a partner dying, for instance. "The position of the executors of a deceased partner is," says the learned author of Lindley on Partnership, "one of considerable hardship and difficulty : if they insist on an immediate winding-up of the firm they may ruin those whom the deceased may have been most anxious to benefit; whilst if for their advantage the partnership is allowed to go on the executors may run the risk of being ruined themselves." With incorporation these difficulties vanish. The shares of the deceased partner form part of his estate and are bequeathed in trust or otherwise dealt with as may be convenient, and the estate is represented on the board of directors by his trustees or their nominees, who being nere agents of the company can act without incurring personal liability. The bankruptcy, again, of a partner dislocates a partnership. With a company the trustee in banki ptcy sells the shares of the bankrupt, or if worthless, disclaims; the company on its part proves for the estimated value of future calls, and there is an end of it. So, again, in the matter of contracts, in the admission of new members and the retirement of old members, in the sale, mortgage, .d settlement of shares the company enjoys a striking superiority. The property again in the case of a partnership is constantly having to be conveyed with the admission, retirement, death, or bankruptcy of a partner; with a company the property is vested in it as a body corporate. Shareholders may come and go, but no changes of individual membership affect the title.

(3.) The borrowing facilities, especially on debentures and debenture stock. By means of these securities a company can raise a large sum on easy terms by the contributions of a number of small lenders on the same co-operative principle on which a company's capital is subscribed. They are securities, too, with which the public is familiar, easily enforced and readily transferable. If issued by a company in good repute they are a very marketable security. So advantageous, indeed, is this mode of raising money found to be, that it is by no means uncommon for a business to be converted into a company solely for the purpose of raising a loan by the issue of debentures or debenture stock.

(4.) The simplification of arrangements as between the members

SPECIMEN CASES.

Ch. XXXVII.

and the concern, which, in the case of an ordinary partnership, would be extremely complicated. Thus, if a shareholder is indebted to a company for money lent or in respect of a call made on his shares, the company can sue for the loan or call without difficulty. Conversely, if a shareholder lends money to the company, he can sue for it and enferce any security given him by the company, just as if he were not a shareholder, and should the company fail, he can prove for the money lent in competition with the outside creditors. In the case of partnership one partner cannot sue another except for an account, and great inconveniences arise in seeking to enforce contracts between the members of a par nership; while should the firm become insolvent, a member of it is disentitled to prove in competition with the outside creditors of the firm.

Specimen Cases for Private Companies and Syndicates.

A firm consists of several members, each of whom has laid by some private means which he is desirons of freeing from the risk of trade. To effect this they convert the business into a private company, they become the sole directors of the company, and they receive paid-up shares in substitution for their interests in the business. Henceforth their assets outside the business are free from risk.

A firm consists of several members, one of whom is entitled to the greater part of the capital, and also to private means. He is disposed to retire on the fortune he has accumulated. If his liability could be limited, he would be willing to leave part of his capital in the business, and to assume the position of a sleeping partner. The best way in which this can be effected is by converting the business into a company, and it is accordingly done.

A capitalist is willing to supply a treler, or a trading firm in whom he has confidence, with additional capi 1 in consideration of a share of the profits, but does not wish to incur the liabilities of partnership, though he wishes to have a voice in the management. He therefore stipulates that the business shall b⁻ converted into a company. He will then bring in the additional capital by taking shares in the company to the amount agreed on, and paying for the same in cash. In such a case it is very common for the capitalist to stipulate also that he or his nominee shall be one of the directors for a term of years, a \cdot sometimes that the shares to be allotted to him shall be preference shares.

Another example is given by the late Sir George Jessel, M. R.: "A man dies, leaving his property to three or four sons. He is the senior

partner in a concern. If the enpital were taken out the concern would be ruined. The junior partners cannot go on : they say to the children who are not in the business, and who have succeeded to large fc^{-1} une 'If you shut up the business you will lose a great deal; let us form it into a limited company, which will enable you gradually to draw out of the concern, and, in the meantime, it can go on as usual.' I have known that done with great success."

The above uro all cases of conversion, i great numbers of private companies are formed to establish some new business or carry out some special operation, or transaction, or adventure.

The following is an example :---

A., B. and C. desire to start n newspaper, or to supply n village or town with waterworks. or to build a theatre or a town hall, or to acquire and work a building estate, or to provide a race-course or a cricket ground or swimming baths, or to erect some flats, or some workmen's dwellings; but they do not wish to incur unlimited liability. Accordingly they register a private company and take up shares thereof to the extent of the capital which they are disposed to embark. Each of the subscribers becomes a director, and further funds, if wanted, are raised by the issue of further shares or of debentures.

Similar examples might be multiplied indefinitely.

Formation and Constitution.

Formation and constitution A private company is constituted like any other company, namely, by registration, with a memorandum and articles of association. It has been affected in n number of points by the Act of 1908. Thus the application to register must be signed by the subscribers and be in a special form showing that the company does not issue an invitation to the public to subscribe. It must also be accompanied by a statutory declaration as provided in sect. 17.

The memorandum and articles must be subscribed by at last two persons, and the number must be kept up to two.

The articles must contain special provisions, as required by sect. 1:1 of the Act.

If the articles require a shnre qualification for the directors, sect. 73 applies, nud the directors must not act without one.

Private companies must, like public companies, make a return of allotments to the registrar under sect. 88.

A private company can pay underwriting commission in respect of shares in its capital. Sect. 89.

A private company may consinence business immediately on its incorporation. Sect. 87 (6).

IARE.

A private company must hold the statutory meeting provided for by sect. 65.

A private company must, under sect. 66 convene an extraordinary meeting on requisition.

A private company must register its mortgages and charges under sect. 93.

A private company must keep a register of its directors and notify changes to the registrar. Sect. 75.

The provisions as to nudit (sect. 112) and the altered form (sect. 26, except sub-s. (3)) of a company's annual return also apply to private companies.

A private company may register articles of its own, or it can adopt Table A. altogether or in part.

Number of Members.

The articles have to limit the number of members to fifty, as required by sect. 121.

Transfer of Shares.

It is now a statutory condition of a "private company" that its articles "restrict the right to transfer its shares." Sect. 121 (1) (a).

As to the particular form whi h this "restriction" shall take, clauses are generally inserted with view to preserving, as far as practicable, the private character of the concern. The general plan is to prohibit a member or his executors or administrators from transferring his shares to any outsider, unless and u...*il the shares have first been offered to the continuing members, either at par or at a fair value to be fixed by the auditor, or ascertained by arbitration, or by some sliding scale, or at the "current price" fixed half-yearly by a general meeting, or at, say, ten times the average yearly dividend, or at the amount paid up with an addition proportioned to the average profits during, say, the last three years past, or otherwise; and the clauses usually go on to provide that if none of the continuing members desire to purchase, then that the shares may be transferred to an outsider; but even in that case the directors are usually given a very wide discretion as to approving of the admission of an outsider. The validity of such provisions is clear. Borland's Trustee v. Steel Brothers & Co., (1901) 1 Ch. 279; Att.-Gen. v. Jan.eson, 2 Ir. R. 644. See, further, Company Precedents, Part I. 11th ed. It is sufficient if the directors are given a discretion as to registering transfers, but the restrictions must extend to ell mares, present and future.

Directors.

Directors.

Ŀ

The articles commonly vest the management in a small number of directors, or in a "governing" or "permanent" or "life" director. In the latter case it is a common course to insert provisions enabling such governing or permanent director to appoint, if and when he thinks fit, other persons to be ordinary directors to act under him, and to determine their powers, duties, and renumeration ; also to remove any ord nary director from office. A permanent or governing director is generally grown very wide powers in regard to the management of the business of the company. Sometimes two or more persons are appointed joint governing or permanent directors with like powers. Usually, the powers of a governing or permanent director are limited to the time during which he holds a certain large proportion of the capital-e.g., one-half or one-third of the issued capital-and sometimes his powers are made transmissible, in case of his death, to his executors or their nominee, but so long only as the shares or a large proportion of them remain part of his estate.

The weak point of the ordinary joint stock trading company is undoubtedly its management by deputy; but in the case of the private company the shareholders manage the business and trade with their own money. If profits are made they pocket them; if losses occur they must be met out of assets which they have personally supplied. In the case, therefore, of private companies, there is the best possible guarantee that the directors will not be negligent of their duties or careless of the interests of the concern, and as a consequence their solvency, as Vanghan Williams, L. J., once observed, compares very favourably with that of other companies.

Compulsory retirement, Compulsory Retirement of Members.

Unity of aim and unity of action is always of importance in any co-operative enterprise, and to secure this it is very common to provide that a large proportion in value of the shareholders—say nine-tenths —shall be at liberty to buy out any small shareholder by paying him the fair value of his share; this is a safeguar I which experience has shown to be desirable; for there is always a possibility that some person may be admitted into the company who may afterwards be found cantankerous, or a secret enemy, or otherwise detrimental to the harmonious working of the company.

OBLIGATIONS OF PRIVATE COMPANY. Ch. XXXVII.

Obligations of Private Company.

r of

tor.

ing

he

nul

ove

tor

of

are

TS.

ted

of

nd

to

r a

18

ate

eir

ur

ed.

ble

OF

eir

ry

ny

de

hs

im

as

ne

be

to

It must be borne in mind that a private company, though it has Obligations special features of its own, is none the less subject to the pro- of private visions of the Companies Acts, and must conform thereto. This was pointed out by Lord Machaghten in *Trevor v. Whitworth*, 12 App. Cas. 409. "It is said," remarked that learned judge, "that the company was a family company; but a family company, whatever the expression means, does not limit its trading to the family circle. If it takes the benefit of the Act it is bound by the Act as much as any other company. It can have no special privilege or immunity. It was said that the board did not want Whitworth's shares to be sold to outsiders or put on the market. Unfortunately there was nothing special in that."

Directors, too, of a private company will be equally liable for a misapplication of the company's funde or for other misfeasance. Thus, in Neuman § Co., (1895) 1 Ch. 685, one Newman had converted his business into a private company, and had applied funds of the company, with the privity and consent of the other members, to ultra vires purposes, and it was held that he was guilty of misfeasance, and that the fact that it was a private company did not in any way exempt or protect him. A private company is subject to the restrictions of sect. 89 as to underwriting commissions. Dominion of Canada Syndicate w. Brig. "ke, (1911) 2 K. B. 648.

See furth r as to private companies the twenty-ninth edition of the author's work intituled "Private Companies and Syndicates."

Conversion of Private into Public Company.

Sub-sect. (2) of sect. 121 (*supra*, p. 366) states how a private Conversion company may turn itself into a public company. Not only has a statement in lieu of prospectus to be filed, but the Registrar insists that sect. 72 applies, and therefore that where the directors have not subscribed the memorandum for their qualification shares the company must procure them to sign and file a contract to take their qualification shares, even though they already hold their qualification—which seems somewhat absurd. However, there is a short cut open, for if by special resolution the company, *e.g.*, the limit of members and prohibition against issue of prospectus, it ceases to be a private company, even though it has not complied with all the conditions in sub-sect. (2).



CHAPTER XXXVIII.

COMPANIES LIMITED BY GUARANTEE.

BESIDES companies limited by shares and unlimited, the Act of 1908 allows of the formation of companies limited by guarantee. Such companies may be formed, with or without a capital divided into shares.

The provisions relating to them may be found in sects. 4, 10 and 21 of the Act.

Sect. 4 is as follows :---

4. In the case of a company limited by guarantee-

- (1) The memorandum must state—
 - (i) The name of the company, with "Limited" as the last word in its name;
 - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
 - (iii) The objects of the company;
 - (17) That the liability of the members is limited;
 - (v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (2) If the company has a share capital-
 - (i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
 - (ii) No subscriber of the memorandum may take less than one share;
 - (iii) Each subscriber must write opposite to his name the number of shares he takes.

MODE OF FORMATION-REGISTER OF DIRECTORS. Ch. XXXVIII.

By sect. 10, in the case of a company limited by guarantee there must be registered with the memorandum articles of association signed by the subscribers to the memorandum, and prescribing regulations for the company. A considerable number of associations have availed themselves of this form of incorporation under the correspouding provisions of the Act of 1862 (sects. 9 and 14): for example, associations for mutual iusurance, e.g., for insuring against murine risks, for insuring against accidcuts, for iudemnifying the members against liability to pay compensation to injured employés, for trade protection, for mutual information, for exploring mines, testing patents, pooling shares and debentures, and for pooling and realising produce of various kinds. The great majority of the compauies which register as companies limited by guarantee are, however, associations intended to be supported by annual subscriptions or donations, and registered by licence of the Board of Trade without the word "Limited." See sects. 19 and 20.

See also sect. 56 as to reduction of capital.

8

h

b

1

٠d

t-10

oť

ie

nt

чl

ie,

ի

ed

rø ed

ne

he

Prior to the Companies Act, 1900, it was permissible to form a company limited by guarantee, with articles dividing the undertaking into shares of no nominal amount—a most convenient form of association; but sect. 27 of the Act of 1900 prohibited this, and sect. 21 of the Act of 1908 has continued the prohibition.

Mode of Formation.

In order to form a company limited by gnarantee, a memorandum How formed, and articles of association must be prepared. The memorandum will accord with Form B. in the Third Schedule to the Act of 1908, but where there is a capital divided into shares the amount must be stated as in Form A., and the two forms must be amalgamated. In either case there is a clause by which every member of the company undertakes to contribute, in the event of winding-up, a limited sum. See *supra*, sect. 4. The quantum of this undertaking varies from 1s. to 10l. and upwards. If there are no defined shares, the words declaring that "the subscribers respectively agree to take the number of shares set opposite their names" must be omitted. The articles of association will contain appropriate provisions.

Register of Directors.

A company limited by guarantee is bound to keep a register of its Directors. members (*supra*, p. 124) and of mortgages (*supra*, p. 277), and must give notice to the registrar of special resolutions. *Supra*, p. 240. Moreover, sect. 75 of the Act provides that such a company shall keep

COMPANIES LIMITED BY GUARANTEE.

at its office a register of its directors or managers, and shall send to the registrar a copy of such register, and shall further notify any change that takes place in such directors or managers. The executive body, by whatever name called, will be the managers within the meaning of this section. Directors who are ex officio members of the company are not as such liable on the guarantee. Re Premier Underwriting Association (No. 2), (1913) 2 Ch. 81. Unless it has a capital divided into shares a company limited by guarantee has not to make the annual return as to its members, &c. in accordance with sect. 26. And companies registered under sect. 23 of the Act of 1867, or sect. 20 of the Act of 1908 (see supra, p. 250), are relieved from the obligations imposed by sect. 75 of the Act of 1908. Sect. 88, as to return of allotments, does not apply to a company limited by guarantee. Persons who have ceased to be members of the company within a year of a winding-up are not liable unless the existing members are unable to satisfy the contributions required from them. Re Premier Underwriting Association (No. 1), (1913) 2 Ch. 29.

Stamp Duty.

Stamp.

Upon the registration of a company limited by guarantee, the memorandum must be stamped with duty as provided by Table B. in the First Schedule to the Act. Where there is no capital divided into shares the amount is proportioned to the number of members, and accordingly the articles usually state that "for the purposes of registration the company is to consist of [e.g., 100] members." When the number is not to exceed twenty the fee is 2l.; when it exceeds twenty, but does not exceed 100, the fee is 5l.; and so on up to 20l. When the number is to be unlimited the fee is 20l. Most of the observations contained in this work apply mutatis mutandis to companies limited by guarantee.

Where the company has a capital divided into shares the registration fees are the same as in the case of a company limited by shares. See Table B. aforesaid.

Ch. XXXIX.

CHAPTER XXXIX.

UNLIMITED COMPANIES.

.

r

ρ

n

ì

Ι,

9

n

0 /.

COMPANIES with unlimited liability are rarely formed now. While Unlimited limited companies have been increasing by "leaps and bounds," un- companies. limited companies have dwindled nearly to zero. Accordingly it will not be necessary here to say much about them. The statutory requirements as to such companies are contained in sects. 5, 10, 57 and 58 of the Act. An unlimited company requires a memorandum and articles of association, and may have a joint stock capital divided into shares, or no such capital. Its name will not include the word "Limited." If the company is wound up, the liability of its members to contribute to the payment of the debts and costs of winding-up will be unlimited. It having been held that mutual insurance associations, consisting of more than twenty persons, are illegal unless registered, a considerable number of mutual insurance associations have been formed and registered as unlimited companies, but it is now found preferable to form and register such associations as companies limited by guarantee. Of late years a good many loan clubs have been registered as unlimited companies. Several banks and insurance companies are also so registered.

Companies formed under the Act of 1844, or by special Act, or otherwise, sometimes register as unlimited (see p. 385) in order at once to wind up voluntarily. This is allowable. Southall v. British Mutual Soc., 6 Ch. 619.

Where an association is registered as an unlimited company, it is always open to the members to re-register it as a limited company under the provisions of sects. 57 and 58 of the Act.

CHAPTER XL.

THE ASSURANCE COMPANIES ACT, 1909.

The growth of insurance companies, the accumulation of the colossal funds which they control, and the constant extension of their business to new classes of risks is one of the most striking commercial developments of the last half century. In a group of detached Acts-the Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), and the Life Assurance Companies Act, 1871 (34 & 35 Vict. c. 58), and the Life Assurance Companies Act, 1872 (35 & 36 Vict. c. 41), and the Employers' Liability Insurance Companies Act, 1907 (7 Edw. 7, c. 46 -the Legislature had dealt in its usual piecemeal fashion with the subject, and had established a variety of salutary rules for the formation and regulation of life assurance companies and employers' liability insurance companies designed to secure their solves ey and stability. These Acts were set out in former editions of this work, and commented on in Chapter XL. of the same work. But the time had come when-like the Companies Acts-they needed to be revised, and consolidated and extended; and this useful work has now been accomplished in the shape of the Assurance Companies Act, 1909 9 Edw. 7, c. 49). This Act, set out infra, pp. 552 et seq., re-enacts with amendments and additions (see infra) most of the provisions contained in the repealed Acts, and it extends these provisions to companies for accident and fire insurance.

The principal points in this new legislation calling for notice are:— (1) the scope of the Act; (2) the requirements as to deposits; (3) the separation and appropriation of the funds; (4) balance sheets, valuations and accounts; (5) transfer of business and amalgamation: (6) winding-up; (7) reduction of contracts.

Scope of the Act.

1. Scope of the Act.—This is very comprehensive. The Act is to apply to all companies (exclusive of Friendly Societies and Trade Unions) whether established before or after the commencement of the Act (1 July, 1910), and whether established within or without the United Kingdom, to carry on within the United Kingdom assurance business of any of the following classes :—(a) life assurance; (b) fire insurance; (c) accident insurance; (d) employers' liability insurance; (e) bond investment business; but subject as respects any class of assurance business to the special provisions in regard to that class. These special provisions or sets of rules will be found in sects. 30, 31, 32, 33, and 34 of the Act.

Deposits.

2. Deposits .- On this point sect. 2 of the Act introduce .. two important

The legislation.

THE ASSURANCE COMPANIES ACT, 1909.

It requires an assurance company to deposit in Court changes. 20.0001. in respect of each class of business-life, firo, accident, employers' liability and bond investment business-which it transacts. The deposit in each case is to be invested and the interest paid to the company. In the case of a new company 'he deposit has to be made before the certificate of incorporation is issued. The deposit under the new Act is not dispensed with even though a deposit has already been made under the Act of 1870 or 1907, and withdrawn (sect. 30 of 1870), and the company might therefore have been assumed to be wellestablished, sound and solvent.

Following up this principle of differentiating the various classes of insurance business carried on by one and the same company, the deposit is to become part of the assurance fund appropriated for each particular class of insurance business. Under sect. 3 of the Act of 1870, the deposit was to be returned when the assurance fund accumulated out of premiums amounted to 40,0001. (Le Phenix (1888), 58 L. T. 512; Scottish Economic Life Assurance Co. (1890), 38 W. R. 684; Colonial Mutual Soc. (1882), 21 Ch. D. 837; Popular Life Assurance Co., W. N. (1908) 222; Life and Health Assurance Association, W. N. (1910) 45); but the Act of 1909 contains no such provision, and the deposit therefore will have to remain in Court as a continuing security for the policy holders.

3. Separation and Appropriation of Funds. - The same principlo of Funds. differentiation is applied to the company's funds. By sect. 3 of the Act, there is to be a separate fund kept for each class of assurance business, and the receipts in respect of assurance business of a class are to be placed in such separate fund, and the fund is to be "as absolutely the security of the policy holders of the class as though it belonged to a company carrying on no other business other than assurance business of that class," and is not to be applied directly or indirectly for any purposes other than those of the class of business to which the fund is applicable.

4. Balance Sheets, Valuation and Accounts .- There is an important Balance group of sections-sects. 4-9-relating to these matters, designed to sheets, &c. secure as far as possiblo the financial soundness of the undertakings in the interests of the public.

Sect. 4 provides for an annual revenue account, profit and loss account and balance sheet framed in accordance with the scheduled forms.

Sect. 5 provides for periodical investigation and valuations at intervals of not more than five years.

Sect. 6 provides for a statement of the assurance business.

Sect. 7 provides for the deposit of the accounts, statements, &c. with the Board of Trade, who are to examine them, and if they find

383

Ch. XL.

THE ASSURANCE COMPANIES ACT, 1909.

anything "inaccurate or incomplete" to call the company's attention to it. This official criticism may well prove a valuable guarantee.

Sect. 8 provides for the delivery to policy holders on request, copies of the documents.

Sect. 9 provides for audit of the company's accounts.

Sect. 10 provides for the keeping of registered holders' addresses.

Sect. 11 provides for printing of the deed of settlement for furnishing to shareholders and policy holders.

Sect. 12 in effect prohibits the publication of any notice as to the capital without specifying the amount subscribed and the amount paid.

5. Transfer and Amaigamation.—Sect. 13, which takes the place of sect. 14 of the Act of 1870, provides in effect that no assurance company shall amalgamate with another or transfer its business to another unless the amalgamation or transfer is sanctioned by the Court in accordance with the section. After the transfer or amalgamation is sanctioned, certain statements as to assets and liabilities, copies of the transfer or amalgamation agreement, &c. are to be deposited with the Board of Trade (sect. 14). It will be borne in mind that the sect. 13, like sect. 14 of the Act of 1870, is not venabling one. It does not, that is, give a company by implication power to transfer or amalgamate, but merely operates is restriction of the company's power if it has one (*Re Sovereign Life Assurance Co.*, 42 C. D. 540; Company Precedents, 10th ed., Part I., p. 1224).

Winding-up.

Transfer and

amalgama-

tion.

6. Winding-up.—Sect. 15 of the Act of 1909 makes special provision for the winding-up of an assurance company. As to the method of proof in respect of policies, $\varepsilon_{ee} \ Re \ Law \ Car \ and \ General \ Insurance \ Co$, (1913) 2 Ch. 103.

Novation.

7. Sect. 7 of the Life Assurance Companies Act, 1870, mado special provisions as to novation, and enacted that where a company has transferred its business to or has been amalgamated with another company, no policy holder of the first-mentioned company who shall pay to the other company the premiums accruiug due in respect of its policy shall by reason of any such payment made after the passing of this Act, or by reason of any other act done after the passing of this Act, be deemed to have abandoned any claim which he would have had against the first-mentioned company on due payment of premiums to such company, or to have accepted in lieu thercof the liability of the other company, unless such abandonment and acceptance have been signified by some writing signed by him or his agent lawfully authorised. No similar provisions, strange to say, are to be found in the Act of 1909. Thus the old law appears to be restored, as to which see Family Endowment Society, 5 Ch. 118; Spencer's case, 6 Ch. 362; Manchester, London, &c. Assoc., 9 Eq. 643; Kettle's case, 9 Eq. 306.

385

CHAPTER XLI.

REGISTRATION UNDER SECT. 249 OF EXISTING COMPANIES.

PART VII. of the Act of 1862 authorized the registration of companies Registration existing before registration. These provisions have been re-enacted in under Part sects 249-255 of the Act of 1998. Most of the companying which are VIJ. of Comsects. 249-255 of the Act of 1908. Most of the companies which so registered were old companies formed by deed of settlement or charter, 1862, and or letters patent obtained before the Act of 1862, but some companies Act of 1908. formed since that Act have been registered. If the company is a joint stock company it can register as a company limited by shares; otherwise it must register as a company limited by guarantee or an unlimited company. But in any case there must be at least seven members.

In order to register, a resolution for registration must be passed at a Mode. meeting of the company, and application in writing must then be made to the registrar accompanied by a copy of the company's deed of settlement, charter or other instrument by which it was constituted, and a list of shareholders, &c., and in due course the registrar will certify that the company is incorporated and, if so, with limited liability. Thereupon the company is placed very much in the same position as if it had originally been formed under Part I. of the Act. The course of procedure is fully stated in sects. 249-257 of the Act, and the necessary forms are given in Company Precedents, Part 1., pp. 624

The objects of existing companies in registering under this part of Object of the Act are various. In most cases registration is dictated by a desire registration. to obtain the benefit of limited liability and the advantages of incorporation. Sometimes the registration is adopted with a view to the voluntary winding-up of the company; for after registration that course is open to the members. Occasionally the object is to reconstruct the company (infra, p. 423), when reconstruction cannot otherwise be effected with the consent of every member.

panies Act.

Ρ.

n

-

£ 1.

۶ť

e ð

e

Ŀ

of

h

6

t

1 r

y

n

f

0 r

,

v

1

e

1

r

CHAPTER XLII.

ILLEGAL ASSOCIATIONS.

Hiegal amodiations. The Act of 1908, as we have seen, affords great facilities for forming companies, but before it introduces the machinery of formation the Act, in sect. 1, clears the ground by declaring illegal all large unregistered companies or associations subsequently formed, and thus indirectly compelling associations with anything but a very small membership to avail themselves of the provisions of the Act. Section 1, the section in question (which is a re-enactment of sect. 4 of the Act of 1862), provides, in effect, as follows :—

- (1) That after the commencement of the Act no company, association, or partnership consisting of more than ten members is to be formed for carrying on the business of banking unless registered under the Act or formed in pursuance of some other Act of Parliament or of letters patent : and
- (2) That no company, association, or partnership consisting of more than twenty persons shall be formed after the commencement of the Act for the purpose of carrying on any other business (i.e., other than banking) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered under the Act, or is formed in pursuance of some other Act, or of letters patent, or is a company engaged in working mines within the Stannaries [Devon and Cornwall].

Decided meaning of above provisions. The meaning of these prohibitions, as interpreted by the Courts, is that any company or association formed in violation of the section is an illegal association, and the policy of the enactment is well expounded by James, L. J., in *Smith* v. *Anderson* (1880), 15 Ch. D. at p. 273. "The object of the Act," says the Lord Justice, "was to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies, so that persons dealing with them did not know with whom they were contracting, and so might be put to great expense, which was a public mischief to be repressed."

And this ϵ ject the Act may be said effectually to have accomplished. Thus an association which is illegal cannot be wound up, under the Act of 1908, at the instance either of the association, of a creditor, or of a shareholder. *Re South Wales Atlantic*, §c. Co. (1875), 2 C. D. 763;

Ch. XLII.

Re Padstow Association (1882), 20 Ch. D. 137; Ex parte Hargrove (1875), L. R. 10 Ch. 542; Ilfracombe Building Society, (1901) 1 Ch. 102. See, however, One and All Sickness Association, 95 T. L. R. 674. So, too, an action by an illegal association, whether against a member or any other person, must fail if the illegality of the association is disclosed. Re Day (1876), 1 Ch. D. 699. If the association has lent money, and as security obtained a promissory note, it cannot sue thereon. Shaw v. Benson, 11 Q. B. D. 562. And, conversely, a member or outsider caunot sue such an association, for it can contract no debts (Re Lona n Marine Association (1869), 8 Eq. 176), and can enter into no contracts. Jennings v. Hammond (1882), 9 Q. B. D. 229; and see Hume v. Record Reign Jubilee Syndicate, 80 L. T.

ng

the

m-

us

all

ı 1,

Act

ia-

be

ed

of

re

nt

e.,

of

he

he

18

he

is

iB

ed

3.

he

b**y**

ot

at

d.

he

of

3;

404. In a word, the association is a phantom. It has no legal existence. Many atten:pts have been made to escape from the provisions of the section, but seldom successfully; the words are too wide. It was at one time thought, for example, that mutual assurance associations were not within the section—not "associations for gain"; but these doubts —or hopes—were dispelled by the decision in *Re Padstoc Association* (1882), 20 Ch. D. 149.

In Re Thomas (1884), 14 Q. B. D. 379, again, it was contended that an unregistered loan society consisting of more than twenty members was not illegal, because in its inception it comprised less than twenty members, but this contention was overruled. "I cannot," said Cave, J., "assont to the doctrine that, because a society is projected by less than twenty people originally, and subsequently grows to more than twenty, it is outside the Act and does not require registration. This would be making a laughing-stock of the Act."

These cases must, howover, be read with Smith v. Anderson (1880), 15 Ch. D. 258, a decision of the Court of Appeal in which it was held that an investment trust was not an illegal association although there were more than twenty beneficiaries entitled to the benefit of it, the ratio decidendi being that the business, if business it was, was carried on by the trustees, who were less in number than twenty.

Wigfield v. Potter (1881), 45 L. T. 612; Re Siddall (1885), 29 Ch. D. 1; Crowther v. Thorley, 50 L. T. 43, are other instances in which unregistered land companies of more than twenty members have been held to be not illegal or the ground that they were formed merely for acquiring and dividing land between the members, and not for carrying on any business of land ich bins of the formed for the formed in the second seco

for carrying on any business of land jobbing or tratficking in land. In a recent case (Marrs v. Thompson, 17 T. L. R. 365 (C. A.)), the trustees of an nnregistered society consisting of more than twenty members were held entitled to sue the society's treasurer for the recovery of money of the society in his hauds, but it is not easy to reconcile the decision with *Re Padstow Association*, supra.

25 (2)

CHAPTER XLIII.

WINDING-UP.

A COMPANY once incorporated under the Companies Acts cannot be put an end to except through the machinery of a winding-up (*Princess* of *Reuss* v. Bos, L. R. 5 H. L. 193), or by removal from the register as a defunct company under sect. 242 of the Act of 1908, which takes the place of sect. 7 of the Companies Act, 1880, as amended by sect. 26 of the Companies Act, 1900.

Acts and Rules applicat' .

Acts and Rules applicable.

Parts IV. and VIII. of the Act (1908), and the Rules made under the Act, contain the provisions applicable to the winding-up of companies.

Modes of Winding-up.

Kinds of winding-up.

The different kinds of winding-up are as follows :---

1. By the Court.

2. Voluntary, (1) Purely voluntary.

(2) Under the supervision of the Court.

Of these two a simple coluntary winding-up is by far the more common, and this is consonant with the policy of the Companies Act, which contemplates that shareholders shall manage their own affairs, and as one of them, winding-up: but the Act has defined certain circumstances in which a creditor or contributory is entitled to invoke the intervention of the Court and have the assets administered by the Court. The original provisions relating to a compulsory winding-up by the Court were contained in the Companies Act, 1862, sects. 74-128, but they were supplemented and largely added to and altered by the Companies (Winding-up) Act, 1890, and the rules and orders made thereunder.

Ch. XLIII.

Courts having Jurisdiction to Wind up.

The following are the Courts having jurisdiction to wind up Courts having companies in England and Wales :- the High Court, the Palatine jurisdiction. Courts of Lancaster and Durham, and, as a general rule, all the County Courts having bankruptcy jurisdiction. Courts, in any particular case, has jurisdiction to wind up a com-Which of these pany depends on the amount of the paid-up capital of the company. See sect. 131. If the paid-up capit.' is over 10,000%, then tho jurisdiction is in the High Court; but, as regards companies whose registered office is within the jurisdiction of the Palatine Courts aforesaid, these Courts have concurrent jurisdiction. If the paid-up capital does not exceed 10,000%. the jurisdiction is in the County Court, unless the registered office of the company is within the metropolis, in which case the jurisdiction is in the High Court. See Southsea Garage, Limited, 55 S. J. 314. The Stannaries jurisdiction has now become vested in a County Court. See sect. 131 (4), and Company Precedents, Pt. II. pp. 22-28.

Over what Companies.

The companies subject to this jurisdiction are the following :-

(a) Companies formed and registered under Part I. or registered under Part VII. of the Act of 1908.

(b) Existing companies as defined in sect. 285 of the Act of 1908, which says, "existing company means a company formed and registered under the" Joint Stock Companies Acts, or under the Companies Act, 1862.

- (c) Companies registered but not formed under the Companies Act, 1862. See sect. 246.
- (d) Companies registered as limited under the Companies Act,
- (e) Unregistered companies, as defined in Part VIII. of the Act of 1908, that is to say, "Any partnership, association, or company (except railway companies incorporated by Act of Parliament) consisting of more than seven members and not registered under this Act," and having a registered office in England and Wales.

Examples of unregistered companies which have been ordered to be wound up are :---

1. Companies incorporated by special Act.

Bradford Navigation Co., 10 Eq. 331; Wey and Arun Canal, 4 Eq. 197; Brentford Tramways Co., 26 C. D.

Over what companies have Courts jurisdiction *

t hø 10048 ster ikes . 26

ider o of

iore

Act,

irs,

tain

oke

the

o by

128,

by

ade

527; South London Fish Market, 39 C. D. 324; Bartonupon-Humber Water, 42 C. D. 585; St. Neole Water, 22 T. I. R. 478.

- 2. Companies incorporated by Royal Charter.
 - Oriental Bank Corporation, 54 L. J. Ch. 481; Bank of South Australia, (1895) 1 Ch. 578.
- 3. Foreign and colonial companies having assets and liabilities in England.

Queensland Merce ile Agency, 58 L. T. 878; Mercantile Bank of Australia 1892) 2 Ch. 204; Jarvis Conklin Mortgage, 11 T. L. R. 373; North Australian Co. v Goldsborough Co., 61 L. T. 717; Syria Ottoman Rail. Co., 20 T. L. R. 217.

4. Building societies formed prior to the Building Societies Act, 1874.

Doncaster Building Society, 3 Eq. 158; Queen's Building Society, L. R. 6 Ch. 815; Smith's Trustees v. Irving and Fullarton Building Society, 6 F. 99, Ct. of Sess.; Ilfracombe F B. M. Building Society, [1907] 1 Ch. 102.

5. Trustees' savings banks.

6. Friendly Societies.

Irish Mercantile Loan Society, [1907_1 Ir. R. 98; Tean Friendly Society (1914), 58 Sol. J. 234; Victoria Society, Knottingley, (1913) 1 Ch. 167.

7. Life assurance comprinies.

Great Britain Mutual, 16 C. D. 246; Masonic and General, Re Sharpe, (1892) 2 Ch. 154.

 An association for purchase and division of an estate. Re Osmondthorpe Hall Society (1913) W. N. 243; 58 Sol. J. 13. (A member who had paid up all instalments due from him being treated as a contributory.)

See Company Precedents, Pt. II. p. 16 et seq.

Cases for Winding-Up.

The following are the several grounds on which a winding-up order may be made :---

- Sect. 129. A company may be wound up by the Court-
- (i) if the company has by special resolution resolved that the company be wound in by the Court:
- (ii) if default is made in filing the statutory report or in holding the statutory meeting :
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

PETITION FOR COMPULSORY WINDING-UP ORDER. Ch. XLIII.

- (iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any otion company, below seven:
- (v) if the company is unable to pay its debts :

m-22

af

in

ilr

lin

v

nil.

et,

ng

nd

'*ll* •

an

y,

nd

Re

3.

m

01

10

ıg

1.8

le

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

Inability to pay Debts.

This is the usual ground for a petition. In sect. 130 the Act Inability to states the cases in which a company is to be "deemed unable to pay debts. pay its debts." See Appendix. In most cases the evidence is given under the fourth paragraph of that section by proving "to the satisfaction of the Court that the company is unable to pay its debts." The fact that the petitioner has made repeated applications for payment, and that the company has neglected to pay, affords cogent evidence that it is unable to pay its is and this is the evidence generally relied on. Almost the only answer open to the company is to show that the debt claimed is bond fide disputed, in which case a winding-up petition is not a proper mode of enforcing it. Re Gold Hill Mines, 23 C. D. 210. Where the debt is undisputed, it is futile for the company to say, "We are able to pay our debts, but we do not choose to pay this particular debt." The Court will not listen to such a defence. See Company Precedents, Pt. II. pp. 49-53.

The "Just and Equitable" Clause.

It was at one time thought that these words, as appearing in sect. 79 of the .'.ct of 1862, ought to be confined to cases ejusdem generis with the provious cases, but this construction was subsequently held erroneous. Australian Joint Stock Co., W N. (1897) 48; Sailing Ship "Kentnere" Co., W. N. (1897) 58. Under these words winding-up orders have been made on the ground (a) that the substratum of the company was gone (German Date Coffee Co., 20 C. D. 169; Haven Gold Co., 20 C. D. 151; Red Rock Gold Mining Co., 61 L. T. 785); (b) that the company was a bubble (London and County Coal Co., 3 Eq. 355); (c) that the company was conceived and brought forth in fraud; (T. .". Brinsmead §: Sons, (1897) 1 Ch. 45); on appeal, (1897) 1 Ch. 406; (d) that full investigation was necessary (Peruvian Amazon Co., 29 T. L. R. 384).

Petition for Compulsory Winding-up Order.

See as to this, sect. 137 of the Act of 1908. A petition may be Petition for presented (1) by the company; (2) by any creditor; (3) by any con- compulsory tributory; (4) by the Official Receiver under sub-sect. (2) of sect. 137. order.

And the right to petition, being a statutory right, cannot be excluded by a clause in the articles of association. *Re Peveril Gold Co.*, (1898) 1 Ch. 122.

Petitions by the company are not very common; for if a company desires to wind up it has only to pass a special resolution. or an extraordinary resolution for voluntary winding-up. See sect. 182 of the Act. Sometimes the directors deem it advisable to get a friendly creditor to present a petition in order to gain time to pass a resolution for winding-up in the meanwhile, and then the creditor at the hearing asks for a supervision order. Nor are petitions by contributories very common, for the theory of the Act is that shareholders shall manage their own affairs, and winding-up is one of them. The great bulk of winding-up petitions are by creditors, a petition for a winding-up order being a proper as well as effective mode of enforcing payment of a debt due from a company.

Creditor's Petition.

Creditor's petition.

Any person to whom the company is indebted in a sum of money presently due is indisputably a creditor, and entitled to present a petition. See sect. 137 of the Act. In this respect the Act re-enacts the provisions of the Act of 1862, s. 82. Under that Act it was held that the following could petition :—The assignee of a debt, whether at law or in equity (*Paris Skating Rink Co.*, 5 C. D. 959; *Re Montgomery Moore Ship Collision Doors Syndicate*, 72 L. J. Ch. 624); the depositary by way of mortgage of debentures to bearer, the interest on which was in arrear (*Olathe Silver Mining Co.*, 27 C. D. 278); the executor of a deceased life policy holder in respect of an admitted claim, a sum by the policy made payable out of the assets (*Masonic and General Life Assurance Co.*, 32 C. D. 373); a secured creditor (*Moor* ∇ . *Anglo-Italian Bank*, 10 C. D. 681), even after obtaining the appointment of a receiver in an action. Borough of Portsmouth *Tranways Co.*, (1892) 2 Ch. 362.

But it was held that a garnishee order against a company did not make the garnishor a creditor of the company (Combined Weighing Machine Co., 43 C. D. 99); and that a person who had a claim against the company for unliquidated damages was not a creditor within the section (Pen-y-Van Colliery Co., 6 C. D. 477); nor was a person who had guaranteed the payment of a debt due from the company, but had not paid such debt. Vron Colliery Co., 20 C. 1). 442. It was also held that a landlord was not a creditor as regards future rent (United Club, 60 L. T. 665); nor the holder of a bill of exchange not yet payable (W. Powell § Sons, W. N. (1892) 94); nor a holder of debentures not yet payable. Melbourne Brewery Co., (1901) 1 Ch. 453. But the Act of 1908 has in this respect

CREDITOR'S PETITION.

Ch. XLIII.

modified the law, for under sect. 137 a "creditor" includes "any Creditor's contingent or prospective creditor or creditors." British Equitable right to Bond, &c. Co., (1910) 1 Ch. 574. Such a creditor has, however, to give security for costs, and before the hearing show a primá facie case. (Sect. 137 (1) (c).) A petitioning creditor who cannot get paid a sum presently payable has primd facie a right, ex debito justitiæ, to a winding-up order (Bowes v. Hope Mutual, &c. Society (1845), 11 H. L. C. 402; Re Western of Canada, 17 Eq. 1; Re Chapel House Colliery Co. (1883), 24 Ch. D. 259); even though the assets are overcharged by debentures (Alfred Melson & Co., (1906) 1 Ch. 841; Crigglestone Coal Co., (1906) 2 Ch. 327; Re Clandown Colliery Co., (1915) 1 Ch. 369; and see now sect. 141 (1) of the Act). It has been held that the Courts (Emergency Powers) Act, 1914 (see Appendix, p. 634), makes no difference to this prima facie right (Re Globe Trust, (1915) W. N. 221); but see Re A Company, (1915) 1 Ch. 520. This primá facie right to a winding-up order is qualified by another rule, viz., that the Court will regard the wishes of the majority in value of the creditors, and if, for some good reason, they object to a winding-up order, the Court in its discretion may refuse the order. Re West Hartlepool Co. (1874), L. R. 10 Ch. 618; Western of Canada Co. (1878), 17 Eq. 1; Chapel House Colliery Co. (1883), 24 Ch. D. 259. See Company Precedents, Pt. II. pp. 77, 78. Moreover, securities may be so framed that the debenture or debenture stock holder is not a creditor capable of petitioning (Uruguay Central Co., 11 C. D. 372; Dunderland Iron Co.,

(1909) 1 Ch. 446); but query whether this decision can be supported. Whether the Court will make an order or not, does not depend solely on the wishes of the creditors. The Court is now, under Part IV. of the Act, invested with a wide jurisdiction in the interests of commercial morality; and if the facts disclose a strong primd facie case for investigation into the formation or promotion of the company, or the issue of debentures by it, the Court will make a compulsory order irrespective of creditors' opposition. Re Bishop & Sons, Limited, (1900) 2 Ch. 254; Re Lichtenstein, 23 T. L. R. 424; Re Clandown Colliery Co., (1915) W. N. 75.

By sect. 197 of the Act, the voluntary winding-up of a company is not to be a bar to the right of any creditor of such company to have the same wound up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up (Re Gold Co., 11 Ch. D. 701; Re Haycraft Gold Reduction Co., (1900) 2 Ch. 230; Re Gutta Percha Corporation, (1900) 2 Ch. 665); but the Court may in its discretion refuse the order if it will not benefit the creditors generally, but only the petitioning creditor. Re Greenwood, (1900) 2 Q. B. 306.

ded **398**)

f a ion. See e to e to the oetit is r-up by well any.

mey nt a acts held er at nery posit on the itted sonic dito**r** ning outh did eigh-

laim ditor as a the). D. rards. ill of nor Co.,

spect

393

order.

Contributory's Petition.

Contributory's petition.

Such petitions are comparatively rare; for the Act establishes a domestic tribunal as between the members and the company, and thus enables the members themselves, by passing the requisite resolutions, to determine whether there shall be a voluntary liquidation, or whether the Court shall be asked to make a compulsory order. See sect. 182; Langham Skating Rink (1877), 5 Ch. D. 683. Accordingly, a contributory, to obtain an order, must make out a special case, and the case usually made out is that it is just and equitable that the company shall be wound up because the substratum of the company is gone. See Re Suburban Hotel Co. (1867), L. R. 2 Ch. App. 737; Re German Date Co. (1882), 20 Ch. D. 169; Re Haven Gold Co. (1882), 20 Ch. D. 151; Re Brinsmead & Sons, (1897) 1 Ch. 45; Symington v. Symington's Quarries, Limited, 8 F. 121, Ct. Soss.; Pirie v. Stewart, 6 F. 847, Ct. Sess. The substratum is held to be gone when the main object for which the company was formed has become impracticable. Re Suburban Hotel Co., supra.

In such a case shareholders may fairly claim that they ought no longer to be forced to risk their property in going on. No contributory of a company is, by sect. 137, to be capable of presenting a petition unless (i) either the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below seven, or (ii) the shares in respect of which he is a contributory or some of them were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder: the object, of course, being to prevent a person buying shares in order to qualify himself to wreck the company. "Held" means standing in the name of the contributory petitioner. Wala Wynaad, 21 C. D. 849.

Registration of a wife's shares in the name of her husband is for this purpose sufficient. (Sect. 137 (3).)

Occasionally, a contributory petitions on the ground that the company is insolvent or unable to pay its debts; but in such case the petitioner, if fully paid, must allege and prove that there will be a substantial surplus for the shareholders (*Re Rica Gold Co.* (1879), 11 C. D. 36); otherwise he has no interest which the Court ought to regard. But see now sect. 141, and see Company Precedents, Pt. II. p. 73.

The Court may also make a compulsory order on the petition of a fully-paid shareholder if satisfied that the voluntary winding-up is likely to prejudice the shareholders. *Re National Co. for Distribution of Electricity*, (1902) 2 Ch. 34.

FORM OF PETITION.

It is open, too, to the petitioning shareholder to show the Court that he will derive some real benefit from a compulsory order. *Re Dori Gallery*, W. N. (1891) 98; *Anglo-Austrian Co.*, 35 S. J. 469.

a

us

er

2;

11-

10

iy

e.

ın

D,

's

7,

et

Re

10 ry

m

a y,

ry.

уy

ie

р,

::

er

in

9.

 \mathbf{r}

ıc

ie a

to

8,

a

is

n

Mismanagement by directors is not a ground for a shareholder petitioning. He should call a meeting. Re Professional Benefit Building Society, L. R. 6 Ch. 862.

A shareholder who is in arrear with calls must make out a very special case to justify his petitioniug in such circumstances, and he may be required to pay the calls into Court or to give an undertaking for payment of them. *Diamond Fuel Co.*, 13 C. D. 400; *Crystal Reef Co.*, (1892) 1 Ch. 408.

The fact that a voluntary winding-up is in progrous is primd facie a bar to a winding-up on a shareholder's petition (*Bank of Gibraltar*, L. R. 1 Ch. 74; Imperial Bank of China, L. R. 1 Ch. 339; London and Mercantile Discount Co., L. R. 1 Fq. 277), because a shareholder is bound by the wishes of the majori but the Court has a discretion, and if it sees cause will examine into the composition of the majority passing the resolution to make sure that it represents the real wishes of the shareholders. Re Varieties, (1893) 2 Ch. 235. Primd facie a petition by a fully paid up shareholder alleging that the company has uo assets will be dismissed. Kaslo-Slocan Co., W. N. (1910) 13.

Petition by Official Receiver.

Sect. 137 (2) of the Act provides that where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the Court having jurisdiction to wind up the company, as well as by any other person authorized in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding-up, or winding-up subject to supervision, cannot be continued with due regard to the interest of the creditors or contributories.

As to the meaning and operation of this section, see Re Jubilee Sites Syndicate, (1899) 2 Ch. 204.

Form of Petition.

A petition to the High Court is headed :---In the High Court of Justice. (Companies Winding-up.) Mr. Justice ----. In the matter of the Companies (Consolidation) Act, 1908, and In the matter of the ---- Company, Limited.

Ch. XLIII.

Form of

petition. Rule 11,

p. 599.

It then proceeds thus :--

To His Majesty's High Court of Justice.

The humble petition of — of — showeth as follows :--Then follow statements as to the incorporation of the company, situation of its registered office, amount of its paid-up capital (to show jurisdiction), the circumstances founding the title to relief, e.g., that the company is indebted to \cdot e petitioner in a specified sum, and that he has made repeated applications for payment, but without success, that the company is unable to pay its debts, and then the petition concludes with the prayer "that the company may be wound up under the Companies (Consolidation) Act, 1908." There is a note at the foot to the effect that it is "intended to serve this petition on the company." In framing a petition, it is essential to allege a case for winding-up within the Act. See sect. 129. If no case is alleged, the petition, unless the Court should give liberty to amend, is demurrable, and will be dismissed with costs. *Re Wear Engine Works Co.* (1873), L. R. 10 Ch. 188.

Presentation and Answering.

Rule 26, p. 601.

A winding-up petition to the High Court is presented at the office of the Registrar in Winding-up, who appoints the time and place at which the petition is to be heard. Winding-up Rules, 1909, r. 26. After a petition has been presented, the petitioner must, on a day to be appointed by the registrar, not less than two days before the day appointed for the hearing of the petition, attend before the registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service have been duly filed, and that the provisions of the rules as to winding-up petitions have been duly complied with by the petitioner.

Where several petitions are presented, they rank according to the date of presentation. *Re Building Societies Trust*, 44 C. D. 144; *Re Bamford*, (1910) 1 Ir. R. 390.

A summons under the Courts (Emergency Powers) Act, 1914, is not necessary. *Re A Company*, (1915) 1 Ch. 520, and Appendix, p. 634.

Advertisement of Petition.

Advertising the petition. Rule 27, p. 601. Every petition is to be advertised seven clear days before the hearing. City and County Bank, L. R. 10 Ch. 471; London Indiarubber, 14 W R. 594. If the company's registered office is within ten miles of the Royal Courts of Justice, the advertisement is to be inserted in the London Gazette and in one London daily morning newspaper, or in such other newspaper as the Court directs; in the case of any other company, once in the London Gazette and once in a local newspaper. See the Rules. Every advertisement of a pecition is

SERVICE-EVIDENCE IN SUPPORT. Ch. XLIII.

to contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner. Notice of intention to appear must be given by any person intending to do so (see Rule 33, p. 602), and must contain names and addresses. Descours, Parry § Co., W. N. (1909) 50.

Any error in the title, name, day or place for hearing may render the advertisement useless (Manure Co., W. N. (1876) 234; Army and Navy Hotel, 31 C. D. 644; Neucastle Co., W. N. (1888) 246; London and Provincial Pure Ice, W. N. (1904) 136); but a formal defect where no one is misled will not invalidate the petition. Broad's v. Fatent Co., W. N. (1892) 5; see Company Precedents, Pt. II., p. 98.

The Court will restrain the issuing of the advertisements when the petition is an abuse of the process of the Court. Re A Company, (1894) 2 Ch. 349.

Service.

The petition is to be served on the company, unless it is presented Service of by the company itself. See Rules of 1909; Chester §: Co., 52 W. R. Petition. 189. Where it is impracticable to serve the petition in the manner p. 601. Rule 28, therein mentioned, the Court, e.g., when the company's registered office is closed or pulled down, will make a special order, e.g., to serve upon one or two officials connected with the company, and direct that such service should be deemed to be service on the company. See Company Precedents, Pt. 11. p. 101.

Evidence in Support.

The Rules provide for the filing of an affidavit by the petitioner Evidence in in general terms, stating, in effect, that the statements in the support of petition relating to his own acts and deeds are true, and that he Rule 29, believes the other statements to be true. This is known as the statu- p. 601. tory affidavit, and the Rules make this affidavit prima facie evidence of the statements in the petition. It must be sworn and filed within four days after the presentation of the petition, and notice of the filing must be given to the company. New Weighing Machine Co., W. N. (1896) 48.

The object of the statutory affidavit is to prevent the abuse of putting upon the file long affidavits in support of the petition which may turn out to be unnecessary. Per Lindley, L. J., Re Gold Hill Mines, 23 C. D. 214.

Affidavits, if put in in opposition to the petition, must be file 1 within Rule 35, seven days of the date of the filing of the statutory affidavit. 'ing. p. 60", up Rules, 1909; and Re Evans, W. N. (1892) 126. Th ner

may also be cross-examined as well as the opposing deponents; but the Court has a discretion as to allowing cross-examination in a winding-up petition, and refused, for example, to allow a petitioner to cross-examine the respondent company's witnesses where the petitioner had no direct evidence but the statutory affidavit, and wanted to cross-examine as to the company's business, means and bona fides. London Fish Market Co., 27 S. J. 600; and see Re Emma Silver Mining Co., L. R. 10 Ch. 194; Re West Devon Mine, W. N. (1884) 139. If necessary, witnesses who decline to make affidavits can be called and examined at the instance of any party interested. Company Precedents, 11th ed. Pt. II. pp. 191, 195.

Hearing of Petition.

Hearing. Rule 32, p. 602.

Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, may make an interim order, or any other order that it deems just. Companies Act, 1908, s. 141. In all matters relating to the winding-up -and winding-up includes the petition-the Court may, by sect. 145 of the Act, have regard to the wishes of creditors and contributories, and may, if expedient, direct meetings to be summouch to ascertain such wishes. See in Appendix, s. 152. If the company is solvent, the wishes of contributories, as the persons chiefly interested in the assets, carry most weight; if the company is insolvent, the wishes of creditors. Instances in which the Court has acted on this principlo are Western of Canada Co., 17 Eq. 1; Chapel House Colliery, 24 C. D. 259; Re Professional Benefit Building Society, L. R. 6 Ch. 856; Re City and County Bank, L. R. 10 Ch. 470; Haven Gold Company, 20 C. D. 151; T. E. Brinsmead & Sons, (1897) 1 Ch. 45; affirmed (1897) 1 Ch. 406. Since the Winding-up Act, 1890, a new element-that of public policy in regard to commercial morality-has been introduced into the consideration of the question of the propriety of a winding-up order. It is illustrated in Re Krasnapolsky Co., (1892) 3 Ch. 174; New Oriental Bank Corporation, (1892) 3 Ch. 563; J. H. Evans & Co., W. N. (1892) 126; General Phosphate Corporation, W. N. (1893) 142; Re Medical Battery Co., (1894) 1 Ch. 444; Crigglestone Coal Co., (1906) 2 Ch. 327. See also Bishop & Sons, Limited, (1900) 2 Ch. 254; Melson & Co., (1906) 1 Ch. 841; Re Clandown Colliery, (1915) W. N. 75. The principle of these last three cases has now received statutory confirmation in sect. 141 (1) of the Act of 1908, providing that an order is not to be refused on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

The Court will not order a petition to stand over for a lengthened

period: it would not be just to the company. Chapel House Colliery Co., 24 C. D. 267.

The Court has now power, under the Winding-up Rules, to substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition.

Commencement of Winding-up.

In the case of a winding-up by the Court the winding-up dates from the presentation of the petition (sect. 139). A voluntary winding-up dates from the passing of the (confirmatory) resolution (sect. 183). Where a winding up order is made after a voluntary winding-up has commenced, the winding-up dates from the presentation of the petition. *Re Russell Hunting Record Co.*, (1910) 2 Ch. 78.

As to commencement of winding-up for the purposes of preferential payments, see p. 411, post.

Winding-up Order.

The order is to the effect that the company be wound up by Winding-up the Court under the Companies Act, 1908.

The effect of a winding-up order is, by sect. 205 (2) (which takes the $\frac{1}{12}$ place of sect. 153 of the Act of 1862), to avoid all dispositious of the $\frac{1}{12}$ property (including things in action) of the company made between the commencement of the winding-up—*i.e.*, the presentation of the petition—and the winding-up order, unless the Court otherwise orders; but the practice of the Court is to allow such payments or dispositions pending petition if made honestly and in the ordinary course of business. Re Neath Harbour Smelling & Rolling Works, 35 W. R. 827; Re Wiltshire Iron Co., L. R. 3 Ch. 443; Re Liverpool Service Association, L. R. 9 Ch. 511; Bolognesi's Case, L. R. 5 Ch. 567; Re Oriental Bank Corporation, 28 C. D. 634; Gorringev. Irwell Indiarubber Works, 34 C. D. 128. See Company Precedents, Pt. II. pp. 448, 449.

Costs.

U

ſ

e

r

đ

3

d

The winding-up order usually gives the petitioning creditor and the company their costs, and also one set of costs to creditors, and one set to contributories supporting the petition (*Humber Ironworks* Co., L. R. 2 Eq. 15; 35 Beaz. 346; *European Banking Co.*, 2 Eq. 521; *Peckham Trams*, 57 L. J. Ch. 462), but there is no hard and fast rule. Where the contributories and the creditors appear by the same solicitor, one set of costs ouly will as a rule be allowed. *Re Silberhütte Supply Co., Ltd.*, (1910) W. N. 81. The costs are paid in the first

Winding-up order. Bule 37 et seq., p. 602.

place (subject to incumbrances) out of the company's assets. Rule 187 of 1909. See also on the subject of costs, Ibo Investment Trust, Limited, (1904) 1 Ch. 26; Consolidated Exploration Co., (1899) 2 Ch. 599; Leyton and Walthamstow Cycle Co., 50 W. R. 93; Re Bamford, (1910) 1 I. R. 390.

As to security for costs on appeal, Consolidated South Rand Mines, W. N. (1909) 66; and as to costs on an appeal, see Ibo Investment Trust, Limited, (1903) 2 Ch. 373.

Provisional Liquidators.

Provisional liquidators. The Court has jurisdiction to appoint a provisional liquidator before or after winding-up order. Sect. 149 (2), (3). An appointment before winding-up is not often made, except by consent; but, on the windingup order being made, the official receiver becomes, *ipso facto*, provisional liquidator until a liquidator is appointed. See sect. 149 (3) (b) of the Act, and *Reid and Sons*, (1900) 2 Q. B. 634. The powers of a provisional liquidator are usually restricted, more or less, by the Court under sect. 149 of the Act. See Company Precedents, Pt. II. pp. 160—173.

Proceedings following on Winding-up Order.

Subsequent proceedings.

When a winding-up order is made, the registrar sends to the official receiver a notice informing him that the order has been pronounced. The official receiver thus set in motion occupies a double position. He is an officer of the Board of Trade appointed by it for the purposes of winding-up under the Act, see sect. 146; but he is also answerable to the Court for the performance of his duties. Notice is sent to him because, on a winding up order being made, the official receiver becomes virtule officii provisional liquidator (see sect. 149 (3) (b)) until a liquidator, if any, is appointed. As provisional liquidator it is his duty to take possession of and protect the assets, and to call on the directors to furnish him with a statement of the company's affairs, which has to be made out iu accordance with a statutory form and verified by affidavit (see sect. 147 of the Act); and for the purpose of investigating the company's affairs he may require the attendance of the persons furnishing the report to answer questions. A director refusing to make out a statement may be committed for disobedience. New Par Consols, (1898) 1 Q. B. 673. Of this statement, when complete, the official receiver prepares a summary for the information of creditors and contributories, appending to it observations of his own on the formation, management, &c. of the company, and, as soon as practicable, submits his preliminary report to the Court as to the causes of failure

PROCEEDINGS FOLLOWING ON WINDING-UP ORDER. Ch. XLIII.

and the necessity for inquiry (sect. 148); but the unravelling of the company's affairs being a long business, it is not now necessary that the first meetings of creditors and contributories provided for by sect. 152 of the Act should he delayed until the investigation is concluded, and they are consequently summoned at once for the purpose of determining two preliminary questions :--

- 1. Whether they desire a liquidator of their own choosing in place Rule 115, of the official receiver as liquidator; and p. 613.
- 2. Whether there shall be a committee of inspection; and, if so, of whom it shall consist.

Creditors must prove a debt due to them from the company before they can vote at this first meeting. See Rules of 1909, and Ex parte Ruffle, L. R. 8 Ch. 1001; Re Parrott, 63 L. T. 777; Henry Lister & Co., (1892) 2 Ch. 417; Re Newton, (1896) 2 Q. B. 403. Voting may be in person or by proxy.

The result of the wishes of the meetings on the points thus submitted to them is reported to the Court, and the Court fixes a day for considering such wishes, and, if it approves, giving effect to them. If there is a difference of opinion the Court is to decide. Sect. 152 (2). Where a per on other than the official receiver is appointed liquidator he must notify his appointment to the Registrar of Companies, and give security to the satisfaction of the Board of Trade before he can act. Sect. 149 (3) (c). Company Precedents, Part II. p. 290 et seq.

The official receiver then hands over the "property" of the company to such liquidator. Companies Winding-up Rules, 1909. This expression "property" does not include notes and memoranda representing information obtained from officers of the company. *Re Lake George Mines, Limited*, (1904) 1 Ch. 803.

Duties and Powers of the Liquidator.

The liquidator's principal duties—speaking generally—are to take Duties of possession of and protect the assets, to make out the requisite lists of liquidator contributories and of creditors; to have disputed cases adjudicated upon, to realize the assets subject to the control of the committee of inspection (if any) in certain matters, and to apply the proceeds in payment of the company's debts and linbilities, in due course of administration, and, having done that, to divide the surplus amongst the contributories, and to adjust their rig—But before he makes any such distribution he ought to take ever, nears to satisfy himself that all creditors are paid, not only by advertising, but by writing to those creditors of whose existence he knows, and asking them if they have any claims

Ρ.

87

ist,

Ch.

rd,

es,

ent

oro

ore

ig-

r0-

(b)

of

the

H.

cial

ed.

He

of

the

ise,

t*ute* tor, ake

ish ade

see

oni-

ing

t a

ols,

cial

and

ma-

ble,

ure

26

against the company. See Pulsford v. Devenish, (1903) 2 Ch. 625. As to payment of statute-barred dehts, see Fleetwood and District Syndicate, (1915) 1 Ch. 488. He must also be eareful to provide, before distribution, for income tax due to the Crown. New Zealand Joint Stock Corporation, 23 T. L. R. 238.

A number of his statutory powers-not, of course, exhaustivenro specified in sect. 151 of the Act of 1908, which takes the place of sect. 94 of the Act of 1862. Some of these he can exercise only with the sanction of the Court or of the committee of inspection, if any; others without such sanction. For instance, the liquidator may without any such sanction sell any property of the company, prove in the bankruptcy or insolvency of any contributory, accept and make bills of exchange or promissory notes on security of the assets, take out administration to a deceased contributory, execute deeds, receipts, and other documents, and do and excente all other things that may be necessary for winding up the affairs of the company and distributing its assets: but he cannot (see sect. 151 of the Act bring or defend actions or other legal ; ceedings, civil or criminal, or carry on the business of the company, compromise with creditors er contributories under sect. 120 of the Act, or make calls (Re North Eastern Insurance Co., (1915) W. N. 210), or employ a solicitor, without the sanction of the Court or of the committee of inspection, if any. The sanction required for the employment of a selicitor must be obtained before the employment, except in cases of urgency. Sect. 151 (1) (c).

The liquidator or any creditor or contributory can apply to the Court by summons to determine any question arising in the windingup (sect. 193). Questions between the company and third parties cannot be determined on such a summons. *Re Centrifugal Butter Co.*, (1913) 1 Ch. 188.

A liquidator must pay all moneys received by him into the Companies Liquidation Account at the Bank of England. If he retains for more than ten days a sum exceeding 50*l*., he may be liable to pay interest at 20 per cent. Companies Act, 1908, s. 154. See Company Precedents, Part II. pp. 333 et seq.

But he may be allowed to have an account with any other bank if the committee of inspection satisfy the Board of Trade that it is desirable for the purposes of the liquidation.

Board of Trade's Audit of Liquidator's Accounts.

Board of Trade audit. This is provided for in sect. 155 of the Act. See Company Precedents, Part II. p. 297.

THE COMMITTEE OF INSPECTION. Ch. XLIII.

Removal of Liquidator.

15. iet

48,

wł

he

11

: f

læ

111 у, of

ito

er

111

nt i

al,

)rn

th

nt

ıy.

ed

e).

 \mathbf{he}

g-

ies

o.,

he

he

sle

lee

uk

is

ee-

A liquidator may be removed by the Court "on cause shown" (seet, 149 (6)). A liquidator was removed where he insisted on acting in the interests of shareholders only, though there was no reasonable prospect of paying the debts in full. Re Rubber and Produce Investment Trust, (1915) + Ch. 382.

An order for removal was refused where the applicant had no sup out from other creditors. Re Amalgamated Properties of Rhodesia, 30 T. L. R. 405.

The Committee of Inspection.

The creditors and contributories may, as stated above, at their first Committee meetings decide to have a committee of inspection. This is a little bit of inspection. of machinery which has been imported into winding-np from the practice in bankruptcy. See sect. 160 of the Act of 1908. The committee consists of a joint body of creditors and contributories, and its function is to assist the liquidator and supervise his proceedings. It is to meet at such times as the committee from time to time may appoint and is to act by a majority. General meetings of creditors and contributories may be summoned by the liquidator, and if any conflict of opinion arises between such meetings and the committee of inspection, the liquidator is to follow the directions of the meetings in preference to those of the committee. The sanction of the committee, as an alternative to loave of the Court, is necessary to the exercise by the liquidator of certain of his powers under sect. 151. The liquidator should not obtain leave of the Court ex parte to appoint a solicitor or take any similar step to which he knows the committee object. Re Consolidated Diesel Engine, (1915) 1 Ch. 192. The Court, however, is by no means bound by the decision of the committee. Re North Eastern Insurance Co., (1915) W. N. 210.

The Court may also order the liquidator to summon a meeting with a view to reconstitute the committee of inspection so as more fairly to represent creditors. Re Radford and Bright, Limited (No. 1), (1901) 1 Ch. 272; soe also Re Radford and Bright (No. 2), (1901) 1 Ch. 735.

No member of the committee of inspection can become a purchaser of the company's assets either directly or indirectly, or derive any profit out of winding-up transactions or receive any remuneration without the sanction of the Court. This sanction of the Court must in all cases be obtained before the business is commenced from which the profit is derived; it cannot be given after. Ex parte Gallard, (1896) 1 Q. B. 68,

26 (2)

Contributories.

Contributories. Rule 77 et seg., p. 609. An important part of a liquidator's duty in getting in the company's assets is to require payment by contributories of the amount, if any, uncalled on their shares in the company.

"Contributory" means every person "able to contributo to the assets of a company under the Act in the event of the company being wound up. See sect. 124 of the Act of 1908. The liability of a contributory is defined in sect. 123 of the act. For the purpose of enforcing this liability the liquidator makes out a list of the persons he claims to treat as contributories, and gives each of such persons notice that they are included in the list and for what amount, and that he proposes on a stated day to settle the list. On the day in question the liquidator hears uny objections by contributories to their being included in the list, and after such hearing settles the list one way or the other finally, and notifies the contributories. Any person who considers himself aggrieved can apply to the Court by originating summons to have his name removed from the list. The list of contributories is made out in two parts, A. and B., in accordance with sect. 123 of the Act of 1908. The A. contributories are the present members and nreprimarily liable. The B. centributories are the past members-that is, these who have ceased to be members within a year preceding the winding-up-and these are only liable to contribute after the A. contributories are exhausted. That is to say, a B. contributory is not liable to contribute in respect of any debt of the company contracted after he ceased to be a member, nor unless the existing members are unable to satisfy the contributions required to be made by them, and he cannot be called upon to pay more than the amount, if any, which remains unpaid on the shares which he held ; see the section (sect. 123 and Hilbert v. Banner, L. R. 5 H. L. 28; Webb v. Whiffin, L. R. 5 H. L. 718; Brett's case, 6 Ch. 800; 8 Ch. 800; and Morris's case, L. R. 7 Ch. 200: L. R. 8 Ch. 810. The list distinguishes also between persons who are contributories in their own right and persons who are contributorics as representatives of others.

A call can only be made on contributories with the sanction of the committee of inspection, if there is one, and if there is not, of the Court. Sect. 166 of the Act. It is not necessary that debts or liabilities should be established against the company before a call can be made. "Debts and liabilities" in sect. 166 (Companies (Consolidation) Act, 1908) mean estimated debts and liabilities. *Re Contract Corporation*, L. R. 2 Ch. 95. In sanctioning a call the Court may allow payment by instalments. *Law Guarantee Society*, 25 T. L. R. 565. A call made in winding-up is in the nature of a specialty

SET-OFF.

v'n

Ŋ,

-*.N

nd

ry

tis

to

ey

oh

or

he

ly,

olf

iis

int.

let

ire is, he A.

ωt

ed

(r)

nd

ch

3

L.

R.

eh

tre-

he

he

ies

le.

m)

aet

ay

R.

ltv

Ch. XLIII.

Buck v. Robson, L. R. 10 Eq. 629; Re Muggeridge, L. R. debt. Payment of a call is enforced by an order of the 10 Eq. 443. Court made in chambers on summons by the liquidator. Companies Act, 1908, s. 166; Winding-up Rulas, 1909. Such an order, called a "balance order," is a summary statutory proceeding for the purpose of enabling the liquidator to get payment from a contributory in lieu of proceeding by action. Ex parte Whinney, 13 Q. B. D. 478. A balance order is not, however, a "linal judgment" which will found a bankruptcy notice against the contributory. Re Sanders, 13 Q. B. D. 476. An action lies by the liquidator in the name of the company against a contributory for calls made before the winding-np, notwithstanding that the liquidator has obtained a balance order in the winding-up for payment of the same moneys under sect. 166 of the Westmoreland Slate Co. v. Feilden, (1891) 3 Ch. 15. Where Act. a director has received, in breach of trust, a present of paid-up shares from the company's vendor, he may be made liable for misfeasance, but he cannot be made liable as a contributory for unpaid shares. Carling's case, 1 Ch. D. 115; Re Innes & Co., (1903) 2 Ch. 254. The same principle applies to arrears of calls on forfeited shares. Ladies' Dress Association, Ltd. v. Pulbrook, (1900) 2 Q. B. 376.

Set-off.

By sect. Tot of the Act, in the winding-up of an insolvent company the baukruptcy rules apply as regards the rights of secured and unsecured creditors, debts provable, valuation of annuities and future and contingent liabilities. This section incorporates into the windingup of companies sect. 31 of the Bankruptcy Act, 1914, which allows set-off where there have been mutual credits, initial debts or other mutual dealings. Where, therefore, at the commencement of the winding-up A. has a money claim against the company, and the company has a money claim against A., one claim can be set off against the other. Sovereign Life Assurance Co. v. Dodd, (1892) 2 Q. B. 573, at p. 578; H. E. Thorne § Sons, Ltd., (1914) 2 Ch. 438.

But a contributory in a limited company who is also a creditor of the company cannot on a winding-up set off his debt against a call made on him by the liquidator (Grissell's case, L. R. 1 Ch. 528; Gill's case, 12 C. D. 755) until all the creditors have been paid in full (sect. 165 (3)); and this is so though in an action by the company, before winding up, to enforce the call the shareholder has obtained unconditional leave to defend under Ord. XIV. Re Hiran Maxim Lamp Co., (1903) 1 Ch. 70; or though the company has agreed that there shall be such a set-off. Re Law Car § General Corporation, (1912)

1 Ch. 405. And the liquidator cannot set off a debt due to the company from a deceased insolvent contributory against the amount due to the contributory in the liquidation. Re Peruvian Railway Construction Co., (1915) 2 Ch. 144. The principle is that where a person entitled to contribute to a fund is also hound to make a contribution in aid of that fund, he cannot be allowed to participate until he has fulfilled his duty to contribute (S. C., at p. 150); and where the question of set-off arises in respect of the estate of a deceased debtor, the "mutual dealings" section does not apply, since there were no mutual dealings between the company and his estate. S. C., and see H. E. Thorne & Sons (above).

Misfeasance Claims.

Misfeasance claims. Rt le 68 et seq., p. 607.

It frequently happens that the promoters, directors, managers, or other officers of a company are accountable to it for money of the company misapplied by them or wrongfully received, or for which in their fiduciary character they are accountable to the company; or the directors may have been guilty of some negligence or misfeasance for which they are answerable to the company in damages. In these cases the Companies Act, 1862, provided in sect. 165 a summary romedy by misfeasance proceedings. This section was replaced by sect. 10 of the Winding-up Act, 1890, which was wider in its scope than the older section, and sect. 10 has again been replaced by sect. 215 of the Act of 1908. It runs as follows:—

(1.) Where in the course of the winding-up of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property, or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the Court thinks just.

(2.) This section shall apply notwithstanding that the offence is one for which the offender may be criminally liable. . .

It is the duty of the liquidator—as part of his general duty of collecting the assets of the company—to proceed under this section against delinquent directors and others when he sees good ground for MISFEASANCE CLAIMS.

m-

ue

te-

on

 \mathbf{on}

as

he

)r.

no

ee.

or

 \mathbf{he}

in he

 \mathbf{for}

ase

iry

by

pe

Ъy

irs

of

or

mē

or he or

ay,

ni-

or

ate

of

on,

)IIt²

of

ion

for

Ch. XLIII.

doing so, and from the commencement of the Companies Act, 1862, the misfeasance summons has been constantly resorted to: for example. where directors have used the funds of the company for objects no sanctioned by the company's memorandum of association (Cullerne v London and Suburban Building Society, 25 Q. B. D. 485; Re Liverpoo Household Stores, 59 L. J. Ch. 616; Joint Stock Discount Co.v. Brown, L. R. 8 Eq. 381; Hardy v. Metropolitan Land Co., L. R. 7 Ch. 427; Coats v. Crossland, 20 T. L. R. 800); or paid dividends out of capital (Re National Funds Assurance Co., 10 C. D. 118; Flitcroft's case, 21 C. D. 519; Re Sharpe, (1892) 1 Ch. 154; Moxham v. Grant, (1900) 1 Q. B. 88), or made scoret profits (Hay's case, L. K. 10 Ch. 593; Carling's case, 1 C. D. 115; Pearson's case, 5 C. D. 336). or sold their own property to the company. Re Cape Breton Co., 29 C. D. 795. Bankers of a company are not officers within the section (Imperial Land Co. of Marseilles, L. R. 10 Eq. 298), nor prima facie is the company's solicitor (Great Western Forest of Dean, 31 C. D. 496); but he may be when he does all the work for a fixed salary. Liberator Building Society, 71 L. T. 406.

An auditor, if an "officer" of the company, may be proceeded against under this section. Kingston Cotton Mills Co. (No. 2), (1896) 2 Ch. 279; London and General Bank, (1895) 2 Ch. 166. But an accountant who is mercly called in-pro hac vice-to andit the accounts of the company is not an "officer." Western Counties Steam Bakeries, (1897) 1 Ch. 617. See p. 227. No set-off is allowed on a proceeding under the section. An order for payment of money under the above unisfeasance section constitutes a "final judgment" within the meaning of the Bankruptcy Act, 1914, s. 1 (1) (g), and will found bankruptcy proceedings (by way of bankruptey notice) against the delinquent director or officer. Sect. 215 (3). An order for security for costs will not as a rule be made. Strand Wood Co., (1904) 2 Ch. 1.

Examination before the Registrar.

For the purposes of misfeasance proceedings and to ascertain what Rule 73, assets are outstanding, the Court may, at the instance of the liquidator p. 608. under sect. 174 of the Act of 1908 (which takes the place of sect. 115 of the Act of 1862), summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the company. The jurisdiction of the Court to make the order is discretionary. Joseph Hargreaves, Limited, (1900) 1 Ch. 347.

The pendency of an action by the liquidating company against au

examinee or third party may be a ground for postponing the examination. Re London and Northern Bank, Ex parte Archer, 85 L. T. 698; and see Re North Australian Territory Co., 45 Ch. D. 87. But otherwise pendency of civil proceedings in the same matter is no excuse. Re Reliance Taxi-Cab (1912), 28 T. L. R. 529.

The examination is held before the registrar in winding-up or an examiner of the Court. It is a strictly private proceeding, and if a witness is attended by his solicitor the registrar or examiner may, as a condition of such solicitor being present, exact an undertaking from him not to use the information acquired for any other purpose than re-examination. Re London and Northern Bank; Haddock's case, (1902) 2 Ch. 73. To inspect the depositions when filed a special case must be made. Merchants' Fire Office, (1899) 1 Ch. 432. An examinee cannot refuse to answer any question unless it involves a question of privilege or is incriminating. He must give all the information he is capable of giving. Re Ottoman, W. N. (1867) 164. The examination may be ordered to be made in open Court, but this should not be done except in very exceptional circumstances. Re Property Insurance Co., (1914) 1 Ch. 775. As to public examination under sect. 175, see below.

Public Examination of Directors and Others.

Public examination.

In addition to the report of the official receiver-referred to above. p. 400-summarizing the statement of affairs and commenting on the history of the company, the official receiver may present a further report stating the manner in which the company was formed and whether, in his opinion, any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company; and the Court may, after consideration of any such report, direct the persons implicated, or the directors, to attend before the Court and be publicly examined on oath. Sect. 175. This public examination was by the Act of 1890 imported from bankruptcy, but the analogy of a director and a bankrupt is not exact. The section 8 in the Act of 1890 was at first largely resorted to, but its operation was considerably curtailed by the decision of the House of Lords in Ex parte Barnes, (1896 A. C. 146, and of the Court of Appeal in Civil, Naval and Military Outfitters, (1899) 1 Ch. 215, holding that no order for public examination of a particular person can be made unless the official receiver expresses the opinion that such person has been guilty of fraud, and shows how he is connected with the facts. The time for applying to discharge an order for public examination is fourteen days from the service of the order. National Stores, (1899) 2 Ch. 773. The number

CREDITORS.

of persons-directors, promoters, officers, &c.-examined under this jurisdiction in 1914 was, according to the latest Board of Trade return, 25. For all practical purposes of a winding-up-as distinguished from the pillorying of delinquent directors before trial-t. procedure under sect. 174 is quite sufficient.

As to the control of the Court over questions to be put at a public examination, see Re London and Globe Finance Co., 50 W. R. 253.

a

8

(I

11

A liquidator will not be ordered personally to pay the costs of a director examinee who has exculpated himself, unless the liquidator has accepted the position of a litigant. Tweddle & Co., (1910) 2 K. B. 697.

The Court may order the person procuring the examination to pay the witnesses their costs. Appleton, French & Scrafton, Limited, (1905) 1 Ch. 749.

Creditors.

The remedy of a creditor is solely against the incorporated company. Creditors. Oakes v. Turquand, L. R. 2 H. L. 357. When the legislature introduced the principle of limited liability, it set up, as Lord Cairns said (Re Reese River Mining Co., L. R. 2 Ch. 616), the company, and the company alone, as that with which creditors or third persons cover the company alone, as that with which creditors of the persons cover the company alone, as that with which creditors of the persons cover the company alone, as the compan contract.

But creditors may have a claim in damages against a liquid personally for breach of his statutory duty, if he has not used prop . diligence to ascertain their claims before the company has been dissolved, and they have thus lost their remedy against it. Pulsford v. Devenish, (1903) 2 Ch. 625; Argyll's Ltd. v. Coxeter (1913), 29 T. L.R. 355.

The company's debts and liabilities are ascertained as they exist at the date of the winding-up order (Re General Rolling Stock Co., 20 W. R. 762; Winding-up Rules, 1909), for "as the tree falls, so it must lie." Warrant Finance Co.'s case, L. R. 4 Ch. 647; Emmerson's case, L. R. 2 Eq. 236; Duncan & Co., (1905) 1 Ch. 307.

Creditors entitled to Prove.

The creditors entitled to prove are specified in sect. 206 of the Act of What credi-1908, subject to the qualifications introduced by sect. 207 of the same tors entitled Act as regards insolvent companies, which last-mentioned section takes Rule 88 et seq., the place of sect. 10 of the Judicature Act, 1875. Under the combined p. 611. effect of these sections there is the widest possible scope for proof. Every kind of liability, however difficult of valuation, is provable unless

declared by the Court incapable of being fairly estimated (Hardy v. Fothergill (1888), 13 App. Cas. 351), the object of the Act being "to put all unsecured creditors upon an equality, and to pay them pari passu." Per Liudley, L. J., Re Oak Pitts Colliery Co. (1882), 21 Ch. D. 329. Accordingly, not only creditors to whom the company is indebted in sums presently due can prove, but also creditors whose dobts are not yet due, and not only creditors but persons who have any claim or who may have any claim against the company, e.g., a person who has a claim for damages for breach of contract (Bradford Tramways and Omnibus Co., 68 J. P. 362), or for the determination of a contract, e.g., a policy of insurance, by the company's going into liquidation; any liability, in fact, of the company existing at the commencement of the winding-up may be proved, and not merely debts due at the commencement of the winding-up. See Macfarlane's claim (1884), 17 Ch. D. 339; Re Printing Co. (1878), 8 Ch. D. 538; Re Albion Steel Co. (1877), 7 Ch. D. 547.

Set-off as regards creditors. In the case of an insolvent company where there are mntual debts and credits, or mntual dealings between the company and any other person, an account, as in bankruptcy, is to be made out, and the balance only proved for. So held on sect. 10 of the Judicature Act, 1875; *Mersey Steel Co.* v. *Naylor*, 9 App. Cas. 434; Company Precedents, Pt. II. p. 526. Bnt this rule only applies where the crossclaims are "commensurable." See *Eberle's Hotel Co.* v. *Jonas*, 18 Q. B. D. 459; and *Mid-Kent Fruit Factory*, (1896) 1 Ch. 567; *Auriferous Properties*, *Limited* (No. 1), (1898) 1 Ch. 691; *Leeds and Hanley Co.*, (1904) 2 Ch. 45.

Payment Pari Passu and Preferential Payments.

Pari passe.

All debts due to unsecured creditors must be paid pari passu and equally. Black § Co.'s case, L. R. 8 Ch. 262. Judgment creditors have no priority. Re Leinster Contract Corp., (1903) 1 Ir. R. 517. This is the general rule, but it has exceptions, and on it the legislature has further engrafted provisions for priorities in certain cases. Thus the Crown has a prerogative to be paid first and in full out of the assets of a company which is being wound up. Re Oriental Bank, 28 C. D. 643; Exchange Bank v. Reg., 11 App. Cas. 157; Company Precedents, Part II. p. 506. And by sect. 209, parochial and other rates, the salary of any clerk or servant (for four months before winding-up, not exceeding 50*l*.) and the wages of any labourer or workman (for two months before winding-up, not exceeding 25*l*.) of a company are given priority even over debenture holders (sub-sect. (2) of sect. 209), and are to be paid pari passu and in full out of the

SECURED CREDITORS.

Ch. XLIII.

assets. A secretary of a company who devotes himsolf exclusively to the business thereof may be a clerk or servant within the section (Cairney v. Back, (1906) 2 K. B. 246), or a director employed as editor of a paper. Re Beeton & Co., Ltd., (1913) 2 Ch. 279. Not so a managing director (Newspaper Proprietary Syndicate, (1900) 2 Ch. 349), uor the contributors to a paper. Re Beeton & Co., abi sup. See also G. H. Morrison & Co., Ltd. (1912), 196 L. T. 731 (chemist's assistant). Where the company is wound up by the Court after a voluntary winding-up has commenced, the date for the purposes of this section under sub-sect. (5) is the date of the commencement of the voluntary liquidation. Re Havana Exploration Co., (1915) W. N. 348. Another priority is given under the Saviugs Bank Act, s. 10, and by the Workmen's Compensation Act, 1897, s. 5, as to which see Re Pethick, Dix & Co., (1914) W. N. 403. See also sect. 241 of the Act of 1908 as to club funds. As to priorities between rates and evets, see Corporation of V estminster v. Chapman, (1915) W. N. 378.

Secured Creditors.

A secured ereditor is one who has some mortgage, charge or lien on Secured creditors

An execution creditor who has seized before the commencement of a winding-up is a secured ereditor (*Re Printing and Numerical Registering Co.*, 8 C. D. 538); but not if he has merely delivered the writ of *fi. fa.* to the sheriff. *Ex parte Nelson*, 14 C. D. 45.

A solicitor who holds a lien on documents of a liquidating company for his costs against the company is a secured creditor, and must mention his lien in his proof. *Re Safety Explosives, Limited*, (1904) 1 Ch. 226.

A creditor who has obtained the appointment of a receiver of land by way of equitable execution is also a secured ereditor. Anglo-Italian Bank v. Davies, 9 C. D. 275.

A landlord is uot a secured creditor because he has a power of distress (Thomas v. Patent Lionite Co., 17 C. D. 257; Re Coal Consumers' Association, 4 Ch. D. 629); nor is a creditor of a company who has obtained a garnishee order nisi attaching a debt due to the company but has not served it on the debtor before a winding-up. Re Stanhope Silkstone Collieries Co., 11 C. D. 160. But the attachment of a debt due to a company by the service of a garnishee order nisi before the filing of a petition to wind up the company constitutes the garnishor a secured ereditor with priority over the liquidator. National United Investment Corp., (1901) 1 Ch. 950.

A secured ereditor has several alternatives :---

1. He may rest on his security aud not prove.

2. He may realise his security and prove for the deficiency.

- 3. He may value it and prove for the deficiency after deduction of the assessed value, in which case the liquidator may redeem at such assessed value.
- He may surrender his security and prove for the whole debt. Bankruptcy Act, 1914, s. 7 (2), and Schedule II. Rules 10 to 18, made applicable to winding-up by Judicature Act, 1875, s. 10; Re Withernsea Brick Works, 16 C. D. 337.

If a creditor values his security he cannot prove for more than the balance, though the security realises less than his valuation. *Williams* v. *Hopkins*, 18 C. D. 370. If ho wilfully omits to mention his security in his proof, he will not generally be allowed to amend. *Safety Explosives*, (1904) 1 Ch. 226.

Interest.

When a company has been ordered to be wound up, the interest upon debts which carry interest ceases to run from the date of the winding-up order, unless the assets are enough to pay all debts in full. *Humber Ironworks Co. v. Warrant Finance Co.*, L. R. 4 Ch. 647; *Hughes' case*, 13 Eq. 623; conf. *Ex parte Ador*, (1891) 2 Q. B. 574.

Rule 97 of the Winding-up Rules, 1909, specifies certain cases in which interest may be proved for (*post*, p. 611).

If by the course of dealing between the company and the creditor there is an implied contract to pay interest, the creditor is entitled to interest on admitted debts down to the date of paying the final dividend, provided there are surplus assets. Duncan §: Co., (1905 1 Ch. 307.

Mode of Proving.

Procedure.

The Court fixes a certain day within which creditors of the company are to prove their debts or claims. Companies Act, 1908, s. 169. A debt may be proved by delivering or sending through the post in a prepaid letter to the liquidator an affidavit in the statutory form verifying the debt. Winding-up Rules, 1909, r. 89. A creditor may come in and prove at any time hefore final distribution of the assets, but he cannot disturb any dividend already paid. *Re General Rolling Stock Co.*, L. R. 7 Ch. 646; *Hicks* v. *May*, 13 C. D. 236. The liquidator examines every proof tendered, and notifies the person tondering it either that he admits it or rejects the proof in whole or in part, or requires further evidence. Winding-up Rules, 1909, rr. 88—114. A creditor is, by the Winding-up Rules, to bear the cost of proving his debt unless the Court otherwise orders. A mortgagee cannot prove for mortgagee's costs on winding-up of the company which guaranteed

412

Costs.

STAYING PROCEEDINGS.

Ch. XLIII.

the mortgage. Law Guarantee Trust, 108 L. T. 830. As to a solicitor proving for costs due before winding-up, and taxation of such costs in the winding-up, see *Re Palace Restaurants*, *Ltd.*, (1914) 1 Ch. 492. See Company Precedents, Part II, p. 505.

Staying Proceedings.

"The object of the winding-up provisions of the Companies Act, Staying. 1862," said Lindley, L. J., in Re Oak Pitts Colliery Co., 21 C. D. 329, "is to put all unsecured creditors upon au equality and to pay them pari To accomplish this it was indispensable that proceedings passu." against the company by way of action, execution, distress or other process should be suspended; otherwise the winding-up would resolve itself into a scramble for the assets. Accordingly, seets. 140, 142, and 211 of the Act give the Court jurisdiction in various cases to restrain proceedings. Sect. 24 (5) of the Judicature Act, 1873, modified these provisions to some exteat, for, having regard to that section, no proceeding in the High Court can be restrained by injunction, but this has not altered in substance the jurisdiction. All that is necessary, where an action is pending against the company in the High Court, is to apply to the particular branch of the Court in which it is peuding for an order to stay proceedings. See Re Artistic Colour Co. (1880), 14 Ch. D. 502; Re General Service Co., (1891) 1 Ch. 496. As regards inferior Courts injunctions can be granted. This is, generally speaking, only necessary where a winding-up petition is pending. Sect. 140. Where a winding-up order has been made, the combined effect of sects. 142 and 211 is that such order operates automatically as a stay of all actions. executions, distresses, sequestrations, &c. against the company, subject to the discretion of the Court to allow such actions, executions, &c. to proceed notwithstaudiag the winding-up. Re Vron Colliery Co. (1882). 20 Ch. D. 446. Thus, a distress levied before winding-up will not be restrained, even though it be for rent iu advance. Venner's Electrical Appliances v. Thorpe, (1915) 2 Ch. 404. In this way creditors and others are compelled to come in and prove their claims in the windiagup, and a rateable and just distribution of the company's assets is effected. Re International Pulp Co. (1876), 3 Ch. D. 598. See further. Company Precedents, Part II. p. 451 et seq.

Liberty to Proceed.

a

λ

ı it

r

١

d

The power of the Court to allow actions and other proceedings to Liberly to be brought, taken, or proceeded with, notwithstanding a winding-up proceed, order (sect. 140 of the Act), is often excreised. Thus secured creditors are, as a matter of course, given liberty to proceed with any

action for enforcing their securities. Lloyd v. Lloyd & Co. (1877), 6 Ch. D. 339. So, too, liberty to proceed is often given where outsiders are involved in some dispute with the company, and it is desirable that the dispute should be decided in an action by the ordinary tribunals : for instance, in the case of an action against the company for damages under Lord Campbell's Act, Re Thurso New Gas Co. (1889), 42 Ch. D. 491; or for specific performance, Thames Plate Glass Co. v. Land Co. (1870), 11 Eq. 248; or for trespass, Wyley v. Exhall Coal Co., 33 Beav. 538; or to proceed with an execution, where execution was delayed by a trick, Armorduct Co. v. General Incandescent Co., (1911 2 K. B. 143 (a voluntary liquidation); or to bring a new action for the purpose of obtaining the fruits of an earlier action, National Prorincial Insurance, 56 Sol. J. 290. McEwen v. London, Bombay and Mediterranean Bank, 15 W. R. 245; Re Marine Investment Co., 17 L. T. 535; Re Strand Hotel Co., W. N. (1868) 2, are other examples. The leave must not be given on an ex parte application. Western Brazilian Telegraph Co. v. Bibby, 42 L. T. 821. Costs of unsuccessful litigation by the liquidator are payable first out of the company's assets. Weuborn & Co., (1905) 1 Ch. 413; Re Pacific Coast Syndicate, (1913) 2 Ch. 26. Proceedings against n company in liquidation may be transferred to the Chancery Division and assigned to the Company Judge (W. U. Rule 42) even though other parties are concerned. Pacaya Rubber Co., (1913) 1 Ch. 218. See further, Company Precodents, Part II. pp. 657 et seq.

Wishes of Creditors and Contributories.

Wishes of oreditors and contributories. The Court may have regard to these. See sect. 145 (substituted for sect. 91 of the Act of 1862) and also sect. 118; Re Western of Canada Oil Co., 17 Eq. 5; Re Chapel House Colliery Co., 24 Ch. D. 259; West Hartlepool Colliery Co., 10 Ch. 618; Re Great Western Forest of Deau Consumers Co., 31 Ch. D. 773; Re Langham Skating Rink Co., 5 Ch. D. 669; Iu re Suburban Hotel Co., L. R. 2 Ch. App. 737, and p. 140; Company Precedents, Part II. p. 121.

Misfeasance and Breach of Trust.

Misfeasauce and breach of trust. Sect. 10 of the Act of 1890, which was substituted for sect. 165 of the Act of 1862, is now in its turn replaced by sect. 215 of the Act. It affords a summary mode of enforcing claims against directors, trustees, and other officers, and against promoters of companies, in respect of any moneys or property of the company, or misfeasances or breaches of truct. See *supra*, pp. 206 *et seq.*, for a number of cases in which such claims have been enforced. See also Company Precedents, Part II, pp. 697 *et seq.*

Ch. XLIII.

Compi mises.

Sect. 214 of the Act of 1903 is now substituted for sects. 159 and Compromises. 160 of the Act of 1862. Under these sections the Court has a wido power of sanctioning compromises with creditors and contributories, and this power is frequently exercised. As to compromises with creditors nuclear sect. 120 of the Act (substituted for sect. 2 of the Joint Stock Companies Arrangement Act, 1870), see infra. Arrangements. See Company Precedents, Pt. H. p. 978 et seq.

Fraudulent Preference.

ł

n

5

3

l

d

if

),

·77

g

Ð,

ъf

t.

...

in es

in

۰,

Sect. 210 of the Act of 1908 (substituted for sect. 164 of the Act of Frauchlent 1862) in effect renders the provisions of the bankruptey law for the and undue time being on this subject applicable to winding-up. Gallagher, Slater and Mason's case (1882), 30 W. R. 378. To found a case of frandulent preference, it must appear that the transaction took place within three mouths of the commencement of the winding-up, and that the dominant motive in the mind of the company, acting by its directors, was to prefer the creditor. If the payment, &c. was made by the directors with a view to shielding themselves from civil or criminal proceedings, or to relieve a surety, this is not a frandulent preference. *Re Blackpool Motor Car Co.*, (1901) 1 Ch. 77; *Blackburn & Co.*, (1899) 2 Ch. 725; *Re Stenotyper, Limited*, 8 Maus. 203; Jackson v. Bassford, (1906) 2 Ch. 467.

Where a compulsory order supersedes a voluntary winding-up, the "commencement of the winding-up" is the date of the presentation of petition, not of the resolution to wind np. *Russell Hunting Record* Co., (1910) 2 Ch. 78.

The provision in sect. 210 of the Act, as to the fraudulent preference by an insolvent company, like the aualogons provision in sect. 44 of the Baukruptcy Act, 1914, is for the benefit of all the ereditors of the company, and eannot be invoked if the result of recovering the property comprised in the fraudulent instrument will not be for the benefit of the creditors at large, but only of one creditor or one class of creditors, e.g., debenture holders. Willmott v. London Celluloid (b., 34 C. D. 147; Ex parte Cooper, L. R. 10 Ch. 510.

Sect. 31 of the Bankruptcy Act. 1914—the mutual debts and credits section—will not prevent a transaction from being a fraudulent preference if it would be so but for the section. *Kent's case*, 39 C. D. 256. See Company Precedents, Part II. pp. 719—721.

Prosecution of Directors and Promoters.

The Court has power under sect. 217 of the Act of 1908 (substituted Prosecution, for sect. 166 of the Act of 1862), to direct a prosecution of delinquent

directors, managers, officers, or members of the company, and in a proper case will do so. London and Globe Finance Corporation, (1903) 1 Ch. 728.

Adjusting Rights of Contributories.

Adjusting rights of contributories.

Subject to the payment of the creditors and of the costs of windingup, the assets in a winding-up are distributable mnougst the members or contributories in necordance with their rights and interests; and for this purpose it must be borne in mind that the uncalled capital is to be regarded as part of the assets. Bridgwater Navigation Co., 14 App. Cas. 525; Welton v. Saffery, (1897) A. C. 299.

What those rights and interests are is to be ascertained, as a rule, from the memorandum particles.

In the absence of any special provision the assets available for distribution amongst the membors, if sufficient or more than sufficient to pay off the whole of the puid-up capital, are to be applied first in paying off such paid-up capital, and the balance is to be distributed amongst the members or contributories in proportic : to the nominal amount of the share capital held by them; but, if ' ... ficient to do this, then such assets are distributable in such manner that the loss of capital which has been sustained may be thrown on the members in proportion to the nominal capital held by them respectively. Maude's case, 6 Ch. 51; Driffield Gas Light Co., (1898) 1 Ch. 451; Anglo-Continental Corporation of Western Australia, (1898) 1 Ch. 327. Prima facie, preference shures ure ... ot entitled to any proference in winding-up. London Indiarubber Co., 5 Eq. 518; Welton v. Saffery, supra; and supra. p. 85. Where shures are unequally paid up, a call to equalize must, unless the articles otherwise provide, be made : Maude's case, supra : and on the same principle, where shares have been issued at a discount. the amount credited by way of discount is to be treated as so much nncalled capital, and the rights are to be adjusted accordingly. Welton v. Saffery, supra. Sometimes the memorandum . : articles contain express provisions as to the distribution of assets in winding-up, e.g., provide that the preference shares shall rank first, sometimes that the ordinary shares shall take the whole of the surplus. In default of any such special provisions the surplus is distributable among both classes of shareholders in proportion to the nominal amount of the shares held by them. Bridgwater Navigation Co., supra, p. 85; Re Odessa Waterworks Co., W. N. (1897) 166; Re Mutoscope and Biograph Syndicate, (1899) 1 Ch. 896; Crichton's Co., (1902) 2 Ch. 86. "Surplus assets" in articles has no technical meaning. Re New Transraal Co. (1896) 2 Ch. 750. It may mean the fund remaining in the hunds of the liquidator after all claims of outside creditors and costs of winding-

ADJUSTING RIGHTS OF CONTRIBUTORIES. Ch. XLIII.

up have been met (Crichton's Oil Co., (1902) 2 Ch. 86), or it may mean what remains after payment also of the capital paid up on all classes of shares. Ramel Syndicate, Ltd., (1911) 1 Ch. 749. The meaning must in each case be determined by the context.

Where the liquidator proves for calls in the bankruptcy of a shareholder, that does not make the shares paid-up for the purpose of participating in surplus assets. West Coast Goldfields, (1906) 1 Ch. 1.

As to capital paid up in advance of calls, and interest thereon, see Wakefield Rolling Stock Co., (1892) 3 Ch. 165.

See further, Company Precedents, Pt. 11. p. 597 et seg.

Release of Liquidator.

This is provided for in sect. 157 of the Act of 1908, and Winding-up Release of Rules, 1909, r. 197. liquidator

See Company Precedents, Pt. 11. p. 783,

Unclaimed Dividends.

Sect. 224 of the Act makes special provision as to these. If un-Unclaimed claimed for more than six months, they have to be paid into the Bank dividenda. of England to the Companies Liquidation Account. The liquidators are bound to furnish accounts to the Board of Trade, and there are stringent provisions for enforcing payment. See Company Freedents, Part II. p. 348 et seq. ; and In ro Land Mortgage Bank of Florida, (1898) 1 Ch. 444. See infra.

Staying Winding-up Proceedings.

Sect. 144 of the Act gives the Court a discretion to stay the pro- Staying ceedings under a winding-up order. In exercising this discretion the Court will be guided by the analogy of bankruptcy in rescinding a receiving order-that is to say, it will consider the interests of commercial morality and not mercly the wishes of creditors, and will refuse a stay if there is evidence of misfeasance or of irregularities demanding investigation. Re Telescriptor Syndicate, (1903) 2 Ch. 174.

Dissolution of the Company.

When the affairs of the company have been completely wound up, Dissolution the Court is, by sect. 172 of the Act, to make an order that the com- of company. pany be dissolved from the date of such order, and the company is dissolved accordingly. Notice of the order is to be communicated by the liquidator to the Registrar, and the Registrar is to make a minute of the order.

Ρ.

н

3

Kr.

id i.

).,

le*,

. [31-

nt

in ed

ա1

do

)NH

in

p's

n-

mi

ц). ra_{i} st,

a;

nt.

ich

ton

 $^{3}X^{-}$

.y.,

the

шy N1 .8

res

<u>85(</u>

di-

ins

ο,

Cof

ng-

27

winding-up

+17

Under the old practice, it was the usual course, when a winding-ujwas completed, to make an order for dissolution and for the destruction of the books, but, of late years, such orders have been lescommonly mado. See Company Precedents, Pt. II, p. 792.

Upon dissolution the real assets revert to the donors or their heirs (Co. Litt. 23 b), leases determine (Hastings Corporation v. Letton, (1898 1 K. B. 378), and personal assets vest in the Crown as bona vacantia Re Higginson, Ex parte Att.-Gen., (1899) 1 Q. B. 329. But any trust affecting the premises is not displaced.

As to obtaining a vesting order where a company which holds property in trust is dissolved, see General Accident Co., (1904) 1 Ch. 147; Taylor's Agreement Trusts, (1904) 2 Ch. 737; Richard Mills & Co. Smith v. The Co., W. N. (1905) 36; Bomore Roud (No. 9). (1906) 1 Ch. 359.

The dissolution may be declared void within two years (sect. 223). see *Re Henderson's Nigel, Ltd.*, (1911) W. N. 159 (undistributed assets, the Crown not claiming them as *bona vacantia*).

A company some of whose shares were held by the dissolved company was held to be "a person interested" under the Act for the purpose of enforcing a call on the shares. *Re Spottiswoode, Diron & Hunting. Ltd.*, (1912) 1 Ch. 410.

Voluntary Winding-up.

Voluntary winding-up

Of the companies which come to be wound up, by far the larger number-nbout 90 per cent.-are wound up voluntarily; and this is in accordance with the Companies Acts, which contemplate voluntary winding-up as the normal mode of liquidation. Unregistered companies cannot wind up voluntarily under the Act, but they can register under Part VII. of the Act (Southall v. British Mutual, L. R. 6 Ch. 614), and then wind up voluntarily. The proceedings in a voluntary winding-up are now subject to many statutory and official regulations -as will be seen below-from which they were formerly exempt. Voluntary winding-up is initiated by a resolution of the share-See sect. 182. This may be eithor a special resolution. holders. defined by sect. 69 of the Companies Act, 1908, requiring that the company he wound up voluntarily, or an extraordinary resolution to the effect that it has been proved to the satisfaction of the sharoholders that the company cannot, by reason of its liabilities. continue its business, and that it is advisable to wind up the same. An extraordinary resolution is a resolution passed at a single meeting by the statutory majority as in sub-sect. (1) of sect. 69 of the Act provided. Of these two the extraordinary resolution is the most convenient-as being the quickest-where the company is insolvent and

-

• ••

aî.

6.1

÷.,

۱.

£i.

). tu.

u٨

3400

ng

ger

sin

ary

)UI-

ster

Ch.

arv

ious

upt.

ure-

tion,

that

.089

the

ities.

- An

g by Act

con-

t and

being pressed by creditors; but it is inapplicable where the company desires to wind up for reasons other than inability to carry on its business by reason of its liabilities, e.g., with a view to reconstruction ; hence, in these cases the special resolution must be resorted to. In either case the commencement of the winding-up dates from the passing of the resolution. See sect. 183 of the Act. This, in the case of a special resolution, is the date of the confirmatory resolution. Sect. 69. Proper notices must be given, otherwise the resolution will not be valid. Thus a resolution for voluntary winding-up is not valid if passed at an extraordinary general meeting convened by the secretary on his own initiative without the authority of the board of directors. In re Haycroft (iold Reduction Co., 1900) 2 Ch. 240; Re State of Wyoming Syndicate, (1901) 2 Ch. 411, supra, p. 164. As to the proceedings at the meetings, see Company Precedents, Pt. 11. p. 835 et seq. The resolution, when passed, must be advertised in the Gazette. See sect. 185 of the Act.

A resolution to wind up voluntarily is not necessarily invalid because it is followed by other resolutions which are altra vires. Thomson v. Henderson Transvaal Estates, (1908) 1 Ch. 765.

After commencement of a voluntary winding-up the company is to cease to carry on its business, except so far as may be required for the beneficial winding-up thereof, but the corporate powers are to continue until dissolution. Sect. 184. Notice of the passing of a resolution to wind ap voluntarily must be given by advertisement in the Gazette. Sect. 185. The course of proceeding under a voluntary winding-up is sketched in sect. 186 of the Act. A liquidator is to be appointed, and with his appointment the directors' powers are to cease. He can be appointed as soon as the resolution for winding-up has been passed even without notice. Bethell v. Trench Tubeless Co., (1900) 1 Ch. 408. But the person so chosen as liquidator by the shareholders is liable to be displaced or to have an additional liquidator associated with him by a resolution of the creditors followed by an application to the Court. See sect. 188 (2). See infra.

He must, within twenty-one days of his appointment, file with the Registrar of Companies notice of his appointment in the form prescribed by the Board of Trade. Sect. 187. See p. 499.

The liquidator may settle the list of contributories and make calls, and the property of the company from that and other sources is to be applied in satisfaction of the company's liabilities pari passu, and subject thereto is to be distributed among the members according to their rights and interests in the company. The powers given to the liquidator are very large. In addition to the other powers conferred upon him by sect. 186, he may exercise-and without the sanction of the Court - all the powers given by the Companies Act, 1908, s. 151, to a

419

Ch. XLIII.

liquidator in a winding-up by the Court. He can get an order for the examination of directors and others under sect. 174, he can have actions and executions against the company stayed (Poole Firebrick Co., L. R. 17 Eq. 268; Currie v. Consolidated Kent Collieries Corporation, (1906) 1 K. B. 134); he can get an order for delivery up of books and papers in the hands of an auditor (Findlay v. Waddell (1910), S. C. 670, Ct. Sess.), and he can take misfeasance proceedings under sect. 215 of the Act. He can sanction a transfer of shares after the date of the winding-up. See sect. 205 of the Act; Taylor, Phillips and Rickards' cases, (1897) 1 Ch. 298. If he requires at any time the advice or protection of the Court, he can apply for it under sect. 193; and he constantly does so-usually by summons (Wakefield Rolling Stock Co., (1892) 3 Ch. 165)-in such matters as borrowing, bringing or defending actions, the making of calls, the taking of misfeasance proceedings, compromises, adjusting the rights of contributories, adjudicating on disputed claims, settling the list of contributories, the payment of dividends, and many other like matters. Any contributory or creditor or the liquidator may also apply under the section to the Court.

The power for a creditor so to apply was first conferred by sect. 25 of the Act of 1900, and the power is preserved by sect. 193 of the Act of 1908.

But no person other than the liquidator, a contributory or a creditor has any *locus standi* under sect. 188 to make an application to the Court in a voluntary winding-up, *e.g.*, to remove the liquidator and appoint a new one. *New de Kaap, Limited*, (1908) 1 Ch. 589.

Sect. 188 of the Act contains special provisions for safeguarding the rights of creditors under a voluntary winding-up. These provisions were introduced by the Companies Act, 1907. The liquidator is, within seven days of his appointment, to send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors will be held on a date not less than fourteen or more than twenty-one days from the appointment of the liquidator, at a specified place and hour. He is also to advertise the meeting in the Gazette and in two local newspapers. At this meeting the creditors are to determine whether an application shall be made to the Court for the appointment of a liquidator in the place of the shareholders' nominee or to act jointly with him, or for the appointment of a committee of inspection, and if they decide on any of these things the application may be made to the Court by any creditor nominated by the meeting, and the Court is empowered to make the order or such other order as may seem just, having regard to the interests of the creditors and contributories. No appeal is to lie from the order, and the Court is given complete discretion as to the costs of the application.

VOLUNTARY WINDING-UP.

These provisions may be said to be a statutory recognition of Liquidator's Pulsford v. Devenish ((1903) 2 Ch. 625), in which Farwell, J., strongly duty to emphasized the duty of a liquidator in regard to the payment of creditors of the company. New Zealand Joint Stock, 23 T. L. R. 238. It is not enough for him, the lcarned judge hold, to advertise for creditors; he must write to any creditors of whose existence he knows, and who have not sent in claims, and ask them if they have claims. If the liquidator fails to perform his statutory duty under sect. 188, and the company is dissolved, so that the creditor loses his remedy against it, the liquidator is personally liable to the creditor in damages. This is not in conflict with Knowles v. Scott, (1891) 1 Ch. 717. There the company had not been dissolved.

All costs, charges and expenses properly incurred in the voluntary winding-up of a company, including the remuncration of the liquidator, are, by sect. 196 of the Act, payable out of the assets of the company in priority to all other claims; but this does not give priority over secured creditors of the company except so far as the liquidator's costs are costs of preservation or realization, of which the secured creditor has had the benefit. Regent's Canal Ironworks Co., Ex parte Grissell, 3 C. D. 411; conf. Anglo-Austrian Printing Union, (1895) 2 Ch. 891.

The Court has power to stay a voluntary winding-up, so that the company may resume business, and the power is often exercised, e.g., upon any arrangement with creditors. S.S. Titian, 36 W. R. 347; Hafna Mining Co., 84 L. T. N. S. 403. The Court has power also to stay proceedings against the company after a voluntary winding-up has commenced (sect. 140). Westbury v. Twigg, (1892) 1 Q. B. 77; Armorduct Co. v. General Incandescent Co., (1911) 2 K. B. 143.

A voluntary liquidator is subject to sect. 224 of the Act (substituted for sect. 15 of the Companies Winding-up Act, 1890), and if the winding-up is not concluded within one year after its commencement, must send to the Registrar of Joint Stock Companies a periodical return of the state of the liquidation, and must pay in unclaimed or undistributed balances in his hands for six months into the Companies Liquidation Account at the Bank of England. Moreover, if a voluntary winding-up is unduly protracted or is not being conducted with a due regard to the interests of the creditors or contributories, the official receiver may present a petition to have the company wound up by the Court. See sect. 137 (2) of the Act. So, again, by sect. 197 of the Act, the voluntary winding-up of a company is not to be a bar to the right of any creditor of such company to have it wound up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up. Re New York Exchange Co., 39 C. D. 415; Re Russell, Cordner & Co., (1891) 3 Ch. 171; National

1

θ

е

f

creditors.

Co. for Distribution of Electricity, (1902) 2 Ch. 34; Bishop & Sons, (1900) 2 Ch. 254; Lichtenstein, 23 T. L. R. 424; and p. 394, ante. These are safeguards against any abuse of the voluntary system.

As soon as the liquidator has done his work and the affairs of the company are fully wound up, the liquidator makes up an account showing the manner in which the winding-up has been conducted and the property of the company disposed of, and calls, by advertisement in the *Gazette* one month previously, a general meeting of the company for the purpose of laying the accounts before the shareholders, and giving them any explanation that may be required. A return is made to the registrar by the liquidator of the meeting having been held and the date of it, and on the expiration of three months from the registration of the return the company is to be deemed to be dissolved. (See sect. 195 of the Act.) But the Court is given power by sect. 223, at any time within two years, on the application of the liquidator or any person interested, to declare the dissolution void.

Winding-up under Supervision.

Winding-up under supervision.

When a resolution has been passed by a company to wind up voluntarily, the Court may-by sect. 199 of the Act-make an order directing that the voluntary winding-up shall continue, but subject to the supervision of the Court, and on such terms and conditions as the Court thinks just. In making or refusing a supervision order the Court has regard, as in the case of a petition for a compulsory order, to the wishes of creditors and contributories. Sect. 145. Thus the Court will not make the order on a shareholder's petition against the wishes of a majority of the other shareholders, but if the resolution was passed by the preponderating influence of a shareholder whose conduct is impeached (Varieties, Limited, (1893) 2 Ch. 235; Medical Battery, (1894) 1 Ch. 444), or if the petition is supported by creditors, the case is different (Lonsdale Vale Ironstone Co., 16 W. R. 601); so, too, a supervision order may be made where investigation is required and the assets are large. Barned's Banking Co., 14 W. R. 722. The fact that creditors were enabled by a supervision order to apply to the Court was a good reason at one time for making the order; but since the Companies Act, 1900, s. 25 (for which sect. 193 of the Act of 1908 is substituted), giving creditors power to apply to the Court in a purely voluntary winding-up, this ground no longer exists. There are two other grounds, however, on which a supervision order is still useful-(i) it operates automatically as a stay of actions and other proceedings against the company just as a winding-up order does (see sect. 142 of the Act); and (ii) it is competent to the Court on making a

WINDING-UP UNDER SUPERVISION. Ch. XLIII.

supervision order to appoint an additional liquidator or liquidators to act with the existing liquidator. See sect. 202. This is a valuable power, because in a large number of cases in which a supervision order is asked the cause is dissatisfaction on the part of either shareholders or creditors with the appointment or conduct of the acting liquidator.

In making a supervision order the Court commonly inserts as conditions of the order (1) that the liquidator shall file with the registrar a monthly-now a quarterly (Horner §. Co., 5 Manson, 355) report in writing as to the position and progress made with the winding-up and with the realization of the assets, and as to any other matters connected with the winding-up as the Court may from time to time direct, and (2) that no bills of costs, charges, or expenses, or special remuneration of any solicitor employed by the liquidator, or any remuneration, charges, or expenses of such liquidator, or of any manager, accountant, auctioneer, broker, or other person are to be paid out of the assets of the company unless such costs, charges, expenses, or remuneration have been taxed or allowed by the registrar. See Civil Service Brewery Co., W. N. (1893) 5; 37 S. J. 194; Waterproof Materials Co., W. N. (1893) 18; 37 S. J. 231; Pritchard, Offor & Co., W. N. (1893) 153; New Morgan Gold Mining Co., 0093 of 1893, and Theatrical Trust, 00177 of 1893.

The taxed costs of the solicitor employed by the liquidator incurred during the period down to the date of the supervision order must be paid out of the assets before any remuneration due to the liquidator up to that time. So also must any costs properly incurred after the date of the order in getting in assets of the company or in work done on the instructions of the liquidator. Sanitary Burial Association, (1900) 2 Ch. 289.

Separate costs of the company and the liquidators will not be allowed as a rule on the petition.

A supervision order does not affect the commencement of the winding-up, which is still the date of the resolution.

Reconstruction.

A company at times finds itself embarrassed by something in its Reconstrucconstitution prejudicial to the successful carrying on of its business. tion. It may have started with too restricted an objects clause in its memorandum of association, and the desired extension may not fall within the scope of relief afforded by sect. 9 of the Act, or, being at an end of its financial resources, it may be necessary to provide further capital to work the undertaking. In these and other cases it is common for the company to reconstruct. There are, roughly speaking,

three ways of doing this: (1) By a sale and transfer of assets under sect. 192 of the Act (substituted for sect. 161 of the Act of 1862). (2) By a sale under the memorandum, followed by a winding-up. See Company Precedents, Part I., p. 1431 *et seq.* (3) By proceedings under sect. 120 of the Act (substituted for sect. 2 or the Joint Stock Companies Arrangement Act, 1870).

Where the reconstruction is to be under sect. 192 of the Act a special resolution should be passed that it is desirable to reconstruct, that the company accordingly be wound up voluntarily, appointing liquidators, and authorizing them, under sect. 192, to transfer the undertaking to a new company on the terms of a specified draft agreement in consideration—say—of paid-up, or partly paid-up, shares in the new company, to be distributed amongst the members of the old company or those who elect to take them. The sale must be to a company (Bird v. Bird's Patent Sewage (1874), L. R. 9 Ch. 358), or an agent for a proposed company (Re Hester § Co. (1874), 44 L. J. Ch. 757), not to an individual. The distribution is worked out in the subsequent winding-up.

Subject to certain exceptions, care member may, under the section, dissent from the sale and claim mayment in cash of the value of his interest. If this value cannot be agreed, it must be assessed by arbitration. Sect. 192; Mysore Gold Co., 42 Ch. D. 535. A dissentient member will not be given liberty to examine the officers of the company under sect. 174 (replacing sect. 115, Companies Act, 1862), with a view to obtaining evidence to enhance the value of his interest. British Building Stone Co., (1908) 2 Ch. 450. The notice of dissent must expressly give the liquidator notice either to abstain from carrying the resolution into effect or to purchase the dissentient member's Union Bank of Kingston-upon-Hull, 13 Ch. D. 808, 810; interest. Re Demerara Rubber Co., (1913) 1 Ch. 331. The liquidator may, however, waive technical informalities, such as incorrect service of the notice of dissent. Brailey v. Rhodesia Consolidated, (1910) 2 Ch. 95. The executors of a deceased member may exercise the right of dissent. Llewellyn v. Kasintoe Rubber Estates, (1914) 2 Ch. 670.

Under sect. 162 of the Act of 1862, a sale could be made to a foreign company (*Ex parte Fox*, L. R. 6 Ch. 176): not so under sect. 192, for by sect. 285 "company" is defined so as not to include a foreign company. *Thomas* v. *United Butter Companies of France*, (1909) 2 Ch. 484.

It seems that a clause in the articles negativing the right of a member to dissent is not valid. Payne v. The Cork Co., (1900) 1 Ch. 308; Re Baring Gould & Sharpington, &c. Syndicate, (1899) 2 Ch. 80, sed qu.

If the company proceeds under sect. 192, members who do not assent or dissent may get nothing. *Higg's case*, 2 H. & M. 657. It is no objec-

RECONSTRUCTION.

Ch. XLIII.

tion that the sale is to be for shares with liability on them-that is, for partly paid-up shares. See Re City and County, &c. Investment Co., 13 Ch. D. 475; Postlethwaite v. Port Phillip Co., 43 C. D. 452. 'The notice convening the meetings must show that the proceeding is under sect. 192. The agreement may limit the time within which the members must come in and claim their shares iu the new company; if no time is fixed they have only a reasonable time to exercise their option. Postlethwaite v. Port Phillip Co., supra; Burdett-Coutts v. True Blue, (1899) 2 Ch. 616. A general meeting can only decide on the nature of the consideration to be accepted from the new com-It cannot (unless the regulations of the old company so pany. provide) direct a distribution of the consideration, e.g., the shares, &c. in the new company, otherwise than in accordance with the rights of the contributories of the old company. Griffiths -. Paget (1876), 5 C. D. 894. To effect this it is necessary to take proceedings under sect. 120 of the Act. A reconstruction agreement may provide compensation for outgoing directors, but the notice of the meetings must disclose same. Kaye v. Croydon Tramways, (1898) 1 Ch. 358; Tiessen v. Henderson, (1899) 1 Ch. 861; Southall v. British Mutual, &c. Soc., 6 Ch. 614.

Amalgamation.

Where two or more companies desire to unite their undertakings, Amalganiathe operation is commonly carried out under sect. 193 of the Act. tion. In some cases the amalgamation is effected by the registration of a new company which takes over the several undertakings of the existing companies; in other cases, one of the existing companies takes over the undertaking or undertakings of the other concerns, but to do this it must be expressly authorized by the company's constitution, for it is not within the ordinary scope of a company's objects to purchase the good will of another. Ernest v. Nicholls (1857), 6 H. L. C. 414. See, further, as to the distinction between reconstruction and amalgamation, and the procedure, Company Precedents, Part I. p. 1481 et seq.

Reconstruction and Amalgamation by Sale under a Power in the Memorandum.

Another mode of effecting a reconstruction or amalgamation has Reconstrucheen frequently adopted with success during the last twenty years, tion and amalgamaviz. :--

tion by sale under power

(1.) To sell the company's undertaking under a power (supra, in memop. 66) in its memorandum of association for paid-up shares randum of association.

WINDING-UP.

in a new company to be allotted to the selling company or its nominees :

(2.) Subsequently to resolve on a voluntary winding-up, and pursuant to a power in the articles, to au'horize the liquidator, after paying or providing for the debts and liabilities, to distribute the surplus proceeds of sale, namely, the shares amongst the members of the company according to their rights and interests.

This mode was, in many cases, found preferable to proceeding under sect. 161 of the Act of 1862 (sect. 192, 1908); for example, in cases in which it was desired to reconstruct conditionally on the new company finding further capital by the issue of shares or debentures, or conditionally on the selling company coming to some specified arrangement with its debenture holders. In such cases the agreement for sale reserved power to rescind if the condition was not fulfilled within a specified time, and in case of rescission the selling company could then continue its business; whereas, if it proceeded under sect. 161, that would not have been feasible, for it would have passed into liquidation.

So, in the case of amalgamation, if several companies agreed to sell their undertakings to a new company, or to one of the amalgamating companies conditionally on the purchasing company placing further capital or complying with some other condition. If the condition was not fulfilled the agreements could be rescinded and the several companies continue their business.

There was a further advantage in adopting this mode, in that it enabled the company or companies to avoid the danger arising from the provisions of sect. 161 in favour of dissentient members, for that section has not uncommonly been used by dissentients for blackmailing purposes. And the costs of an arbitration are in some cases capable of being run up to a very large sum. In one case they amounted to 10,000%, or thereabouts.

There was ample authority for adopting this mode of reconstruction or amalgamation. Thus, in Cotton v. The Imperial and Foreign Agency and Investment Corporation, (1892) 3 Ch. 454, where this mode was adopted, Chitty, L.J. (then J.), refused an injunction to restrain the company from acting on the agreement for sale to the new company, holding that the agreement, made as it was under the power contained in the company's memorandum of association, was valid, notwithstanding that it was made in contemplation of a voluntary winding-up and distribution, and that the resolution for voluntary winding-up and distribution in specie was passed shortly after the resolution ratifying the agreement. His lordship did not decide that the proposed distribution of the shares was valid, but there being power in the articles to distribute in specie a distribution in exercise of the

426

Ű

AMALGAMATION.

Ch. XLIII.

power was regarded with equanimity. So, too, in New Zealand, &c. Co. v. Peacock, (1894) 1 Q. B. 622, the validity of such a scheme came into question. In that case the company, under a power in its memorandum, agreed to sell its undertaking and a call to be made by its directors, to a new company, and the sale was made in contemplation of a voluntary winding-up and distribution. The call was made, and afterwards the resolution for voluntary winding-up was passed. In the action the liquidator sought to enforce payment of the call, and it was objected that the call was made for the purposes of an ultra

is scheme, and was therefore invalid; but the Court of Appeal (Lindley, A. L. Smith, and Davey, L.JJ.) held that the scheme was not *ultra vires*, and therefore that the call was not invalid. And these decisions were followed in several other reported cases, and were largely acted on.

In a recent case, however (Bisgood v. Hendersons, §c. Co., (1908) The Bisgood 1 Ch. 743, below referred to as the Bisgood case), a scheme of case. reconstruction in its main features closely resembling that adopted in Cotton v. The Imperial, §c. Corp., supra, has been held by the Court of Appeal to be ultra vires on the ground or principle that sect. 161 of the Act of 1862 by implication prohibits a company from selling its undertaking for shares under a power in its memorandum where the sale is made at a time when a voluntary winding-up and distribution of the shares is "proposed." In other words, the Court's view was that "If the company is proposed to be wound up, and the transaction is a sale and distribution, then the statute provides that sale by conversion into money may be replaced by exchange for shares on the terms, but only upon the terms, of complying with the provisions of sect. 161," and as a corollary the Court held that Cotton v. Imperial, &c. Corp., supra, was wrongly decided.

Serions doubts, however, exist whether the ground or principle of the decision in the *Bisgood case*—namely, that the section is to be treated as implying such a prohibition—is sound, although it may be that the actual decision, looking to the special features of the case, was correct.

The following are some of the principal objections which have been Objections raised to the construction thus placed by the Court on sect. 161 of the to Bisgood Companies Act, 1862, for which sect. 192 (in similar terms) of the Act case.

In the first place it is objected that there is no sufficient reason for implying the prohibition. The section is affirmative in its terms, and (1) enables a liquidator who, in a voluntary winding-up, is selling the undertaking to receive shares in another company in compensation if he is authorized so to do by special resolution, and it also (2) enables the company to give that authority to the liquidator by special resolu-

WINDING-UP.

tion passed in the course of the winding-up or antecedently thereto. And it is urged that there is nothing in the section or elsewhere in the Act to indicate an intention on the part of the legislature to curtail or derogate from the power of a company to sell under its memorandum of association prior to the commencement of the winding-up.

It is conjectured that in treating the prohibition as implied by the terms of sect. 161, the Court conceived that the implication was justified by the well-known rule of construction recognized in *Chambers* v. *Manchester and Milford Railway* (5 B. & S. 588), and in *Baroness Wenlock* v. *River Dee Co.* (10 App. Cas. 350) and other cases, that where the legislature gives a company express power within certain limits to do a specified thing, it is to be taken *primd facie* to impliedly prohibit any transgression of the power so given. But applying that rule to sect. 161, it is pointed out that the rule merely goes to prohibit the liquidator of a company from selling for shares otherwise than under the section, and to prohibit the company from *authorizing its liquidator*, or proposed liquidator, to sell for shares in another company except under the section, and it is maintained that it is not possible by applying the rule to spell out any intention to curtail the powers of the company whilst a going concern.

It is also objected that, in arriving at the implication in question, the Court seems to have overlooked sects. 131 and 133 of the Act of 1862 (replaced by sects. 184 and 186 of the Act of 1908), which have an important bearing on the construction of sect. 161 [192]. Under sect. 131. there was an express provision that "in a voluntary winding-up the company's corporate state and all its corporate powers shall continue . . . until the affairs of the company are wound up"; and under sect. 133 (5), these corporate powers were to be exerciseable by the directors, with the sanction of a general meeting or of the liquidators, so that where a company has power under its memorandum to sell its undertaking for shares in another company, that, being one of its corporate powers. can be exercised in the course of a voluntary winding-up, with the sanction of the company in general meeting or of the liquidators. And such a sale would not be fettered in any way by sect. 161 [192]. It is an alternative power, and the fact that it is reserved is inconsistent with the view of the Court of Appeal that the Act impliedly prohibits in winding-up a sale for shares otherwise than under sect. 161.

Again, it is argued that it would have been easy for the legislature, if so minded, to have inserted in sect. 161 [192] words to the effect that "except under or with reference to this section, no sale of the company's undertaking shall be made for shares or other interests in any other company where a voluntary winding-up and distribution of such shares is proposed."

But the section observes a significant silence on this point, and what

AMALGAMATION.

Ch. XLIII.

adds not a little to the force of this criticism is that it appears from the context that where the legislature desired to invalidate transactions entered into in contemplation of winding-up, it did so by express provision, e.g., in sect. 164 [210], where, by apt words, certain transactions in contemplation of winding-up were invalidated.

Further, it is objected that to imply in sect. 161 the prohibition relied on by the Court of Appeal is to disregard the principle recognized and emphasized by the House of Lords in Salomon v. Salomon § Co., (1857) A. C. 22. In that case the Court of Appeal held that the Act of 1862 impliedly contained provisions and conditions not expressed in it, but the House of Lords reversed the decision, holding that there was nothing to justify the implication, and that the Act of 1862 was to be taken as it stood, and that it was not for the Court to supplement it by implied prohibitions and conditions. See snpra, p. 57.

n

n

n

n

n

It is also objected that the principle of the Bisgood case is inconsistent with the decision of the Court of Appeal in New Zealand, &c. Co. v. Peacock, (1894) 1 Q. B. 622, above referred to (p. 427, supra), and that the Court of Appeal in 1907 had no power to overrule that decision of the Court of Appeal in 1894.

It is also objected that inasmuch as the decisions in Cotton v. The Imperial, §c. Co. and in New Zealand, §c. Co. v. Peacock were of considerable standing, and had been acted on in hundreds of cases by thousands of people, they should not have been disturbed—the principle stare decisis should have been acted on by the Court, and to depart from that principle was mischievous.

It is also pointed out that the Court of Appeal misapprehended the decision in *Cotton* v. *The Imperial, &c. Co.,* for it represents Chitty, J., to have decided in that case, that "under clauses in the memorandum of association the company might sell its whole undertaking . . . and might under the authority of special resolutions divide the proceeds of sale amongst the members without the safeguard provided by sect. 161"; whereas, in truth, all that the judge decided was that the sale under the memorandum for shares was valid.

Nor, it is pointed out, do the decisions relied on by the Court of Appeal in the *Bisgood case* justify the construction placed by the Court on sect. 161. Thus, to take them in order, *Welton* v. *Saffery*, (1897) A. C. 299, on which the Court placed great reliauce, when examined has in reality no application. It merely decided that where the Act of 1862 expressly or impliedly prohibits a thing, such as the issue of shares at a discount, the thing is *ultra cires* for all purposes, and cannot be treated as binding on the mombers *inter se* in a wiading-up, even after the creditors have been paid off. Tho decision, therefore, does not in any way show that *Cotton* v. *The Imperial*, *yc*.

WINDING-UP.

Corporation was wrongly decided, or that the implication made by the Court of Appeal is justified.

So, too, Peveril Gold Mines, (1898) I Ch. 122, merely shows that a company cannot by any provision in its articles deprive its members of the right to petition for a winding-up of the company, and Re Baring-Gould and Sharpington Syndicate, (1899) 2 Ch. 80, and Payne v. Cork Co., (1900) 1 Ch. 308, merely decided that where proceedings are taken under sect. 161 the whole section must have effect, and therefore dissentients cannot be deprived of their rights under the section by virtue of a clause in the articles.

Taken together, the above objections to the principle on which the Bisgood case was decided constitute, it must be admitted, a serious impeachment of that principle. The Court, in its solicitude to prevent what it called "iniquitous cases of reconstruction"—that is, cases in which people were, in effect, obliged to elect whether they would take partly paid shares or have them sold at perhaps a low price—seems to have strained the construction of the Act. This is the more to be regretted, because the decision might have been put on other grounds, and because reconstruction schemes on the lines in effect sanctioned in Cotton v. The Imperial, §c. Corporation have not at all been confined to imiquitous cases. Large numbers of them have been of a perfectly fair and bond fide character, and have been carried through with entire success.

It is to be hoped, therefore, that the principle of the *Bisgood* decision will before long be re-considered by a higher tribunal. In the meantime this decision has been followed and applied in *Etheridge* v. *Central Uruguay Railway*, (1913) 1 Ch. 425.

Arrangements.

Companies, like individuals, find it necessary sometimes to make an arrangement with their creditors. Such an arrangement with creditors. in the case of a company, is commonly effected under sect. 120 of See Appendix. The machinery of the Act is available the Act. where there is, and also where there is not a winding-up in progress. The course of proceeding is to apply to the Cou by summons in the first instance, to direct meetings of the different classes of creditors (which includes debenture holders: Re Alabama, &c. Co., (1891) 1 Ch. (C. A.) 213; Slater v. Darlaston Steel Co., W. N (1877) 165), and of the members or contributories, to be held to consider the proposed scheme of arrangement. The Court usually makes an order for this purpose, appoints a chairman of the meetings, and directs them to be convened by circular or advertisement. The resolution of the meeting is required to be passed by a three-fourths majority

Arrangements.

ARRANGEMENTS.

in value of those who are present in person or by proxy. In voting, debenture holders to bearer must produce their debentures. Re Wedgwood Coal Co. (1877), 6 Ch. D. 627. The resolution having been passed by the requisite majority, a petition is then presented to the Court to sanction the scheme; and, if approved, an order in due course is made. Schemes of the most varied character are adopted. The commonest form of scheme is that a new company shall be formed; that the debenture holders of the existing company shall take in exchange debentures or preference shures of the new company; that the unsecured creditors of the existing company shall take a composition of so much in the pound payable partly in eash and partly in shares, or partly in debenturos; and that the shareholders shall receive shares in the new company with a liubility attached. Any schemo which is fair and reasonable, and made in good faith, will be sanctioned. Re Alabama, Sc. Co., (1891) 1 Ch. (C. A.' 213. It is now settled that there is no objection to a scheme by which debenture holders are to accept fully paid shares in satisfaction of their debts, and the Conrt will under such a scheme compel dissentient debenture holders to surrender their scentities. Empire Co. (1890), 44 Ch. D. 402; and see Alabama Co., supra, and Re Dominion of Canada Freehold Estate Co. (1886), 58 L. T. 347. Not uncommonly the scheme provides that debenture holders of the existing company shall grant an extension of time for payment, say, five or ten years, and that creditor shall accept some composition, or, perhaps, second debentures or tories, and that the winding-up shall be stayed, and that the conrr. shall resume business. This avoids the necessity for a new contrary. For examples of other schemes, see Company Precedents, Pt. II. pp. 997 et seq.

Sect. 120 of the Act of 1908 in effect r3-enacts the Act of 1870, with the extension introduced by sect. 24 of the Act of 1900 so as to apply to an arrangement between the company and the members thereof or any class thereof, and so as to make the section available without a winding-up.

Where an arrangement was combined with a reconstruction under sect. 161 of the Act of 1862, it was held that it ought to provide for payment out of dissentient members. Canning Jarrah Timber Co., (1900) 1 Ch. 708. And where there was in fact no arrangement with creditors, but a scheme for the sale of the whole of the company's audertaking to a new company, without any provisions for dealing with dissentient shareholders, the Court has declined to approve the scheme. Re General Motor Cab Co., (1913) 1 Ch. 377. A reconstruction can, however, be carried out by this method where proper provision is made for dissentient members. Re Sandwell Park Colliery Co., (1914) 1 Ch. 589. And a bond fide arrangement with creditors may in

the

t a

i of nyork (+n lis. tue he ns. ent in ke 10 $\mathbf{h}_{\mathbf{D}}$ 1 -. red ued. tly ire nal In

lyr

an

rs,

of

1.0

ss.

ns

 \mathbf{of}

a.,

7)

ler

an

nd

11-

ity

WINDING-UP.

a proper case be sanctioned by the Court without giving to dissentient members (by analogy to sect. 192 of the Act) the right to payment out of thevalue of their interests. Standard Exploration Co., Buckley, J., 21st March, 1903; Sorsbie v. Tea Corporation, (1904) 1 Ch. 12; Company Precedents, Part II., p. 997 et seq.

Proceedings in an English Court under the Joint Stock Companies Arrangement Act, 1870, or under sect. 120 of the Act of 1908, or the Companies Acts generally, cannot be pleaded in a colony as a defence to an action by a colonial creditor, those Acts not extending to the colonies or being intended to bind them. New Zealand Loan action Mercantile Agency Co., 67 L. J. P. C. 10; 77 L. T. 603; 46 W. R. 239

Where a scheme of arrangement is proposed in regard to a company not being wound up, the Court has no jurisdiction to restrain actions and proceedings against the company. Booth v. Walkden Spinning Co., (1909) 2 K. B. 368. This is a defect in the Act. See contra, the Railway Companies Act, 1867, sect. 9, which provides whilst the scheme is pending no execution shall be available without the leave of the Court.

As to the form of proxy to be use , see form approved by Swinfen Eady, J., W. N. (1910) 154. And as to separate class meetings, see United Provident Assurance Co., (1910) 2 Ch. 477.

A creditor who did not put forward a claim at the time of the deed of arrangement may be allowed to prove under it. Curtis v. B. U. R. T Co., Ltd., 28 T. L. R. 585.

CHAPTER XLIV.

PENSIONS AND GRATUITIES.

The question whether it is within the powers of a company under Pensions and the Act of 1908 to grant a pension or gratuity to an employee or e_X . gratuities, employee, or to his dependants, or to give a gratnity to its workmen and others, not uncommonly arises for consideration. Sometimes the company's memorandum contains an express sanction for these objects, e.g., it gives power to the company " to establish and support, or aid in the establishment and support, of associations, institutions, funds, trusts, schemes and conveniences calculated to benefit employees or ex-employees of the company or its predecessors in business, or the dependants or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe and guarantee money for charitable or benevolent objects, or for any exhibitions, or for any public, general, or useful object." Such provision puts the company's power in regard to the matters specified

But apart from such an express sanction, a company may have, as Implied incidental to its business, an implied power which will cover a part at powers. least of the ground. This was well pointed ont by Bowen, L. J., in Hutton v. West Cork Rail. Co., 23 C. D. 672, where a company had voted a gratnity to its directors : "You cannot say that the company has only got power to spend the money which it is bound to pay according to law; otherwise the wheels of business would stop. Nor can you say that directors, who have got all the powers of the company given to them . . . are always to be limited to the strictest possible view of what the oblightions of the company are. They are not to keep their pockets buttoned up unless they are hable in a way which could be enforced at law or in equity. Most businesses require liberal dealings. The test there again is not whether it is bond fide, but whether as well as being bond fide it is done within the ordinary scope of the company's business, and whether it is reasonably incidental to the carrying on of the company's business for the company's benefit." It was on this principle that Sir George Jessel, M. R., in Hampson v. Price's Patent Candle Co., 24 W. R. 754,

483

P.

beyond all question.

nt ti t

1

PN 10

10 (0

1

y

19 9

0 0

f

n

4

đ

PENSIONS AND GRATUITIES.

held that "a company might lawfully expend a week's wages as gratuities for its servants, because that sort of liberal dealing with servants eases the relation between masters and servants, and is in the end a benefit to the company." So also in *Henderson* v. Bank of *Australia*, it was held to be within the powers of a banking company to give the family of a deceased manager a pension for a term of years. See also *Cyclists' Touring Club* v. *Hopkinson*, (1910) 1 Ch. 179, which shows that the principle is not confined to trading companies. In any case the power of paying gratuities stops on the commencement of a winding-up, for it is a power incidental to the carrying on of the company's business as a going concern. Hutton v. West Cork Rail. Co... 23 C. D. 654; Stroud v. Royal Aquarium, W. N. (1903) 146; 89 L. T 243.

A subscription for outside purposes, e.g., a subscription to the Imperial Institute (*Tomkinson* v. S. E. Rail. Co., 56 L. T. 813) stands on a very different footing. It may be shown to be for the benefit of the company, but in the absence of express authority it is not a form of expenditure easy for directors to justify.

CHAPTER XLV.

POWERS OF ATTORNEY.

The directors of a company sometimes have occasion to affix the Powers of common seal of the company to a document (commonly called a power attorney, of attorney) anthorizing some person or persons on the company's behalf to execute or do some deed, instrument or thing, whether in the United Kingdom or abroad.

Sect. 78 of the Act of 1908 runs as follows :----

Sect. 78 f Act of 1908,

S. 78. A company may by writing under its common seal empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place not situate in the United Kingdom, and every deed signed by such attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Besides this, sect. 79 enables a company whose objects require or comprise the transaction of business in foreign countries, to have an official seal for use abroad if its articles authorize it. See infra. And the articles very commonly contain more or less elaborate provisions as to local management. See Company Precedents, Part I., p. 756. Moreover, it is well to bear in mind sects. 46, 47 and 48 of the Conveyancing and Law of Property Act, 1881. Under these the donee of a power of attorney can execute and do any assurance, instrument or thing in and with his own name and signature, and under his own seal where sealing is required by the authority of the donor of the power, and protect persons acting thereunder and allow of the deposit of the original instrument in the High Court, and sects. 8 and 9 of the Conveyancing Act, 1882, enable the power of attorney for valuable consideration to be made irrevocable, and enable the power of attorney, whether for value or not, to be made irrevocable for a fixed time.

Powers of attorney are strictly construed, as, for example, power of Strict attorney to act prior to the happening of some contingency may render construction. it necessary to prove that such contingency has not happened (*Danby* v. *Coutts*, 29 C. D. 500); and so the operation of a power of attorney may be cut down with reference to what appears to have been the

28 (2)

POWERS OF ATTORNEY.

purpose for which it was executed. Attwood v. Munnings, 7 B. & C. 278; Jonmenjoy v. Watson, 9 A. C. 561; Jacobs v. Morris, (1902) 1 Ch. 816; Hambro v. Burnand, (1904) 2 K. B. 14.

Put ou inquiry.

Primd facie those who deal with a person acting under, or purporting to act under, a power of attorney, are bound to inquire into the authenticity of the power. De Bouchont v. Goldsmid, 5 Ves. 213, per Lord Eldon; Sheffield v. London Joint Stock Bank, 13 A. C. 333; Bryant v. Banque du Peuple, (1893) A. C. 170. Where the agent is acting under a written authority, and what he does comes within the terms of that authority, the principal cannot repudiate on the ground that the agent acted in his own interests and not in those of the principal, unless the other party was aware of the facts. Hambro v. Burnand, (1904) 2 K. B. 10. And where the agent has powers exercisable in special circumstances, it seems that a person dealing with him bond fide need not inquire whether those special circumstances have arisen. Montuignac v. Shitta, 15 A. C. 357. An attorney is an agent, and therefore subject to the well-settled rule that an agent cannot appropriate any illegitimate profit. (Parker v. McKenna, 10 Ch. 96; Bray v. Ford, (1896) A. C. 44; and as to sub-agents, Powell v. Jones, (1905) 1 K. B. 11. Under the Stamp Act, 1891, a power of attorney generally requires a 10s. stamp.

Illegitimate

487

CHAPTER XLVI.

FOREIGN COMPANIES.

SECTION 274 of the Act (replacing sect. 35 of the Act of 1907) imposes certain requirements on companies incorporated outside the United Kingdom, which, on 1st July, 1908, has a place of business in the United Kingdom or afterwards establishes such a place of business. Such companies are required to file with the Registrar of Companies :---

(a) a certified copy of the charter, statutes, or memorandum and articles creating the corporation and defining its constitution;

(b) a list of the directors of the company;(c) the names and addresses of some one or more persons resident in

the United Kingdom authorized to accept service of process and notices on behalf of the company.

In case of any alterations in any of these, notice of the alteration must be filed with the registrar (1).

Service on the persons made agents for service under (c) is to be sufficient (2).

Every such company must also file with the registrar an annual statement, in the form of a balance sheet containing the particulars required to be given in its annual summary by a company registered in the United Kingdom with a share capital.

If the foreign company uses the word "Limited" as part of its name the section makes further requirements.

- (a) The company must, in every prospectus it issues inviting subscriptions for its shares or debentures, state the country in which it was incorporated.
- (b) It must conspicuously exhibit in every place in the United Kingdom where it carries on business the name of the company and the country where it was incorporated.
 (c) It must have the provided of the second sec
- (c) It must have the name of the company and of the country of its incorporation mentioned in legible characters in all billheads and letter paper, and in all rotices, advertisements, and other official publications of the company.

These are just and reasonable conditions, to which no honest foreign trading company can fairly take exception; while to investors, or persons having dealings with the foreign company in the United Kingdom, they afford a much-desired information and protection.

ortthe per

; 8 is

he nd

he

v.

)rth

86

L TI

nt

h.

of

FOREIGN COMPANIES.

By sect. 275 of the Act, a company incorporated in a British possession which has filed with the registrar the documents and particulars specified in paragraphs (a), (b) and (c) of sub-sect. 1 of sect. 275 is to have the same power to hold lands in the United Kingdom as if it were a company incorporated under the Act.

A sale to a foreign company on reconstruction cannot be effected under sect. 192 of the Act. Thomas v. United Butter Cos., (1909) 2 Ch. 484.

Foreign or colonial companies having assets and liabilities in England may be wound up by the Court in England. *Re Mercantile Bank of Australia*, (1892) 2 Ch. 204.

CHAPTER XLVII.

LEADING CASES.

It may be convenient here to bring together some of the leading cases Leading in relation to companies under the Companies Acts.

1.—Andrews v. Gas Meter Co., (1897) 1 Ch. 361: which decided that a company can, by taking the proper steps, create and issue preference shares, although not authorized so to do by its memorandum or by its articles as originally framed, and overruled *Hutton v. Scar*borough Cliff Hotel Co. (No. 2), 2 Dr. & Sm. 514. See supra, p. 83.

2.—Ashbury v. Watson (1885), 30 C. Div. 376: which decided that where the rights attached to several classes of shares are set out in the memorandum of association they are unalterable. See *supra*, p. 88.

3.—Ashbury Railway Carriage and Iron Co. v. Riche (1874), L. R. 7 H. L. 671: which decided that the powers of a company under the Act of 1862 were limited by its objects. See *supra*, p. 61.

4.—Bahia and San Francisco Railway Co. (1868), L. R. 3 Q. B. 595: in which it was held that a company which issued a certificate of title to shares might be estopped by persons acting thercon *boná fide*. See other cases, *supra*, p. 143.

5.—Barnes, Ex parte, (1896) A. C. 146: which decided that a public examination of a person cannot be ordered under sect: 8 of the Companies Winding-up Act, 1890, unless the official receiver has found fraud against such person. Sce supra, p. 408.

6.—Barwick v. English Joint Stock Bank (1866), L. R. 2 Ex. 265: deciding that a company is answerable in an action of deceit for the fraud of its directors in managing the affairs of the company to the same extent as if the fraud were its own. See *supra*, p. 74.

ritish and 1 of nited

eeted 9097

18 in Intile

LEADING CASES.

7.—Bowes v. Hope Mutual Life Insurance Society (1865), 11 H. L. (402: which decided that a creditor who cannot get paid is primá facir entitled ex debito justitiæ to a winding-up order. See also Western of Canada Co., 17 Eq. 1. See supra, p. 393.

8.—Bradford Banking Co. v. Briggs (1886), 12 App. Cas. 29: deciding that notice given to a company by an equitable mortgagee is not notice of a trust which a company is prohibited from receiving by sect. 30 of the Conpanies Act, 1862. See *supra*, p. 157.

9.—Re Bridgwater Navigation Co., Limited (1889), 14 App. Cas. 525: which decided that where there were preference shares and ordinary shares the holders of both classes were (subject to any provision to the contrary) entitled to share *pari passu* in the surplus assets in the winding-up, after paying off the whole of the paid-up capital. See *supra*, p. 85.

10.— British and American Trustee and Finance Corporation v. Cooper, (1894) A. C. 399, and Poole v. National Bank of China, (1907 A. C. 229, which decided that, under the Companies Acts, 1867 and 1877, the Court had jurisdiction to sanction any kind of reduction whatsoever. See supra, p. 93.

11.—British Equitable Life Assurance Co. v. Baily, (1906) A. C. 35: which decided that a company may alter its articles so as to vary a contract with an outsider, if the outsider has taken his contract subject to the risk of the articles being altered. See *supra*, p. 49.

12.—Burkinshaw v. Nicolls (1877), 3 App. Cas. 1004: which decided that where a company issues a certificate to the effect that certain shares were fully paid up, it may be estopped from denying their being paid up as against anyone acting upon such certificate in good faith. See also *Bloomenthal* v. *Ford*, (1897) A. C. 156; and *Balkis Co.* v. *Tompkinson*, (1893) A. C. 396. See *supra*, p. 144.

13.—Davis v. Bank of England (1824), 2 Bing. 393: deciding that a forged transfer of stock does not affect the title of the stockholder to the stock and dividends on it. See *supra*, p. 135.

14.—**Dovey v. Cory**, (1901) A. C. 477: deciding that a director is entitled to rely on his subordinates doing their duty in the absence of any ground for suspicion, and is not liable if, owing to the fraud or neglect of such subordinates, the company sustains damage. See supra, p. 202.

LEADING CASES.

Ch. XLVII.

15.—Ernest v. Nicholls (1857), 6 H. L. C. 419: deciding that all who deal with a company are to be deemed to have notice of its registered documents. See *supra*, p. 44.

C

ir

of

):

is

Ŋ

IS.

ul

ō.,

ts d.

٢.

7 7,

r.

٩.

ŗv

et.

h

ŧt

g

n.

d

it

 ϕ

14

٠f

)F

.,

16.—Foss v. Harbottle (1843), 2 Hare, 461: which decided that the Court will not interfere in the internal affairs of a company where there is nothing *ultra vires* the company. It leaves the matter to the majority. See *supra*, pp. 176, 242.

17.—Griffith v. Paget (1877), 5 C. D. 894; 6 C. D. 515: which decided that, upon a sale under sect. 161 of the Companies Act, 1862, it was not allowable to provide for a distribution of the assets otherwise than in accordance with the legal rights of the parties. See *supra*, p. 425.

18.—Grissell's case (1865), 1 Ch. 528: which decided that a shareholder in a company who was a creditor thereof could in the windingup prove in competition with the outside creditors, but was not entitled to set off his debt ngainst calls. See *supra*, p. 405.

19.—Hardy v. Fothergill (1888), 13 App. Cas. 351: deciding, in effect, that every liability of a company, however difficult of valuation, is provable in the winding-up, unless declared by the Court "incapable of being fairly estimated." See *supra*, p. 410.

20.—Hartley's case (1875), 10 Ch. 157: which decided that where shares have been issued for a consideration other than cash, and by nuistake the requisite contract had not been filed pursuant to sect. 25 of the Companies Act, 1867, it was open to the parties themselves to rectify the mistake without going to the Court. See supra, p. 121.

21.—Kelner v. Baxter (1866), L. R. 2 C. P. 174: which decided that where A., before the incorporation of a company, purports to make a contract on the company's behalf with B., the company cannot ratify such contract, and A. is personally liable on it. See *supra*, p. 253.

22.- New Sombrero Co. v. Erlanger (1862), 3 App. Cas. 1218: which decided that the promoters of a company stand in a fiduciary position to it. See *supra*, p. 332.

23.—Oakbank Oil Co. v. Crum (1883), 8 App. Cas. 65: deciding that primd facie a company has no power to pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than others, unless pursuant to the Companies Act, 1867, s. 24 (3), its regulations so provide. See supra, p. 214.

LEADING CASES.

24.—Oakes v. Turquand (1867), L. R. 2 H. L. 375: deciding (1) that a contract induced by fraud or misrepresentation is not void, but voidable at the option of the party defrauded; until avoided, it is valid; (2) that it is too late to rescind after the rights of creditors have intervened on a winding-up. Sco supre, p. 353.

25.—Ooregum Gold Mining Co. v. Roper, (1892) A. C. 125: deciding that a company limited by shares has no power to issue its shares at a discount, and that the registration of a contract under sect. 25 of the Companies Act, 1867, made no difference. See *supra*, p. 69.

26.—Re Panama Mail Co. (1870), 5 Ch. 318: deciding that a charge on a company's undertaking by way of floating security is effective. See *supra*, p. 311.

27.- Parker v. McKenna (1875), 10 Ch. 118: deciding that a director eannot make uny profit out of his agency without the knowledge and consent of his principal—the company. See *supra*, p. 193.

28.—Peek v. Derry (1889), 14 App. Cas. 337: which decided that, in an action of deceit against directors, it was necessary to prove fraud. See *supra*, p. 358.

29.— Peel's case (1867), 2 Ch. 674: which decided that the registrar's eertificate of incorporation of a company was conclusive (see *supra*, p. 51), and that subscribers for shares are to be taken to have read the memorandum and articles of association.

30.—Peel v. London and North Western Railway Co. (No. 1), (1907) 1 Ch. 5: deciding that a company may legitimately do and pay for out of its assets all such things as are reasonably necessary for procuring members to express their views upon any questions affecting the management of the company's uffairs, *e.g.*, sending stamped proxy forms, overruling *Studdert* v. *Grosvenor*, 33 Ch. D. 528. See *supra*, p. 67.

31.—Pell's case (1869), 5 Ch. 11: which decided that where shares have been issued as paid-up shares upon the footing that certain specified property shall be accepted by the company as the maideration for such shares, the Court will not, whilst the contract stands, inquire into the value of the consideration, even at the instance of a creditor. See *supra*, p. 117.

32.—Re Reese River Silver Mining Co. (1867), L. R. 2 Ch. 609: deciding that an innocent misrepresentation in a prospectus may be a ground for rescission. See *supra*, p. 355. at

£Ť.

is rs

в н

ie

n

is

or id

t.

ł.

'8

n, Id

),

кł

y

s

g 8.

15

in m

l'tł

r.

):

a

Ch. XLVII.

33.—Royal British Bank v. Turquand (1857), 6 E. & B. 327: which decided that those who deal with a company are not concerned with the indoor management. See further, *supra*, p. 45.

34.—Ruben v. Great Fingall Consolidated, (1906) A. C. 439: deciding that a company is not liable on share certificates to which the secretary has forged the names of the directors. See *supra*, p. 136.

35 - Salomon v. Salomon & Son, (1897) A. C. 22: which decided that one man companies are legal. See *supra*, pp. 56, 371.

36.—Spargo's case (1873), 8 Ch. 407: which decided that shares might, within the meaning of sect. 25 of the Companies Act, 1867, be paid up in cush by setting off by agreement a debt presently due to the shureholder from the company against the amount due on the shares. See further, *supra*, p. 122.

37.-Standard Manufacturing Co., Re, (1891) 1 Ch. 627: deciding that debentures und trust deeds do not require to be registered under the Bills of Sale Acts. See *supra*, p. 315.

38.—Trevor v. Whitworth (1887), 12 App. Cas. 409: which decided that it was illegal for a company to bny its own shares. See supra, p. 66.

39.—Twycross v. Grant (1877), 2 C. P. D. 469: as to the construction of sect. 38 of the Companies Act, 1867. See supra, p. 369.

40.—Walker v. London Tramways Co. (1879), 12 C. D. 705: which decided that a company cannot by a clause in its articles deprive its shareholders of the statutory power of altering its regulations contained in sect. 50 of the Companies Act, 1862. Sec supra, p. 47.

41.—Welton v. Saffery, (1897) A. C. 299: which decided that shares issued at a discount must, even as between the members in a windingup, be treated as $im_1 = g$ a liability to puy up the discount in cush. See *supra*, p. 69.

12 - Weston's case (1870), 4 Ch. 20: which decided that the right of transfer of shares in a company under the Act of 1862 is primá facie free. See supra, p. 130.

43.-Will v. United Lankat Plantations, (1914) A. C. 11, deciding that preference shares are not *primá facie* entitled to receive may dividend beyond the fixed preferential dividend. See *supra*, p. 85. 443

29 (2)





TABLE OF CORRESPONDING SECTIONS.

Аст, 1862.	NEW ALT.	Acr, 1862.	NEW ACT
Sect. 4	Sect. 1	Sect. 74	Sect. 124
6	11	75, 77	127
	2	75, 90, 134	126
10	3	76, 99, 105	126
ii		78	128
12	14 7	79	129
12	41	80	130
13	8	81	134, 135
14	6	81, 176	285
14	10	82	137, 138
14	12	84 85	139
18	11	85,92	140, 149
16	14	86	149
17	16	87	141
17	244	88	142
19	18	89	143
20	8	90, 134	144
21	19	91	123 (3) 145
22	22	91, 149	219
23	24	92, 94	149, 150
24 25	29	92	149 (4), (8)
	28	93	149
26, 27	26	94	149
27 (1), (4) 28	4	95	181
29	42	96	161 (4)
30	43	97	21, 151 (1) (d)
31	27	98, 99	163
32	23	100	164
33	30	101	165
34	31	102	166
36, 36	32	103, 104	167
37	33	105	126 (3)
38	123	106	168
39, 40	62	107	169
41, 42	63	109	170
43	100, 101	110	171
44	108	111, 112, 113 118, 127, 184, 155, 166	172
45, 46	75	115, 117	
47	77	118	174
48	118	119	176 177
60	13	120	178
51, 129	69	121	179
62	67	122, 123	180
53, 54	70	124	181
68 40	78	125	225
56-59 60	109	126	226
61	110	127	227
62	111	128	228
62, 64	115	129	182
64	285	130	183
65	117	131	184
66	276	131, 153	205
67	277	132, 142	185, 285
68	71, 74, 149 (10)	133 (8), (9), (10)	186 (v)
69	280 278	133, 141	186
70	418	134	123 (3) 125
71	118	135	190
72, 73	119	136, 137	191
	4.4.4	138	193

Acr, 1862.	NEW ACT.	Acr, 1862.	NEW A.OT.
Sect. 139	Sect. 194	Sect. 174 (3)	Sect. 15
140	18	174 (6)	289
141	186 viii)	176	13, 245
142, 143 144	195	177	246
145	196	178	248
146	197 198	179, 180	249
147	195	181	250
148	200	183, 185	262
149	201	184	253
150	202	186 187	254
151	203	188	255
152	204	189	256 257
153	205 (2)	190	258
154	220	191	259
155	222	193	260
156	221	194	261
158	206	195	262
159, 160	214	196	263
161, 162	192	197	265
163	211	198	266
164	210	199	267, 268
165	215	200	269
166	216	201	270
167, 168	217	202	271
169	218	203	272
170		204	273
171 172	151 (6)	205, 206	286
171, 173	238	207	287
111, 110	238, 290	208	288
	Act, 1864.	NEW ACT.	
	Sect. 1-6	Sect. 79	
Аст, 1867.	NEW ACT.	Acr, 1867.	NEW ACT.
Sect. 4, 7	Sect. 60	Sect. 16, 18	Sect. 52
5	123 (2)	19	54
6	165	20	238, 290
8	31	21, 22	41
9	46	23	20
9, 15	51	24	39
10	48	26	28
11	47	27 - 32	37
11, 12 12	50	32	26, 37
13, 14	285 49	3436	38
16, 17	53	37 40	76
,	ACT. 1870.	NEW ACT.	137
	Sect. 2	Sect. 120	
Аст, 1877.	NEW ACT.	Act, 1877.	NEW ACT.
Sect. 3	Sect. 46		
4	48, 49, 51, 55	Sect. 5 6	Sect. 41 243
Аст, 1879.	NEW ACT.	Acr, 1879.	NEW ACT.
Nect. 4, 9	Sect. 57	Sant 0	
5	58, 59	Seet. 8	Sect. 113 (5) (b
6	251	8 (5)	113
		10	263 (iii)
Acr, 1880.	NEW ACT.	Acr, 1880.	NEW ACT.
Sect. 3-6	Sect. 40	Sect. 7 (8)	Sect. 285
7	242		

TABLE OF CORRESPONDING SECTIONS.

Acr, 1883.	NEW ACT.	Аст, 1883.	NEW ACT.
Sect. 2 2, 3 (1) (3	Sect. 285 2 34 35, 36	Sect. 3 (3), (6), 3 (7)	
Аст, 1886.	NEW ACT.	Аст, 1886,	NEW ACT.
Sect. 3 4 5	Sect. 213 208 135	Sect. 5, 6 6	Sect. 181 136, 203
Аст, 1897.	NEW ACT.	Act, 1888.	NEW ACT.
Sect. 5	Sect. 41	Sect. 1	Sect. 209
Aor, 1890 (WU.). NEW ACT.	Acr, 1890 (WU.).	New Act.
Sect. 1 1 (1) 1, 2, 3 1 (1), 3 2 3 3-5 4 (1), (3) 4 (2) 4 (3) 4 (4) 4 (6) 5 6 7 8 (1), (2) 8 (3)-(9 9 10 11 (1), (5) 11 (2)-(4) 12 (2)	Sect. 131, 263 264 (3), 264 (4) (3) 263 (e) 132 133 84 (4) (5) 149 146 149, 153 149 162 161 152 147 148 (6) 215 229 (6) 154 214 151 (2)	Sect. $12 (3)$ So $12 (4)$ 13 (4) 13 (4) 15 16 17, 18 19 20 21 22 23, 24 25 26 27 28 29 30 31 (1) 31 (2) 32 (3)	$\begin{array}{c} 1.124 \\ \text{ret. 151 (3), 214 (2, 151 (1) (e, 173 137 224 230 231 232 155 156 157 156 157 156 157 158 159 237 233 234 2235 236 287 122 285 131 (8) \end{array}$
A0.	r, 1890 (Directors' Lia	bility). New A	Аст.
Act, 1893.	Sect. 3, 4 NEW Act.	Sect. 8	
Sect. 1	Seot. 215	Aor, 1897.	NEW AOT.
Acr, 1900.	NEW ACT.		Sect 209
Sect. 1 1, 2 2 3	Sect. 17 9 72 73	Act, 1900, Sect. 16 17 18 (1), (3) 18	NEW Act. Sect. 97 98 16 99
4 4 (1), (5) 5 6 7 8	83 149 86 87 88 89	20 21, 22 24 25 26	75 112 120 193 242
9 10 11 12	80 81 83 65	28 29 30 31 32 (2)	281 41 279, 285 245 285
12 (8 13 14 15	129, 137, 141 66 93 96	34 34 (2) 34 (3)	17 93 276 (2)

450

Acr, 1907.	NEW ACT.	Acr, 1907.	NEW ACT.
Sect. 1 (2),	Sect. 72	Sect. 25, 45	Sect. 69
and Sched. II.		26	187
1(2)	83	27	188
1 (2), 4,	87	28	130, 137
and Sched. II.	82	29	141
$ \begin{array}{c} 1 & (1), & (5) \\ 1 & (3) \end{array} $	85	30	209 (5), 209
2	81	31	223 195
3	80	31 (1), (3)	279
5	92	33	84
6	88	34	73
7	90	35	274
7, 20, 21	26	36	106
8	89	37	2, 121
9	91	37 (4)	115, 129
10 (6)	99	38	120
10, 52 (1)	93	39	45
10, 17 11	101 94	40	108
13	212	41 42	95 20
14	103	43	34
15	104	44	109
16	105	45	- 70
18	102	46	284
19 (4)	112	47	283
19, 50	113	48	282
20	26	49	276
21	25	50	195
22, 23	65	50, and Sched. III	
23	114	52 (1)	274, 281, 285
24 (1), (2) 24 (3)	64 68	52 (3)	296
	Аст, 1908.	NEW ACT.	
	Sect. 1	Sect. 275	
LIFE ASSURANCE ACT, 1870.	ABSURANCE ACT OF 1909.	LIFE ASSURANCE ACT, 1870.	Assurance Act of 1909.
Sect. 2	Sect. 1	Sect. 14	Sect. 13
3	2	15	14
4	3	16	22
5	4	17	22
6	6	18	24
7	5	19	25
8	6	20	26
9 10	23	21	-
10	7	22 23	19
12	7	23	27 28
13	11		20
LIFE ASSURANCE ACT, 1872.	Assurance Act of 1909.	LIFE ASSURANCE ACT, 1872.	Assurance Act of 1909.
Sect. 1	Sect. 2	Sect. 5	Sect. 18
2 3	3	8 7	15
4	17	8	

r.

COMPANIES (CONSOLIDATION) ACT, 1908.

8 Ebw. 7, c. 69.

An Act to consolidate the Companies Act, 1862, and the Acts amending it. [21st December, 1908.]

[Came into operation 1st April, 1909. See sect. 296.]

Bz it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the anthority of the same, as follows :-

PART I.

CONSTITUTION AND INCORPORATION.

Prohibition of Large Partnerships.

1.—(1.) No company, association, or partnership consisting of more than ten S. 4 of 1862. persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of partnerships (2) No company regulation of letters patent.

(2.) No company, association, or partnership consisting of more than twenty exceeding persons shall be formed for the purpose of carrying on any other business that has certain for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under p. 386 this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the Court exercising the stannaries jurisdiction.

Memorandum of Association.

2. Any seven or more persons (or, where the company to be formed will be a Ss. 6 et seq. private company within the meaning of this Act, any two or more persons) asso-ciated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in Mode of of association and otherwise complying with the requirements of interview forming incorporated company, with or without limited forming incorporated hiability (that is to say), either-

- (i) A company having the liability of its members limited by the memorandum (i) A company having the having of its members initide by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
 (ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to such amount as the constraint of the constraints.
- to contribute to the assets of the company in the ovent of its being
- (iii) A company not having any limit on the limited by guarantee); or
 (iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

company.

pp. 21, 26

(451)

452

APPENDIX.

8, 8 of 1862. 3. In the case of a company limited by shares

- (1.) The memoraudum must state
 - i) The name of the company, with "Limited" as the last word in its name:
 - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate ;
 - (iii) The objects of the company ;
 - (iv) That the liability of the members is limited ;
 - (v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount :
- (2.) No subscriber of the memorandum may take less than one share;

(3.) Each subscriber must write opposite to his name the number of shares he takes. 4. In the case of a company limited by guarantee

S. 9 of 1862. Memorandum

of company limited by

guarantee. p. 378

S. 10 of 1862. Memorandum p. 381

of unlimited company.

Stamp and signature of memorandum. p. 22 8. 12 of 1862. Restriction on alteration of memorandum pp. 77, 81, 88 Ss. 13, 20 of 1862 Name of

S. 11 of 1982.

company aud change of name. p. 249

(i) The name of the company, with "Limited" as the last word in its name :

- (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate ;
- (iii) The objects of the company :

1.) The memorandum must state-

- (iv) That the liability of the members is limited ;
- (v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the cost-. charges, and expenses of winding up, and for adjustment of the rightof the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (2.) If the company has a share capital-
 - (i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;
 - (ii) No subscriber of the memorandum may take less than one share ;
 - (iii) Each subscriber must write opposite to his name the number of shares he takes.
- 5. In the case of an unlimited company--
 - (1.) The memorandum must state
 - The name of the company;
 - ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate ;
 - (iii) The objects of the company.
 - 2.) If the company has a share capital
 - i) No subscriber of the memorandum may take less than oue share ;
 - (ii) Each subscriber must write opposite to his name the number of shares he takes

6. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

7. A company may ust alter the couditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made iu this Act.

8.-(1.) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manne: as the registrar requires

(2.) If a company, through inadvertence or otherwise, is, without such con-cut as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

Memorandum of company

limited by

shares. pp. 26, 32

COMPANIES (CONSOLIDATION) ACT, 1908.

(3.) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

(4.) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incor-poration altered to meet the circumstances of the case.

(5.) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

9. -(1.) Subject to the provisions of this section a company may, by special Ss. 1, 2 of resolution, alter the provisions of its memorandum with respect to the objects of the 1890. company, so far as may be required to enable it-

to carry on its business more conomically or more efficiently ; or

(a) to carry on its business more commutally or more emerent (b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or (d) to earry on some business which under existing circumstances may conveniently or advantageously be combined with the lossiness of the company: or

(e) to restrict or abandon any of the objects specified in the momorandum. (2.)

The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court.

(3.) Before confirming the alteration the Court must be satisfied-

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and
- (b) that, with respect to every creditor who in the epinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

5.) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them. as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement : Provided that no part of the capital of the company may be expended in any such purchase. 6 An office copy of the order confirming the alteration, together with a printed

copy of the memorandum as altered, shall, within tiffeen days from the date of the order, he delivered by the company to the Registrar of Companies, and he shall register the same, and shall certify the registration under his band, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thene-

forth the memorandum so altered shall be the memorandum of the company. The Court may by order at my time extend the time for the delivery of docaments to the registrar under this section for such period as the Court may think proper.

(7. If a company makes default in delivering to the Registrar of Companies any decument required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

Articles of Association.

10.- (1.) There may, in the case of a company limited by shares, and there S. 14 of 1862 shall in the case of a company limited by guarantee or unlimited, be registered Registration with the memorandum articles of association signed by the subscribers to the of articles. memorandum and prescribing regulations for the company.

pp. 21, 22, 37

Alteration of

objects of company.

Act of 1908 453

Er ife t. or

to he

o be

s he

ti ita

L or

o be

pany ithin

f the osts.

whit-

e re-

hich

into

nares

and,

area

nust

ttest

s in

cept

nde

br

that s in trar

sent 7 in 1 to

rar.

(2.) Articles of association may adopt all or any of the regulations contained in Table A. in the First Schedule to this Act.

(3.) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital (4.) In the case of an unlimited company or a company limited by guarantee,

if the company has not a share capital, the articles must state the num ser of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the tees payne?) on registration.

11. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table Λ , in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

12. Articles must-

(a be printed ;

(b be divided into paragraphs numbered consecutively;

bear the same stamp as if they were contained in a deed ; and

(d) be signed by each subscriber of the memorandum of association in the prosence of ut least one witness, who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Ss. 50, 176 of 1862. Alteration of

13.-(1.) Subject to the provisions of this Act and to the conditions contained mits memorandum, a company may by special resolution after or add to its articles; and any alteration or addition so made shall be us valid as if originally contained in the articles, and be subject in like manner to ultration by special resolution. (2.) The power of altering articles under this section shall, in the case of an

unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

General Provisions. 14.-(1.) The memorandum and articles shall, when registered, bind the com-

S. 11 of 1862. Effect of memorandum and articles.

pany and the members thereof to the same extent as if they respectively had been signed and seeled by each member, and contained a venants on the part of each member, his heirs, executors, and administrations, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act. (2.) All money payable by any member to the company under the memorandum

or articles shall be a debt due from him to the company, and in England and Ireland be of the nature of a specialty debt.

15. The memorandum and the articles (if any) shall be delivered to the Registrar of Companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and

register them. **16.**—(1.) On the registration of the memorandum of a company the registrar **16.**—(1.) On the registration of the memorandum of a company the registrar limited company that the company is limited.

(2.) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual snecession and a common seal, with power to hold hands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound mp, as is mentioned in this Act.

17.-(1.) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act

8. 17 of 1832, Registration of memorandum and articles.

Effect of registration. p. 51

8, 18 of 1862 and s, 1 of 1890, Conclusiveness of certificate of incorporation. p. 51

454

Ss. 14, 16 of 1862. Form, stamp, and signature of articles. p. 37

S. 15 of 1862.

Application of Table A.

pp. 22, 37

articles by special resolution. p. 46

COMPANIES (CONSOLIDATION) ACT, 1908.

(2.) A statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a decharation as sufficient evidence of compliance.

18.-(1.) Every company shall send to every member, at his request, and on S. 19 of 1862. payment of one shilling or such less sum as the company may prescribe, a copy of Copies of the memorandum and of the articles (if any).

(2.) If a company makes default in complying with the requirements of this and articles to section, it shall be liable for each offence to a fine not exceeding one pound. be given to

Associations not for Profit.

19. A company formed for the purpose of promoting art, science, religion, S. 21 of 1862, charity, or any other like object, not involving the acquisition of gain by the Restriction on the statistical enderstands of th company or by its individual members, shall not, without the licence of the Board choritable and of Trade, hold more than two acres of land; but the Board may by licence em- other compower any such company to hold lands in such quantity, and subject to such panies holding conditions, as the Board think fit.

20.-(1.) Where it is proved to the satisfaction of the Board of Trade that an p. 250 association about to be formed as a limited company is to be formed for promoting S. 23 of 1867. commerce, art, science, religion, charity, or any other useful object, and intends to Power to apply its profits (if any) or other income in promoting its objects, and to prohibit dispense with apply its profits (if any for other income in promoting its objects, and to promot dispense with the payment of any dividend to its members, the Board may by licence direct that "Limited" the association be registered as a company with limited liability, without the in name of addition of the word "Limited" to its name, and the association may be registered charitable

(2.) A licence by the Board of Trade under this section may be granted on such companies. eonditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, p. 250 be inserted in the memorandum and articles, or in one of those documents.

(3.) The association shall on registration enjoy all the privileges of limited com-panies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the Registrar of Companies.

(4.) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word " Limited " at the end of the name of the association upon the register, and the association shall cense to enjoy the exemptions and privileges granted by this section :

Provided that before a licence is so revoked the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

Companies limited by Guarantee.

21.—(b.) In the case of a company limited by guarantee and not having a share S. 27 of 1900. capital, and registered on or after the first day of January, nineteen hundred and provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits inited by (9.) For the number of the average of the

(2.) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the p. 378 memorandum or articles, or in any resolution, of any company limited by gnarantee and registered on or after the first day of January, nineteen hundred and onepurporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

members.

Act of 1908 455

ied m

apital intee, NT of

ee the

CODItered, $\Lambda_{\rm e}$ in HI TILE they

r the 5 and 1 and

ed in ieles; mined of an Acts,

dise n the

com-In en each ns of

idum Land strar ice of and and

strar of a tion.

from y the the ud a the

and

REEV 1 in beeu ored

Appendix.

PART II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTERATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIADILITY OF DIRECTORS

Distribution of Share Capital.

S. 22 of 1862. **22.**—(1.) The shares or other interest of any member in a company shall be Nature of personal estate, transferable in manner provided by the articles of the company, shares. and shall not be of the nature of real estate.

(2.) Each share in a company having a share capital shall be distinguished by its appropriate number.

8.23 of 1862. 23. A certificate, under the common seal of the company, specifying any shares or stock held by any number, shall be *primit facia* evidence of the title of the shares or stock.

24.—(1.) The subscribers of the memorandum of a company shall be deemed to have agreed to lacome members of the company, and on its registration shall be entered as members in its register of members.

(2.) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

25.—(1.) Every company shall keep in one or more books a register of its S. 25 of 1862. members, and enter therein the following particulars:—

(i) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shareheld by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(ii) The date at which each person was entered in the register as a member ;

(iii) The date at which any person ceased to be a member.

(2.) If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorizes of permits the default shall be liable to the like penalty.

S. 26 of 1862. Annual list ⁿ of members ^p and summary. p. 123

28.—(1.) Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the dute of the last return or (in the case of the first return of the incorport, it of the company.
 (2.) The list must state the names addresses and compations of all the part and

(2.) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for each and shares issued as fully or partly paid up otherwise than in each, and specifying the following particulars:—

(a) The amount of the share capital of the company, and the number of the shares into which it is divided;

- (b) The number of shares taken from the commencement of the company up to the date of the return;
- (c) The amount called np on each share ;
- (d) The total amount of calls received;
- (e) The total amount of ealls mpaid ;
- (f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return ;
- (g) The total number of shares forfeited ;
- h) The total amount of shares or stock for which share warrants are outstanding at the date of the return ;
- (i The total amount of share warrants issued and surrendered respectively since the date of the last returu;

456

p. 142

member. pp. 101, 103

8. 24 of 1862.

Definition of

Register of

members.

p. 124

COMPANIES (CONSOLIDATION) ACT, 1908.

(k) The number of shares or amount of stock comprised in each share warrant :

(1) The names and addresses of the persons who at the date of the return are the directors of the company, or ocenpy the position of directors, by whatover name called ; and

(m) The total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, whileh, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.

(3.) The summary must also (except where the company is a private company include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, undited by the company's anditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those habilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss.

(4.) The above list and summary must be contained in a separate port of the register of members, and must be completed within seven days after the conteenth day aforesaid, and the company must forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company.

(5) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every ducetor and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty

27. No notice of any trust, expressed, implied, or constructive, shall be entered 8.30 of 1802 on the register, or be receivable by the registrar, in the case of companies registered Trusts not to be in Encloud or Iradand

28. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferce in the same manner and subject to the same conditions as if the application for the antry were made by the transferce.

24. A transfer of the share or other interest of a deceased member of a company made hy his personal representative shall, although the personal representative is not hunself a member, be as v-did as if he had been a member at the time of the execution of the instrument of transfer.

30.-(1.) The register of members, commencing from the date of the registration representative, of the company, shall be kept at the registered office of the company, and, except p. 139 when closed under the provisions of this Act, shall during business hours (subject 8, 32 of 1882. to such reasonable restrictions as the company in general meeting may impose, so Inspection of that not less than two hours in each day be allowed for inspection) be open to the register of inspection of any includer available and to the inspection of any adder present on members. inspection of any member gratis, and to the inspection of any other person on payment of one shilling or su n less sum as the company may prescribe, for each p. 124 inspection.

(2.) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3.) If any inspection or copy required under this section is refused, the company shall be hable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorizes or permits the refusal shall be liable to the like penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the Court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the r gister.

31. A company may, on giving notice by advertisement in some newspaper S. 33 of 1862. circulating in the district in which the registered office of the company is situate. Power to close the register of members for any time or times not exceeding in the whole close register. thirty days in each year. 32.-(1) lf-

(a) the name of any person is, without sufficient cause, entered in cr omitted S 35 of 1862. from the register of members of a company; or

Power of Court to pertify register.

30

DREIS'S D p. 158 8. 28 of 1887. transfer at request of transteror S. 24 of 1962. Tran-fer by

Regustration of

457

Act of 1908

P.

Ð

In

av.

it-

the

to In

(82% F

it-

nd

reof of

i++t

•r v

et:

ar

15

 h_{0}

 \mathbf{h}

nđ he

1.0

 1_{122} d^{1}

а Ъ

he

111

ct

of

1.12"

(b) default is made or unuccessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2.) The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in classifier, or by application to the judge of the Court exerelsing the standards jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said Courts may respectively direct; and the Court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party nggrieved.

(3.) On any application under this section the Court muy decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4.) In the case of a company required by this Act to send a list of its members to the register of companies, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the register.
33. The register of members shall be *prival facie* evidence of any matters by

33. The register of members shall be *prind facie* evidence of any matters by this Act directed or nuthorized to be inserted therein.

34.—(1.) A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorized by its articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony (in this Act called a colonal register).

(2.) The company shall give to the registrar of companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3.) For the purpose of the provisions of this Act relating to colonial registers the term "colony" Includes British India and the Commonwealth of Australia.

35.-(1.) A colonial register shall be deemed to be part of the company's register of members (in this and the next following section c died the principal register).

(2.) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some Lewspaper circulating in the district wherein the colouid register is kept, and that any competent Court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exerciseable by the High Court, and that the offences of refusing inspection or copies of a colonial register, and of unthorizing or permitting the refusal may be prosented summarily before any tribunal in the colony having summary criminal jurisdiction.

(3.) The company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4.) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5.) The company may discontinue to keep any colonial register, and thereupou all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the principal register.

(6.) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of colonial registers.

36. In relation to stamp duties the following provisions shall have effect :--

8. 3 of 1882. Stamp duties in case of shares registered in

(n) An instrument of transfer of a share registered in a colonial register shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from British stamp duty :

458

8. 87 of 1882. Register to be evidence.

S. 2 of 1883.

Power for

register.

p. 129 S. 3 of 1883.

company to

keep colonial

Regulations

as to colouial

register.

p. 129

p. 125

COMPANIES (CONSOLABATION) ACT, 1908.

(b) On the death of a member registered in a colonial register, the shares of colonial the deceased member shall, if he died domiciled in the United Kingdom, registers, but not otherwise, he deemed, so far as relates to British duties, to be part of his estate and effects simate h, the l'inted Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof au inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

37. -(1.) A company limited by shares, if so authorized by its articles, may. S. 27 of 1867. with respect to any fully paid-up shares, or to stock, issue under its common seal home and a warrant starting that the bearer of the warrand is entitled to the shares or stock effect of share therein specifial, and may provide by company or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed bearer,

(2.) A share warrant shall entitle the hearer thereof to the shares or stock therein P. 141 specified, and the shares or stock may be transferred av delivery of the warrant.

(3.) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for concellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any porson by reason of on company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surren brad and cancelle h.

(4.) The hearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company wohin the maning of this Ast, either to the fall extent or for any purposes defined in the articles : except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company in cases where such a qualification is required by the articles

(5.) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shill enter I the register the following particulars, namely :--

(i) The fact of the issue of the warrant ;

(ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number ; and

(lii) The date of the Issue of the warrant.

(6.) Until the warrant is surrendered, the above particulars shall be desine I to be the particulars required by this Act to be entered in the register of in unbers; and, on the surrender, the date of the surrender must be entered us if it were the date at which a person reased to be a member.

38.-(1.) If any person -

tor

aly

nd he

er.

is-

to

ee-

ter

red

ion

hia

eu

nte

- 19

ers

ion

to

hy

- 14 pt

'iit

ioh

on.

1-17N

ter

hy

the

the

140

by

nal

rily

in

to

11.8

lev1

sr,

TEB

3 4195

eili,

nou

ept

ake

all

ng-

Eve

- (i) with intent to defraud, forges or alters, or offers, atters, disposes of, or puts Forgery, off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in parsuance of this Act; or hy means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any shire or interest in any company nuder this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or
- (ii) falsely and deceitfully personates any owner of any share or interest in any company, or of any shero warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or ressives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner.

he shall be guilty of felony, and being convicted thereof shall be liable, at the disorction of the Court, to be kept in penal servitude for life or for any term not less than three years.

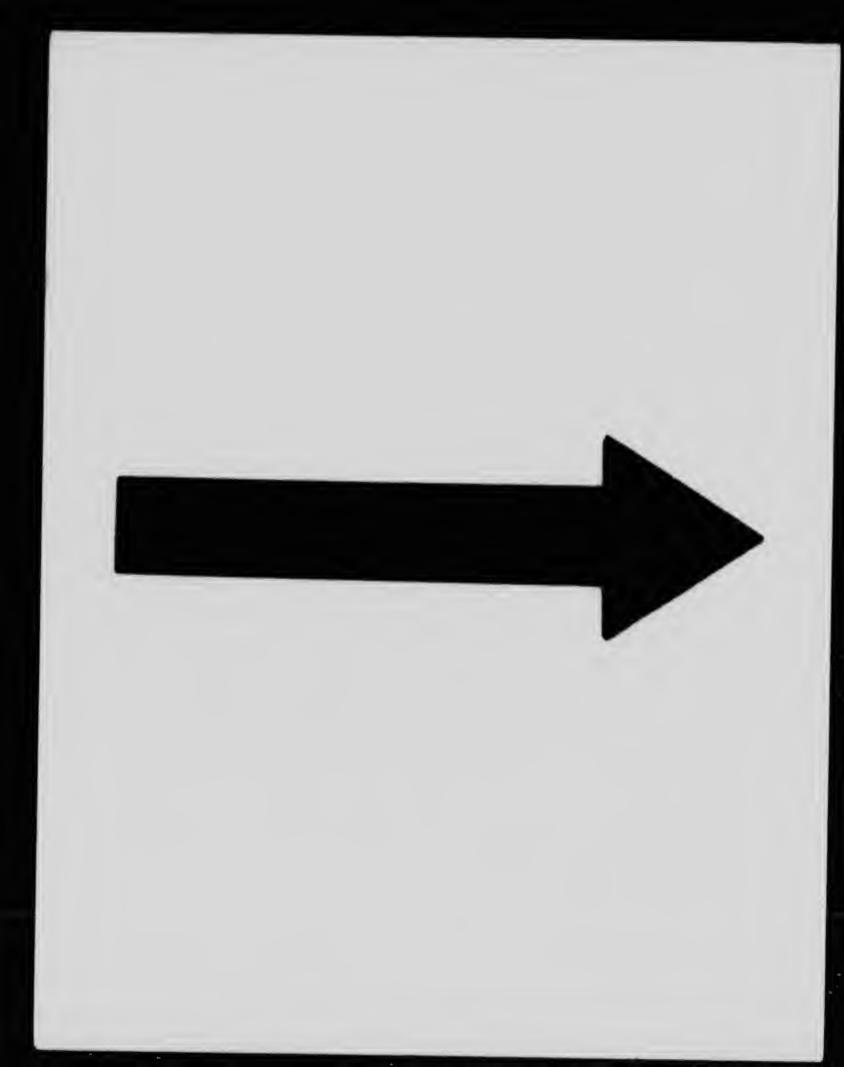
(2.) If any person without lawful authority or oxcuse, proof whereof shall lie on him, engraves or makes on any plate, wool, stone, or other unterial any share warrant or coupon purporting to be a share warrant or coupon issued or unde by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or

30(2)

S. 34 of 1867.

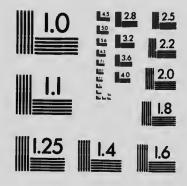
personation, unlawfully engraving plates, &c.

warrauts to



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



APPLIED IMAGE Inc.

1653 East Main Street Rochester, New York 14609 USA (716) 482 - 0300 - Phone (716) 288 - 5989 - Fax any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, ho shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years. 39. A company, if so authorized by its articles, may do any one or more of the

Power of company to arrange for different amounts being paid on shares.

S. 24 of 1867.

following things; namely,-(1.) Make arrangements on the isaue of shares for a difference between the shareholders in the amounts and times of payment of calls on their ahares (2.) Accept from any member who assents thereto the whole or a part of the

amount remaining unpaid on any shares held hy him, although no part of that amount has been oslled up:

(3.) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares thau on others.

S. 3 of 1880. Power to return accumulated profits in reduction of paid-up share capital. p. 93

40.—(1.) When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, hy special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. (2.) The resolution shall not take effect until a memorandum, showing the par-

ticulars required by this Act in the case of a 1 duction of share capital, has been produced to and registered by the registrar of companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursnance of this section any share-(3.) On a reduction of paid-up capital in pursnance of this section any share-holder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those sharea shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorized for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities. (4.) The amount retained and invested shall be held to represent the future calls

which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of

(5.) On a reduction of paid-np share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as angmented hy the reduction.

(6.) After any reduction of share capital under this section the company shall specify in the annual list of members required hy this Act the amounts retained at the request of any of the sharehold rs in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

41.-(1.) A company limited hy shares, if so anthorized by its articles, may alter the conditions of its memorandum as follows (that is to say), it may

(a) increase its share capital by the issue of new shares of auch amount as it thinks expedient :

(b) consolidate and divide all or any of its share cavital into shares of larger amount than its existing shares ;

(c) convert all or any of its psid-up shares into stock, and reconvert that stock

 (d) and divide its shares of any denomination;
 (d) and divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;

S. 12 of 1862, a. 21 of 1867. Power of company limited by sbarea to alter its share capital,

pp. 86, 88, 89

(e); cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share expital by the amount of the shares so (2.) The powers conferred by this section with respect to sub-division of shares

(3.) Where any alteration has been made under this section in the memorandum

of a company, every copy of the memorundum issued after the date of the alteration shall be in accordance with the alteration.

If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wil-fully authorizes or permits the default shall be liable to the like penalty.

(4.) A cancellation of shares in pursuaure of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

42. Where a company having a share capital has consolidated and divided its 8, 28 of 1962. share capital into shares of larger mount than its existing shares, or converted Notice to regia-any of its shares into stock, or recorverted stock into shares, it shall give notice to trave of consoli-the registrar of companies of the cansolidation, division, conversiou, or recon- dation of share' optical conversion of the cansolidation of share's on the conversion of the conversion o version specifying the shares consolidated, divided, or converted, or the stock dation of share capital conver-

43. Where a company having a share capital has converted any of its shares S. 29 of 1862. into stock, and given notice of the conversion to the registrar of companies, all Effect of the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall into stock show the amount of stock held by each member instead of the amount of shares into stock. show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinhefore required by this Act.

44.-(1.) Where a company having a share capital, whether its shares have or S. 34 of 1862. have not been converted into stock, has increased its share capital beyond the Notice of registered capital, and where a company not having a share capital has increased increase of registered capital, and where a company not having a share capital has increased increase of the number of its members beyond the registered number, it shall give to the share capital registrar of companies, in the case of an increase of share capital, within fifteen days or of members. after the passing, or in the case of a special resolution the confirmation, of the reso-lution authorizing the increase, and in the case of an increase of members within

of capital or members, and the registrar shall record the increase. (2.) If a company makes default in complying with the requirements of this

section it shall be linble to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like

45.-(1.) A company limited by shares may, by special resolution confirmed by S. 39 of 1907. an order of the Court, modify the conditions contained in its memoraudum so as to Reorganisareorganise its share capital, whether by the consolidation of shares of different tion of share classes or by the division of its shares into shares of different classes :

Provided that no preference or special privilege attached to or belonging to any capital class of shares shall be interfered with except by a resolution passed by a majority p. 100 in number of sharcholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all sharcholders of the class.

(2.) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect nntil such a copy has been so filed.

Reduction of Share Capital.

46.-(1.) Subject to confirmation by the Court, a company limited by shares, if S. 9 of 1867, so authorized by its articles, may by special resolution reduce its share capital in s. 3 of 1897. any way and in particular (without prejudice to the generality of the foregoing Special Special

(a) Exting tish or reduce the liability on any of its shares in respect of share resolution for reduction of

share capital.

p. 91

capital.

461

n any being penal ARTR. of the

shareof the art of

nere a

which ers iu ne, or f the

par-been isions iction

harcionth stain, id on

h, in , and epted avest vestd or

ently shall calls ether

ents it of , the the the

hare hall d at hall

the h**ar**e lter

us it

rger

lock a is the on

are

APPENDIX.

- (b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share espital which is lost or unrepresented by available naseta : or
- (e) Either with ar without extingaishing or reducing liability on any of its shares, pay off any paid-up sharo capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount

of its share capital and of its shares accordingly. (2.) A special resolution under this section is in this Act called a resolution for reducing share capital.

47. Where a company has passed and confirmed a resolution for reducing share

capital it may apply by petition to the Court for an order confirming the reduction.
48. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capical or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for con-firming the reduction, the company shall add to its name, until such date as the Court may fix, the words " and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company: Provided that, where the reduction does not involve either the diminution of any

liability in respect of unpaid sharo capital or the payment to any shareholder of any paid-np share capital, the Court may, if it tbluks expedient, dispense altogether with the addition of the words " and reduced."

-(I.) Where the proposed reduction of share capital involves either diminution of liability in respect of enpaid sharo capital or the payment to any shareholder of any paid-up sharo capital, and in any other case if the Court so directs, overy creditor of the company who at the date fixed by the Conrt is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the redaction.

(2.) The Court shall settlo a list of creditors so entitled to object, and for that purpose shall ascertain, as far ns possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3.) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that ereditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount; (that is to say,)-

- (i) If the company admits the full amount of bis debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim
- (ii) If the company does not admit or is not villing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed hy the Conrt after the like inquiry and adjudication as if the company were being wound up by the Court.

50. The Court, if satisfied, with respect to every creditor of the company who S. 11 of 1867. r, that either his consent to the under this Act is entitled to object to the re reduction bas been obtained or his debt or c. .as been discharged or bas determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

> 51.-(I.) The registrar of companies on production to him of an order of the Court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing with respect to the sharo capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid np on each share, shall register the order and minute.

> (2.) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

> (3.) Notice of the registration shall be published in such manner as the Court may direct.

8. 11 of 1867. Application to firming order. p. 98 8. 10 of 1862. Addition to name of coru-pany of " and reduced." p. 99

S. 13 of 1867. Objections by creditors, and settlement of list of objecting creditors.

Order confirming reduction. p. 98 S. 9 of 1867. Registration

of order and minute of reduction. p. 99

č

le

ta

ta

nt

or

re

u.

ıg

1 y ıÿ

1-

he

ae ıy

ŋ

er

1-

er

ry bt

he to

at

١V or ot

ht

or

se

or

to

ot

bt

ıll

rnd ho he r. eh ırt

im

th of $\mathbf{n}\mathbf{t}$

be

tal

ay

(4.) The registrar shall certify under his hund the registration of the order and p. 99 minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the sharo capital of the company is such as is stated in the minute.

52.-(1.) The munte when registered shall be deemed to be substituted for the S. 16 of 1867. corresponding part of the memorandum of the company, and shall be valid and Minute to alterable as if it had been originally contained therein : and must be embodied in form art every copy of the memorandum issued after its registration. (2.) If a company makes default in complying with the requirements of this section

it shall be liable to a fine not exceeding one pound for each copy in respect of which default is anade, and every director and annuager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

53. A member of the company, past or present, shall not be liable in respect of S. 16 of 1867. any abare to any call or contribution exceeding in amount the difference (if my) Liability of between the resount paid, or (as the case may be) the reduced amount, if any, which members in ia to be deem to have been paid, ou the share and the amount of the share as fixed by tho minut

Provided the solution of share capital, is, by reason of his ignorance of the proceedings for shares, reduction, or of their nature and effect with respect to his elain, not entered on the list of oreditors, and, after the reduction, the company is unable, within the ac ming of the provisions of this Act with respect to winding up by the Court, to pay the amouat of his debt or elaim, theu-

- (i) every person who was a member of the company at the date of the regiatration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or clean an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration ; and
- (ii) if the company is wound up, the Court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordiaary contributories in a winding up. Nothing in this section shall affect the rights of the contributories among

themselvos.

54. If any director, manager, or officer of the company wilfully conceals the S. 19 of 1867. name of any creditor entitled to object to the reduction, or wilfully misrepresents Penalty on the nature or amount of the debt or claim of any creditor, or if any director or eoneealment manager of the company aids or abets in or is privy to any such eoucealment or of usate of misrepresentation as aforesaid, every such director, manager, or officer shall be ereditor.

guilty of a misdemeanour. 55. In any case of reduction of share capital, the Court may require the company S. 4 of 1977. to publish as the Court directs the reasons for reduction, or such other information Publication in regard thereto as the Court may think expedient with a view to give proper of reasons for information to the public, and, if the Conrt thinks fit, the causes which led to the reduction. reduction.

reduction. **56.** A company limited by guarantee and registered on or after the first day of S. 27 er 1800. January nineteen hundred and one, may, if it has a share capital, and is so Increase and authorized by its articles, increase or reduce its share capital in the same manner reduction of and subject to the same conditions in and subject to which a company limited by share capital shares may increase or reduce its share capital under the provisions of this Act. by guarantee having a share capital.

57.-(1.) Subject to the provisions of this section, any company registered as S. 4 of 1879. unlimited may register under this Act as limited, or any company already registered Registration unimited may register inder the acter under this Act, but the registration of an of unlimited company as a limited company shall not affect any debts, hisbilities, company as obligations, or contracts incurred or entered into by, to, with, or on behalf of the limited. company before the registration, and those debts, liabilities, obligat as, and p. 385 contracts may be enforced in manner provided by Part VII. of this Act in the case p. 385 of a company registered in pursuance of that Part.

(2.) On registration in puranance of this section the registrar shall eleve the former registration of the company, and may dispense with the delivery to him of

candum.

art of

members in respect of reduced

Act of 1908

4

A. PENDIX.

copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, hut, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acta under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is

S. 5 of 1879. Power of nnlimited company to provide for reserve share capital on reregistration.

registered as a limited company. $\delta 8$. An unlimited company having a share capital may, hy its resolution for registration as a limited company in pursnance of this Act, do either or both of the following things, namely :

- (a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, hut subject to the condition that no part of the increased oapital shall be capable of being called up except in the event and for the purposes of the company being wound up; (h) Provide that a specified portion of its uncalled sharo capital shall not be
 - capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

8. 5 of 1879. Reserve liahility of limited company. p. 271

Limited

tors with

unlimited hability.

59. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

Ss. 4, 7 of 1867. 60.-(1.) In a limited company the liability of the directors or managers, or company may have direc-

the managing director, may, if so previded by the memorandum, be unlimited. (2.) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3.) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding ono hundred pounds, and shall also be liable for any damago which the person so clected or appointed may sustain from the default, but the liability of the person elected or appointed shall

not be affected by the default. 61.-(1.) A limited company, if so anthorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its

directors, or managers, or of any managing director. (2.) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum ; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3.) If a company maker default in complying — h the requirements of this section, it shall be liable to a fine not exceeding one , and for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like

PART III.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

8. 39 of 1862. Registered

62.--(1.) Every company shall have a registered office, to which all communications and notices may be addressed.

8. 8 of 1867.

Special resolution of limited company making hability of directors unlimited.

(2.) Notice of the situation of the registered office, and of any change therein, office of shall be given to the registrar of companies, who shall record the same. (3.) If a company carries on business without complying with the requirements

this section it shall be liable to a fine not exceeding five pounds for every day p. 243 during which it so carries on busiaess.

63.- (1.) Every limited company-

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its bus ness is carried on, in a conspicuous of name by position, in letters easily legible : (b) shall bave its name engraven in legible characters on its seal :
- (o) shall have its name mentioned in let ble characters in all notices, advertisements, and other official publications of the company, and in all bills of p. 348 exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2.) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a five not exceeding five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

(3.) If any director, manager, or officer of a limited company, or any person on its behalf, uses or anthorizes the use of any seal purporing to be a scal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of the company, or signs or anthorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parecls, invoice, receipt, or letter of credit of tho company, wherein its name is not mentioned in manner aforeshid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly laid by the company.

Meetings and Proceedings.

64.-(1.) A general meeting of every company shall be held once at the least in 8. 24 of 1907. every calendar year, and not more than fifteen months after the holding of the last Annual preceding general meeting, and, if not so held, the company and every director, general precenting general interime, and other officer of the company, who is knowingly a party to meeting, the default, shall be liable to a fine not exceeding fifty ponads.

(2.) When default has been made in holding a meeting of the company in p. 163 accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the

65.-(1.) Every company limited by shares and registered on or after the first S. 12 of 1900. day of January ineteen hundred and one shall, within a period of not less than one First statu-month nor more than three months from the date at which the company is cutilled tory meeting month nor more that the general meeting of the members of the company of company. to commence business, hold a general meeting of the members of the company of company.

(2.) The directors shall, at least seven days before the day on which the meeting Pp. 161-163 is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to

(3.) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state-

- (a) the total number of sbares allotted, distinguishing shares allotted as fully or partly paid up otherwise nan in eash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;
- (c) an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a

8. 41 of 1862. a limited

company.

Publication

company.

Act of 1908 465 date within seven days of the date of the report, oxhibiting under distinc-tive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimato of the preliminary expenses of the company :

(d) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company ; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4.) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and company, and to the cash receiver in respect of such snares, and to the receipts and payments of the company on capital account, be cortified as correct by the anditors, if any, of the company. (5.) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the

sending thereof to the members of the company.

(6.) The directors shall cause a list showing the names, descriptions, and addresses of the mombers of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting

(7.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8.) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9.) If a petition is presented to the Court in manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions f r the statutory report to be filed or a meeting to be held, or make such other order as may be just. (10.) The provisions of this section as to the forwarding and filing of the statutory

report shall not apply in the case of a private company.

S. 13 of 1900. Convening of extraordinary general meeting on requisition. pp. 163, 164

66. -(1.) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2.) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3.) If the directors do not proceed to cause a meeting to be held within twentyene days from the c te of the requisition being so deposited, the requisitionists, or a majority of them value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

so convened shall not be need after three months from the date of the deposit. (4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution; the previous of them in value, may therease convene the the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly us possible, as that in which meetings are to be convened by directors.

8. 52 c 1862. Provisions as to meetings and votes.

67. In default of, and subject to, any regulations in the articles-

(i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A. in the First Schedule to this Act : (ii) Five members may call a meeting :

(iii) Any person elected by the members present at a meeting may be chairman

(iv) Every member shall have one vote.
 68. A company which is a member of another company may, by resolution of 8. 34 of 1007 the directors, authorize any of its officials or any other person to act as its representation sentative at any meeting of that other company, and the person so authorized shall of companies at be entitled to exercise the same powers on behalf of the company which he representation of which they contains at if he were an individual shareholder of that other company.

69.-(1.) A resolution shall be an extraordinary resolution when it has been are members. passed by a majority of not less than three-fourths of such members suitled to Ss. 51, 129 of vote as are present in person or by proxy (where proxies are allowed) at a general 1862. meeting of which notice specifying the intentice to propose the resolution as an Defini extraordinary resolution has been duly given.

(2.) A resolution shall be a special resolution when it has been -

(a) passed in manner required for the passing of an extraordinary resolution; resolution.

(b) confirmed by a majority of such members entitled to vote as are present in pp. 336, 337 person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval

of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3.) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. (4.) At any meeting at which an extraordinary resolution is submitted to be p. 339

passed or a special resolution is submitted to be passed or confirmed a poll may be demarded, if demanded by three persons for the time being cutified according to the articles to vote, nnless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the

articles. (5.) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which the ch

member is entitled by the articles of the company. (6.) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly bid when the notice is given and the

meeting held in manner provided by the articles. 70.-(1) A copy of every special and extraordinary resolution shall within S. 53 of 1862. fifteen days from the confirmation of the special resolution, or from the passing of Registration the extraordinary resolution, as the case may be, he printed and forwarded to the and copies registrate of companies, who shall record the same. (2.) Where articles have been registered, a copy of every special resolution for resolutions, the time being in force shall be embedded in or annexed to every copy of the articles p. 240

issued after the confirmation of the resolution.

Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4.) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a flue not exceeding two pounds for every day during which the default continues. (5.) If a company makes default in embodying in or annexing to a copy of its

articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shal' or liable to a fine not exceeding one pound for each copy in respect of which def. alt is made.

(6.) Every director and manager of a company who knowingly and wilfully authorizes or permits any default by the company in complying with the require-ments of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

71.-(1.) Every company shall cause minutes of all proceedings of general S. 67 of 1862. meetings and (where there are director or managers) of its directors or managers Minutes of

(2.) Any such minute if purporting to be signed by the chairm. 1 of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

p. 244

Definitions of extraordinary and special

tinea and g the inary

ltted no li-

any),

y the s and tors,

this e the

and them main É the

ty to tho ition ed.

ting ither rned

V. of tory that ora

tory

rtors h of then ting

d by may ists. uty-4, or ting

ther nary : fiť,

the ion, the 1 be

tre ing, o be 467

Act of 1908

APPENDIX.

is pr ved, every general meeting of the company or ...anagers in respect of the proceedings whereof minutes have (3.) Uutit meeting of du ... been so made shall deemed to have been duly held and convened, and all pro-coordings had there to have been duly had, and all appointments of directors, managers, or liqu'dators, shall be deemed to be valid.

Appointment, Qualification, &c. of Directors.

8. 2 of 1900. Restrictions on appointment or advertisement of director. p. 181

8. 3 of 1900.

Qualification of director.

pp. 182-185

8. 67 of 1869.

p. 189

1

1

79.-(1.) A person shall not be capable of being appointed director of a ompany by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on twhalf of the company, or is any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his ageut authorized in writing-

(i) Signed and filed with the registrar of companies a consent in writing to act as such director; and

(ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any)

(2.) On the application for registration of the memorandom and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be in ble to a fine not exceeding

period who has detailed a company to a private company nor to a prospectus issued 3.) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commerce business. **73**.--(1.) Without prejudice to the restrictions imposed by the last foregoing the date of the company is entitled to devery director who is by the regulations of the

section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or

such shorter time as may be fixed by the regulations of the company. (2.) The office of director of a company shall b. zacated, if the director does not within two months from the date of his appointment, or within such shorter time as muy bo fixed by the regulations of the company, obtain his qualification, or if after the exp is on of such period or shorter time he ceases at any time to hold his qualification and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3.) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

74. The acts of a director or manager shall be valid notwithste in defect that may a terwards be discovered in his appointment or qualification. ing eny

Validity of acts of directors. 75.-(i.) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the Registrar of Companies a copy thereof, and from time to time notify to the registrar any change among it directors or managers.

(2.) If default is made in compliance with this section, the company shall be isable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penal-

76.-(1.) Contracts on behalf of a company may be made as follows (that is to say): (i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under

contracts. p. 267 et sog.

Form of

8. 37 of 1867.

8. 45 of 1862. List of directors to be sent to registrar.

Contracts, &c.

the common seal of the company, and may in the same manner be varied or ulscharged :

- (ii) Any contract which if ma'e between vrivato persons would be hy la. required to be in writing, signed by t > partles to be charged therewith, may be made an behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged :
- (iii) Any contract which if mule between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on tehalf of the company by any person acting under the authority compares on humile? and must be the same acting under the same set of the its authority, express or huplied, and may in the same manner be varied or discharged.

(2.) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be,

(3.) Any deal to which a company is a party shall be held to be validly excented in Sectland on behalf of the company if it is excented in terms of the provisions of this Act or is sealed with the common seal of the company and subscribed ou behalf of the company by two of the directors and the secretary of the company, and such subscription an behalf of the company shall be equally binding whether attented by witnesses or not.

77. A bill of exchange or promissory noto shall be deemed to have been made, 8. 47 of 1882. accepted, or endorsed on behalf of a company if made, accepted, or endorsed in Bills feachange the name of, or by or nu behalf or on uccount of, the company by any person and promimory acting nuder its authority.

78. A company may, by writing under its common seal, empower any person, S. 65 of 1862. either generally or in respect of any specified matters, as its attorney, to execute Execution of doeds on its behalf in any place not situato in the United Kingdom; and every deeds abroad. doed signed by such attorney, on beinsif of the company, and nuder his seai, shall bind the company, and have the same effect as if it were under its common seal. p. 259

79.-(1.) A company whose objects squire or comprise the transaction of Act of 1862. business in foreign countries may, if auth. zed by its articles, have for use in any Power for territory, district, or place not situate in the United Kingdom, an official seal, company to which shall be a facelinite of the common seal of the company, with the addition have official on its face of the name of every torritory, district, or place where it is to be used. seal for use (2.) A company having such an official seal may, by writing under its common abroad.

(a) A company having and an one in each lary, or writing under the company abroad abroad seed, authorize any person appointed for the purpose in any territory, district, or p. 259 document to which the company is party in that territory, district, or place.
(3.) The authority of any such agent shall, as between the company and any

(c.) The authority of any such agent using as between the company and aling person dealing with the agent, continue during the palied, if any, mentioned in the instrument conferring the authority, or if no period is there mentions, then until notice of the revocation or determination of the agent's authority is been given to the person dealing with him.

(4.) The person affixing any such official seal shall, by writing nuder his hand, on the deed ar other document to which the seal is affixed, certify the date and place of affixing the same.

(6.) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Prospectus

80.-(1.) Ever, prospectus issued by or on behalf of a company or in relation S. v to any intended coorpany shall be dated, and that date shall, unless the contrary s. 3 of 107. be proved, be taken as the date of publication of the prospectus. Filing .

(2.) A copy of every such prospectus, signed by every person who is named prospect therein as a director or proposed director of the company, or hy his agent authorized in writing, shall be filed for registration with the registrar of companies on or p. 343 before the date of its poblication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3.) The registian shall not register any prospectus unless it is dated, and the copy thereof signed, in manuer required by this solution.

(4.) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

Dotes.

469

08

¥.

0-

Ŋ

at H-

in

t t

in n N

R (0

y

g

d t

R 6 y

r 8

r ١. ò e

APPENDIX.

(5.) If a prospectus i \cdot issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date c^{*} the issue

of the prospectus until a copy thereof is so filed. 81.-(t.) Every prospectus issued by or on behalf of a compute, or by or on behalf of any person who is or has been engaged or interested in t a formation of the company, must state-

- (a) The contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respec-tively; and the number of founders or management or deferred shares, if auy, and the nature and extent of the interest of the holders in the property and profits of the company ; and
- (b) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors ; and
- (e) the names, descriptions, and addresses of the directors or proposed directors . and
- and
 (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within i + two preceding years, and the amount actually shotted, and the am , if any, paid on the shares so allotted; and (e) the number and amount of shares and debentures which within the two pre
 - ceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in each, and in the latter case 'he extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued ; and
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor : Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separato vendors; and
- (g) the amount (if any) paid or payable as purchase-money in each, shares, or debentures, for any anch property as aforesaid, specifying the amount (if any) payable for goodwill; and
- (h) the amount (if any) paid within the two preceding years, or payable, as com-mission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares iu, or debentures of, the company, or the rate of any such commission : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and
- (i) the amount or estimated amount of preliminary expenses; and
- (i) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and
- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contrast or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the husiness carried on or intended to be carried on by the company, or to any contract ontered into more than two years before the date of issue of the prospectus; and
- (i) the names and addresses of the anditors (if any) of the company; and (m) full particulars of the unturo and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in beiog a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered hy him or by the firm in connexion with the promotion or formation of the company; and

8. 10 of 1900, s. 2 of 1907. Specifio requirementa as to particulars of prospectus. p. 343 at ma.

-11

7.

£[.r

uh of

ιn.

61 L ĐH,

ho

1 hp ж,

nt. 63 last.

w o

if

. 11. j.

id

LEO. OF

nd

w.l

80

for

eh

he

ere

er,

). D

85

OF

(if

18-

ng

iy,

28-

ny

nd

d :

ito ied

115

ry

)y,

7 8

t a

in

ae. im lie (n) where the company is a company having shates of more than one class, the right of voting at meetings of the company conferred ! T POVOTAL PARM. AM of shares respectively.

(2.) For the purposes of this section every person shall be deened to be a voolor who has entered into any contract, siscolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in

(a) the purchase-money is not fully paid at the date of issue of the prospectus ;

(b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(c) the contract depends for its validity or fulfilment on the result of that issue.

(3.) Where any of the property to be accessive 'by the company is to be taken on lease, this section shall apply as if the "cession "vendor" hieladel the issue, and the expression "purchase-money up 'ed the consideration for the lease, and the expression "sub-purchaser" incl. 1 a nb-iessee.

(4.) Any condition requiring or bin y applicant for shares or debentures to waive compliance with any requirement. It it is section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be vuid.

(5.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandom or the signatories thereto, and the number of shares subscribed for by them.

(6.) In the event of non-compliance with any of the requirements of this section, a director o other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that

(a) as regards any matter not disclosed, he was not cognizant thereof ; or

(b) the non-compliance arese from an honest mistaka of fact on his part ;

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of sub-section (1) of this section no ilirector or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7.) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as afore-aid, this section shall apply to any prospectus whether issued on or . 'h reference to the formation of a company or subsequently. (8.) The

, .rements of this section as to the memorandum and the qualification, remuneratio ad interest of directors, the names, des riptions, and addresses of osed directors, and the amount or estimated amount of preliminary directors or expenses, shall not apply in the case of a prospectus issuel more than one year atter the date at which the company is entitled to commence business

(9.) Nothing in this section shall limit or diminish any liability which any person may hour under the general law or this Act apart from this section. **82.** -(1.) A company which does not issue a prospectus on or with reference to S. 1 of 1907.

its formation, shall not allot any of its shares or debentures unless is fore the first Obligations allotment of either shares or debentures thore has been filed with the registrar of of companies companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed dire tor of the company or by his agest authorized in writing, in the form and containing the particulars set out in the Second Schedule is issued.

to this Act. (2.) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nincteen hundred and

83. A company shall not previously to the statutory meeting vary the terms of 8. 11 of 1900, a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting

81.-(1.) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorized the naming of him and issue of the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, pud every person who has authorized the issue of the prospectus, shall be liable to S 3 of 1900, and every person who has authorized the issue of the prospectus, shall be liable to S 3 of 1900,

24y compensation to all persons who subscribe for any shares or debentures on the s. 33 of 1907.

where no

p. 363

. 1 of 19/7. Restriction on atteration of terms mentioned in prospe tu : or statement in lieu

Liability for

Act of 1908

APPENDIX.

statements in prospectus.

faith of the prospectus for the loss or damage they may have sustained hy reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or hy reference incorporated therein or issued therewith, unless it is proved—

- (a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, helieve, that the statement was true; and
- (h With respect to every untrue statement purporting to be a statement hy or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation. Provided that the director, person named as director, promoter, or persou who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and
- (e) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document:

or unless it is proved-

- (i) that having consonted to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his anthority or consent; or
- (ii) that the prospectus was i-sued without his knowledge or consent, and that on hecoming aware of its issue he forthwith give reasonable public notico that it was issued without his knowledge or consent; or
- (iii) that after the issue of the prospectus and before all trent thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2.) Where a company existing on the eighteenth day of August one thousand eight hundred and ninety, has issued shares or debentures, and for the purpose of obtaining further capital hy subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorized the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to hecome a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may he made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4.) Every person who hy reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorized the issue of the pro-pectus, hecomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so lishle was, and that other person was not, guilty of fraudulent misrepresentation.

(5.) For the purposes of this section-

- The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:
- The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Companies (Consolidation) Act, 1908.

Allotment.

85. -(1.) No allotment shall be made of any share capital of a company offered to S. 4 of 1900. the public for subscription, unless the following conditions have been complied with, Restriction as

(a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been suby ribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and remivel by the company.

(2.) The amount so fixed and named and the whole amount aforesaid shall be reckneed exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3.) The amount payable on application on each share shall not be less than five per cent, of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for sheres shall be forthwith repaid to them without interest, and, if any such money is not as repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with i terest at the rate of five per centum per annum from the expiration of the forty-eighth day :

Provided that a director shall not be liable if he proves that the loss of the money was not due to any missondust or negligence on his part.

(5.) Any condition requiring or binding any spplicant for shares to waive com-pliance with any requirement of this section shell be void.

(6.) This section, except sub-section (3) thereof, shall not apply to any allotment p. 106 shares subsequent to the first allotment of shares offered to the public for of subscription.

(7.) In the case of the first allotment of sbare capital payable in cash of a company w) ich does not issue any invitation to the public to subscribe for it sbares, no allotment shall be made unless the minimum subscription (that is to say) : ---

- (a) the amount (if any) fixed by the memorandum or articles and named in the statement in lien of prospectus as the minimum subscription npou which
- the directors may proceed to allotment; or (b) if no amount is so fixed and named, then the whole amount of the share expital other than that issued or agreed to be issued as fully or partly paid up otherwise than in casb,

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company

This sub section shall not apply to a private company or to a company which has p. 106 all sted any shares or debentures before the first day of July nineteen hundred aud

86.-(1.) An allotment made by a company to an anglicant in contravention of S. 5 of 1900. the provisions of the last f regoing section shall be voidable at t e instance of the Effect of applicant within one month after the holding of the statutory meeting of the company irregular and not later, and shall be so voidable notwithstanding that the company is in allotment. course of being wound np. (2.) If any director of a company knowingly contravenes or permits or authorizes p. 107

the contravention of any of the provisions of the last foregoing section with respect to allotment he shill be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustai ed or incurred thereby : Provided that proceedings to recover any su h loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

87.-(1) A company shall not commence any husiness or exercise any horrowing S. 6 of 1900. powers unless

(4) shares held subject to the payment of the whole amount thereof in cash have seen allotted to an amount not less in the whole than the minimum subscription; and

Restrictious on commencement of business. p. 58

31

to allotment. p. 105

473

Act of 1908

Р.

- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which ho is liable to pay in each, a proportion equal to the proportion payshle on application and allotment on the shares offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and
 (o) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the
- afore-aid conditions have been complied with ; and
- (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the e has been filed with the registrar of companies a statem at in lieu of prospectus. (2.) The registrar of companies shall, on the filing of this statutory declaration.

certify that the company is entitled to commence business, and that certificate shall be conclusive evi tence that the company is so entitled:

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become hinding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5.) If any company commences husiness or exercises borrowing powers in con-travention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6.) Nothing in this section shall apply to a private company, or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July nineteen hundred and eight which does not issue a prospectus inviting the public to subscribe for its shares.

88.-(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with tho registrar of companies

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptious of the allottees, and the amount (if any) paid or due and payable on each share; and
- (h) in the case of shares allotted as fully or partly paid up otherwise than in eash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other con-sideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of sbares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2.) Where such a contract as above mentioned is not reduced to writing, the company shall within ono month after the allotment file with the registrar of companies the prescribed particulars of the contract stamped with the samo stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act. 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3.) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues :

Provided that, in case of default in filing with the registrar of companies within one month after the al otment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was ao idental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

S. 7 of 1900. Return as to allotments. p. 118

54 & 55 Viet. o. 39.

Companies (Consolidation) Act, 1908.

Commissions and Discounts,

89.---(i). It shall be lawful for a company to pay a commission to any person S. 8 of 1900, in consideration of his subscribing or agreeing to subscribe, whether absolutely or 8.8 of 1907. conditionally, for any shares in the company, or precuring or agreeing to procure Power to pay subscriptions, whether absolute or conditional, for any shares in the company, if certain enmithe payment of the commission is authorized by the articles, and the commission missions, and paid or agreed to be paid does not exceed the amount or rate so authorized, und if prohibition

- (a) In the case of shares offered to the public for subscription, disclosed in the of all other
 - (a) in the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (b) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (b) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (b) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (c) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (b) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (c) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (c) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (c) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (c) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (c) In the case of shares not offered to the public for subscription, disclosed in discounts, &c.
 (c) In the case of shares not offered to the public for subscription, disclosed in discounts, &c. signed in like manner as a statement in lieu of prospectny and filed with the registrur of companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shures is issued, also disclosed in that circular or notice.

(2.) Save as aforesaid, no company shall apply any of its shares or capital money

either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or producing or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares of money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3.) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vender to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under

90. Where a company has paid any sums by way of commission in respect of S. 7 of 1907. any shares or debentures, or allowed any sums by way of discount in respect of Statement in any debentures, the total amount so paid or allowed, or so much thereof as has not balance sheet been written off, shall be stated in every balanco sheet of the company until the as to combalauce sheet missions and

Payment of Interest out of Capital.

91. Where any shares of a company are issued for the purpose of raising mouey S. 9 of 1907. to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the canditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the meriod and building the same to capital as part of the cost of construction of the work or building, or the provision of plant : in certain

Provided that-

- (i.) No such payment shall be made unless the same is authorized by the p. 221 articles or by special resolution :
- (2.) No such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Board of
- (3.) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appoint-ment, requiro the company to give security for the payment of the costs
- of the inquiry : (4.) The payment shall be made only for such period as may be determined by (4.) The payment shall be made only period shall in no one or tand beyond the the Board of Trade; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided :

31(2)

Power of company to pay interest out of capital

cases.

discounts.

Act of 1908 475

APPENDIX.

- (5.) The rate of interest shall in no case exceed four per ceut, per annum or such iower rate as may for the time being be prescribed by Order in Council:
- (6.) The payment of the interest shall not operate as a reduction of the amount raid up on the shares in respect of which it is paid :
- (7.) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:
- (8.) Nothing i.: this section shall affect any company to which the Indian Railways Act, 1891, as amended by any subsequent enactment, applics.

Certificates of Shares, &o.

registration of the transfer of any such shares, debentures, or debenture stock,

complete and have ready for delivery the certificates of all ... haves, the debentures,

and the certificates of all dehenture stock allotted or transferred, unless the con-

(2.) If default is male in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be if the to a fine not exceeding five

ditions of issue of the shares, debentures, or debenture stock otherwise provide.

pounds for every day during which the default continues.

92.-(1.) Ev.ry company shall, within two months after the allotment of any of its abares, dehentures, or debenture stock, and within two months after the

57 & 58 Viet. c. 12.

S. 5 of 1907. Limitation of time for issue of certificates. p. 142

S. 14 of 1900, s. 10 of 1907. Registration of mortgayes and charges in England and Ireland. p. 277

93.—(1.) Every m rtrage or charge created after the first day of July nineteen hundred and eight by a company registered in England or ireland and being either— (a) a mortgage or charge for the nurpose of securing any issue of debentures; or

Information as to Mortgages, Charges, Ac.

(a) a mortgage or charge for the purpose of securing any issue of debentures; or (b) a mortgage or charge on uncalled share capital of the company; or

 (c) a moregage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
 (d) a moregage or charge on any land, wherever situate, or any interest therein;

or

(e) a mortgage or charge on any book debts of the company; or

(i) a finite gage in charge on the undertaking or property of the company, (i) a floating charge on the undertaking or property of the company, shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidato, and any creditor of the company, unless the reservibed particulars of the mortgage or charge, together with the instrument (if any) hy which the mortgage or charge, together with the instrument or received hy the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge become soid under this section the money secured thereby shali immediately become payable:

Provided that --

- (i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate ontside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substitute if or twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and
- (ii) where the mortgage or charge is created in the United Kingdom hut comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to

make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrum at for the purpose of securing au advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts;
- (iv) the holding of debentures entitling the holder to a charge ou hand shall not be deemed to be an interest in land.

(2.) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, sbort particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3.) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passes is created by a company, it shall be sufficient if there are del red to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :-

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the (4.) Where any commission, allowance, or discount has been paid or made either

directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or silowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as scenrity for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursues of this section, stating the amount thereby secured, and the certificate shall nclusive evidence that the requirements of this section as to registration h: (6.) The company shall cause a copy a complied with.

ery certificate of registration given nnder this section to be endorsed on every accenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificato of debenture stock which liss been issued by the company before the mortgage or charge was crested.

(7.) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, bat registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8.) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9.) Every company shall cause a copy of every instrument creating any mortgage or charge requiring r gistration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient. 94.-(1.) If any person obtally an order for the appointment of a receiver or

S. 11 of 1907. Registration of enforcement of security.

8. 41 of 1907. Filing of accounts of receivers and managers.

S. 15 of 1907. Rectification of register of mortgages.

8. 16 of 1900. Entry of satisfaction.

8. 17 of 1900. Index to revister of mortgan and charges. 8. 18 of 1900. Penalties.

94.—(1.) If any person obta. \neg an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager nucler any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, euter the fact in the register of mortgages and charges.

(2.) If any person makes default in complying with the requirements of this section ho shall be liable to a fine not exceeding five pounds for every day during which the default continues.

95.—(1.) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the registrar of mortgages and elarges.

(2.) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

96. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, ou the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

97. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or chargo was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a oopy thereof.

98. The registrar of companies shall keep a chronological index, in the preeribed form and with the prescribed particulars, of the mortgages or charges registered with him uuder this Act.

99.—(1.) If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, scretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(2.) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration, with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorized or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

(3.) If any person knowingly and wilfully authorizes or permits the drivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other

liability, be liable on summary conviction to a fine not exceeding one hundred 100.-

-(1.) Every limited company shall keep a register of mortgages and enter S. 43 of 1862. therein all mortgages and charges specifically affecting property of the company, Company's amount of the mortgage or charge, and except in the case of securities to bearer) mortgages.

(2.) If any director, manager, or other officer of the company knowingly and P. 276 wilfully anthorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

101.-(1.) The copies of instruments creating any mortgage or charge requiring S. 10 of 1907. registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reusonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2.) If Inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusel, shall be limble to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above peualty as respects companies registered in England or Ireland, any judge or the High Court sitting in chambers, or the judge of the Court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel un

immediate inspectiou of the copies or register. 102.-(1.) Every register of holders of debentures of a company shall, except S. 18 of 1907. when elosed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registerel holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words debenture required to be copied.

(2.) A copy of any trust deed for securing any issue of debentures shall be to have copies forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of oue shifting or such less sum as may ho prescribed by the company, or, where the t t deed has not been printed, ou pay-ment of sixpence for every one hundred wo. is required to be copied.

(3.) If inspection is refused, or p copy is refused or not forwarded, the company shall be liable to a fine not exceeding se pounds, und to a further fine not exceeding two pounds for every day di. ; which the refusal continues, and every director, mutager, secretary, or correction of the company who knowingly anthorizes or permits the refusal shat, incur the like penalty.

Debentures and Floating Charges.

103. A condition contained in any debeutures or in uny deed for securing any S. 14 of 1907. debentures, whether issued or executed hefere or after the passing of this Act. Perpetual shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or debentures. on the expiration of a period, however long, any rule of equity to the coutrary p. 313 not withstanding.

104.-(1.) Where either before or after the passing of this Act a company has S. 15 of 1907. redeemed any debentures previously issued, the company, unless the articles or the Power to conditions of issue expressly otherwise provide, or unless the debentures have been re-issue redeemed in pursuance of any obligation on the company so to do (not being an redeemed obligation enforceable only by the person to whom the redeemed debentures were debentures a obligation enforceante onty by the person to whom the redeemed decentures were debentures a issued or his assigns), shall have power, and shall be deemed always to have had certain cases, power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, p. 288 and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debeutures in their place,

holders and to have copies

Right to inspect copies ofinstruments creating mortgages and charges and company's register of mortgrages.

Right of debenture holders to iuspect the register of

Act of 1908

and npon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issue l.

had not previously been issue i. (2.) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be desired to be a re-issue for the purposes of this section.

(3.) Where a company has either before or after the passing of this Act deposited any of its debeutures to secure advances from time to time on current account or otherwise, the debeutures shill not be deemed to have been redeneed by reason only of the account of this company having ceased to be in debit whilst the debeutures manned so deposited.

(4.) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been passessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or numl r of debectures to be issued:

Provided that any erson lending money on the security of a dehenture re-issued moder this section which spiears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duly or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5.) Nothing In this section shall prejudlee-

- (a) the operation of any judgment or order of a Court of competent jurisdiction pronounced or medo before the seventh day of March nineteen hundred und seven as between the parties to the preseedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or
- (b) any power to issue debentures in the place of any debentures paid aff or otherwise satisfied or extinguished, rescried to a company by its debentures or the securities for the same.

105. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for apecific performance.

106. Notwith-tunding anything contained in the statute of the Scot- Parliament of 169%, chapter twenty-five, debentures to bearer Issued in Scotland are declared to be valid and binding according to their terms.

107.-(1.) Where, in the case of a company registered in England or in land, either a receiver is appointed on behalf of the holders of any detentures of the company secured by a floating charge, or possession is taken by or on held of those debeature holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Fart IV, of this set relating to preferential payments to be paid in priority to all other debts, shall be poid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for prioripal or interest in respect of the debentures.

(2.) The periods of time mentioned in the said provisions of Part IV, of this A \cdot t shall be reckoned from the date of the appointment of the receiver or of possession being taken us aforesaid, as the case may be.

(3.) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors

[The above section represents the Preferential Payments in Bankrup to y Act, 18:7 (60 & 61 Vict. c. 3).]

Statement to be published by Banking and certain other Companies.

108.—(1.) Every company being a limited backing company or an insurance company or a deposit, provident, or benefit success shall, before it cononcides business, and also on the first Monday in February and the first Turaday in August in every year during which it carries on business, make a statement in the form marked C. in the First Sohedule to this Act, or as usar thereto as circumstances will admit.

5. 16 of 1907. Specific performance of debenture contract. p 321

B. 36 of 1907. Validity of det entures to

bearer in Beotland. Payments of certain debts out of assets subject to floating charge in priority to claims uooer the charge.

S. 44 of 1862. Certain companies to publish statement in schedule.

(2.) A copy of the statement shall be put up in a conspicuous place in the regis-tered office of the company, and in every branch office or place where the business of the company is carried on.

(3.) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.
(4.) If default is made in compliance with this section, the company shall be bable to a found the factor.

liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and

wilfully aotherizes or permits the default shall be liable to the like penalty. (5.) For the purposes of this Act * company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6.) This section shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 33 ± 34 Vict. 1870 to 1872, as to the annual statements to be made by such a company, apply 5 61. with or without modificatious, if the company complies with those provisions.

Inspection and Audit

109.-(1.) The Board of Trade may appoint one or more competent inspectors to S. 56 of 1862. investigate the affairs of any company and to report thereon in such nanuer as the Investigation

- (i) In the case of a hanking company having a share capital, on the application of members holding not less than one-third of the shares issued :
- (ii) In the case of any other company having a share capital, on the application Board of members holding not less than one tenth of the shares issued : inspect
- (iii) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2.) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reaso for, and are not actuated by mulicious motives in requiring, the investigation ; at the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3.) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power

(4.) An inspector may examine on oath the officers and agents of the company in relation to its business, and may a luminister an oath accordingly.

(5.) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, ho shall be liable to a fine uot exceeding five pounds in respect of each offence.

(6.) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a forther copy shall, at the request of the applicants for the investigation, be delivered to them. The report shall be written or printed, as the Board direct.

(7.) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board is hereby authorized to do.

110.-(1.) A company may by special resolution appoint inspectors to investigate S. 60 of 1362. its uffairs.

(2.) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, ins ead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct. inspectors.

(3.) Officers and agents of the company scali ineur the live penaltics in case of retusal to produce any book or do ument required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

111. A copy of the report of any inspectors appointed nuder this Act, antheuti-eated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in inspectors to relation to any matter contained in the report.

inspectors to bo evidence.

Power of compa-iy to appoint

of affairs of company by Board of

35 & 36 Vict. c. 41.

inspectors.

Act of 1908 481

8, 19 of 1907. Appointment and remuneration of auditors. p. 227

112.--(1.) Every company shall at each annual general meeting appoint an auditor or and/tors to hold office until the next annual general meeting.

(2.) If an appointment of anditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an anditor of the company for the current year, and fix the remuneration to be paid so him by the company for his services.

(3.) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4.) A person, other than a retiring auditor, shall not be eapable of being appointed unditor at an annual general meeting unless notice of an intention to nominate that person to the offlee of unditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting :

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general unceting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5). The first militars of the company may be appointed by the directors before the statutory meeting, and 1ℓ so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shurcholders in general meeting, has which case the shurcholders at that meeting may appoint auditors.

(6.) The directors may fill any easard vacancy in the office of auditor, but while any such vacancy continues the surviving of continuing auditor or auditors, if any, may act.

(7.) The remuneration of the anditors of a company shall be fixed by the company in general meeting, except that the remuneration of any anditors appointed before the statatory meeting, or to fill any casual vacancy, may be fixed by the directors. **113.**—(1.) Every auditor of a company shall have a right of access a all times

113.—(1.) Every nuditor of a company shall have a right of access at all times to the books and accounts and vonchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the daties of the auditors. (2.) The anditors shall make a report to the shareholders on the accounts example.

(2.) The anditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet haid before the company in general meeting during their tenure of office, and the report shall state—

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a trae and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shewn by the books of the company.
(3.) The balance sheet shall be signed on behalf of the board by two of the

(3.) The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the raditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be eutitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

(4.) If any copy of a balance sheet which has not beeu signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall ou conviction be liable to a fine not oxceeding fifty pounds.

(5.) In the case of a banking company registered after the fifteenth day of August eighteen hundred and seventy-une-

(a) if the company has branch banks beyond the limits of Europe, it shall be

S. 19 of 1907. Powers and duties of auditors. p. 225

sufficient if the amilitor is allowed access to any copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom; and

(b) the ladance sheet must be signed by the sceretary or manager (if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors,

114.-(L.) Holders of preference shares and debentures of a company shall have S. 21 of 1907, the same right to receive and inspect the balance sheets of the company and the Rights of reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company. (2.) This section shall not apply to a private company, nor to a company registered Ac. as to preference almreholders,

before the first duy of July nineteen hundred and eight.

Carrying on Business with less than the legal Minimum of Members.

115. If at any time the number of members of a company is reduced, in the S. 48 of 1862. case of a private company, below two, or, in the case of any other company, below Prohibition seven, and it ca. to on business for more than six months while the number is so of carrying reduced, every per, in who is a member of the company during the time that it so of carrying carries on business a ter those six months, and is cognisant of the fact that it is with fewer carrying on business with fewer than two members, or seven members, as the case than seven muy be, shall be severally liable for the payment of the whole debts of the company or, in the contracted during that time, and may be sued for the same, without joinder in the case of a

Service and Authentication of Incomments.

116. A document may be served on a company by leaving it at or sending it by 8. 62 of 1862. post to the registered office of the company.

117. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal.

Tables and Forms.

118.-(1.) The forms in the Third Schedule to this Act or forms as near thereto S. 71 of 1862. as circumstances admit shall be used in all matters to which those forms refer.

as circumstances adout shall be used in all matters to which those forms refer. (2.) The Board of Trade may alter any of the tables and forms in the First Application and alteration Schedule to this Act, so that it does not increase the amount of fees payable to the dot of tables and of tables and registrar in the said schedule mentioned, and may niter or add to the forms in the forms.

(3.) Any such table or form, when altered, shall be published in the London Gazette, and thenceforth shall have the same force us if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A. in the said First Schedule shall affect any company registered before the alteration. or repeal, as respects that company, any portion of that Table.

Arbitrations. "

119.-(1.) A company may by writing nuder its common seal agree to refer and S. 72 of 1862. may refer to arhitration, in accordance with the Railway Companies Arbitration Act, 1859, any existing or future difference between itself and any other company

or person. (2) Companies parties to the arbitration may delegate to the arbitrator power to and others. ettle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing

(3.) All the provisions of the Railway Companies Arhit. stion Act. 1859, shall ar-1

"> arbitrations between companies and persons in pursuance of this Act; and truction of those provisions "the companies" shall include companies

private company, twoubers.

receipt nut in-partion of

reports, &c.

Service of d-setuments on company. 8. 64 of 1862. Authentication of documents.

Arbitzation 22 & 23 Viet. e. 59.

Act of 1908

Power to Compromise.

8. 2 of 1870. Power to compromise with creditors and mombers. p. 410

120.-(1.) Where a compromise or arrangement is proposed between a company and its creditors or may class of them, or herven its proposed between a company and its creditors or may class of them, or between the company and its members or any class of them, the Court may on the application in a someonry way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, or ier a one-tung of the creditors or class of creditors, or of the members of the company or ends of members, as the case may be, to be summoned in such manoer as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either is person or by prosy at the meeting, agree to any compromise or ariangement, the compromise or arrengement shall, it same oned by the Cours, be binding on all the creditors or the class of creditors, or an the members or class of members, as the case may be, and also on the company or, in the case of a company in the

course of being wound up, on the incident and contributories of the company. (3.) In this settion the expression "company" means any company inble to be wound up under this Act.

Meaning of " Private Company."

8. 37 of 1907. Meaning of " private company." p. 366

121.-(i.) For the purposes of this Act the expression "private company" means a company which by its articles -

(a) restricts the right to transfer its shares ; and

(b) limits the number of its memb rs (evolutive of persons who are in the employment of the company) to fifty : and

(o) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company may, subject to anything contained in the memorandum or articles, by possing a special resolution and by filing with the registrar of com-panies such a statement in hier of prospectus as the company, if a public company, would have had to file before allotting any of its shares or depentures, for ther with such a statutory deciaration as the company, if a public company, would have had to file betters commencing husiness, ture itself into a public company.

(3.) Where two or more persons issid one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

PART IV.

WINDING UP.

Preliminary.

Modes of winding up. p. 358

ł

122.-(1.) The winding up of a company may be either-

(i) by the Court ; or

(ii) voluntary ; or

(iii) subject to the supervision of the Court. (2.) The provisions of this Act with rescent to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

S. 38 of 1862. Linbility as contributories of present and just memberr. p. 404

123 -(1.) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debis and li shihitis and the cost-, charges, and expenses of the winding up, and for the adju-tment of the rights of the contributories among themselves, with the qualifications following (that is to say):

- (i) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding no :
- (ii) A past member shall not be liable to contribute in respect of muy debt or liability of the company contracted after he ceased to be a member :

- (iii) A past member shall not be lishle to contribute unless it appears to the Court that the existing members are mable to satisfy the contributions required to be made by them in purpose of this Act.
- required to be made by them in pur-name of this Act :
 (iv) In the case of a company limited by shares to contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or pust member :
- (v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount midertaken to be contributed by 'n to the assets of the company in the event of its being wound to
- (vi) Nothing in this Act shall invalidate any provision contained in any policy of insumance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract:
- (vil) A sum doe to any member of a company, in his character of a member, by way of dividends, profits, or otherwhe, shall not be deemed to be a debt of the company, payable to that are more in a case of compatition between himself and any other creditor not a member of the company; but any such such may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2.) In the winding up of a limited company, any director or manager, whether part or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, he liable to make a further contribution as if he were at the commencement of the windlug-up a member of an unlimited company: Provided that—

- ³ A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding-np:
- (II) A pass director or manager shell not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:
- (iii) Subjet to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court derms it necessary to require that contribution in order to satisfy the debts and isabilities of the company, and the costs, charges, and expenses of the winding-up.

(3.) In the wording-up of a company limited by guarantee which has a share capital, every is the of the company shall be listle, in addit on to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by blue.

held by blue. 124. The term "contributory" means every person liable to contribute to the S. 74 of 1862. assets of a company in the event of its being wornd up and, in all proceedings Definition of for determining and healt proceedings prior to the final determination of the persons contributory. who are to be deemed contributories, includes any person all god to be a contributory. S. 75 of 1862.

125. The fiability of a contributory shall erecte a deht (in England and Irdaid Nature of of the nature of a specialty) scerular due from him at the time when his liability Holicy of commenced, but payable at the times when calls are made for enforcing the contributory.

126.—(1.) If a contributory dies (liker before or after he has been placed on the Contribulist of contributories, his personal representatives and his beirs and evisees, shall torics in case be liable in a due course of adoubletration to contribute to the assets of the of death of company in discharge of his limbility and shall be contributories accordingly.

(2. Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the ense of heirs or devisees of any such real estate in England, they may be added as and when the Court thicks fit.

(3.) if the personal représentatives make default in paying any money ordered to be paid by them, proceedings may be taken for administ ring the personal and real estates of the decreased contributory, or either of them, and of compelling payment therecut of the money doe.

127. If a contributory be omes bankrupt, either before or after he has been S. 75 of 1862.

(1.) his trustee in bankrepter shall represent him for all the purposes of the in cas winding up, and shall be a contributory accordingly, and may be called on bankr membrane.

S. 74 of 1862. Definition of contributors. S. 75 of 1862. Nature of li-bility of contributors. S. 76 of 1862. Contributories in case of death of member.

485

Act of 1908

S. 75 of 1862. Contributories is case of bankruptcy of member. to admit to proof against the estate of the hankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company: and

(2.) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

128.—(1.) The husband of a female contributory married before the date of the commencement of the Married Women's Prop rty Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the inarriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

Winding up by Court.

129. A company may be wound up hy the Court-

- (i) if the company has by special resolution resolved that the company be wound up by the Court:
- (ii) if default is made in filing the statutory report or in holding the statutory meeting:
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year: (iv) if the number of members is reduced, in the case of a private company,
- below two, or, in the case of any other company, helow seven :
- if the company is unable to pay its debts:
- (vi) if the Court is of opinion that it is just and equitable that the company should be wound up.
- 130. A company shall be deemed to be unable to pay its debts-
 - (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered offico, a demand under his hand by leaving the same at its register sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
 - (ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
 - iii) if, in Scotland, the inducize of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made ; or
 - (iv) if it is proved to the satistaction of the Court that the company is unable to pay its dehts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective habilities of the company.

-(1.) The Courts having jurisdiction to wind up companies registered in 131 -England shall be the High Court, the Chancery Courts of the counties palatine of Lancaster and Durham, and the County Courts.

(2.) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a potition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatino courts aforesaid, either to the High Court or to the palatine court having jurisdiction. (3.) Where the amount of the share capital of a company paid up or credited as

paid up do s not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a County Court having jurisdiction under this Act, a petition to wind up the company shall he presented to that County

Court. (4.) Where a company is formed for working miues within the standards and is not shown to be actually working mines beyond the limits of the standards, or to be engaged in any other undertaking boyond those limits, or to have entered into

S. 80 of 1862. Company when deemed unable to pay its debts. p. 391

S. 1 of 1890. Jurisdiction to wind up companies in England.

486

S. 78 of 1862. **Provision** as to married

44 & 45 Vict.

S. 79 of 1862.

Circumstances in which

company may

he wound up hy Court.

women. 45 & 46 Viet.

0. 15.

e. 21.

a contract for such working or undertuking, a petition to wind up the company shall be presented to the Court exercising the standards jurisdiction whatever may bo the amount of the capital of the company and wherever the registered office of

(5.) The Lord Chancellor may by order exclude a County Court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other County Court, and may revoke or vary any such order or any like order made under the Companies

In exercising his powers under this section the Lord Chancellor shull provide c. 63, that a County Court shall not have jurisdiction under this Act nuless it has for 53 & 54 Viet,

An order mude under this provision shall not affect any jurisdiction or powers vested in any County Court under or by virtue of the Stannaries Jurisdictiou

(Abolition) Act, 1896.
(6) Every Court in England having jurisdiction under this Act to wind up a c. 45.
compuny shall for the purposes of that jorisdiction have all the powers of the High an officer of the Court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or the manual to the minimum of a computer.

(7.) Nothing in this section shall invahilate a proceeding by reason of its being

taken in a wroug Court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

132. Subject to general rules and te orders of transfer made under the authority S, 2 of 1890. of the Supreme Court of Judicature / ct, 1873, and the Acts amending it, the Conduct of jurisdiction to wind up companies of the High Court in England under this Act winding-up shall, as the Lord Chancellor may from time to time by general order direct, bo shall, as the Lord Chancellor may from time to time by general other business in exercised, either generally or in specified classes of cases, either by such judge or High Court judges of the Chancery Division of the High Court as the Lord Chancellor may in England. assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptey jurisdiction of the High Court.

36 & 37 Viet. 133.-(1.) The winding up of a company by the Court in England or any proceedings in the winding up may ut any time and at any stage, and either with e. 66. or without application from any of the parties thereto, he transferred from one Transfer of Court to another Court, or may be retained in the Court in which the proceedings proceedings. S. 3 of 1890. were commenced, although it may not be the Court in which they ought to have

(2.) The powers of transfer given by the foregoing provisions of this section may, subject to und in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other Court, by the judge of that Court

(3.) If any question arises in any winding up proceeding in a County Court which all the parties to the proceeding, or which one of them and the judge of the Court, desire to have determined in the first instance in the High Court, tho judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them us may be required, shull be transmitted to the High Court for the purposes of the determination.

134. The Court having jurisdiction to wind up companies registered in Ireland S. 81 of 1862. shall be the High Court :

Provided that where the High Court in Ireland makes an order for winding up to wind up a company it may, if it thinks fit, direct that all subsequent proceedings in the companies which the registered office of the winding up, have all the powers of the High Court in Ireland.

135. The Court having jurisdiction to wind up companies registered in Scotland S. 81 of 1862. shall be the Court of Session in either division thereof, or, in the event of a remit Jurisdiction to a permauent Lord Ordinary, that Lord Ordinary during session, and in time of to wind up

companies in Scotland.

Jurisdiction

59 & 60 Viet.

Act of 1908 487

APPENDIX. 136. Where the Court in Scotland makes a winding-up order, it may, if it

S. 6 of 1886. Po ver in Scotland to remit winding up to Lord Ordinary.

Provisions as to applications for winding up.

thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to be him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the Court :

Provided that the Lord Ordinary may report to the division of the Court any matter which may arise in the course of the winding up.

137.-(1.) An application to the Court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those

parties, together or separately: Provided that (a) A contributory shall not be entitled to present a petition for winding up a company unless

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to a or have been held by him, and registcred in his name, for at least at mouths during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

- (b) A petition for w' ding up a company on the ground of default in filing the or in holding the statutory meeting, shall not be prestatutory ret ron except a shareholder, nor hefore the expiration of sented by a: fourteen days after the last day on which the meeting ought to have been held; and
- (c) The Court shall not give a hearing to a petition for winding np a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable, and until a primd facie case for winding up has been established to the sati-faction of the Court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the Court, as well as by any other person authorized in that behalf under the other provisions of this section, but the Court shall not make a winding up orler on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3.) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been hold by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

138. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

139. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

110. At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, Commencement of winding-up may

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the Court in which the a tion or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is peuding against the company, apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ;

and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit. 141.-(1) On hearing the petition, the Court may dismiss it with or without

costs, or adjourn the hearing conditionally or unconditionally, or make any interim

order. or any other order that it deems just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been

8. 86 of 1862. Powers of Court on hearing petition.

S. 82 of 1862.

Effect of

p. 399

winding-up order.

S 81 of 1862.

by Court.

S 85 of 1562. Power to stay

or restrain proc-ediags

ag inst company.

p. 398

488

S. 82 of 1862.

20

p. 391

mortgaged to an amount equal to or in excess of those assets, or that the company

(2.) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible

142. When a winding-up order has been made, no action or proceeding shall be 8, 87 of 1862. proceeded with or commeuced against the company except by leave of the Court, Actiona stayed and subject to such terms as the Court may impose.

143. On the making of a winding-up order, a copy of the order must forthwith order, minute thereof in his books relating to the company to the registrar of companies, who shall make a p. 413 minute thereof in his books relating to the company. N. 58 of 1862.

144. The Court may at any time after an order for winding up, on the application of any ereditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an Copy of order to be forwarded order staying the proceedings, either altogether or for a limited time, on such terms to registrar. and conditions as the Court thinks fit, S. 89 of 1862.

145. The Court may, as to all matters relating to a winding-up, have regard to Power of the wishes of the creditors or contributories as proved to it by any sufficient ing-up. Power of Court to stay wind-

Official Receiver.

146.—(1.) For the purposes of this Act so far us it relates to the winding up of contributories companies by the Court in England, the term "official receiver" shall mean the 8.4 of 1890. official receiver, if any, attached to the Court for bankruptcy purposes, or, if there Definition of is more than one such official receiver, then such one of them as the Board of Trade official receiver. may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.

(2.) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

147.—(1.) Where the Court in England has made a winding-up order, there S. 7 of 1890. shall be made out and submitted to the official receiver a statement as to the affairs Statement of of the company in the prescribed form, verified by affidavit, and showing the Statement of particulars of its assets, debts, and liabilities, the uames, residences, and occupa. tions of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be to official received on the securities of the official received on the securities of the official received on the official received on the official received on the securities of the securities of the official received on the securities of the s prescribed or as the official receiver may require. (2.) It is statement shall be submitted and verified by one or more of the persons

who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the Court, may require to submit and verify the same.

(3.) The statement shall be submitted within fourteen days from the date of the order, or within such estended time as the official receiver or the Court may for special reasons appoint.

(4.) Any person making or concurring in making the statement and affidavit required hy this section shall be allowed, and shall be paid by the official receiver, oat of the assets of the company, such costs and expenses incurred in and about the prepara on and making of the statement and affidavit as the official receiver may cousider reasonable, subject to an appeal to the Court.

(5.) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person matrix fally so stating himself to be a creditor or contributory shall be guilty of a contemp of Conrt and shall be panishable accordingly ou the application of the liquidator or of the official receiver.

148.-(1.) Where the Court in England has made a winding-up order, the 5. 8 of 1890. Р. Report by

32

8. 91 of 1862. Court may have regard to wishes of creditors or

to official receiver

y, if it ip to be ig up to s of the

ourt auy

ny shall by the spective of those

ng up a

private even; or of them, ad regismonths on him

iling the he preave been

pany by has been case for

rvision in he Court. rovisions petition ubject to editors or

being the as during the name band, the d by and

of all the the joint

nmence at

nd before tributory,

the High Court in roceedings

my, apply o restrain be, stay or

or without ny interim se to make have been Act of 1908

APPENDIX.

official receiver. official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court— (a) as to the amount of capital issued, subscribed, and pald up, and the estimated

amount of assets and liabilities; and

(h) if the company has failed, as to the causes of the failure; and

(e) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the husiness thereof.

(2.) The official receiver may also, if ho thinks fit, make a further report, or further reports, stating the manner ln which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company siuce the formation thereof, and any other matters which in his opiuion it is desirable to hring to the notice of the Court.

Liquidators.

S. 92 of 186%. Appointment, remnneration, and title of liquidators.

149.-(1.) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Conrt may impose, the Court may appoint a liquidator or liquidators.

(2.) The Court n aake such an appointment provisionally at any timo after the presentation of a petition and hefore (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment or liquidators.

(3.) Where the proceedings are in England-

- (a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed : (b) On a winding-up order heing made the official receiver shall by virtue of
- his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such :
- (c) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4.) If more than one liquidator is appointed hy the Court, the Court shall declare whether any act hy this Act required or authorized to be done hy the liquidator is to

he done hy all or any one or more of the persons appointed. (5.) In a winding-up in Scotland or Ireland the Court may determine whether

any and what security is to be given by a liquidator ou bis appointment. (6.) A liquidator appointed by the Court may resign or, on cause shown, be removed hy the Court.

(7.) A vacancy in the office of a liquidator appointed by the Court shall he filled by the Court.

In a winding-up in England the official receiver shall hy virtue of his office be the liquidator during the vacancy.

(8.) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwiso as the Court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the Court directs.

- (9.) A liquidator shall be described as follows (that is to say) :-(a) in a winding-up in England, where a person other than the official receiver is liquidator, hy the style of the liquidator, and, where the official receiver is liquidator, hy the style of the official receiver and liquidator, aud
 - (h) in a winding-up in Scotland or Ireland, hy the style of the official liquidator,

of the particular company in respect of which he is appointed, and not hy his individual name.

(10.) The acts of a liquidator shall he valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

150.—(1.) In a winding-up by the Court the liquidator shall take into his custody, or under his control, all the property t^{-3} things in action to which the company is or appears to be entitled.

S. 92 of 1862. Custody of company's property.

(2.) In a winding-up by the Court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the

151.-(1.) The liquidator in a winding-up by the Court shall have power, in the S. 95 of 1862. case of a winding-up in England with the sanction either of the Court or of the Powers of

- committee of inspection, and in the case of a winding-up in Scotland or Ireland liquidator. (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company:
 - (b) to carry on the business of the company, so far as may be necessary for the
 - beneficial winding-up thereof :
 - (c) in the case of a winding-up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself ; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction :

(d) in the case of a winding-up in Scotland or Ireland, to appoint a solicitor or

(a) In the ease of a winding-up in Coordant of Archard, to appoint a solution of law agent to assist him in the performance of his duties.
(2.) The liquidator in a winding-up by the Court shall have power, but (subject to the provisions of this cection) in the case of a winding-up in Scotland or Ireland only with the sanction of the Court-

(a) To sell the real and personal property, and things in action of the company hy public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels : (b) To do all acts and to execute, in the name and on behalf of the company, all

- deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal : (c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of
- any contributory, for any balance against his estate, and to receive dividends in the bankruptey, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate ereditors
- (d) Te draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, er indorsed by or on behalf of the company in the course
- (e) To raise on the security of the assets of the company any money requisite :
- (f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :

(g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

ė

e

J is 1

y

ix

3.) The exercise by the liquidator in a winding-up by the Court in England of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(4.) In the case of a winding-up in Scotland or Ireland the Court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the Court.

(5.) Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.
(6.) In a winding-up by the Court in Scotland the liquidator shall, subject to reach a data the liquidator shall, subject to reach a data the liquidator shall a harkmut.

rules made under this Act, have the same powers as a trustee on a hankrupt

152.-(1.) When a winding-up order has been made by the Court in England, S. 6 of 1890. the official receiver shall summon separate meetings of the creditors and con-Meetings of creditors and tributories of the company for the purpose of-

32 (2)

(a) determining whether or not an application is to be mude to the Court for in English appointing a liquidator in the place of the official receiver; and

creditors and contributories

winding-up.

Act of 1908

(h) determining whether or not an application is to be made to the Court for the appointment of a committee of inspectium to act with the liquidator, and who are to be the members of the committee if appointed.

(2.) The Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the Court shall decide the difference with the determination of the foregoing provisions of the foregoing t difference and make such order thereon as the Court may think fit. (3.) In case a liquidator is not appointed by the Court tho official receiver shall be the lionidator of the company.

153. Where in the winding-up of a company by the Court in England a person other than the official receiver is appointed liquidator he shall give the official other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act. **154.**—(1.) Every liquidator of a company which is being wound up by the Court in England shall in such manner and at such times as the Board of Trade, with the company of the Transmy direct per the monor received by him to give information to official

with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shail

the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid: Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the husiness of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shali, on the application of the committee of inspection, authorizo the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner. (2.) If any such liquidator at any time retains for more than ten days a sum

exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorize him to retain, then, unless ho explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3.) A liquidator of a company which is being wound up hy the Court in England shall not pay any sums received hy him as liquidator into his private

hanking account. 155.—(1.) Every liquidator of a company which is being wound up hy the Court in England shall, at such times as may be prescribed hut not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his rec-ipts and payments as liquidatur. (2.) The account shall be in a prescribed form, shall be made in duplicate, and shall he verified by a statutory declaration in the prescribed form. (3.) The Board shall cause the account to he audited and for the purpose of the undit the liquidator shall furnish the Board with such vouchers and information as

audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4.) When the account has been audited, one copy thereof shall be filed and kept hy the Board, and the other copy shall he filed with the Court, and each copy shall

be open to the inspection of any creditor, or of any person interested. (5.) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary hy post to every

oreditor and contributory. 156. Every liquidator of a company which is being wound up hy the Court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters

be made entries or minutes or proceedings at meetings, and or such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such hooks. 157 - (1.) When the liquidator of a company which is being wound up by the Court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributors among themselves and made a final return, if any to the of the contributorics among themselves, and made a final return, if any, to the contributories, or has resigned, or has heen removed from his office, the Board of

S. 20 of 1890. Andit of liquidator's accounts in English winding-up.

S. 21 of 1890. Books to be kept by liquidator in English winding-up.

8. 22 of 1890. Release of liquidators in England.

492

S. 4 of 1890.

Payments of

iiquidator m English winding-up into bank.

Liquidator to

receiver. S. 11 of 1890.

Companies (Consolidation) Acr, 1908.

Trade shall, on his application, cause a report ou his accounts to be prepared, and, tion his complying with all the requirements of the Board, shall take into considera-tion the report, and any objection which may be urged by any creditor, or cou-tributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the (2.) Where the release of a liquidator is withheld the Court may, on the applica-

tion of any ereditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default (3.) An order of the Board of Trade releasing the liquidator shall discharge him

from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4.) Where the liquidator has not previously resigned or been removed, his release shall operate us a removal of him from his office.

158.—(1.) Subject to the provisions of this Ac*, the liquidator of a company Ss. 23, 24 of which is being wound up by the Court in England shall, in the administration of 1890. the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contri-butories at any general meeting, or by the committee of inspection, and any cc ol of directions given by the creditors or contributories at any general meeting shall in liq... ator's case of conflict he deemed to everythe sum direction in the sum of the creditors of the sum of the conflict he deemed to everythe sum directions for the sum of the sum of the conflict he deemed to everythe sum directions for the sum of case of conflict be deemed to override any directions given by the committee of England.

(2.) The liquidator may summon general meetings of the ereditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may he.

(3.) The liquidator may apply to the Court in manner prescribed for directions in relation to any purticular matter arising under the winding-up. (4.) Subject to the provisions of this Act, the liquidator shall use his own

e

e 3

11 e

ıe е

y

ıð

lie

38 of pt all

be .ry

> in t0

ers Innt

the

reof

ion. rhts

the

d of

discretion in the management of the estate and its distribution among the creditors. (5.) If any person is aggrieved by any net or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse, or modify the

act or decision complained of, and make such order in the premises as it thinks just.

159.-(1.) The Board of Trade shall take cognizance of the conduct of liquidators S. 25 of 1890. of companies which are being wound up by the Court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by uny creditor or contributory in regard thereto, the Board shall inquiro into the matter, and take such action thereon as they may think expedient.

(2.) The Board him of any other person on oath concerning the winding sup.

(3.) The Board may also direct a local investigation to be unde of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

160.-(1.) A committee of inspection appointed in pursuance of this Act shall S. 9 of 1890. consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories it such proportions as may be of inspection agreed on by the meetings of creditors and contributories, or us, in case of in English difference, may be determined by the Court.

(2.) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once u month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

of inspection winding-up.

Control of Board of Trade over liquidators in England.

sise and

Act of 1908

APPENDIX.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

but shall not act inness a majority of the committee are present. (4.) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

him and delivered to the infiniture. (5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall therenpon become vacant.

vacant. (6.) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the

object of the meeting. (7.) On a vacancy occurring in the committee the iiquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or fill the vacancy.

appoint another creditor or contributory to fill the vacancy. (8.) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

notwithstanding any vacancy in the committee. (9.) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

161.--(1.) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager thereof te act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2.) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3.) The special manager shall receive such remuneration as may be fixed by the Court.

162. Where au application is made to the Court to appoint a receiver on behaif of the debenture holders or other creditors of a company which is being wound up by the Court in England, the official receiver may be so appointed.

Ordinary Powers of Court.

2. 163.-(1) As soon as may be after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members if in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(2.) In settling the list of contributories, the Conrt shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

164. The Court may, at any time after making a winding-up order, require auy contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, couvey, surrender, or transfer forth with, or withiu such time as the Court directs, to the liquidator any money, property, or books and papers in his hands to which the company is primé facie entitled.

165.—(1.) The Court may, at any time after making a winding-up order, make order on any contributory for the time being settled on the list of contributories way, in manner directed by the order, any money due from him or from the secte of the person whom he represents to the company, exclusive of any money payable by him or the setate by virtue of any call in pursuance of this Act.

(2.) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the

S. 5 of 1890. Fower in England to appoint special manager.

a. 4 (6 of 1800. Power in Engiand to appoint official receiver as receiver fo. debenture holders or creditors.

S. 98 of 1862. Settlement of list of contributories and application of assets.

S. 100 of 1862. Power to require delivery of property.

S. 161 of 1865 Power to orde. payment of debts by contributory.

estate which he represents from the company on any independent dealing or contract with the company, hut not any money due to him as a member of the company in respect of any dividend or profit : and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the

(3.) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a cou-tributory from the company may be allowed to him by way of set-off against any

166.-(1.) The Court may, at any time after making a winding-up order, and S. 102 of 1862. either before or after it has ascertained the sufficiency of the assets of the company. Power of either before or after it has accertained the sumer ney of the assets of the company. Power of nake calls on and order payment thereof by all or any of the contributories for the Court to thue being settled on the list of the contributories to the extent of their liability, for make calls. payment of any money which the Court considers necessary to satisfy the debts and habilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves

(2.) In making a call the Court may take into consideration the probability that some of the contributorles may partly or wholly fail to pay the call.

167.-(1.) The Court may order any contributory, purchaser or other person S. 103 of 1862. from whom money is due to the company to pay the same into the Bank of Powertoorder England or any branch thereof to the account of the liquidator instead of to the payment into liquidator, and any such order may be enforced in the same manner as if it had bank. directed payment to the liquidator. (2.) All moneys and scentities paid or delivered into the Bauk of England or any

branch thereof in the event of a winding-up by the Court shull be subject in all respects to the orders of the Court.

168.-(1.) An order made by the Court on a contributory shall subject to any S. 106 of 1862. right of appeal) be conclusive evidence that the money, if any, thereby appearing Order on

(2.) All other pertinent matters stated in the order shall be taken to be truly conclusive stated as against all persons, and in all proceedings, except proceedings against the evidence. real estate of a deceased contributory, in which case the order shall be only prima facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

169.—The Conrt muy fix a time or times within which creditors are to prove S. 107 of 1862. Their debts or claims, or to be excluded from the benefit of any distribution made before there debts are proved.

170. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto. ad distribute any surplus among the persons entitled thereto. 171. The Court may, in the event of the assets being insufficient to satisfy the of rights of

habilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding-up in such order of priority as the Court thinks just.

172.—(1.) When the affairs of a company havo been completely wound up, the S. 111 of 1862. Court shall make an order that the company be dissolved from the date of the Dissolution

contribution indice an order that the company be dissolved from the date of the Dissolution order, and the company shall be dissolved accordingly. (2.) The order shall be reported by the liquidator to the registrar of companies of company, who shall make in his books a minute of the dissolution of the company.

(3.) If the liquidator makes default in complying with the requirements of this ection he shall be liable to a fino not exceeding five pounds for every day during which he is in default.

173. General rules may be made for enabling or requiring all or any of the S. 13 of 1890. powers and duties conferred and imposed on the Court in Eugland by this Act, in Delegation respect of the matters following, to be exercised or performed by the liquidator as to liquidator au officer of the Court, and subject to the control of the Court; that is to say. the of cortain

(a) holding and conducting meetings to ascertain the wishes of ereditors and Court in England.

(b) settling lists of contributories and rectifying the register of members where required, and collecting aud applying the assets;
(c) requiring delivery of property or documents to the liquidator;

(d) making calls;

(e) fixing a time within which debts and elaims must be proved :

contributory

not proving in time.

contributories. S. 110 of 1862.

Power to order

owers of

495

Act of 1908

eeting,

ned by Tanges

mittee nt the havome

olution ing the

rthwith ulre, to ame or

nuy act

etion or muittee ator.

nipany of the bushess may on as the eiver or

nner as

1 by the

n behalf ound up

ie Court members and shall ge of its

between contribu-

r, require and any , convey, ts, to the which the

ler, make ributories from the ay money

ited comor to the

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Extraordinary Powers of Court.

8. 115 of 1462. Power to **rumm**on porema auspe...d property of company.

174.-(1.) The Court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs, or property of the company. (2.) The Court may examine him on oath concerning the same, either by word of

mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3.) The Court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by blm, the production shall be without prejudice to that iien, and the Court shall have jurisdiction is the winding-up to determine all questions relating to that lien.

(4.) If any person so summoned after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended, and brought before the Court for examination

8. 8 of 1890. Power in England to order public examination of promoters, directors, &c.

175.—(1.) When an order has been made in England for winding up a company by the Court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the pro-motion or formation of the commany, or by any director or other officer of the commany in relation to the commany since its formation, the Court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the Court on a day appointed by the Court of the purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2.) The official receiver shall take part in the examination, and for that purpose muy, if specially authorized by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3.) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4.) The Conrt may put such questions to the person examined as the Conrt thinks fit.

(5.) The person examined shall be examined on oath, and shall answer all such

questions as the Court may put or allow to be put to him. (6.) A person ordered to be examined under this section shall at his own cost. before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him : Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7.) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or comtributory at all reasonable times.

(8.) The Court may, if it thinks fit, adjourn the examination from tind to time.

(9.) An examination under this section may, if the Court so directs, and subject to general rules, be held before any judge of County Courts, or before any officer of the Supreme Court, being an official referce, master, or registrar in bankruptey, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being worn 1 up by a palatine court

he Court, either the

non before passession ly, or any the trade,

y word of dting and

is enstedy or papers 1, and the a relating

im for his having a ad allowed the Court

eompany r this Act the procer of the nay, after art in the cer of the t for that he conduct director or

at purpose r a solicitor

, and any rsonally or

the Court

er all such

own cost, er's report, shall be at purpose of that If he suggested ion it may

all be read be used in tor or con-

from time

and subject ny officer of kruptcy, or ose by the atine court.

COMPANIES (CONSOLIDATION) ACT, 1908.

before a registrar of that Court, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

176. The Court, at any time either before or after making a winding-up order, S. 118 of 1862. on proof of probable cause for believing that a contributory is about to quit the Power to perty for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, contributory, and his performed to the Court may order. 177 Any super but the Art conformed on the Court shell be in addition to and S. 119 of 1862.

177. Any powers by this Act conferred on the Court shall be in addition to and S. 119 of 1862. not in restriction of any existing powers of instituting proceedings against any Powers of contributory or debtar of the company, or the estate of any contributory or debtar. Court

cumulative.

force orders,

Enforcement of and . Inpeal from Orders.

178.- (1.) Orders made by the High Court in England or Ireland under this S. 120 of 1862. Act may be enforced in the same manner as orders made in any action pending Power to entherein.

(2.) For the purposes of this Part of this Act the Court exercising the standaries jurisdiction shall, in addition to its ordinary powers, have the same power of euforcing any orders made by it as the High Court in England has in relation to tion of the judge of the Court excreising the standards purposes, the jurisdic-deened to be co-extensive in local limits with the jurisdiction of the High Court

179. Where an order, interiorntor, or decree has been made in Scotland for S. 121 of 1862. winding-up a company by the Court, it shall be competent to the Court, on pro- Order for duction by the liquidators of a list certified by them of the names of the contribu- calls on contories liable in payment of any calls, and of the muonit due by each contributory, tributories in and of the date when the same became due, to promotice forthwith a decree Scotland. Interest from the wild date till provide a the same so certified to be due, with interest from the said date till payment of the sinks so certified to builde, with the same way and to the same effect as if they had severally consented to registration for excention, on a charge of six days, of a legal obligation to pay these sub-

suspension thereof shall be competent, except on caution or consignation, anless with special leave of the Court. 180.-(1.) Any order made by the Court in England for or in the course of S. 122 of 1862. winding-up a company shall be enforced in Scotland and Ireland in the Courts that Enforcement would respectively have purisdiction in respect of that company if registered in of orders Seotland or Ireland, and in the same manner in all respects us of the order had been throughout

(2.) In like manner orders, interlocators, and decrees made by the Court in Kingdom. Scotland for or in the course of winding-up a company shall be enforced in England and Ireland, and orders made by the Court in Ireland for or in the course of winding-up a company shall be enforced in England and Scotland, by the Courts which would respectively have invisible in respect of that company if Courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those Courts.

(3.) Where any order, interlocator, or decree made by one Court is required to (5.) where any order, interioentor, or decree made by one court is required to be enforced by another Court, au office copy of the order, interboutor, or decree shall be produced to the proper officer of the Court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, inter-locutor, or decree, and therenpon the last-mentioned Court shall take the requisito steps in the matter for enforcing the order, interlocutor, or decree, in the same steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that Court.

181.-(1.) Subject to rules of Court, an appeal from any order or decision made S. 124 of 1862. or given in the winding-up of a company by the Court under this Act shall lie in Appeals from or an analysis of the same manner and subject to the same conditions as an appeal from any order or order. decision of the Court in cases within its ordinary jurisdiction.

197

Act of 1908

(2.) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation, that-

(i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review,

(ii) Every other order or judgment (except as hereinafter mentioned) shall be subject to review only by reelaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any teclaiming note against them, be carried out and receive effect until the reelaiming note is disposed of by the Court.

reclaiming note is disposed of by the Court. (3.) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the Bills in vacation shall apply to the order or judgment. (4.) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls '... we winding-up of companies, whether voluntarily or by or subject to the supervision of the Court.

Voluntary Winding Up.

- 182. A company may be wound up voluntarily— (1.) When the period (if auy) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voinntarily
 - 2 If the company resolves by special resolution that the company be wound up voluntarily :
 - (3.) If the company resolves by extraordinary resolution to the offect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

183. A voluntary winding-up shall be deemed to commence at the time of the

passing of the resolution authorizing the winding-np. 184. When a company is wound up voluntarily the company shall, from the comneucement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

185. When a company has resolved hy special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution hy advertisement in the Gnzette.

186. The following consequences shall ensue on the voluntary winding-up of a

- company : (i) The property of the company shall be applied in satisfaction of its liabilities
 (ii) The property of the company shall, unless the articles otherwise pro-pari pass, and, subject thereto, shall, unless the articles otherwise pro-pari pass, and, subject thereto, shall, unless the articles otherwise pro-pari pass. vide, be distributed among the members according to their rights and interests in the company :
 - (ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding np the affairs and distributing the assets of the
 - (iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof :
 - (iv) The liquidator may, without the sanction of the Court, exercise all powers by this Act given to the liquidator in a winding up by the Court:
 - (v) The liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the

Circumstances in which company may be wound up volnntarily.

8, 129 of 1862.

6, 190 of 1862. Commencement of voluntary winding-up.

8. 131 of 1862. Effect of voluntary winding-up on status of company. 8. 182 of 1882. Notice of resolu-tion to wind up voluntarily.

S. 133 of 1862. Consequences of voluntary winding-up.

debts of the company, and adjust the rights of the contributories among

(v1) The list of contributories shall be prime face evidence of the hability of the persons named therein to be contributories ;

- (vil) When several liquidators are appointed, every power hereby given may be excremed by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (viii) If from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator :
- ix) The Court may, on cause shown, remove a liquidator, and appoint another

187. -(1.) The liquidator in a voluntary winding-np shail, within twenty-one 8, 26 of 1997. days after his appointment, file with the registrar of companies a notice of his Notice by appointment in the form prescribed by the Board of Trade. (2.) If the liquidator fails to comply with the requirements of this section he appointment.

shall be liable to a fine not exceeding five pounds for every day during which the default continues.

186.—(1.) Every liquidator appointed by a company in a voluntary winding-np S. 27 of 1907, shall, within seven days from his appointment, send notice by post to all persons Rights of who appear to him to be creditors of the company that a meeting of the creditors in company that a meeting of the creditors in Rights of Rights of Rights of the creditors in Rights of the creditors in <math>Rights of Rights of Rightsof the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in a voluntary the notice, and shall also advertise notice of the meeting once in the Gazette and once

The notice, and shall also advertise notice of the meeting once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate. (2.) At the meeting to be held in pursuance of the foregoing provisious of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company or for the foregoing provision of the section of the with the liquidator appointment of any person as inquisitor in the phase of or jointly with the liquidator appointed by the company, or for the appointment of a com-initize of inspection, and, if the creditors so resolve, an application may be made accordingly to the Court at any time, not later than fourteen days after the date

of the meeting, by any creditor appointed for the purpose at the meeting. (3.) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other The still and appoint of the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a alignidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just. (4.) No appeal shall lie from any order of the Court npon an application under

(5.)

The Court shall make such order us to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

189.—(1.) If a vacancy occurs by death, resignation, or otherwise in the office S. 140 of 1862. of liquidator appointed by the company in a voluntary winding up, the company in Power to fill general meeting may, subject to any arrangement with its ereditors, fill the vacancy in

(2.) For that purpose a general meeting may be convened by any contributory or, liquidator. if there were more liquidators than one, by the continuing liquidators.

(3.) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

190.-(1.) A company about to be of in course of being, wound up voluntarily S. 135 of 1862. may, by extraordinary resolution, d : r to its creditors, or to any committee of Delegation them, the power of appointing liquid. ...sor any of them, and of supplying varancies of authority the power of appointing inquite lists any of them, and of supprying variances of authority to be exercised by the liquidators, and the mauner in which they are to be exercised. (2.) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been dene by the company.

vacancy in

winding-up.

Appendix.

S. 136 of 1862. Arrangement when binding on creditors.

191.--(1.) Any arrangemout entered into betweeu a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-four be in number and value of the creditors.

number and value of the creditors. (2.) Any creditor or contributory may, within three weeks from the completation of the arrangement, appeal to the Conrt against it, and the Court methods the reupon, of the arrangement, amend, vary, or confirm the arrangement.

S. 161 of 1862. Power of a liquidator to a accept shares, a dc. as consideration for sale of property of company.

192.—(1.) Where a company is proposed to be, or is in course of beion, would up altogether voluntarily, and the whole or part of its business or properties of proposed altogether voluntarily, and the whole or part of its business or properties of proposed to be transferred or sold to another company (in this section called the transfer company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanctiou of a special resolution of that company, transferor company) may, with the sanctiou of a special resolution of that company, transferor company general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the ransferor company may may in any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transfere company. (2.) Any sale or arrangement in pursuance of this section shall be binding on the

members of the transferor company. (3.) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from entrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manuer provided by this section.

or by arbitration in manuer provided by this section. (4.) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in must be paid before the dermined hys special resolution.

such manner as may be determined by special resolution. (5.) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

resolution shall not be vand unless same loned by the court. (6.) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the cuse of a winding-np in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shull be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the

liquidators. **193.**—(1.) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up, or to exercise, as respects the enforcing of ealls, or any $c^{(1)}$ or matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. (1) The Court if articled that the determination of the question or the provided (1) the court of the provided that the determination of the question or the provided (1) the court of the set of the set of the set of the court of the court of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the court of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the question of the provided that the determination of the question of the provided the determination of the question of the question

pany were being wound up by the court. (2.) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

194.—(1.) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he

may think fit. (2.) In the event of the winding up continuing for more than oue year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each sneeeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an

8 & 9 Vict. c. 17.

8 & 9 Viet. c. 16.

5. 138 of 1862. Power to apply to Court.

S. 139 of 1862. Power of liquidator to call general meeting.

account of his acts and dealings and of the conduct of the winding-up during the

195.—(1.) In the case of every voluntary winding-up, as soon as the affairs of S. 142 of 1862. 195.—(1.) In the case of every voluntary winding-up, as soon as the affairs of S. 142 of 1862. the company are fully wound up, the liquidator shall niake up an account of the Final meeting winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of ; and therenpon shall cal a general meeting of the company for the purpose of laying before it the account, and giving any

(2.) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the

(3.) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine uot exceeding five pounds for every day during which the default continues.

(4.) The registrar, on receiving the return, shall forthwith register it, and on tho expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thiuks fit.

(5.) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding five pounds for every day during which the default continues

196. All costs, charges, and expenses properly incurred in the voluntary winding- 8, 114 of 1862. up of a company, including the remnneration of the liquidator, shall be payable out Costs of of the assets of the company in priority to all other claims.

197. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will

be prejudiced by a voluntary winding-up. 198. Where a company is being wound up voluntarily, and an order is made for winding-up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding-up.

Winding Up subject to Supervision of Court.

199. When a company has by special or extraordinary resolution resolved to 8. 147 of 1862. wind up voluntarily, the Court may make an order that the voluntary winding up Power to order shall continue, but subject to such supervision of the Court, and with such liberty for ereditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

200. A petition for the continuance of a voluntary winding-up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding-up by the Court.

201. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

202.—(1.) Where an order is made for a winding-up subject to supervisiou, the Court may by the same or sny subsequent order appoint any additional liquidator. (2.) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same powers, but it is a liquidate to the same obligation of the same obligation of the same obligation of the same of the same obligation of the same obligation of the same obligation. position as if he had been appointed by the company.

(3.) The Court may remove any liquidator so appointed by the Court, or any liquidator continued under the supervision order, and fill any vacancy occasioned liquidators. by the removal or by decide the supervision order, and fill any vacancy occasioned liquidators.

by the removal, or by death or resignation. **203.**-(1.) Where an order is made for a winding-up subject to supervision, the S. 151 of 1862 liquidator may, subject to any restrictions imposed by the Court, exercise all his Effect of super-

winding-np subject to supervision.

8. 148 of 1862. Effect of petition for winding-up subject to supervision.

8. 149 of 1862. Court may have regard to wishes of creditors and contributories. 8. 150 of 1862.

Power for Court to appoint or

vision order.

volunta liquidation. 8. 145 of 1869. Saving for rights of creditors and contributories.

8.146 of 1862. **Power of Court**

to adopt proceedings of voluntary winding-up.

501

Act of 1908

ər in anv y an

etion pon, ad up

[i3Hrid d the

pany. eet of or the pany, r into

ay, in iereto, ipany. on the

of the same , at the of the resolucement

money ator in tion by

up the year for special

of the g-up in spect to et; and special intment l of the of the re of the

idator or question s, or any the com-

required lly to the ake such

lator may e sanction irposes he

year, the f the first g year, or eeting an powers, without the sanction or intervention of the Court, in the same number as if the company were being wound up altogether voluntarily.

(2.) A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-time, except sub-section (10), one hundred and fifty-two, one hundred and fifty-tree, one hundred and fifty-soven, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-soven, one hundred and fifty-five, one, one hundred and fifty-six, one hundred and sixt — me hundred and fiftyone, one hundred and fifty-six as aforesaid, an order for a winding-up subject to supervision, shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to renit the winding-up to a permanent Lord Ordinary, and the exercise of all other powers, be leemed to be an order for winding-up by the Court.

8. 152 of 1862. Appointment of voluntary liquidator as liquidator in winding-up by Court in Scotland or Ireland.

204. Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding-up by the Court, the Court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding-up by the Court.

Supplemental Provisions.

Ss. 131-153 of 1862. Avoidance of transfers, &c. after commencement of winding-up.

S. 158 of 1862. Debts of all descriptions to be proved.

Judicaturo Act, 1875, s. 10. Application of bankruptcy rules in winding-up of

insolvent English and

Irish companies. S. 4 of 1886. Ranking of claims in Scotland. 19 & 20 Vict. c. 79.

S. 1 of 51 & 52 Vict. c. 62. Preferential payments.

205.--(1.) In the case of voluntary winding-up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding-up, shall be void.

(2.) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding-up, shall, unless the Court otherwise orders, be void.

206. In every winding-up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in $\frac{2}{2}$..., (s, shall be admissible to proof against the company, a just estimate bein the company of far as possible, of the value of such debts or claims as may be subject or ingency or sound only in damages, or for some other reason do not bear a ..., uc.

207. In the winding-up of an insolvent company registered . England or Ireland the same rules shall prevail and be observed with regard to the respective rights of seenred and nuscenred creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the caso may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up, and make such claims against the company as they respectively are entitled to by virtuo of this sectiou.

208. In the winding-up of a company registered in Scotland, the genere and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptey (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to ereditors of the company voting in matters relating to the winding-up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the Court.

209.-(1.) In a winding-up there shall be paid in priority to all other debts-

(a) All parochial or other local rates due from the company at the date hereiuafter mentiored, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or iucome tax assessed on the company up to the fifth day of April noxt before that date, and not exceeding in the whole one year's assessment;

(b) All wnges or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; nnd

(c) All wages of any workman or labourer not exceeding twenty-five pounds, whether pnyable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a hump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the said date; and

(d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect the of compensation under the Workmen's Compensation Act, 1906, the 6 Edw. 7, hability wherefor accrued before the said date, subject nevertheless to c. 58.

the provisions of section five of that Act. (2.) The for agoing debts shall-

- (a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) In the case of a company registered in England or Ireland, so far as the insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that

(3.) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4.) In the event of a handlord or other person distraining or baying distrained on any goods or effects of the company within three mouths next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sule

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5.) The date hereinbefore in this section referred to 18-

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order ; and

(b) in any other case, the date of the commencement of the winding-up.

210.-(1.) Any conveyance, mortgage, delivery of goods, payment, execution, or S. 164 of 1862. other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or preference. done hy or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly

(2.) For the purposes of this section the presentation of a petition for winding-up in the case of a winding-up by or subject to the supervision of the Court, and a resolution for winding-up in the case of a voluntary winding-up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3.) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

211. Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

212. Where a company is being wound up, a subscription of the commencement of Effect of or property of the company created within three months of the commencement of Effect of the winding-up shall, unless it is proved that the company immediately after the floating charge, creation of the charge was solvent, be invalid, except to the amount of nny cash columbian Fire Proping Co. In Provide the company at the time of or subsequently to the creation of, and in con-

S. 163 of 1962, Avoidance of certain attachments, execu-tions, &c. in case of compuny re-gistered in Eng-land or Ireland. floating charge.

Act of 1908 503

er as g-up hose

ght,

two, five, iftyxtydred et to other

emit vers,

np a p by point ither ourt.

reept n tĥe ling-

ourt.

, und r the void. o the ptcy) ent or all be

ar as zency nd or ective

ation being with n any ets of

gainst

and led by r any in the sistent to the equessheriff

-8 crelntwelve operty inext nent;

sideration for, the charge, together with interest on that amount at the rate of five per cent. per annuni.

213. In the winding-up, by or subject to the supervision of the Court, of a com-

commencement, and in the case of a winding-up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to au arrestment in execution and decree of forthcoming, and to an executed or completed poinding ; and no arrestment or poinding of the funds or effects of the company, exceuted on or after the sixtieth day prio to the commencement of the winding-up by the Court, or to the presentation of the petition on which a supervision order is made, as the case may be, 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 the date of the winding-up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense bonâ fide incurred by him in such diligence :

- (2.) The winding-up shall, as at the respective dates 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 dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein fter provided :
- (3.) The provisions of sections one hundred and twelve to one hundred and soventeen, and of section one neuror and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as is consistent with this Act, apply to the realization of heritable estates affected by such he table 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 expressiou "the Lord Ordinary or the Court " shall mean "the Court" as defined by this Act with respect to Scotland : (4.) No poinding of the ground which has not been carried into execution by sale
 - of the effects sixty days before the respective dates 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 respectivo dates aforesaid, but that poinding shall in coupetition 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.
- 214.-(1.) The liquidator may, with the sanction following (that is to say)-
- (a) in the case of a winding-up by the Court in England with the sanction either of the Court or the committee of inspection;
- (b) in the case of a winding-up by the Court in Scotland or Ireland, and in the case of any winding-up subject to supervision, with the sanction of the
- (c) in the case of a voluntary winding-up, with the sanction of an extraordinary Court ; aud resolution of the company,
- do the following things or any of them :
 - i) Pay any classes of creditors in full;
 - Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (iii) Compromise all cal's and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in ar.7 way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any

S. 3 of 1886. Effect in ease of company registered in Scotland of diligenco within 60 days of winding-up by or subject to supervision of Court.

19 & 20 Vict. e. 79.

S. 159 of 1862. General scheme of liquidation may be sanctioned.

Companies (Consolidation) Acr, 1908.

security for the discharge of any such call, deht, liability or claim, and give a complete discharge in respect thereof. (2.) In the case of a winding-up by the Comt in England the exercise by the

liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise

or proposed exercise of any of those powers. 215.—(1.) Where is the course of winding up a company it appears that any S. 165 of 1862. person who has taken part in the formation or promotion of the company, or any Power of past or present director, manager, or liquidator, or any officer of the company, has Court to asmisapplied or retained or become hable or accountable for any money or property of sess damages the company, or been guilty of any misfensauce or breach of trust in relation to against the company, the Court 1.1ay, on the application of the official receiver, or of the delinquent liquidator, or of any creditor or contributory, examine into the conduct of the definquent liquidator, or of any creditor or contributory, examine into the conduct of the directors, &c. promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such company by way of compensation in respect of the misapplication, retainer, misfeasuree, or breach of trust as the Court thinks just.

(2.) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3.) Where in the case of a winding-up in England un order for payment of monoy is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-section (1) of section four of the Bankrnptcy Act, 1883.

(4.) So much of this section as refers to promoters, and to property of a company e. 52. other than money, shall not apply to a winding-up in Scotland or Ireland.

216. If any director, officer, or contributory of any company being wound up S. 166 of 1862. destroys, mutilates, alters, or falsifies any books, papers, or socurities, or makes or Penalty for is privy to the making of any false or frandulent entry in any register, book of falsification account, or document belonging to the company with intent to defraud or deceive of books. any person, he shall be guilty of a misdemeanour, and be no ble to imprisonment for sny term not exceeding two years, with or without hard labour.

217.-(1.) If it appears to the Court in the course of a winding-up by or subject S. 167 of 1862. to the supervision of the Court that any past or present director, manager, officer, Prosecution or member of the company has been guilty of any offence in relation to the of delinquent company for which he is criminally responsible, the Court may on the application directors, &e. of any person interested in the winding-np, or of its own motion, direct the hiquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company

(2.) If it uppears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous succion of the Court, may prosecute the offender, and all expenses properly incarred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities

218. If any person, on examination on oath authorized under this Act, or in S. 169 of 1862. any affidavit or deposition in or about the winding up of any company or otherwise Penalty on in or about any pratter arising noder this Act, wilfully and corruptly gives false perjury.

evidence, he shall be liable to the penalties for wilful perjury. 219 - (1) Where by this Act the Court is anthorized, in relation to winding-up, Ss. 91, 149 to have regard to the wishes of creditors or contributories, as proved to it by any of 1862. sufficient evidence, the Court may, if it thinks fit, for the purpose of aso rtaining Mortages to sufficient evidence, the Court may. If it transs nt, for the purpose of ascentrating Meetings to those wishes, direct meetings of the creditors or contributories to be called, held, ascentan wishes and conducted in such manner as the Court directs, and may appoint a person to of er-ditors or cot as chairman of any such meeting and to report the result thereof to the Court. act as chairman of any such meeting and to report the result thereof to the Court.

(2.) In the ease 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

(3) In the case of contributories, regard shall be had to the infinite of these conferred on each contributory by the articles. **220.** Where any company is being wound up, all books and papers of the S. 151 of 1862. company and of the liquidators shall, as between the contributories of the contany, Books of con-j be primit fame evidence of the truth of all matters purporting to be therein recorded. Pauly to be **221.** After an order for a winding-up by or subject to the supervision of the evidence. Court, the Court may make such order for inspection by ereditors and contributories. Index 16 of 1862. of the company of its books and papers as the Court thinks just, and any books books.

Р.

46 & 47 Viet.

33

of five

a comat its

ision as ervision decree arrest d on or by the on order effects, g to the of tho rived of unds or

lent to a ayment ilited at ghts and ngeable,

red and akruptcy apply to this and o words all mean on "the d by this

n by sale ll, except with the the heriprevented es aforeavailable a, and for

ay) a sanction

and in the ion of the

raordinary

s claiming any claim, ing only in oo rendered

eapable of coutingent, upposed to atributory. any, and all ne winding. d take any 505

Act of 1908

and papers in the possession of the company may be inspected by creditors or con-tributories accordingly, but not further or otherwise.

222. -(1.) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as S. 155 of 1862. Disposal of books and

(a) In the case of a winding-up by or subject to the supervision of the Court in such way as the Court directs; follows (that is to say)

(b) In the case of a voluntary winding-up in such way as the company by extraordinary resolution directs.

(2.) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

228.—(1.) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, ou an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested make an order when and, terms as the Court time. to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2.) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liablo to a fine not exceeding five pounds for every day during which the default continues.

224.-(1.) Where a company is being wound up in England, if the winding-up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his ageut, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a ereditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3.) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues

(4.) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which bave remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5.) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section one hundred and sixtytwo of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section. (6.) Any person claiming to be entitled to any money paid into the Bank of

46 & 47 Vict. (c.) Any person claiming to be entitled to any money pair into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person elaming is suitiled, make an order for the payment to that person of the sum due. (7.) Any person dissatisfied with the decision of the Board of Trade in respect of

any claim made in pursuance of this section may appeal to the High Court.

S. 125 of 1862. Judicial notice of signature of officers.

0. 52.

225. In all proceedings under this Part of this Act, all Courts, judges, and persons judicially acting, aud all officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial uoties of the signature of any officer of the High Court in Eugland or Ireland, or of the Court of Spring in Satland or we the process of the Court of Session in Scotland, or of the registrar of the Court exercising the stannaries jurisdiction, and also of the official real or stamp of the several offices of the High Court in England or Irelaud, Court of Session, or Court excreising the stannaries juris-

506

papers of

company.

S. 31 of 1907. Power of Court to declare dissolution of company void.

8. 15 of 1890. Information as to pending liquidations in England.

diction, 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. 226.-(1.) The judges of the County Courts in England who sit at places more S. 126 of 1862. than twenty miles from the General Post Office, and the judge exercising the bankruptey jurisdiction of the High Court in Ireland and the assistant barristers and mission for recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners receiving for the purpose of taking evidence under this Act, where a company is wound up in evidence. any part of the United Kiugdom, 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

2.) Every commissioner shall, in addition to any powers which he might law-fully exercise as a judge of a county court, judge of the High Court, assistant barrister or 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

(3.) The examination so taken shall be returned or reported to the Court which

made the order in such mauner as that Court directs.

227.-(1.) The Court may direct the examination in Scotland of any person for S. 127 of 1862. the time being in Scotland, whether a contributory of the company or uot, in regard Court may to the trade, dealings, affairs, or property of any company in course of being wound order examimay be interested therein by reason of his being a contributory; and the order or persons in commission to take the examination shall be directed to the sheriff of the county in Scotland. 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 us a haver, and to produce any books or papers called for which are in his possession or power.

(2.) The sheriff may take the examination either orally or on written interrogashall transmit with the report the books und papers produced, if the originals thereof are required und specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the shoriff.

(3.) If uny person so summoued fuils to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shull proceed against him as a witness or haver duly eited and failing to appear or refusing to

give evidence or make production may be proceeded against by the law of Scotland. (4.) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like 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.

(5.) If any objection is stated to the sheriff by the witness, either on the ground S. 128 of 1862. of his incompeteucy as a witness, or as to the production required, or on any other Affidavits, &c. ground, the sheriff may, if he thinks fit, report the objection to the Court, and in United suspend the examination of the witness until it has been disposed of by the Court.

228.—(1.) Any affidavit required to be sworn under the provisions or for the and Colonies. purposes of this Part of this Act may be sworn in Great Britain or Irelaud, or elsewhere within the dominions of His Majesty, before any Court, judge, or person lawfully authorized to take and receive affidavits or before auy 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 tuke 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 sub-scribed to any such affidavit, or to any other document to be used for the purposes

229.-(1.) An account, called the Companies Liquidation Account, shall be kept S. 11 of 1390. by the Board of Trado with the Bunk of England, and all moneys received by the Companies Board in respect of proceedings under this Act in connexion with the winding up Liquidation of companies in England shall be paid to that account.

(2.) All payments out of money standing to the credit of the Board of Trade in defined. the Companies Liquidation Account shall be made by the Bauk of England in the

230.-(1.) Whenever the cush balance standing to the credit of the Companies S. 16 of 1890. Liquidation Account is in excess of the amount which in the opinion of the Board Investment

33 (2)

Special com-

ersens in

con

lved. of as

rt in y by

shall f the

ming time lo for

pears hinks s may

made, rar of all be efault

ng-np all, at to the ig the

of the ies, on hereof be a

unish-. e shall default

hus in ributed for six ame to entitled tificate

nto the ercised, sixtyr in the

Bank of ayment persou m due. spect of

res, and ourt. or of the Court of s jurish Court es juris507

Act of 1908

of surplus funds on general account. of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the stans paid over, or any part thereof, 'a Government securities, to be placed to the eredit of the sid account.

of the said account. (2.) Where any part of the non y so invested is, in the opinion of the Board of Trude, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the 'Treasury shall thereshall notify to the Board such sum as may be required to the eredit of the Companies apon repay to the Board such sum as may be required to the eredit of the Companies apon repay to the Board such sum as may be required to the such of such part of the said securities as may be necessary.

said securities as may be necessary. (3.) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies

in England. 231.-(1.) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the each balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board the time being to answer demands in respect of the amount uot so required in Government securities, to be placed to the eredit of the said account for the benefit

of the company. (2.) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said scentrities as may be

necessary. (3.) The dividends on investments under this section shall be paid to the credit

of the company. (4.) When the balance at the credit of any company's account in the hands of (4.) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice the Board that the excess is not required for the purposes of the liquidation, to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent.

per annum. 232. The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury in this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the

by the board in respect of salaries and expenses under this Act in relation to the winding up of companies in England. 233.-(1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so

appointed. (2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

that remuneration as they think ht. (3.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any detics under this Act in relation. to the winding up of companies in England, and may vary, increase, or diminish that

the winning up of comparison are presented as the property of the provisions of section twenty-eight of the account had been required by that are provided by the provisions of the provisions of the property of the account as if the account had been required by that the provision of the property of the account as if the account had been required by that the provision of the property of the account as if the account had been required by that provided the provision of the property of the pro

section. (2.) The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such manner as the

SH. 17, 18 of 1890. Separatc accounts of particular estates.

> S. 19 of 1890.
> Certain receipts and fees to be applied in aid of expenditure.
> Officera and remuneration.

> > S. 28 of 1890. Annual accounts of English winding-up. 38 & 39 Vict. c. 77.

Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

235. The officers of the Courts acting in the winding up of companies in S. 29 of 1890. England shah make to the Board of Trade such returns of the business of their Roturns by respective Courts and offices, at such times and in such manner and form us may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information

236 -(1.) All documents purporting to be orders or certificates made or issued S. 30 of 1890 by the Board of Trade for the purposes of this Act and to be scaled with the sent of Proceedings the Board, or to be signed by a secretary or assistant secretary f the Board, or any of Board of purposes authorized in that behalf by the President of the Board, shall be received in Trade. evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order mady, certificate issuel, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Rules and Fers.

237.-(1.) The Lord Chancellor may, with the concarrence of the President of S. 26 of 1890 the Board of Trade, make general rules for earrying into effect the objects of this Rules and Act so far as relates to the winding up of companies in England.

(2.) All general rules in the under this section shall be hard before Parliament within three weeks after they are made, if Parliament is then sitting, within three weeks after the beginning of the text session of Parliament, and shall be judicially noticed, and shall have effect us if curreted by the text set. this Act.

(3.) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected an I accounted for, and to what account they are to be paid.

4.) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chimeery Court of the county pulatine of Laneaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "ehambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that Court in respect of proceedings under this Act shall be subject to the sametion of the Court in the Ducky and reuder this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Laneaster.

(5.) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding-Up) Act, 53 & 54 Vict. 1890, which are in force at the commencement of this Act. e. 62

238.—(1.) Subject to the provisions of this Act with respect to rules and fees in S. 171 of 1862. relation to the winding up of companies in England, rules of procedure for the Powers to purposes of this Act, including rules as to costs and fees, may be made-

- (a) As regards the High Court in England, by the anthority having power to of procedure.
 (b) As regards the Court of Session, by act of sederunt :
- (c) As regards the High Court in Ireland, by the anthority having power to make rules for the Supreme Court in Ireland :
- (d) As regards the Court exercising the stannaries jurisduction, by the anthority having power to make rules for County Courts in England.

(2.) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the 25 & 26 Viet. commencement of this Act. c. 89.

Rules and fees for winding up in England.

officers in English winding-up.

len the to ans dit

lof ard erenin the

ount d hi mies

and cash s of for loard d in nefit

ittee the such ny be

redit

ds of notice ation, cent.

tes of panies asury mated to the

ppoint ion as on so

direct person elation iminish

direct hau an tion to ish that

ore both t day of of proingland, dicature by that

n to the r as the 509

Act of 1908

Special Provisions as to Stannaries.

8. 34 of 32 & 33 Vict. c. 19, s. 34. Attachment of del t due to eontributory on whiding up In stanneries Court.

Vict. e. 43.

Preferential payments in stundaries cases.

6 Edw. 7,

e. 58.

239. When several companies are in course of liquidation by or under the super-Intendence of the Court exercising the stanuaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may lu course of liquidation become due from him to the company of which he is a contributory ; and the amount

thereof shall be applied to such payment in due course : Provided that such an arder of attachment shall not prejudice any claim which the company so Indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt In favour of any third person.

240. In the application to companies within the staunaries of the provisions of this Act with respect to preferential payments, the following modifications shall be 8. 2 of 50 & 51 made :-

(1.) In the case of a clerk or servant of such a company, the priority with respect to wages and saiary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal ugent, ninuager, purser, or secretary :

(2.) All wages in relation to the mino of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts :

(3.) Wages of any miner, artizan, or labourer unpaid at the commencement of the winding-up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (not exceeding in any individ. ' ease one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accured before the commencement of the winding-up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to ali costs, except (in the case of a winding-up by the Court) such costs of and incidental to the making of the winding-up order as in the opinion of the Court have been properly incurred, and to all claims by mortgagees, exceution creditors, or any other persons, except the claims of clerks and servants in respect of their waves or salary, and, subject as aforesaid, the olo or any part of the assets of the 1 to all existing mortgages or charges Court may, by order, charge eompany, in priority to all cit. I to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this chargo may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be psid without delay so far as the amount advanced extends, and in such order of payment or the Court discute. as the Court directs.

Provisions as to mine eiub funds. 241.-(1.) On the winding-up of a company within the stanuaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the ehub.

(2.) Where the company is being wound up voluntarily, the liquidator or any erson claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determino any question arising in the matter in the same manner as if the company were being wound up by the Court.

Removal of Defunct Companies from Register.

349.-(1.) Where the registrar of companies has reasonable cause to believe that S. 26 of 1900. a company is not carrying on business or in operation, he shall send to the company Registrar by post a letter inquiring whether the company is carrying on business or in operation.

(2.) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company hy post a registered letter referring to the first letter, and stating that no answer thereto has lsen received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3.) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any unswer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notico the name of the company mentioned therein will, unless enuse is shown to the contrary, be struck off the register and the company will be dissolved.

(4.) If, in any case where a company is being wound up, the registrar has reason-able cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutivo months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(5.) At the expiration of the time mentioned in the notice the registrar may, onless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the pub-lication in the Gazette of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing efficer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6.) If a company or any member or creditor thereof feels aggrieved by the (b.) It is company or any memory or creation thereof feels aggreeved by the company having been struck off the register, the Court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the r for, order the mane of the company to be restored to the register, and thereup he company shall be deemed to have continued in existence as if its name has not been struck off; and the Court may be the order divergent divergent water are been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and nll other persons in the same position as nearly as may be as if the name of the company had not been struck off.

7.) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

PART V.

REGISTRATION OFFICE AND FEES.

243.-(1.) For the purposes of the registration of companies under this Act. S. 174 of 1862. there shall be offices in England, Scotland, and Ireland, at such places as the Board Registration

(2.) The Board of Trade may appoint such registrars, assistant registrars, elerks, (2.) The Board of Flate may appendent for the registration of companies under Sectland, this Act, and may make regulations with respect to their daties; and may remove and Ireland. any persons so appointed.

offices in

mary strike defunct company off register.

511

Act of 1908

hat e of ifers, ved, tain tion filler

hich off, debt

ns of ll be

pect cipal

oved any t not inded lority

nt of

f the anv under bility all, to to nli of and of the Igres. ts and d, the of the arges wages te not

ude in or nuy ie waid ithout yment

ontions ent, or wets of hall be to the ith the

or any to the ie same

(3.) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of

money provided by Parliament. (4.) The Board of Trade may require that the office of the registrar of the Court exercising in respect of the winding up of companies the standards jurisdiction shall be one of the offices for the registration of companies within that jurisdiction. (5.) The Board may direct a seal or seals to be prepared for the authentication

of documents required for or connected with the registration of companies.

(6.) Any person may inspect the documents kept by the registrar on payment of such fees as may be appainted by the Hoard of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, an payment for the certificate, certified copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each follo of a certified copy or extract, or in Scotland for each sheet of two hundred

words. (7.) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it shall not be necessary to prove shall in all legal proceedings be admissible in evidence as of equal validity with the original document. (8.) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done in England to or by the volution registrar of the stark companies, or how here on the start of the stark companies.

to or by the existing registrar of joint stock companies or he done in England such person as the Board may for the time being authorize; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or to or by such person as the Board may for the time being authorize. person as the Board may for the time being authorize in Sectiand or Ireland, in the absence of the registrar or assistant registrar; but, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

244. -(1.) There shall be paid to the registrar in respect of the several matters mentioned in Table B. in the First Schedule to this Act the several fees therein specified, or such smaller fees as the Board ot Trade may from time to time direct. (2.) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

PART VI.

Application of Act to Companies formed and registered under 10kmer COMPANIES ACTS.

8. 176 of 1862. Application of Act to companies formed under former Companies Acts.

Application of Act to companies registered under former Companies Acts.

245. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a guarantee, as it the company find ocen formed and registered inder this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company other than u limited company, as if the company had been formed and registered under this Act as an unlimited

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the company : Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

246. This Act shall apply to every company registered but not formed uoder the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

8. 17 of 1862. Pecs.

947. This Act shall apply to every unlimited company registered in pursuance 8.26 of 1862, of the Companies Act, 1879, us a limited company, he the same manner as it pplies Application of to an unlimited company registered in pursuance of this Act as a limited company: registered in pursuance of this Act as a limited company: registered in pursuance of this Act as a limited company: registered in pursuance of this Act as a limited company: registered in pursuance of this Act as a limited company: registered in pursuance of this Act as a limited company: registered in the date of registration shall be under Companies and the text as a limited company of the text as a limited company.

construed as a reference to the date at which the company was registered as a panies Act, 1879. limited company under the Companies Act, 1870,

248. A company registered under the Jaint Stock Companies Acts may cause 6.76. its shares to be transferred in manner hitherto in use, or in such other manner is 8, 178 of 1882. the company may direct.

PART VIE

COMPANIES AUTHORIZEDS TO REMISTER UNDER THIS ACT.

249.- (1.) With the exceptions and subject to the provisions mentioned and 8.179 of 1864. contained in this section, -

- (i) any company consisting of seven or more members, which was in existence capable on the second day of November eighteen hundrid and sixty-two, of being hielinding any company registered under the Joint Stock Companies registered. Acts: and
- ii any company formed after the date aforesaid, whether before or after the commencement of this Act, in parsuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannarles, or being otherwise duly constituted by law, and consisting of seven or more members.

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shill not be invalid by reason that it has taken place with a view to the company being wound up.

2.) Provided as follows :-

40 of irt.

п.

on

of

ng

of Les P

hed. ng

wh red

the

leit

()461 be

: nf

Int ley hy

by

neh mI, the

BICY.

the the

terns

rein et.

the

1 the

I by

-

as if

nited

un if

nited

ll be

r the

y ter.

uder

nner

t not

II be

r the

- (a) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section :
- b) A company having the hability of its members limited by Act of Parliament or betters patent shall not register in pursuance of this section as an unlimited company, or as a company limited by guarantes :
- or A company that is not a joint stock company as hereinatter defined shall not register in pursuance of this section as a company limited by shares; 4
- A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy in cases where provies are allowed by the regulations of the company, at a general meeting summoned for the purpose:
- c) Where a company not having the fiability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than threefourths of the members present in person or by proxy at the meeting :
- f. Where a company is about to register as a company limited by guarantee. the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the rompany, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he censed to be a member, and of the costs and expenses of winding-np, and for the adjustment of the rights of the contributories among themselves, such amount as new be required. not exceeding a specified amount.

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

4.) A company registered under the Companies Act, 1862, shall not be registered in pursuance of this section.

250. For the purposes of this Part of this Act, as far as relates to registration S. 181 of 1862. of companies as companies limited by shares, a joint stock company means a Definition of company having a permanent paid-up or nominal share capital of tixed amount joint stock divided into shares, also of fixed amount, or held and transferable as stock, or company,

42 & 44 Viet. Mosle of Linns ferring shares.

Comparies.

513

Act of 1908

divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited limbility under this Act shall be deemed to be a company limited by shares.

251.-(1.) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but it, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the noteholders, shall be liable to contribute towards payment of the debts of the general ereditors a sum equal to the up ount received by the note-holders ont of the general assets.

(2.) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3.) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

252. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say) :-

(1.) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;

(2.) A copy of any Act of Parliament, royal charter, letters patent, deed of settle-(a) a copy of any fit of random royal character, rectors patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and
 (3.) If the company is intended to be registered as a limited company, a state-

ment specifying the following particulars; (that is to say):-(a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(b) The number of shares taken and the amount paid on each share :

(c) The name of the company, with the addition of the word " limited " as the last word thereof : and

(d) In the case of a company intended to be registered as a commy limited by guarantee, the resolution declaring the amount

guarantee. 258. Before the registration in pursuance of this Part of this Act of any company Requirements not being a joint stock company, there shall be delivered to the registrar

(1.) A list showing the names, addresses, and occupations of the directors or other

(1) A managers (if any) of the company ; and
(2.) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3.) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

254. The lists of nembers und directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two cr more directors or other principal officers of the company.

255. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

256.-(1.) Where a banking company which was in existence on the seventh day of Angust eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company. either by delivery of the notice to him, or by posting it to him at, or delivering it at. his last known address.

(2.) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the

S. 184 of 1862. for registration by other than joint stock companies.

8. 186 of 1862. Authentication of statements of existing companies. 8. 187 of 1862. Registrar may require evidence as to nature of

company. 8. 188 of 1862. On regultration of banking company with limited liability, notice to be given

to customers.

S, 183 of 1862. Requirements for registration by joint stock companies.

514

8. 6 of 1879. Liability of bank of issue unlimited in

respect of

notes.

account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

257. No fees shall be charged in respect of the registration in pursuance of this S. 189 of 1862. Part of this Act of a company if it is not registered as a limited company, or if Exemption of

Part of this Act of a company if it is not registered as a minited company, or a Exemption of before its registration as a limited company the liability of the shareholders was certain companies from particle fro limited by some other Act of Parliament or by letters patent.

258. When a company registers in pursuance of this Part of this Act with S. 190 of 1862. limited liability, the word "limited " shall form and be registered as part of its Addition of

259. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, it any, as are payable under Table B. S. 191 of 1862. in the first schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, registration and in the case of a limited company, that it is limited, and thereupon the company of existing shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

260. All property, real and personal (including things in action), belonging S. 193 of 1862. to or vested in the company at the date of its registration in pursuance of this Part Vesting of of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

261. Registration of a company in pursuance of this part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

262. All actions and other legal proceedings which at the time of the registra-tion of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member there f, may be continued in Continu the same manner as if the registration had not taken place: nevertheless execu-tion shall not issue against the effects of any individual member of the company actions. on any judgment, decree, or order obtained in any such action or proceeding ; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company

263. When a company is registered in pursuance of this Part of this Act-

- (i) All provisions contained in any Act of Parliament, deed of settlement. Effect of contract of copartnery, cost book regulations, letters patent, or other registration case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles :
- (ii) All the provisions of this Act shall upply to the company, and the members. contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is (a) The regulations in Table A. in the First Schedule to this Act shall

(a) not apply unless adopted by speci-resolution: (b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered :

(e) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(d) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company ;

(e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company :

Addition of "limited" to name.

Certificate of companies.

property ou registration. S. 194 of 1862. Saving for existing liabilities. S. 195 of 1862. Continuation of existing

S. 196 of 1862.

Act of 1908

(f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid ; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding-np, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency. of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply :

(iii) The provisions of this Act with respect to-

(a) the registration of an unlimited company as limited :

(b) the powers of an unlimited company on registration as a limited company to increase the nominal monont of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up:

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding.np;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery. cost book regulations, letters patent, or other instrument constituting or regulating the company

- (iv) Nothing in this section shall authorize the company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not anthorized to be altered by this Act :
- (v) Nothing in this Act shall decogate from any power of altering its consti-tution or regulations which may by virtue of any Act of Parliament. deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the

company. **264.**—(1.) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2.) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(a) There shall be substituted for the printed copy of the u. _____ memorandham

required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(b) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3.) An alteration under this section may be made either with or without any

alteration of the objects of the company under this Act. (4.) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

265. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application

8. 1 of 1890. Power to substitute memorandum and articles for deed of settlement.

S. 197 of 1862. Power of Court to stay or restrain proceedings.

to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

266. Where an order has been made for winding-up a company registered in S. 198 of 1862. pursuance of this Part of this Act no action or proceeding shall be commenced or Actions proceeded with against the company or any contributory of the company in respect started on of any debt of the company, except by heave of the Court, and subject to such terms as the Court may impose.

PART VIII.

WINDING-UP OF UNREGISTERED COMPANIES.

267. For the purposes of this Part of this Act the expression "unregistered S. 199 of 1862. company" shall not include a railway company incorporated by Act of Parliament Meaning of (crecet in so far as is provided by the Abaudonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Company registered inder the Joint Stock Companies Acts, or under the Companies c. 83. Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, c. 83. association, or company consisting of more than seven members, and any trustee c. 132 & 33 Viet. savings bank certified inder the Trustees Savings Banks Act, 1863, and any c. 114.

26 & : **268**.-(1.) Subject to the provisions of this Part of this Act, any unregistered c. 87. company may be would up under this Act, and all the provisions of this Act with S. 199 of 1862. respect to winding-up shall apply to an unregistered company, with the following Winding-up exceptions and additions ;

- (i) An unregistered company shall, for the purpose of determining the Court tered comhaving jurisdiction in the matter of the winding-up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or it it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted, shall, for all the purposes of the winding-up, be deemed to be the registered office of the company:
- (ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision

(iii) The circumstances in which an unregistered company may be wound up are as follows; (that is to say.)

(a) If the company is dissolved, or has ceased to carry on business, er

is carrying on business only for the purpose of winding-up its affairs; (b) If the company is unable to pay its debts;
(c) If the Court is of opinion that it is just and equitable that the

company should be wound up :

(iv) Au unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:

(a) If a creditor, hy assignment or otherwise, to whom the company is (a) It a creditor, by assignment of other track of the has served on the indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Coart may approve or direct, a demaud under his hand requiring the company to pay the sum so duc, and the company has for three weeks after the service of the demand neglected to pay the sum, or to seenre or compound for it to the satisfaction of the creditor :

(b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member. and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the

unregistered company.

13 & 11 Viet.

26 & 27 Vict.

Winding-up

of unregis-

panies.

Act of 1908

stayed on winding-up order.

debt or demand, or procured the action or proceeding to be stayed, or indennified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same :

(c) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person anthorized to be such as nominal defendant on behalf of the company, is returned unsatisfied;

(d) If in Scotland the inducize of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(e) If it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts :

(v) The Court having jurisdiction to wind a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in Eagland or Ireland, or the Court of Session in Scotland according as the railway was authorized to be made in England, Ireland, or Seotland, and the special provisions of those Acts shall apply to the winding-up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867:

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicuture Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicatnre (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court:

(vi) A petition for winding up a trustee saving. Lank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorized under the other provisions of this Act to present a petition for winding up a company:

(vii) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications (if any) as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

(2.) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

269.—(1.) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the themselves, or to pay or contribute to the payment of the pay or contribute to the payment of the company, and every contributory shall be liable to courribute to the assets of the company all sums due from him in respect of any such liability as a foresaid:

Provided that, in the case of an unregistered company within the standards, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order. (2.) In the event of the death, bankruptcy, or insolvency, of any contributory, or

(2.) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

270. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of

36 & 37 Viet. c. 66. 40 & 41 Viet. c. 57.

50 & 51 Viet. o. 47.

S. 200 of 1862. Contributories in winding-up of unregistered company.

8. 201 of 1862. Power of Court to stay or restrain proceedings.

an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

271. Where an order has been made for winding-up an unregistered company, 8. 202 of 1842. no action or proceeding shall be proceeded with or commenced against any con- Actions stayed tributory of the company in respect of any debt of the company, except by leave of on winding-up the Court, and subject to such terms as the Court may impose.

272. If an unregistered company has no power to sue and be sued in a common S. 203 of 1862. 272. It an unregistered company has no power to she and be shed in a common Directions as name, or if for any reason it appears expedient, the Court may by the winding-up Directions as order, or by any subsequent order, direct that all or any part of the property, real to property and personal (including things in action), belonging to the company, or to trustees in certain on its behalf, is to vest in the liquidator by his official name, and therenon the cases. property or the part thereof specified in the order shall vest accordingly ; and the liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

273. The provisions of this Part of this Act with respect to unregistered com-panies shall be in addition to and not in restriction of any provisions hereinbefore Provisions of in this Act contained with respect to winding up companies by the Conrt, and the Conrt or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound np. be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

PART IX.

COMPANIES ESTABLISHEN OUTSIDE THE UNITEN KINGDOM.

274.-(1.) Every company incorporated outside the United Kingdom which S. 35 of 1907. stablishes a place of business within the United Kingdom shall within one month Requirefrom the establishment of the place of business file with the registrar of companies-

- (a) a certified copy of the charter, statutes, or memorandum and articles of the companies company, or other instrument constituting or defining the constitution of established the company, and, if the instrument is not written in the English language, outside tho a certified translation thereof ; (b) a list of the directors of the company ;
- (c) the names and addresses of some one or more persons resident in the United p. 437 Kingdom authorized to accept on behalf of the company service of process and uny notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the registrar a notice of the alteration.

(2.) Any process or notice required to be served on the company shall be suffi-

(2.) Any process or unice required to be served on the company shall be sum-ciently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.
(3.) Every company to which this section applies shall in every year file with tho registrar such u statement in the form of a balance sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be such deal in the source and the statement. required under this Act to be included in the annual summary

(4.) Every company to which this section applies, and which uses the word "Limited" as part of its name, shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it earries on business in the United Kingdom the name of the company and the country in which the company is incorporated; and
- (c) have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in a notices, advertisements, and other official publications of the company,

ments as to United Kingdom.

order.

Act of 1908

(5.) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing officace, five pounds for every day during which the default continues.

(6.) For the purposes of this section— The expression "certified" means cortified in the prescribed manner to be a true copy or a correct translation ; The expression " place of business " includes a share transfer or share registra-

tion office;

The expression "director" includes any person occupying the position of director, by whatever name called ; and The expression "prospectus" means any prospectus, notice, circular, adver-tisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7.) There shall be paid to the registrar for registering any documont required by this section to be filed with him a fee of five shillings or such smaller fco as may be prescribed.

275. A company incorporated in a British possession which has filed with the (b), and (c) of sub-section (1) of the last foregoing section shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act.

PART X.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

276. -(1.) All offences under this Act made punishable by any fino may be S. 49 of 1907. prosecuted under the Summary Jurisdiction Acts.

(2.) In Scotland all prosecutions for offences or fines under the provisions of this Act relating to-

(a) the appointment of directors;(b) the restrictions on commencement of business by a company;

(e) returns as to allotments ;

- (d) false statements in respect of which a penalty is provided by this Part of this Act;
- (e) the filing of copies of a prospectus, an order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company

(f) the filing of notice of appointment of a liquidator or of the accounts of a receiver or manager ;

(g) general meetings

(h) companies established outside the United Kingdom ;

(i) the issue of debentures and certificates of shares and debenture stock ;

(j) the issue, circulation, and publication of balance sheets;

(k) unqualified persons acting as directors ;

the inspection of registers of debenture holders and the furnishing of copies (\mathbf{I}) of trust deeds ;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord

Advocate may direct. 277. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

278 Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

279. If in any proceeding against a director, or person occupying the position S. 32 of 1907. of director, of a company for negligence or breach of trust it appears to the Court Power of

Applications of fines.

S. 69 of 1862. Costs in actions by certain limited companies.

S. 66 of 1862.

porated in British posse sions to hold lands.

Cap. 12 of 8 Edw. 7.

P- en if comuncor-

Prosecution

of offences.

hearing the case that the director or person is or may be liable in respect of the Court to negligence or breach of trust, but has acted honestly and reasonably, and ought grant relief fairly to be excused for the negligence or breach of trust, that Court may relieve in certain him, either wholly or partly, from his liability on such terms as the Court may cases.

think proper. **280.**—(1.) In the case of a company subject to the stannaries jurisdiction, the S. 68 of 1862. Court exercising the stannaries jurisdiction shall have and exercise the like juris- Jurisdiction for the court exercising the stannaries jurisdiction shall have and exercise the like juris- Jurisdiction diction and powers, as well on the common law as on the equity side thereof, as the of Stannaries Court of the vice-warden of the stamaries possessed before the commencement of Court. The Stamaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of 59 & 60 Vict. this Act and with the constitution of companies as prescribed or required by this c. 45.

(2.) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said Court, and all orders, rules, demands, notices, wurrants, and summonses required or authorized by the practice of the Court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the Court may think fit

Provided that no such service of process out of the limits of the stannaries in any sult or plaint on the common law side of the Court shall be effected without the special order of the judgo made on a statement of the nature and object of the suit or plaint.

(3.) All decrees, orders, and judgments of the said Court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the vice-warden of the stannaries could before its abolition have then by law enforced, whether within or beyond the stannaries.

281. If any person in any return, report, certificate, balance sheet, or other S. 28 of 1900. document, required by or for the purposes of any of the provisions of this Act Penelty for specified in the Fifth Schedule hereto, wilfully makes a statement false in any falle statematerial particular, knowing it to be false, he shall be guilty of a misdemeanor, mert, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a finc in lieu of or in addition to such imprisonment as

Provided that the fine imposed on summary conviction shall not exceed one

282. If any person or persons trade or carry on business under any name or S. 48 of 1907. title of which "Limited" is the last word, that person or those persons shall. Penalty for unless dnly incorporated with limited liability, be liable to a fine not exceeding five improper use of word

Report by Board of Trade.

283. The Board of Trade shall cause a general annual report of matters within S. 47 of 1907. this Act to be prepared and laid before both Houses of Parliament. Annual

Authentication of Documents issued by Board of Trade.

Trade. 284. Any approval, sanction, or licence, or revocation of licence, which under S. 46 of 1907. this Act may be given or made by the Board of Trade may be under the land of a Authenticasecretary or assistant secretary of the Board, or of any person authorized in that tion of docubehalf by the President of the Board. ments issued

Interpretation, &c.

998 fa 41: 4 4

"Fristing comparison of the context otherwise requires, the follow "Fristing comparison of the context other (that is to sav) :	wing expressions	Ss. 129, 1:
"Existing company" means a company formed and registered Stock Companies Acts, or under the Companies Act, 1862;	under the Joint	
P,	34	tion.

" Limited."

report by Board of

by Board of Trade.

p. 14

"Company" means a company formed and registered under this Act or an existing company; "Articles of association of a company, as originally framed

or as altered by special resolution, lucluding, so far as they apply to the company, the regulations contained (as the case may be) in Table B. in the Schedule anuczed to the Joint Stock Companies Act, 1856, or in Table A. in the First Schedule to the Schedule and the Schedule the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of that Act, or in Table A. in the First Schedule to this Act; "Memorandum" means the memorandum of association of a company, as

originally framed or as altered in pursuance of the provisions of this Act; "Documen" includes summons, notice, order, and other legal process, and

registers; "Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied; "Debenture" includes debenture stock;

"Books and papers" and "books or papers" Include accounts, deeds, writings, and documents;

"The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stanusries, as the case requires;

"The Court" used in relation to a company means the Court having jurisdiction

- to wind up the company; 'Joint Stock Compaules Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies ;
- "The Gazette" means, as respects companies registered in Englaud, the Loudon Gazette ; as respects companies registered in Scotland, the Edinhurgh Gazette ; and, as respects companies registered in Ireland, the Dublin Gazette ;

- "Real and personal," as respects Scotland, means heritable and moveable; "General rules" means general rules made under this Act, and includes forms;
- "Prescribed" means, as respects the provisions of this Act relating to the winding-up of companies, prescribed hy general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade; "Company within the stannaries" means a company engaged in or formed for
- working mines within the stannaries ;
- "The Court exercising the standaries jurisdiction " used in relation to any pro-ceedings means the County Court in which the jurisdiction formerly exercised hy the Court of the vice-warden of the stannaries in respect of those proceed-

ings is for the time being vested; "Director" includes any person occupying the position of director hy whatever name called ;

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

Repeal of Acts and Transitional Provisions.

Repeal of Acts and savings.

- 286 .- (1.) The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part : Provided that the repeal shall not affect-
 - (a) The incorporation of any company registered under any enactment hereby repealed ; nor
 - (b) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

522

0. 47.

19 & 20 Vict.

(c) Table A. In the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-one of that Act) so far as the same

applies to any company existing at the commencement of this Act ; nor (d) The continuance in force of the enactments set out in the Second Part of the Sixth Schedule to this Act, being the enactments continued in force

hy section two hundred and five of the Companies Act, 1862. (2.) The mention of particular matters in this section or in any other section of

this Act shall not prejudice the general application of section thirty-eight of the 52 & 53 Vict. Interpretation Act, 1889, with regard to the effect of repeals. 287. The provisions of this Act with respect to whading up shall not apply to Saving of

287. The provisions of this Act with respect to withing up should not apply to Saving of any company of which the winding-up has commenced before the commencement pending pro-of this Act, but every such company shall be wound up in the same manner and coolings for evelopes for the provision of the same manner and for the number of the same realings for with the same incidents as if this Act had not passed, and, for the purposes of the winding up, winding up, the Act or Acts under which the winding up commenced shull be

368. Every conveyance, mortgage, or other deed, made before the commencement S. 208 of 1862. of this Act in pursuance of any enactment hereby repealed, shull be of the same Saving of force as if this Act had not passed, and for the purposes of that deed the repealed deeds. enactment shall be deemed to remain in full force.

289.-(1.) The offices existing at the commencement of this Act in England, S. 174 of 1862. Scotland, and Ireland for registration of joint stock companies shall be continued as Formor regis-if they had been established under this Act. (2.) Registers of companies kept in any such existing offices shall respectively be tration offices, registers.

 (2.) Registers of companies kept in any site existing one can register the part of the registers of companies to be kept under this Act.
 (3.) The existing registrars, assistant registrars, officers, clerks, and servants in receivers, &c.
 those offices shall during the pleasure of the Board of Trade hold the offices and coutinued. received by the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the excention of their duties.

(4.) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5.) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasu. recoive the salaries or remuneration hitherto received by them.

(6.) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding

290. Until revoked and except as varied under the powers of this Act, the Saving for general rules and orders, and scales of fees, under the Companies (Winding Up) existing rules Act, 1890, in force at the commencement of this Act, and the rules of Court in of procedure, force at the commencement of this Act in England, Scotland, and Ireland &c. respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, S totland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

291. W sere any enactment repealed by this Act is mentioned or referred to in any docur ent, that document shall be read as if the corresponding provision (if this Act for any) of t is Act were therein mentioned or referred to and substituted to at the provision of the second state for any) of this Act were therein mentioned or referred to and substituted for the repealed a actment.

292. Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture

293. Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision

294. Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

34(2)

Substitution of provisions of repealed Acts. Saving for 28 & 29 Vict. c. 78, s. 3.

Saving for Life Assurance Com-panies Acts. 33 & 34 Vict.

c. 61. 34 & 35 Vict. c. 58. 35 & 36 Viet.

c. 41. Saving for 34 & 35 Vict. e. 31, s. 5.

Act of 1908 523

Short title. Commencement of Act.

295. This Act may be eited as the Companies (Consolidation) Act, 1908. 296. This Act shall come into operation on the first day of April ninsteen hundred and nine.

SCHEDULES.

Sections 10, 11, 67, 263, 285. p. 37

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in the companies (consolidation) Act, twos, or any statutory monifection thereof in force at the date at which these regulations become hinding on the company, shall have the meanings so defined; and words importing the singular shall include the pinral, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed hy section eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are hinding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred or the holders of existing shares in the company, any share in the com-pany may a sued with such preferred, deferred, or other special rights, or such restriction the helter in regard to dividend, voting, return of share capital, or other methods in the tendent is to time the special resolution determine.

wise, as bompany may from time to time hy special resolution determine. 4. If the ny time the share capital is divided into different classes of shares, the 1. It is ny the the share capital is divided into different classes of shares, the rights $i^{(4)}$ sched to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meeting : shall mutatis mutantis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class. 5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duy comply with such of the provisions of sections eighty-five and eighty-

shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolitation) Act, 1908, as may be applicable thereto. 6. Every person whose name is entered as a member in the register of members

shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount psid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of to certificate for a share to one of several joint holders shall be sufficient delivery to all.

7 7. If a stars certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any,

as to evidence and indemnity as the directors think fit. 8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the scentrity of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable nt a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-pald shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the compan, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

increase payable thereon. i0. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such match the property of which the lien oxists as is presently mayable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the anount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the ball. the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment, pay to the company at the time or times so specified the amount called on his shares. 13. The joint holders of a share shall be jointly and severally liable to pay all

14. If a sum called in respect of a share is not prid before or on the day appointed 14. It is sum called in respect of a share is not pind before or ou the day appointed for payment thereof, the person from whom the sum is due shall pay interest inpon the sum at the rate of five pounds per cent, per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part. 15. The provisions of these regulations as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether, on account of the amount of the agree

becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys mealled and mpaid upon any shares held by him ; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such ate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed npon between the member paying the snm in advance

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be excented both by the transferor and transferee, and the transferor shall be deemed to remain

a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any neual or common form which the directors shall approve :

I. A.B., of in consideration of the sum of £ paid to me by t'. D. of (hereinafter called "the said transferee") do hereby transfer to the said transferee the since [or shares] numbered in the moder-taking called the Company Limited, to hold into the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our bands, the day of the several conditions aforesaid.

Witness to the signatures of, &c.

20. The directors may decline to register any transfer of shares, not being fullypaid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company loss a Hen. The directors may also suspend the registration of transfers during the fourteen days humediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless—

(a) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferer to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to his share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased aurvivor, shall be the only persons recognized by the company as having any title to the share. 22. Any person becoming entitled to a share in consequence of the death or bank-

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share, or, instead of being registered himself, to make such transfer bi the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the discovered or bankrupt person before the death or bankruptey.

deceased or bankrupt person before the death or bankruptey. 23. A person becoming entitled to a share by reason of the death or bankruptey of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

24. If a member fails to pay any call or instaiment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently psyable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in fall of the matinual.

when the company receive payment in fall of the nothinal amount of the shares. 29. A statutory declaration in writing, that the declarant is a director of the company, and that a share in the company has been duly forfatted on a date stated in the declaration, shall be conjustic evidence of the facts therein stated as against all persons chaining to be entitled to the share, and that des aration, and the reselpt of the company for the consideration, if any given for the share on the sale or disposition thereof shall constitute a good title to the share on the sale or the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any arresularity or invalidity in the proceedings in reference to the forfeiture, sale or disposed of the share.

30. The provisions of these regulations as to forfetture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premlum, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Mock.

31. The directors may, with the sametion of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sametion reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations as, and subject to which, the shares from which the stock arose might previously be conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time factions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage except participation in the dividends and profits of the company shall be conferred by any such aliquot put of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the compary other fism those relating to share warrants) as are applicable to paid-up shares all apply to stock, and the words "share" and "share colder." therein shall include "stock" and "stock holder."

Share Warrants,

35. The company may issue share warrants, and according to the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such ordence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupens, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant. 36. A share warrant shall entitle the bearer to the shares included in it, and the

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.
37. The bearer of a share warrant shall, on surrender of the warrant to the

or, the bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time preservice, be entitled to have his name cutered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shale or the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognized as depositor of the share warrant. The company shall, on two days' written poice, return the deposited share warrant to the depositor written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued hy way of renewal iu case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share eapital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. () offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the ayment of ealls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, hy special resolution-

- (a) Consolidate and divido its share capital into shares of larger amount than its existing shares':
- (h) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section forty-one of the Companies (Cousolidation) Act, 1908:
- (c) Cancel any shares which, at the date of the passing of the resolution, have
- (d) Reduce its share or agreed to be taken by any person:
 (d) Reduce its share capital in any manner and with, and subject to, any incident anthorized, and consent required, hy law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required hy section sixty-five of the Companies (Consolidation) Act, 1908. 46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting). and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's

incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors. 47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary. 43. The directors may whenever they think fit convenes an extraordinary requeral

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordiuary general meetings shall also be convened on such requi-sitiou, or, in default, may be convened by such requisitionists, as provided by section sixty-six of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors expable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, hut inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manuer hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general faceting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other offleers in the place of those retiring by rotation, and the fixing of the remnneration of the auditors

51. No business shall be transacted at any general meeting nuless a quorum of members is present at the time when the meeting proceeds to business; save

as herein otherwise provided, three members personally present shall be a quorum. 52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dis-solved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company. 54. If there is no such chairman, or if at any meeting he is not present within free minute for the the terms of the target of the terms of terms of the terms of the terms of terms of

fifteea minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the husiness to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or earried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the mactine at which the poll was demanded

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a questiou of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or hy proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined hy the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made hy any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, hy his committee, curator bonis, or other person in the naturo of a committee or curator bonis appointed hy that Court, and any such committee, curator

bonis, or other person may, on a poll, vote hy proxy. 63. No member shall be entitled to vote at any general meeting unless all ealls or other sums presently payable hy him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or hy proxy. 65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so anthorized. No person shall act as a proxy unless either he is entitled on his

so annormed. No person shall act as a proxy duess either he is childed on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation. 66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the power or authority is a proven to intermed in the instrument person named in the instrument proposes to tote, and in default the instrument of proxy shall not be treated as valid. 67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :---

"---- Company, Limited. ----, of ----, in the county of ----, being a member of the ---- Company, Limited, hereby appoint ----, of ----, as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the --- day of ----, and at any adjournment thereof.

"Signed this ---- day of ----."

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined

by the company in general meeting. 70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of the Companies (Consolidation) Act, 1908.

Powers and Duties of Directors.

The husiness of the company shall be man. ged hy the directors, who may 71. pay all expenses incrired in getting up and registering the company, and may exercise all such poters of the company as are not, by the Companies (Consolida-

tion) Act, 1908, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject and to such regulations, being not inconsistent with the aforesaid regulations or and to such regulations, being not inconsistent with the atoresaid regulations of provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ip so facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager bo determined. 73. The amount for the time being remaining andischarged of moneys borrowed or mixed by the directors for the company of the company (atlearning than by the

75. The amount for the time being remaining andischarged of moneys borrowed or raised by the directors for the parposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting. 74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgares and charges affecting the property of the company, or force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the registrar of companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in bocks provided for the parpose

(a) of all appointments of officers made by the directors :

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(e) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors, and every director present at any meeting of directors or committee of directors

shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their

Disqualifications of Directors.

77. The office of director shall be vacated, if the director-

- (a) ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1908; or
- (b) holds any other office of profit under the company except that of managing

director or manager; or

(c) becomes bankrupt; or
(d) is found lunatio or becomes of unsound mind; or

(c) is concerned or participates in the profits of any contract with the

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of Directors.

73. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directory the time being on if their number of the line to the time being on if their number of the line to the time being on if their number of the line to the time being on if their number of the line to the time being on if their number of the line to the time being on the line to the time being on the line to the time being on the line to the line to the time being on the line to of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors ou the same day those to retire shall (nuless they otherwise agree among themselves) be determined by lot. 80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.
82. If at any meeting at which an election of directors ought to take place the

places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjoined meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead ; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any votes the chairman shall have a second or easting votes. In case of an equality of votes the chairman shall have a second or easting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but

for no other purpose. 90. The directors may cleet a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of tho meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit : any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

COMPANIES (CONSOLIDATION) ACT, 1908.

92. A committee may elect a chairman of their meetings: if no such chairman Is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be after-wards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

shall exceed the amount recommended by the directors. 96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company. 97. No dividend shall be paid otherwise than out of profits. 98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the Inglish as to dividents, an dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of ealls shall, while earrying interest, be treated for the purposes of this article as paid on the three.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reservo or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share. 161. Notice of any dividend that may have been declared shall be given in

manner hereinafter mentioned to the persons entitled to share therein. 102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true account - be kept-

Of the sums of money received and exp- led by the company and the matter in respect of which such receipt and - penditure takes place, and

Of the assets and liabilities of the company. 104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts t nd books of the company or any of them shall be open to the inspectiou of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the ease of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

)7. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such.

Act of 1908

meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to earry to a reserve fund.

108. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings In the manner in which notices are to be given hereinunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post. 111 If a member has no registered address in the United Kingdom and has not

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be

duly given to him on the day on which the advertisement appears. 112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptay to the persons by sending it through the post in a prepaid letter addressed to them by name, or by tho title of representa-tives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner herelnbefore anthorized to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B.

Sections 244, 259.

TABLE OF FEES to be paid to the REGISTEAR OF COMPANIES. I.-By a Company having a Share Capital.

For registration of a company whose nominal share capital does not £ s. d. 2 0

exceed 2,000/. For registration of a company whose nominal share capital exceeds 2,000/., the following fees, regulated according to the amount of nominal share capital (that is to say); £ s. d.

For every 1,000%. of nominal share capital, or part of 1 0 0 1,000%, up to 5,000%

COMPANIES (CONSOLIDATION) ACT, 1908.

For every 1,000/. of nominal share capital, or part of \pounds s. d. \pounds s. d. 1,000/., after the first 5,000/., up to 100,000/. . . . 0 5 0 For every 1,000/. of nominal sharo capital, or part of 1,000/., after the first 100,000/. 0 1 0

For registration of any increase of share capital made after the first registration of the company, the same fees per 1,000%, or part of a 1,000%, as would have been payable if the increased stars capital had formed part of the original share capital at the time of regis-

Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50%, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of regis-tration under this Act, the same fee as is charged for registering a new company.

For registering any document by this Act required or authorized to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England

For	making a record of any fact	by this Act required or authorized to	0
	of recorded by the registrar		0

II .- By a Company not having a Suare Capital.

in the articles, does not exceed 20	£	8.	
For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100	2	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of 5 <i>l</i> ., with an additional 5 <i>s</i> . for every 50 members, or less number than 50 members after the first 100.	5	0	0
For registration of a company in which the number of members is stated in the articles to be unlimited For registration of any investment of the state of the sta	-		
the registration of the company in remet of members made after		0	0
less than 50 members, of that increase Provided that no company shall be hable to pay on the whole a greater fee than 20% in respect of its number of members, taking into account the fee paid on the first registration of the company.	0	5	0
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of regis- tration under this Act, the samo fee us is charged for registering a new company.			
For registering any document by this Act required or authorized to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the state- ment required to the sent to the registrar by the liquidator in a winding-up in En dand			
winding up in En land the registrar by the inquidator in a For making a record of any fact by this Act required or authorized to be recorded by the registrar	0	5	0
	_		

Act of 1908

Section 108.

FORM C.

FORM OF STATEMENT to be published by BANKING and INSURANCE COMPANYING, and DEPOSIT, PROVIDENT, OF BENEFIT SOCIETIES.

• The share capital of the company is ----, divided into --- shares of --- each. The number of shares issued is ----.

Calls to the amount of _____ pounds per share have been made, under which the m of ____ pounds has been received. The liabilities of the company on the first day of January (or July) were_____ Debts owing to sundry persons by the company. sum of ----

On judgment, — *l*. On specialty, — *l*. On notes or bills, — *l*. On simple contracts, — *l*. On estimated liabilities, .

-1.

The assets of the company on that day were-Government securities [stating idem]. Bills of exchange and promiseory notes, ---/. Cash at the bankers, --/.

Other securities, --1.

The nominal share of

• If the company has no abare capital, the portion of, the statement relating to capital and shares must be omitted.

Section 82. p. 471

6

SECOND SCHEDULE.

THE COMPANIES (CONSOLIDATION) ACT, 1908. STATEMENT IN LIEU OF PROSPECTUS

filed by

LIMITED

1.

pursuant to section eighty-two of the Companies (Consolidation) Act, 1908. Presented for filing by

THE COMPANIES (CONSOLIDATION) ACT, 1808.

-. Limited. STATEMENT IN LIEU OF PROSPECTUE. it all the

The nominal share capital of the company	£
Divided into	Shares of £ each.
Names, descriptions, and addresses of directors or proposed dir rs.	
Minimum subser: a (if any) fixed by the memorandum of ticles of association on which the company may proceed to allot- ment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid- up otherwise than in cash. The consideration for the intended issue of	1. — shares of £ fully paid 2. — shares upon which £ per share credited as paid.
those shares and debentures.	3 debenture £ 4. Consideration.

4. Consideration.

COMPANIES (CONSOLIDATION) ACT, 1908.

- Names and addresses of (s) vendors of pro-perty purchased or acquired, or proposed to be (s) purchased or acquired by the company.
- Amount (in cash, shares, or debentures) payable to each separate vendor.
- Amount (if any) paid or payable (in each or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.
- Amount (if any) paid or payable as commis-sion for subscribing or agreeing to subscribe or procuring or agreeing to procure sub-scriptions for any shares or debentures in the company, or Rate of the commission

Estimated amount of preliminary expenses . .

Amount paid or intended to be paid to any promoter.

Consideration for the payment.

- Dates of, and parties to, every material con-tract (other than contracts entered into in the ordinary course of the husiness intended to be carried on by the company or entered into more than two years before the filing of this statement).
- Time and place at which the contracts or copies thereof may be inspected.
- Names and addresses of the anditors of the company (if any).
- Full particulars of the nature and extent of the interest of every director in the promo-tion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, hy any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered hy him or hy the firm in connection with the promotion or formation of the company. the promotion or formation of the company.
- Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting halance sheets or reports of the auditors or other reports.

Nature of the provisions.

(Signatures of the persons above-named as directors or proposed directors, or of their agents anthorized in writing.)

Act of 1908

(a) For defini-tion of vendo see Section 81 (2) of the Companies (Consolidation)

537

Total purchase price . . £-Cash£ Shares £ Debentures£-

Amount paid. payable. ..

Rate per cent.

£----.

Name of promoter. Consideration :--

Act. 198. 1 (3) of the Companies (Consolidation) Act. 1908.

P.

THIRD SCHEDULE.

Section 118.

FORM A.

MEMORANNEM of Association of a Company hus. I by Shares.

1st. The name of the company is "The Eastern Steam Packet Company, Limited.

2nd. The registered effice of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may passengers and goods in super-or toute the doing all such other things as are incidental from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirons of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber
 J. John Jones, of —, in the county of —, merchant J. John Smith, of —, in the county of —, Thomas Green, of —, in the county of —, John Thompson, of —, in the county of —, 	
· 5. Caleb White, of, in the county of	15
6. Andrew Brown, of, in the county of	··
7. Cæsar White, of, in the county of	
Total shares taken	325

Dated the ---- day of ---- 19-.

Witness to the above signatures, A. B., No. 13, Hute Street, Clerkenwell, London.

FORM B.

MEMORANDUM and ARTICLES of Association of a Company limited by Guarantee, and not having a Share Capital.

Memorandum of Association.

1st. The name of the company is "The Mntual London Marine Association,

Limited." 2nd. The registered office of the company will be situate in England. 3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is innited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year aft:rwards, for payment of the debts and Habilities of the company contracted before he ceases to be a member, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

COMPANIES (CONSOLIDATION / ACT, 1908.

 $W\kappa,$ the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursonnee of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of ——, in the county of ——, merchant.
2. John Smith, of ——, in the county of —_____.
3. Thomas Green, of ——, in the county of —_____.
4. John Thompson, of ——, in the county of —_____.

"7. Ciesar White, of , in the county of -.

Dated the ---- day of ---- 19-

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, London.

ARTICLES Of ASSOCIATION to accompany preceding MEMORANDUM of ASSOCIATION.

Number of Members,

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pur-nunce of the regulations

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last proceeding general meeting) and place as may be prescribed by the company in general meeting, or, in default, ut such time in the month following that in which the anuty rarry of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next tollowing, and may be convened by any two members in the same manner as uearly as possible as that in which meetings are to be convened by the directors.

The above-meutloned general meetings shall be called ordinary meetings; al' other general meetings shall be called extraordinary. The directors may, whenever they think fit, and shall, or, a requisition made in

wriging by any five or more members, convene an extraor library general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting : if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five mered ers, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special buriness the general nature of the business, shall be given to the members in manner hereinafter mentioned, or m such other manner, if any, as may be prescribed by the company in general meeting; but the nonreceipt of such a notice by any member shall not invalidate the proceedings at any

35 (2)

H. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and anditors, the election of directors and other officers in the place of those retiring

by rotation, and the fixing of the remmeration of the auditors. 12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five ; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members

after fifty, with this limitation, that no quornin shall in any case exceed thirv. 13. If within one hour from the time appointed for the meeting a quornin of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the following week at the same time and place ; and if a such adjourned meeting a querum of members is not present, it shall he adjourned one dir. 14. The chairman (if any) of the directors shall preside as chairman at every

perman meeting of the company.

14 If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their mucher to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member he a funatie or idiot he may vote by his committee, curator bonus, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation. The instrument appointing him shall be deposited at the registered office of the

company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

Signed this - day of -----

Directore.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the Companies (Consolidation) Act, 1908, be deemed to be directors.

Companies (Consolidation) Act, 1908.

Covery of Directors.

27. The business of the onpany shall be managed by the directors, who may excretise all such powers of the company is are not by the Company. Consolidation) Act, 1908, or by any statutory modification thereof for the time being in force, or by these articles, required to be excretised by the company is general meeting, but the company is general meeting. no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been

Election of Directory.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[Here insert Rules as to most in which business of Insurance is to be conducted.]

Andat.

29 Auditors shall be appointed and their dates regulated in accordance with sent one bardin 1 and twelve and one hundred and thirteen of the Companies (Cor solidate or any statutory modification thereof for the time being (c) and for this purpose the sold sections shall have effect as it the word 'normbers' were substituted for "shareholders," and as if "first general meeting" we are substituted for "statutory meeting."

Notices.

30 A notice may be given by the company to any member either personally, or by sending it by post to him to his registered addr so.

By weating to by post to find to its registered and set 31. Where a notice is sent by post, service of $-\epsilon$ notice shall be deemed to be effected by properly addressing, prepaying, and $\beta = \epsilon_{ijk} a^{-1}$ (for containing the notice, and unless the contrary is proved to have $\epsilon_{ijk} = 0$. If the time at which is the definition of the theorem is the time at which the letter would be delivered in the ordina-10 · ing at

Numen, Addresses, and Theory 5 . 6 . 60

- 1. John Jones, of ____, in the series of 2. John Smith, of ___, h t³
 3. Thomas Green, of ____, i. the series of the series

Dated the --- day of ----, 19--.

FORM C.

MEMORANDUM and ABTICLES of Association of a Company limited by Guarantee, and having a Share Capital.

Memorandum of Anvociation.

1st. The name of the company is " The Highland Hotel Company. Limited,"

1st. The name of the company is "The Highland Hotel Company, Lamited, 2nd. The registered office of the company will be situate in Scotland. 3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland by providing hotes and conveyances by sea and by land for the accommodation of travellers, and the doing all such other the set of the second se things as are incidental or conducive to the attainment of the above object." 4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted

before he ceases to be a member, and the costs, charges, ead expenses of winding-up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceed a twenty pounds.

oth. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirons of being formed into a company, in pursuance of this memorandum of asso-ciation, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
 1. John Jones, of —, in the county of	200 25 30 40 15 6 10 325

, 19-. Dated the -- day of -Witness to the above signatures, A. B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

1. The directors may, with the sanction of the company in general meeting. reduce the amount of shares in the company.

2 The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company. 3. All the articles of Table A. of the Companies (Consolidation) Act, 1908,

shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses, and Description of Subscribers.

" 1. John Jones, of ----, in the county of ----, merchant.

-.

" 2. John Smith, of ____, in the county of _____, " 3. Thomas Green, of ____, in the county of _____,

3. Thomas Green, of ——, in the county of —...,
4. John Thompson, of ——, in the county of —...,
5. Caleb White, of ——, in the county of —...,
6. Audrew Brown, of —..., in the county of —...,
7. Cresar White, of —____, in the county of _____.
Dated the —_____ day of _____, 19 —...
Witten to the characterization.

Witness to the above signatures, A. B., No. 13, Hute Street, Clerkenwell, London.

FORM D.

MEMOBANDUM and ABTICLES of Association of an unlimited Company having a Share Capital.

Memorandum of Association.

1st. 'The name of the company is "The Patent Stereotype Company." 2nd. The registered office of the company will be situate in England.

COMPANIES (CONSOLIDATION) ACT, 1908.

3rd. The objects for which the company is established are "the working of a Satent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
 1. John Jones, of —, in the county of	3 2 1 2 2 1 1 1 12

Dated the ---- day of ----, 19--.

Witness to the above signatures,

A. B., No. 20, Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. All the articles of Table A. of the Companies (Consolidation) Act, 1908 shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses, and Description of Subscribers.

1. John Jones, of ——, in the county of ——, merchant.
2. John Snith, of ——, in the county of —____.
3. Thomas Green. of —____ in the county of _____.
4. John Thompson, of —____, in the county of _____.
5. Caleb White, of —____, in the county of _____.
6. Andrew Brown, of _____, in the county of _____.
4. T. Abel Brown, of _____, in the county of _____.

Dated the ---- day of ----, 19-.

Witness to the above signatures,

A. B., No. 20, Bond Street, London.

Section 26.

FORM E. as required by Part II. of the Act.

- COMPANY, LIMITED, made up SUMMARY of SHARE CAPITAL and SHARES of the to the ---- day of ----, 19- (being the fourteeuth day after the date of the first ordinary general meeting in 19-).

> shares of £----each.

Nominal share capital £---- divided into (a)

shares of £-- each.

Total number of shares taken up (a) to the —— day of ——, 19— (which number agree with the total shown in the list as held by existing members) – - day of ----, 19- (which muaber

otherwise than in cash

(b) There has been called up on each of — shares £—.
(b) There has been called up on each of — shares £—.
(b) There has been called up on each of — shares £—.
(c) Total amount of calls received, including payments ou application and allotment £.

Total amount (if any) agreed to be considered as paid on -- shares which have been issued as fully paid up otherwise than in each \pounds -

Total amount (if any) agreed to be considered as paid on ---- shares which have been issued as partly paid up to the extent of — per share \pounds — Total amount of calls unpaid \pounds —.

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary

Total amount (if any) paid on (d) ---- shares forfeited £-

Total amount of shares and stock for which share warrants are outstanding £-

Total amount of share warrants issued and surrendered respectively since date of last summary £-

Number of shares or amount of stock comprised in each share warrant -

Total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies, or which would require registration if created after the first day of July nineteen hundred and eight £---

STATEMENT in the form of a balance sheet made up to the ---- day of ----, 19--, containing the particulars of the capital, liabilities, and assets of the company.

(a) When there are shares of different kinds or amounts (e.g., Preference and Ordinary, or 10), or 6(.) state the numbers and nominal values separately.

(b) Where various amounts have been called or there are shares of different kinds state them separately.

(c) Include what has been received on forfeited as well as on existing shares.

(d) State the aggregate number of shares forfeited (if any).

The Return must be signed at the cud by the mauager or secretary of the company.

Presented for hling by -----.

COMPANIES (CONSOLIDATION) ACT, 1908.

Act of 1908

List of persons holding shares in the ---- Company, Limited, on the ---- day of -, 19-, and of persons who have held shares therein at any time since the date of the last return, showing their Names and Addresses, and an Account of the Shares so held.

	NAMES, ADDRESSES, AND OCCUPATIONS.			ACCOUNT OF SHARES.						
Folio in Regis- ter Ledger con- taining parti- culars.	Sur-	Chris- tian Name.	Ad-	ber Sha hele Occu- exist pation. Me	Mem- bers	ber of hares since the date of held by tisting Mein- tisting		[‡] Particulars of Shares transferre I since the date of the last Return by Persons who have censed to be Members.		Re- marks.
				at date of Re- turn.	Num- ber.+	Date of Registra- tion of Transfer.	Num- ber.+	Date of Registra- tion of Transfer.		

• The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

+ When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.

art the date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulurs should be placed opposite the number of the transferor and not opposite that of the transferre, but the name of the transferre may be inserted in the "Remarks" column immediately opposite the particulurs of each transfer.

NAMES and Addresses of the persons who are the Directors of the ---- Limited on the ---- day of ---- 19-.

Names. Addresses,

NOTE .- Banking companies must add a list of all their places of business. Signature ----.

(State whether manager or secretary) ----.

FORM F.

LICENCE to hold LANDS.

Section 20.

The Board of Trade hereby license the —— to hold the lands hereunder described ("mert description of lands) [or to hold lands not exceeding in the whole —— acres]. The conditions of this licence are [insert conditions, if any]. - to hold the lands hereunder described

FOURTH SCHEDULE. _____

PART I.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO BE FINAL.

	Orders:
s. 169.	As to time for proving claims. As to the attendance of, and production of documents by, persons indebted to,
8. 174.	the summer of owinformation as to the sharp of property of a company
s. 219.	As to meetings for ascertaining wishes of creditors or contributories. As to ascentiating meetings of ereditors or contributories where a compromise
8, 120,	is proposed. As to the examination of witnesses in regard to the property or affairs of a
s. 227.	As to the examination of witnesses in regard to the property as and company.

PART II.

Orders Pronounced in Vacation in Scotland which are to take effect until Reclaiming Note Disposed of.

s. 140, 142, 44, 266, 270, 71. s. 149, 186, 02. t. 151. t. 164. s. 176. s. 151 (5). s. 199	Orders: Restraining or permitting commencement or coutinuance of legal proceedings. Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the Court) a liquidator for a winding up voluntarily or under supervision. Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property. Requiring the delivery of property or documents to the official liquidator. As to the arrest and detention of an abscouding contributery and his property. Limiting the powers of provisional official liquidators. For continuance of winding-up under supervision.
. 100	
	FIFTH SCHEDULE.

.....

PROVISIONS REFERRED TO IN SECT	ION 201 OF THE ACT.
PROVISIONS REFEREND TO IN DECK	

	Provisions relating to-
н. 17.	The conclusiveness of certificates of incorporation ;
8. 17.	Restrictions on appointments or advertisement of directors
8, 87.	Restrictions on commencement of business;
8, 88	Returns as to allotments ;
s. 65.	Statutory meetings :
s. 26.	The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary ;
ss. 112, 113.	The appointment and remuneration, and powers and duties, of anditors :
	Obligations of companies where no prospectus is issued;
8, 82.	Registration of mortgages and charges in England and Ireland ;
8. 93.	Filing of accounts of receiver and manager :
8. 95.	Notice by liquidator in voluntary winding-up of his appointment ;
в. 187.	Notice by inquiring in contractly winding up the
s. 188.	Rights of creditors in a voluntary winding-up ;
8, 274.	Requirements as to companies established outside the United Kingdom ; and
	Annual report by Board of Trade.
s. 283.	

546

Section 181.

Section 281.

Companies (Consolidation) Act. (908. Act of 1908 547

SIXTH SCHEDULE.

PART I.

ENACTMENTS REPEALED.

Section 284,

Session and Chapter.	Short Title of Act.	Extent of Repeal.
25 & 26 Vict c. 89.	. The Companies Act, 1862.	The whole Act.
27 Vict. c. 19.	The Companies Seals Act, 1864.	The whole Act.
30 & 31 Viet. c. 131.	The Companies Act, 1867	The whole Act.
32 & 33 Viet. c. 19,	The Stannaries Act, 1869	Sections twenty-five, twenty-six, and thirty-four.
33 & 34 Viet. c. 104.	The Joint Stock Companies Arrangement Act, 1870.	The whole Act.
37 & 38 Vict. c. 94.	Conveyancing (Scotland) Act, 1874.	Section fifty-six.
38 & 39 Vict. c. 77.	The Supreme Court of Judi- cature Act, 1875.	Section ten, so far as relates to the winding up of companies.
40 & 41 Vict. c. 26.	The Companies Act, 1877	The whole Act.
40 & 41 Vict. c. 57.	The Supreme Court of Judi- cature (Ireland) Act, 1877.	Sub-section (1) of section twenty-eight, so far us relates to the winding up of companies.
42 & 43 Vict. e. 76.	The Companies Act, 1879	The whole Act.
43 Viet. c. 19.	The Companies Act, 1880	The whole Act.
46 & 47 Viet. c. 30.	The Companies (Colonial Registers) Act, 1883.	The whole Act.
49 Vict. c. 23.	The Companies Act, 1886	The whole Act.
50 & 51 Viet. e. 43.	The Stannaries Act, 1887	Sections nine and ten; section thirteen from "Upon the winding up" to the end of the section (being para- graph (2)); and section thirty-one.
50 & 51 Vict. e. 47.	The Trustee Savings Banks Act, 1887.	Section three.
51 & 52 Vict. c. 62.	The Preferential Payments in Bankruptcy Act, 1888.	Sections one, two, and three, so far as they relate to companies.

Session and Chapter.	Short Title of Act.	Extent of Repeal.		
52 & 53 Viet. c. 42.	The Revenue Act, 1889	Section eighteen.		
52 & 53 Viet. c. 60.	The Preferential Payments in Bankmptey (Ireland) Act, 1889.	Section four, so far as relates to com- panics.		
53 & 54 Vict. c, 62.	The Companies (Memo- randum of Association) Act, 1890.	The whole Act.		
53 & 54 Vict. c. 63.	The Companies (Winding- up) Act, 1890.	The whole Act.		
53 & 54 Viet. c. 64.	The Directors Liability Act, 1890.	The whole Act.		
56 & 57 Viet. c. 58.	The Companies (Winding- up) Act, 1893.	The whole Act.		
60 & 61 Viet. c. 19.	The Preferential Payments in Bankruptey Amend- ment Act, 1897.	The whole Act.		
61 & 62 Viet. c. 26.	The Companies Act, 1898	The whole Act.		
63 & 64 Vict. c. 48.	The Companies Act, 1900	The whole Act.		
7 Edw. 7, c. 24.	The Limited Partnerships Act, 1907.	Sub-section (4) of section six.		
7 Edw. 7, c. 50.	The Companies Act, 1907	The whole Act.		
8 Edw. 7, c. 12.	The Companies Act, 1908	The whole Act.		

PART II.

Section 286.

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND (7 & 8 VICT. C. 113), 8. 47.

suing and being sued.

Existing com-Every company of more than six persons established on the sixth day of May panies to have one thousand eight hundred and forty-four, for the purpose of earrying on the the powers of trade or business of bankers within the distance of sixty-five miles from London. trade or business of bankers within the distance of sixty-five miles from London-and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, initialed "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the mane of any one of the public officers of such co-partmership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partmership; and all jndgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England

COMPANIES (CONSOLIDATION) ACT, 1908.

exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Art, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such inst-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

THE JOINT STOCK BANKING COMPANIES ACT, 1857.

PART OF 8, 12.

Notwithstanding anything contained in any Act passed in the Session holden Powerto form in the seventh and eighth years of Queen Victoria, elapter one bundred and banking part-thirteen, and initialed "An Act to regulate Joint Stock Banks in England." or merships of in any other Act, it shall be lawful for any number of persons, not exceeding ten persons, ten, to carry on in partnership the business of banking, in the same manner and npon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

NOTE ON CAPITAL DUTY.

By sect. 112 of the Stamp Act, 1891, a statement of the amount which is to form the nominal share capital of any company to be registered with limited liability shall be delivered to the registrar of joint stock companies in England, Scotland, or Ireland, and a statement of the amount of any increase of registered capital of any company now registered or to be registered with limited bubility shall be delivered to the said registrar, and every such statement shall be charged with an *ad valorem* stamp duty of 2s. for every 100/., and any fraction of 100/, over any multiple of 100% of the amount of such capital or increase of capital as the case may be.

By the Finance Act, 1899 (62 & 63 Vict. c. 9), s. 7. 5s. is substituted for 2s. as the od ratorem stamp duty by sects, 112 and 113 of the Stamp Act, 1891.

Sect. 12 of the Finance Act, 1896 (59 & 60 Vict. e. 28), extends the provisions of sect. 113 of the Stamp Act, 1891, to certain other corporations and companies.

The Revenue Act, 1903 (3 Edw. 7, c. 46), s.), provides that the statement of the amount of any increase of registered capital of any company registered under the Companies Acts, 1852 to 1900, which is required by sect. 112 of the Stamp Act, 1591, to be delivered to the registrar of joint stock companies, shall be delivered, duly stamped with the duty charged thereon, within fourteen days after the passing of the resolution by which the registered capital is increased.

In Att.-Gen. v. Analo-Argentine Transcaus Co., Ltd., (1909) 1 K B. 677, the company had passed a special resolution authorizing the directors to increase the capital by a sum not exceeding 5,000,0007, by the ercation and issue from time to time of new ordinary shares of 57, caeh, and it was held that the whole of such 5,000,0007 was chargeable with ad valueem duty as an increase of registered capital, though in fact the directors had, pursuant to the resolution, only created and issued capital to the amount of 2,000,000?. The grounds on which the learned judge (Channell, J.) arrived at this conclusion appear to be based on a complete missippre-hension of the scheme of operation of the Companies Act, 1862, in regard to a company's capital. The learned judge appears to have thought that the capital of a company was not a mass of shares created and existing, but merely a figure denoting the maximum beyond which the company might not go. It is submitted that this is not the correct view, and that a company's capital is not increased until it is brought into actual existence, and that a mere authority to increase does not operate as an increase until that authority is exercised. See Campbell's Case, 9 Ch. 1.

Act of 1908

COMPANIES ACT, 1913.

3 & 4 GEO. 5, c. 25.

An Act to amend the provisions of the Companies (Consolidation) Act, 1908, with respect to private Companies.

15th August, 1913.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament ussembled, and by the authority of the same, as follows:----

Amendment of the law relating to private compaules. 8 Edw. 7, c. 69.

1.--(1) Where the articles of a company include the provisions which, by section one hundred and twenty-one of the Companies (Consolidation) Act. 1908, as uncended by this Act, are required to be included therein in order to 1905, as uncertain by this Act, are required to be included therein in order to constitute the company a private company for the purposes of that Act, and default is made in complying with any of those provisions, the company shall censo to be entitled to the privileges and exemptions conferred on private companies under the provisions of that Act mentioned in the Schedulo to this Act, and thereupon the said provisions shall upply to the company as if it were not a private company. not a private company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seen to the Court just and expedient, order that the company bo relieved from such consequences as aforesaid.
(2) In sub-section (1) of the said section one hundred and twenty-one of the Companies (Consolidation) Act, 1908, for paragraph (b) the following paragraph shall be substituted:—

(b) limits the number of its members (exclusive of persons who are in the

employment of the company and of persons who having heen formerly

employment of the company and of persons who having heen formerly in the employment of the company, were while in such employment und have continued after the determination of such employment to be members of the company) to fifty; and"
(3) Every private compuny shall send with the annual list of members and summary required to he sent under section twenty-six of the Companies (Consolidation) Act, 1998, a certificate signed hy a director or the sectary that the company has not, since the date of the last return, or in the case of a first return since the date of the incorporation of the company, issued any invitation. invitation to the public to subscribe for any shares or debentures of the company; and, where the list of members discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that such excess consists wholly of persons who under soction one hundred and twenty-one of that Act, as amended by this section, are to be excluded in reckoning the number of fifty.

Shout title and oonstruction.

This Act may be cited as the Companies Act, 1913, and shall be construed as one with the Companies (Consolidation) Act, 1938, and that Act and this Act may be cited together as the Com_1 anies Acts, 1908 and 1913.

COMPANIES ACT, 1913. Act of 1913 551

SCHEDULE.

Section 1.

PROVISIONS OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

Sub-section (3) of section twenty-six (which relates to the making of an annual return in the form of a balance sheet). Section one hundred and fourteen (which relates to the right of preference shareholders and debenture holders to receive and inspect balance sheets and reports). Section one hundred and fifteen (which relates to the minimum number of

Bergaraph (iv) of section one hundred and twenty-nine (which makes the reduction of the number of members of a company below the minimum a ground for the winding up of the company. for the winding up of the company).

THE ASSURANCE COMPANIES ACT, 1909.

9 Epw. 7, c. 49.

An Act to consolidate and amend and extend to other Companies carrying on Assurance or Insurance business the Law relating to Life Assurance Companies, and for other purposes connected therewith.

BE it enacted by the King's most Excellent Majest, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Palliament assembled, and by the authority of the same, as follows :---

Companies to which Act applies.

8. 2 of Assurance Act, 1870. Companies to which Act applies.

1. This Act shall apply to all persons or bodies of persons, whether corporate or unincorporate, not being registered under the Acts relating to friendly societies or to trade unions (which persons and bodies of persons are hereinatter referred to as assurance companies), whether established before or after the commencement of this Act and whether established within or without the United Kingdom, who carry on within the United Kingdom assurance business of all or any of the following classes

(a) Life assurance business: that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life;

- (b) Fire insurance business; that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire;
- (c) Accident insurance business; that is to say, the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents, whether fatal or not, disease, or siekness, or any class of personal accidents, disease, or sickness;
 (d) Employers' liability insurance business; that is to say, the issue of, or the undertaking of liability under, policies insuring employers against liability to derive to workman in their sumployers.
 - to pay compensation or damages to workmen in their employment ;
- (e) Bond investment business; that is to say, the business of issuing bonds or endowment certificates by which the company, in eturn for subscriptions payable at periodical intervals of two months or iess, contract to pay the bondholder a sum at a future date, and not being life assurance business as hereinbefore defined;

subject as respects any class of assurance business to the special provisions of this Act relating to lusiness of that class:

A company registered under the Companies Acts which transacts assurance business of any such class as aforesaid in any part of the world shall for the purposes of this provision be deemed to be a company transacting such business within the United Kingdom.

General.

8. 2 of 1870. Deposit.

2.-(1) Every assurance company shall deposit and keep deposited with the Paymaster-General for and on behalf of the Supreme Court the sum of twenty thousand pounds.

(2) The sum so deposited shall be invested by the Paymaster-General in such of the securities usually accepted by the Court for the investment of funds placed under its administration as the company may select, and the interest accruing due

on any such securities shall be paid to the company. (3) The deposit may be made by the subscribers of the memorandum of asso-ciation of the company, or any of them, in the name of the proposed company, ciation of the company, or any of them, in the name of the proposed company by and, upon the incorporation of the company, shall be deemed to have been made by, and to be part of the assets of, the company, and the registrar shall not issue a certificate of incorporation of the company until the deposit has been made.

(4) Where a company carries on, or intends to earry on, assurance business of more

than me class, a separate sum of twenty thousand ponods shall be deposited and kept deposited under this section as respects each class of budness, and the deposit made in respect of any class of business in respect of which a separato assurance fund is respired to be kept shall be downed to form part of that fund, and all interest accruing due on any such deposit or the securities in which it is for the

time being invested shall be earried by the company to that fund. (5) The Paymaster-General shall not accept a deposit except on a warrant of the Boarl of Trade.

(6) The Board of Trade may make rules with respect trapplications for warrants, the payment of deposits, and the investment thereof or dealing therewith, the deposit of stocks or other scentities in lieu of money, the mayment of the interest or dividends from time to time according due on any securities in which dep sistare for the time being invested, and the withdrawal and tracefer of deposits, and the rules so made shall have effect as if they were enacted in this Act, and shall be laid before Parliament as soon as may be after they are made.

(7) This section shall apply to an assurance company registered or having its head office in Ireland, subject to the following modifications

References to the Supreme Court shall be construed as references to the Supreme Court of Judicature in Ireland, and references to the Paymaster-Geoeral shall be construed as references to the Accountant-General of the last-mentioned Court.

3. - (1) In the case of an assurance company transaction other business besides S. 4 of 1870. that of assurance or trac-acting more than one class of assurance hu-iness, a separate Separation account shall be kept of all receipts in respect of the assurance business or of each of funds. class of assurance business, and the receipts in respect of the assurance hudness, or, in the case of a company carrying on more than one class of assurance business, of each class of busicess, shall be carried to and form a separate ass mance fan I with an appropriate name :

Provided that nothing in this section shall require the investments of any such fund to be kept separate from the investments of any other fund

(2) A fund of any particular - loss shall be as absolutely the security of the p dicy bolders of that class as though it belonged to a company carroi g on no other business than assurance business of that class, and shad not be lichle for any coutracts of the company for which it would not have been hable had the business of the company been only that of assurance of that class, and shill not be applied, directly or indirectly, for any purposes other than those of the class of business to

4. Every assurance company shall, at the expiration of each financial year of the S. 5 of 1870. company, prepare-

- (a) A revenue account for the year in the form or forms set forth in the First and balance Schedule to this Act and applicable to the class or classes of assurance sheets. business carried on by the company;
- (b) A profit and loss account in the form soft for h in the Second S deslate to this Act, except where the company carcies on assurance business of one class ouly and no other business;

(c) A halaoee sheet in the form set forth in the Third Schelule to this Act.

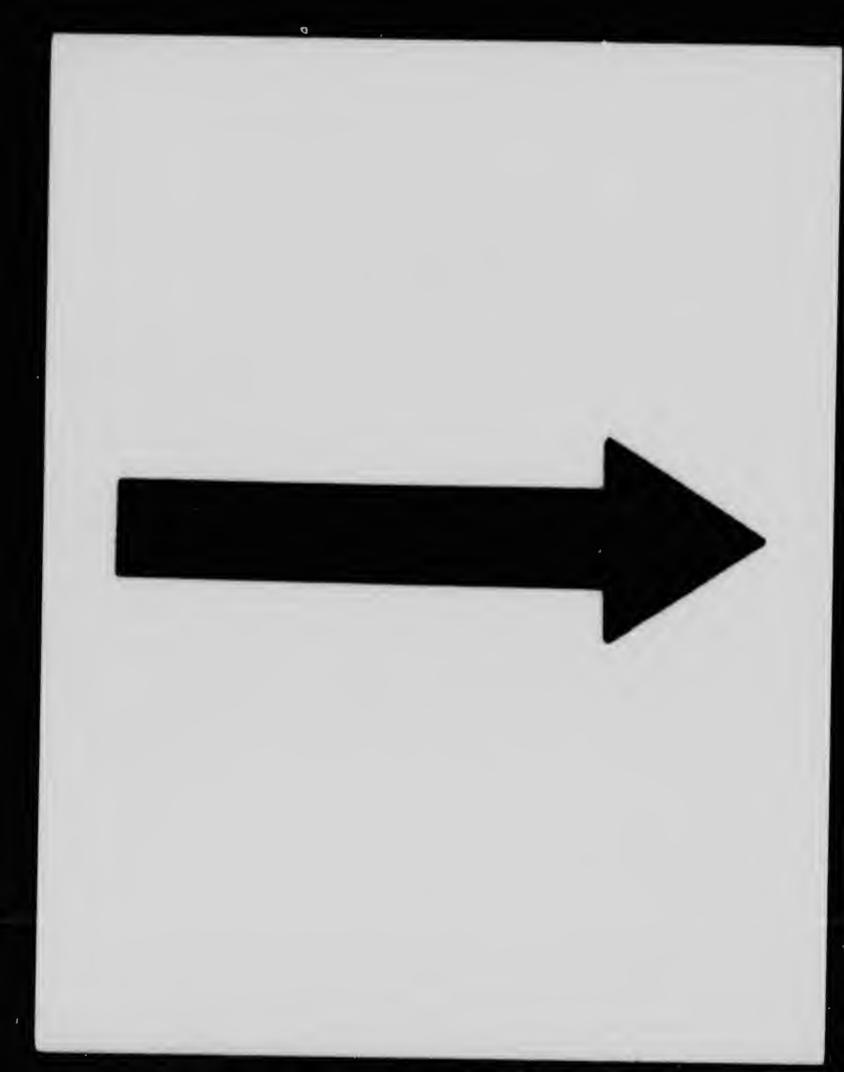
5.-(1) Every assurance company shall, once in every five years, or at -n h shorter S. 70 of 1870. intervals as may be prescribed by the instrument constituting the coopany, or by Actuarial intervals as may be presented by the instrument constituting the tougast, in a constitution of the instrument constituting the tougast, and the instruction of the liabilities, by an actuary, and shall cause an abstract. abstract of the report of such as a cry to be made in the form or forms set forth in the Fourth Schedule to this Act and applicable to the class or classes of assurance

(2) The foregoing provisions of this section shall also apply whenever at any other time an investigation into the financial condition of as ussurance compaoy is made with a view to the distribution of profits, or the results of which are made public.

6. Every assurance company shall prepare a statement of its assurance husioess S. 8 of 1870, at the date to which the accounts of the company are mide up for the purposes of Statement any such investigation as aforesaid in the form or forms set forth in the Fifth of assurance Schedule to this Act and mating the to the stars of characteristic data and the form of the stars and the stars and the stars of the stars and the stars of t Schedule to this Act and applicable to the class or classes of assurance husiness business. Carried on by the company : Provided that, if the investigation is made annoally by any company, the company may prepare such a statement at any time, so that it be made at least once in every five years.

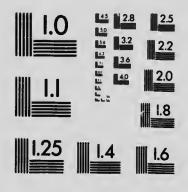
report and

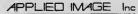
P.



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)







1653 East Main Street Rochester, New Yark 14609 USA (716) 482 - 0300 - Phone (716) 288 - 5989 - Fax

Appendix.

S. 5 of 1870. Deposit of accounts, &c. with Board of Trade.

7.-(1) Every account, balance sheet, abstract, or statement hereiubefore required to be made shall be printed, and four copies thereof, one of which shall be signed by the chairman and two directors of the company and by the principal officer of the company and, if the company has a managing director, by the managing director, shall be deposited at the Board of Trade within six months after the close of the period to which the account, balance sheet, abstract, or statement relates : Provided period to which the account, binance sheet, abstract, or schemel relates: I forded that, if in any case it is made to appear to the Board of Trade that the circum-stances are such that a longer period than six months should be allowed, the Board may extend that period by such period not exceeding three months as they think fit. (2) The Board of Trade shall consider the accounts, balance sheets, abstracts, and

statements so deposited, and, if any such account, balance sheet, abstract, or statement appears to the Board to be inaccurate or incomplete in any respect, the Board shall communicate with the company with a view to the correction of any

such inaccuracies and the supply of deficiencies. (3) There shall be deposited with every revenue account and balance sheet of a company any report on the affairs of the company submitted to the sharehold rs or policy holders of the company in respect of the financial year to which the account aud balance sheet relates.

(4) Where an as-urance company registered under the Companies Acts in any year deposits its accounts and balance sheet in accordance with the provisions of this section, the company may, at the same time, send to the registrar a copy of such accounts and balance sheet ; and, where such copy is so sent, it shall not 1* necessary for the company to send to the registrar a statement in the form of a balance sheet as required by sub-section (3) of section twenty-six of the Companies (Consolidation) Act, 1908, and the copy of the accounts and balance sheet so sout shall be dealt with in all respects as if it' were a statement sent in accordance with that sub-section.

8. A printed copy of the last-deposited accounts, balance sheet, abstract, or statement, shall on the application of any shareholder or policy holder of the company be forwarded to him by the company by post or otherwise.

9. Where the accounts of an assurance company are not subject to andit in accordance with the provisions of the Companies (Cousols ation) Act, 1908, or the Companies Clauses Consolidation Act, 1845, relating to andit, the accounts of the 8 & 9 Vict. c. 16. company shall be audited annually in such manner as the Board of Trade way pre-cribe, and the regulations made for the phrpose may apply to any such company the provisions of the Companies (Consolidation) Act, 1908, relating to andit, subject to such adaptations and modifications as may appear necessary or expedient.

10. Every assurance company which is not registered under the Companies Acts. or which has not incorporated in its deed of settlement section ten of the Companies Changes Consolidation Act, 1845, shall keep a "Shareholders' Address Book," in accordance with the provisions of that section, and shall, on the application of any shureholder or policy holder of the company, furnish to him a copy of such book, on payment of a sum not exceeding sixpence for every hundred words required to be copied.

11. Every assurance company which is not registered under the Companies Actshall cause a sufficient number of copies of its deed of settlement or other instrament constituting the company to be printed, and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of such deed of settlement or other instrument on payment of a sum not exceeding one shilling.

12. Where any notice, advertisement, or other official publication of an assurance company contains a statement of the amount of the anthorized capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

13.-(1) Where it is intended to amalgamato two or more assurance companies. or to transfer the assurance business of any class from oue assurance company to another company, the directors of any one or more of such companies may apply to the Court, by petition, to sauction the proposed arrangement.

(2) The Court, after hearing the directors and other persons whom it considerentitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

(3) Before any such application is made to the Court-

(a) notice of the intention to make the application shall be published in the Gazette ; and

8 Edw. 7, e. 69. 8. 6 of 1870.

Right of share-holders, &c. to copi s of accounts, &c. Audit of accounts.

S. 7 of 1870. List of shareholders.

S. 13 of 1870. Deed of settlement.

Publication of authorized, sub-scribed, and paid up capital.

S. 14 of 1870. Amalgamation or transfer. p. 384

THE ASSURANCE COMPANIES ACT, 1909.

be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policy holder of each company in manner provided by section one hundred and thirty-six of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally : Provided that it shall not be necessary to transmit such statement and other documents to policy holders other than life, endowment, sinking fund, or bond investment policy helders, nor in the case of a transfer to such policy holders if the business transferred is not life assurance business or bond investment husiness; and

(c) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the offices of the companies for a period of fifteen days after the publication of the notice in the Gazette.

(4) No assurance company shall amalgamate with another, or transfer its husiness to another, unless the amalgamation or transfer is sanctioned by the Court in

14. Where an amalgamation takes place between any assurance companies, or S. 15 of 1870. where any assurance business of one such company is transferred to another com- Statements where any assurance business of one such company is transferred to another cont. Statements pany, the combined company or the purchasing company, as the enso may be, in case of shall, within ten days from the dato of the completion of the amalgamation or amalgama-

- (a) certified copies of statements of the assets and habilities of the companies transfer. concerned in such amalgamation or transfer, together with a statement of
- the nature and terms of the analgamation or transfer; and (b) a certified copy of the agreement or deed nuder which the amalgamation or
- trauster is effected ; and (c) certified copies of the actuarial or other reports upon which that agreement
- (d) a declaration under the hand of the chairman of each company, and the
 - principal officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the analgamation or trausfer is therein tully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable scentities, or other property by or with the knowledge of any parties to the amalgamation or transfer.

15. The Court may order the winding up of an assurance company, in accord- 8. 21 of 1870.

The company may be ordered to be wound up on the petition of teu or more winding up policy holders owning policies of an aggregate value of not less than ten of assurance thousand pounds :

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a prima facie case has been established to the satisfaction of the Court, and until security for costs for such amount as the Court may think reasonable has been given.

16 -(1) Where the assurance business or any part of the assurance business of S. 4 of 1872. an assurance company has been transferred to another company nuder an arrange- Winding up subsidiary company) or the creditors thereof has or have claims against the com- companies. pany to which such transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary, with a view to the companies being wound np as if they were one

36(2)

visions as to

companies.

(b) a statement of the nature of the umalgamation or transfer, as the case may

ets, and ract, or eet, the of any ect of a

equired ned by of the

irector,

of the rovided

circum-e Board

hin**k fit**.

d rs or accomit

s in any isions of copy of 1 not be rın of a mpunies t so sent nce wit

tract, or of the

andit in 8. or the s of the ade may company ¦, subje∩t t.

ies Acts. mpanies look, '' in n of any ch hook, quired to

nies Actr instran of any h deed of ling.

tssnran " the comne capital

mpanies. mpany to apply to

considers satisfied

and in the

555

Act of 1909

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company.

(3) In adjusting the rights and liabilities of the members of the several com-panies between themselves, the Court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as neur thoreto as circumstances admit.

(4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not dinct the subsidiary company to be wound up unless, after hearing all objotions (if any) that may be urged hy or on behalf of the company against its being wound up, the Court is of opiniou that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with

the principal company is just and equitable. (5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any ereditor of, or person interested in. the principal or subsidiary company.

(6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups, as it thinks most expecient, upon the principles laid down in this section.

S. 5 of 1872. Valuation of annuities and policies.

17.-(1) Where an assurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of a policy of any class or of a liability under such a policy requiring to be valued in such winding up shall be estimated in manner applicable to policies and liabilities of that class pro-vided by the Sixth Schedulo to this Act.

(2) The rules in the Sixth and Seventh Schedules to this Act shall be of the same force, and may be repeated, altered, or amended, as if they were rules made in pursuance of section two hundred and thirty-eight of the Companies (Consolidation) Act. 1 08, and rules may be made nuder that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of assurance companies.

8. 22 of 1870. Power to | ourt to resider contracts.

Exten-ion of 8 Edw 7, c. 69, s. 274. to all awuranee compinies estate tished - uiside the United Kingd m. 8. 22 of 870. Custody and inspect on of documents depo it d with B said of Trade. 8. 17 of 1870. Evidence of documents.

S. 9 of 1870. Alteration of forms.

18. The Court, in the case of an assurance company which has been proved to be unable to pay its debts, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such couditions us the Court thinks just. in place of making a windling-up order.

19. Section two hundred and seventy-four of the Companies (Consolidation) Act, 1908 (which contains provisions as to companies incorporated outsido the United Kuge om) shall apply to every assuration company constituted outside the United Kingdom which carries on assurance business within the United Kingdom, whether incorporated or not.

20. The Board of Trade may direct any documents deposited with them under this Act, or certified copies thereof, to be kept by the registrar or hy any other officer of the Board of Trade : and any such documents and copies shall be open to inspection, and copies thereof may be procured by any person on payment of such fees as the Board of Trade may direct.

21.-(1) Every document deposited under this Act with the Board of Trade, and certified by the registrar or by any person appointed in that hehalf by the President of the Board of Trade to be a document so deposited, shall be deemed to be a docament so deposited.

(2) Every document purporting to be certified by the registrar, or by any per-on appointed in that behalf hy the President of the Board of Trade, to be a copy of a document so deposited shall be deemed to be a copy of that document, and shall be re eived in evidence as if it were the original document, unless some variation between it and the original document be proved.

22. The Board of Trado may, on the application or with the consent of an assurance company, alter the forms contained in the schedules to this Act as respects that company, for the purpose of adapting them to the eircumstances of that company.

The Assurance Companies Act, 1909.

23. Any assurance company which makes default in complying with any of the S. 13 of 1870. requirements of this Act shall be lable to a penalty not exceeding one hundred Penalty for pounds, or, in the case of a continuing default, to a penalty not exceeding fifty non-componnels for every day during which the default continue, and every director, plance with manager, or secretary, or other officer or agent of the company who is knownedly Act, a party to the default shall be liable to a like penalty; and, if default continue tor a period of three months after notice of default by the Board of Tra's (which notice shall be published in one or more newspapers as the Board of Trade may, upon the application of one or more policy holders or shareholders, direct , the definit shall be a ground an which the Court may order the winding up of the company, in accordance with the Court may order the winding up of the company, in accordance with the Companies (Consolidation) Act, 1905.

24. If any necount, balance shert, alistract, statement, or other document S. 19 of 1870, required by this Act is false in any particular to the knowle kee of any person who Penalty for signs it, that person shall be guilty of a misdemeanour and shall be liable on con-faisitying viction on indictment to fine and invariant or to promote the balance of the statement of the statement of the statement of the statement of the statement.

viction on indictment to fine and imprisonment, or on summary conviction to a fine statements,

25. Every penalty imposed by this Art shall be recovered and applied in the 8, 20 of 187). 25. Every penalty imposed by this Art shall be recovered and applied in the same manner as penalties imposed by the Companies (Consolitation) Act. 19 8, are Recovery and applied in the same manner as penalties imposed by the Companies (Consolitation) are set of the same set of the same

26. Any notice which is by this Act required to be sent to any policy holder Service of may be addressed and sent to the person to whom notices respecting such policy are usually seat, and any notice so addressed and sent shall be deemed and taken noti es. to be notice to the holder of such policy :

Provided that where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Act required to be sent to policy holders shall also be sent to such person at the address specified by him in his notice.

27. The Board of Trade shall lay annually before Parliament the accounts, S. 24 of 1870. balance sheets, abstracts, statements, and other documents under this Act, or Accounts, &c. purporting to be under this Act, deposited with them during the preceding year, to be laid except reports on the affairs of assurance companies submitted to the shareholders before Par-or policy holders thereof, and may append to such accounts, brance sheets, hauent, abstracts, statements, or other documents any note of the Board of Trade thereon, and any correspondence in relatio.. thereto.

28.--(1) This Act shall not affect the National Debt Commissioners or the Post- Savings. master-General, acting nuder the authorities vested in them respectively by the Government Anunities Acts, 1829 to 1888, and the Post Office Savings Bank Acts,

(2) This Act shall not apply to a member of Lloyd's, or of any other associa-(i) this Act shart hat approved by the Board of Tra e, who carries on assurance business of any class, provided that he complies with the requirements set forth in the Eighth Schedule to this Act, and applicable to business of that class.

(3) Save as otherwise expressly provided by this Act, nothing in thes Act shall apply to assurance business of any class other than one of the classes specified in y shall not be deemed to be a pointy of fire insurance by reason only that fire is one of the various risks covered by the policy.

29. In this Act, unless the context otherwise requires,-

The expression "chairman" means the person for the time being presiding Interpretaover the board of directors or other governing body of the assurance tion.

The expression "annuities on human life" does not include supernumation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of per-ons engaged or who have been engaged in any particular profession, trade, or employment, or of the dependants of

such persons; The expression "policy holder" means the person who for the time being is the legal holder of the policy for securing the contract with the as-arance

The expression "underwriter" includes any person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of the sum secured by such policy or contract;

S. 2 of 1870.

wound ie Conrt ring all ainst its y to the ion with

save as of the

al com-

i of the

, in the tolusses

as near

bsidiary r person

no comor where es to one mpanies ples laid

, or sub-y of any iding up ass pro-

the same e in pardidation) carrying ssnrance

ved to be itracts of rt thinks

ion) Act, e United e United , whether

em under any other e open to t of such

rade, and President o a doca-

ny per-on copy of a **d sball** be variation

ent of un is Act as stances of

557

è.

- period of twelve months at the The expression "financial year" means e end of which the balance of the accumts of the assurance company is
- stinck, or, if no such balance is struck, then the calendar year; The expression " Court " means the High Court of Justice in England, except expression "Control means the tright company registered or having its head that in the case of an assurance company registered or having its head offlee in Ireland, it means, in the provisions of this Act, the High Court of Justice in Ireland, and in the case of an assurance company registered or having its head office in Scotland it means, in the provisions of this Act other than those relating to deposits, the Court of Session, in either division
- The expression "Companies Acts" includes the Companies (Consolidation) Act, 1908, and any enuctment repealed by that Act
- The expression "registrar" means the Registrar of Joint Stock Companies ; The expression "actuary" means an actuary possessing such qualifications as
- may be prescribed by rules mado by the Board of Trade; The expression "Gazette" means the London, Edinburgh, or Dublin Gazette, as the case may be.

Application to Special Classes of Business.

30. Where a company carries on life assurance business, this Act shall apply with respect to that business, subject to the following modificatious:

- Application to life assurance companies.
- (a) "Policy on human life" shall mean any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human infe, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;
- (b) Where the company graut annuities upon buman life, "policy" shall include the justrument evidencing the contract to pay such an annuity. and " policy holder " includes aunuitant ;
- (c) The obligation to deposit and keep deposited the sum of twenty thousand pounds shall apply notwith tanding that the company has previously made and withdrawn its deposit, or been exempted from making any deposit under auy erastment hereby repealed ;
- (d) Where the company intends to amalgamate with or to transfer its life assurance business to another assurance company, the Court shall not sauction the amalgamation or transfer in any case in which it appears to the Court that the life policy holders representing one-tenth or more of the total amount assured in the company dissent from the amalgamation
- (e) Nothing in this Act providing that the life assurance fund shall not be liable for any contracts for which it would not have been liable had the business of the company been only that of life assurance shall affect the hability of that fund, in the easo of a company established before the ninth day of August eighteen hundred and seventy, for contracts entered into by the company before that date ;
- (f) In the case of a company carrying on life assurance business and established before the ninth day of August eighteen hundred and seventy, by the terms of whose deed of settlement the whole of the profits of all the business carried on by the company are paid exclusively to the life policy holders, and on the free of whose life policies the liability of the life assurance fu d in respect of the other business distinctly appears, such of the provisions of this Act as require the separation of funds, and exempt the life assurance f and from liability for coutracts to which it would not have been liable had the business of the company been only that of life assniance, shall not apply;
- (g) Any business carried ou by an assurance company which under the provisions of any special Act relating to that company is to be treated as life assurance business shall continue to be so treated, and shall not be deemed to be other business or a separate class of assurance insiness within the meaning of this Act :
- (h) In the case of a mutual company whose profits are allocated to members wholly or mainly by annual abatements of premium, the abstract of the report of the actuary on the financial condition of the company, prepared in

THE Assurance Companies Act, 1909.

accordance with the Fourth Schedule to this Act, may, notwithstanding unything in section 5 of this Act, be made and returned at intervals not exceeding five years, provided that, where such return is not made anomally, it shall include particulars as to the rates of anatement of premiums applicable to different classes or series of assumaces allowed a each year during the period which has clapsed since the previous return under the

- 31. Where a company carries on fire insurance business, this Act shall apply Application with respect to that business, subject to the following modifications :-
 - (a) It shall not be necessary for the company to prepare any statement of its fire ance cominsurance husiness in accordance with the Fourth and Fifth Schedules to panies.

(h) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the fire insurance business carried on by the company if the company has commenced to carry on that business within the United Kingdom before the passing of this Act:

- (c) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply where the company is an association of owners or occupiers of building or other property which satisfies the Board of Trade that it is currying on, or is about to carry on, business wholly or mainly for the purpose of the mutual insurance of its members against dumage by or incidental to fire caused to the honses or other property owned or occupied
- (d) It shall not be nevessary to make a deposit in respect of fire insurance husiness where the company has made a deposit in respect of any other elass of ussurance business, and, where a company, having made a deposit in respect of fire insurance business, comanences to carry on life assurance business or candoyers' liability insurance husiness, the company may transfer the deposit so made to the account of that other business, and after such transfer the deposit shall be treated as if it had been made in respect of such other business ;
- (e) So much of this Act as requires an assurance company transacting other business besides assurance lusiness, or more than one class of assurance business, to keep separate funds into which all receipts in respect of the assurance business or of each class of usurance business ure to be paid shall not apply us respects fire insurance business: (f) The provisions of this Act with respect to the analgumation of companies
 - shall not apply where the only classes of assurance business carried on by , both of the companies are fire insurance business, or fire insurance business and accident insurance business, and the provisions of this Act with respect to the transfer of assurance husiness from one company to another shall not apply to fire insurance business.

32. Where a company carries on accident insurance business, this Act shall apply Application with respect to that business, subject to the following modifications :-

(a) In lien of the provisions of sections five and six of this Act the following insurance provisions shall be substituted :-

 $^{\rm e}$ The company shall annually prepare a statement of its accident insurance business in the to-a set forth in the Fourth Schedule to this Act and applicable to ac .ent insurance business, and the statement shall be printed, signed, and deposited at the Board of Trade in accord-ance with section seven of this Act ":

- (b) Such of the provisions of t' is Act as relate to deposits to be made under this Act shall not apply with respect to the accident insurance business carried on by the company if the company has commenced to carry on that business in the United Kingdom before the passing of this Act
- (c) It shall not be necessary to make or keep a deposit in respect of accident insurance business where the company has made a d-posit in respect of any other class of assurance business, and, where a company, having made u deposit in respect of accident insurance business, commences to carry on hito assurance business or employers' hability insurance business, the company may transfer the deposit so made to the account of that other business, and after such transfer the deposit shall be treated as if it had been made in respect of such other business :

to accident. companies.

to fire iasur-

at the pany is , except

is head Court of tered ar this Act division

idation)

inies; tions as

Gazette,

Il apply

payment) or the strument r a term

" shull aunuity.

thousand reviously king any

r its life shall not ppears to r more of gumation

be liable e business ability of th day of to by the

stablished y. by the of all the life policy f the life rs, such of nd exempt would not hat of life

provisions assurance to be other neaning of

o membera act of the prepared in Act of 1909

- (d) So much of this Act as requires an assurance company transacting other husiness besides assurance business, or more than one close of assurance business, to keep separate funds into which all receipts in respect of the assurance business or of each class of assurance business are to be paid shall not apply as respects accident insurance basiness;
- (e) The provisions of this Act with respect to the annihizmation of companies shall not apply where the only classes of assurance business carried on by loth of the companies are accident insurance business, or accident insurance business and fire insurance business, and the provisions of this Act with respect to the transfer of assurance business from one company to abother shall not apply to accident insurance business;
 (f) The expression "policy" hechdes any policy under which there is for the
- (f) The expression "policy" heddes ony policy under which there is for the time being nu existing liability already accrued, or nuder which a liability may accrue;
- (g) Where a sum is due, or a weekly or other periodical payment is payable, under any pelicy, the expression "pelicy holder" includes the person to whom the sum is due or the weekly or other periodical payment payable.

33.-(1) Where a company earries on employers' liability insurance business, this Act shall apply with respect to that basiness, subject to the following modifications :--

- (a) This Act shall not apply where the company is an association of employers which satisfies the Board of Trade that it is carrying on, or is about to carry on, busicess wholly or mainly for the purpose of the mutual hourance of its members against liability to pay compensation or damages to workmen employed by them, either above or in conjunction with insurance against any other risk incident to their trade or industry :
- (b) This Act shall not apply where the company carries on the employers' liability insurance business as incidental only to the business of marine insurance by issuing merine policies, or policies in the form of unrine policies, covering liability to pay compensation or damages to workmen as well as losses incident to marine adventure or adventure analogous thereto:
- (c) In lieu of the provisions of sections five and six of this Act the following provisions shall be substituted :—

"The company shall annually prepare a statement of its employers' liability insurance business in the form set for'l, in the Fourth–Schedule to this Act and applicable to employers' liability insurance business, and shall cause an investigation of its estimated liabilities to be made by an actuary so far as may be necessary to enable the provisions of that form to be complied with, and the statement shall be printed, signed, and deposited at the Bourd of Trude in accordance with section seven of this Act '':

- (d) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the employers' hability insurance business carried on by a company where the company had commenced to carry on that husiness within the United Kingdom before the twentyeighth day of August mineteen hundred and seven:
- (c) As soon as the employers' hisbibity fund set apart and secured for the satisfaction of the claims of policy holders of that class amounts to forty the usual pounds, the Paymester General shall, if the company has made a deposit in respect of any other class of assurance business, return to the company the moncy deposited in respect of its employers' hisbibity insurance business, and it shall not thereafter be necessary for the company to keep any sum deposited in respect of that business, so long as the sum depo-ited in respect of any other class of assurance business is kept deposited is
- (f) Where money is paid into a County Court under the provisions of the Eighth Schedule to this Act, the Court shall (unless the Court for special reason sees fit to direct otherwise) order the homp sum to be invested or applied in the purchase of an annuity or otherwise, in such manner that the duration of the benefit thereof may, as far as possible, correspond with the probable duration of the incapacity: (g) The expression "pobey" includes any policy under which there is for the
- (g) The expression "poley" includes any policy under which there is for the time being an existing liability already accrued, or under which any liability may accrue:

Application to employers' liability insurance companies.

THE ASSURANCE COMPANIES ACT, 1909.

(h) Where any sum is due, or a weekly payment is payable, under any policy, the expression " policy holder " includes the person to whom the sum is due

or the weekly payment payable : (i) If the company carries on employers' hability insurance business outsido the United Kingdom, that business shall not be treated as part of tho

employers' hability insurance business carried on by the company for the

(2) In the application of this section to Scotland the expression "County Court" means Sheriff Court.

31. Where a company earries on bond investment business, this Act shall apply Application with respect to that business, subject to the following modifications:-

(a) The expression "policy" includes any hond, certificate, receipt, or other vestment Instrument evidencing the contract with the company, and the expression companies, "policy holder" means the person who for the time being is the legal

(b) Such of the provisions of this Act as relate to deposits shall not apply with respect to the bond investment business carried on by the company, if the company has commenced to earry on that business in the United Kingdom before the passing of this Act :

- (c) As soon as the bond investment fund set apart and secured for the satisfaction of the claims of the policy badders of that class amounts to forty thousand pounds, the Paymaster-General shall, if the company has used a deposit in respect of any other class of assurance business, return to the company the money deposited in respect of its bond investment business, and it aball not thereafter he necessary for the company to keep my sum deposited in respect of that business, so long as the sum deposited in respect of any other class of business is kept deposited :
- (d) The first statement of the bond investment business of the company shall be deposited at the Board of Trade on or before the thirtieth day of June
- (e) The company shall not give the holder of any policy issued after the passing of this Act any advantage dependent on lot or chance, but this provision shall not be construed as in any wise prejudicing any question as to the application to any such transaction, whether in respect of a policy issued before or after the passing of this Act, of the law relating to lotteries.

35. The Board of Trude may, on the application of any unregistered trade Power of union originally established more than twenty years before the commencement of Bourd of this Act, extend to the trade union the exemption conferred by this Act on regist. Trade to tered trade unions, and may, on the application of an unregistered friendly society, exempt unextend to the society the exemption conferred by this Act on registered friendly registered societies if it appears to the Board, after consulting the Chief Registrar of Friendly trade unior Societies, that the society is one to which it is inexpedient that the provisions of and friendly this Act should apply.

trade unions Aucieties.

Provisions as to Collecting Societies and Industrial Assurance Companies.

36. (1) Amongst the purposes for which collecting societies and industrial Provisions as assurance companies may issue policies of assurance there shall be included to collecting assuring money to be paid for the funeral expenses of a parent, grandparent, societies and grandchild, brother, or sister.

(2) No policy effected before the passing of this Act with a collecting society or assurance industrial assurance company shall be deemed to be void by reason only that the companies. person effecting the policy had not, at the time the policy was effected, an insurable interest in the life of the person assured, or that the nume of the person interested, or for whose benefit or on whose account the policy was effected, was not inserted in the policy, or that the insurance was not one authorised by the Acts relating to friendly societies, if the policy was effected by or on account of a per-on who had at the time a bond fide expectation that he would incur expenses in con-nection with the death or functal of the ussured, and if the sum assured is not unreasonable for the purpose of covering those expenses, and any such policy shall enure for the benefit of the person for whose benefit it was effected or his assigns.

(3) Any collecting society or industrial insurance company which, after the passing of this Act, issues policies of insurance which are not within the legal

industrial.

her husibusiness. INSLITTICE shall not

onpanie ied on by nt in-urthis Act mpany to

s for the a linbility

ble, under to whom ۶.

business. g modifi-

mplovers it to carry uracce of workmen e against

mployers' of marine of marine workmen analogous

following

mployers' hedule to ness, and ide by an at form to deposited et '':

ander this insurance menced to e twenty-

the satiss to forty has made return to ' liability the comong as the ess is kept

he Eighth ial reason that the pond with

is for the which any

Act of 1909 561

powers of such society or company shall be held to have made default in complying with the requirements of this Act; and the provisions of this Act with respect to such default shail apply to collecting societies, Industrial insurance companies, and their officers, in like manner as they apply to assurance companies and their officer

59 & 60 Viet. 0. 25.

(4) Without prejudice to the powe. ...firred by section seventy-one of the Friendly Societies Act, i896, the committee of management or other governing inferred by section seventy-one of the body of a collecting society having more than one hundred thousand members may petition the Court to make an order for the conversion of the society into a mutual company under the Companies (Consolidation) Act, 1908, and the Court may make such an order if, after hearing the committee of management, or other governing body, and other persons whom the Comt considers emitted to be heard on the petition, the Court is satisfied, on a poll being taken, that fifty-five per cent. at least of the n bers of the society over sixteen years of uge agree to the conversion; and too Court may give such directions as it thinks fit for settling a proper memorandum and articles of association of to company; but, before any such petition is presented to the Court, notice of intention to present the petition shall be published in the Gazette, and in such newspapers in the Coort may direct. When a collecting society converts itself into a company in accordance with the

provisions of this sub-sect: m, sub-section (3) of section seventy-one of the Friendly Societies Act, 1896, shall apply in like manner as f the conversion were effected under that section.

(5) In this section the expressions "collecting society" and "industrial assurance company" have the same meanings as in the Collecting Societies and Industrial 59 & 60 Vict. Assurance Companies Act, 1896.

Repeal.

Short title

and commencoment.

c. 26.

Supplemental. 37. The enactments mentioned in the Ninth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule :

Provided that nothing in this repeal shall affect any investigation made, or any statement, abstract, or other document deposited, under any enactment hereby repealed, but every such investigation shall be deemed to have been made and every such document prepared and deposited under this Act.

38.-(i) This Act may be eited as the Assurance Companies Act, 1909.

(2) This Act shall come into operation on the first day of July nineteen hundred and ten, except that as respects section thirty-six it shall come into operation on the passing thereof.

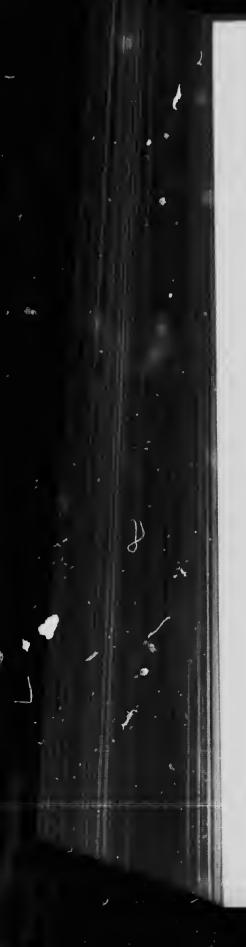
apenditure thereof to be stated ed out of the United Kingdom)	Resinees	Kingdom Kingdom. E s. d. E s. d. E s. d.		1909. : : : : : :	ement. t separately. of the Company's risk. of the Company's risk. ever us an asset, the sum so wing reparately, as respects as of single premiums, and a respect of re-assurances of the United Kingdom, apply 55
There marine inseruce business or sinking fund or capital redenption insumess is carried on, the income and expenditure thereof to be stated to be shown in a separate account. Any additional business a (in luding employers' linbility insurance business transacted out of the United Kingdom) to be shown in a separate inclusive general account. (A) - Form applicable to Life Asturance Business.	A second and build be.	Clans under policies raidnd outstanding :	Surrenders, including surrenders of bonus. Annuties	Oth'r payments 'accounts to be specified) Aucount of life a-surance fund at the end of the year, as per Third Schedule	Nore 1.— (unpanies having separe - accounts for ammities to runn the particular of their ammity basiness in a separate statement. Nore 2.— (unpanies having both Onlu ary and Industrial Fraceles to runn the particular of the busices in each department. Nore 4.— If then us this Account to be net amounts after deduction of the amounts paid and reveived in respect to re-spectrater. Nore 5.— Cumpany separates and industrial Fraceles to runn the particular of the busices in each department spacetly. Nore 5.— Furth "reveit the above means after deduction of the amounts and reveived in respect of re-spectrament spacetly. Nore 5.— Furth "reveal the new life assure account account, and taken credit for in the Balance Sheet as an asset, the sum so the amount of the yearly renewal premium intermed for the transformed to the above Account showing reparted years the sum so the amount of the yearly renewal premium intermesting the prediction of the amounts placed to the above Account showing reparted years to be the amount of the yearly renewal premium intermest after deduction of the amounts plad and revived in respect of re-assurances of Nore 5.— The columns he also be the transforment account to be appended to the above Account showing repartedy, as respects for one parts' as to yearly renewal premium incomestafter deduction of the case of the columns he also of the premiums, and ally to business secured through Branch Offices out of the United Kingdom.
apital r.den biness.a (in m applicad	th- d wn.	d. & e. d.			to r turn the reaction of the of managem of managem of the year multar of polition into income n Kingdom. '
tking fund or c v additional ha l account. (A.)-F5 mrt of the	Rusiness Business within the out of the United United Kingdom.	£ a. d. £ a. d.		: :	is for amplifies out Industrial 1 outs ofter doub outs ofter doub out. I be expenses out. I be for dur frow the united of the United Agencies out
In the marine insurance business or an in like manuer in wranate arounts. Au to be shown in a separate inclusive genera Revenue Acco		Amount of life assurance fund at the ^t biginuing of the year	Consideration for anunities granted Interests, dividends, and rent- Less income tax thereon	Other receipts (accounts to be specified).	Nore 1.—Contenties having separation of the argument of the second Nore 2.—Cumpanies having hold Ordn argument Nore 3.—Items to this Account to be net an Oct 3.—Items to this Account to be net an decide to be sparated, shown in the above Account of the sparation of the the above Account of the the above Account of the sparated the above Account of the sparated structure the above Account of the sparated account of the sparated account for the above Account of the sparated account for the above Account of the sparated account for the above Account Account above Account

4

4 -1

SCH DULES. FIRST SCHEDULE.

Section 4.



(B.)-Form applicable to Fire Insurance Business.

Revenue Account of the ---- for the Year ending ---- 19 -, in respect of Fire Insurance Business.

14 14	APPENDIX.	
£ Claims under policies paid and outstanding Commission Expenses of management Contributions to fire brigades	Other payments (accounts to be specified)	
ч ч ц		
£ . d.	£ . d.	પ્ર
Amount of fire inwurance fund at the beginning of the year :	Premiums £ s. d. Interest, dividends, and reuts £ s. d. Less income tax thereon Other receipts (accounts to be specified)	

Nors 2.- If any sum has been deducted from the Expenses " runagement account, and taken credit for in the Balance Sheet as an asset, the sum so peducted to be separately shown in the above Account. Norg 1.-Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of re-insurances of the Company's risks.

Nore 1.- Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of re-insurances of the Company's risks.

Nore 2.- If any sum has been deducted from the Express. " vanagement account, and taken credit for in the Balance Sheet as an asset, the sum so peduated to be separately shown in the above Account.

(C.)-Form applicable to Accident Insurance Business.

THE ASSURANCE COMPANIES ACT, 1909. Ant . . 4 ayments under policies, including medical and legal Expenses of management Other payments (accounts to be specified)..... expenses in connection therewith Commission \$ • 4 Revenue Account of the ---- for the Year ending ----, 19--, in respect of Accident Insurance Business. Amount of accident insurance fund at the end of the year as per Third Reserve for merpired risks, Ling - per cent. of premium income of outstanding claims as per Fourth Schedule (C, Additional reacree (if any) Schedule :--A. d. 4 њ. А. J. Other receipts (accounts to be specified) 41 4 બ Amount of accident insurance fund at Total estimated liability in respect Reserve for unexpired rades of outstanding claims Additional reserve (if any) Less income tax thereon Interest, dividends, and rents the beginning of the year :--Premiums-

Nors 1.-Items in this Account to be the net amounts after deduction of the amounts paid and received in respect & re-insurances of the Company's risks.

Nors 2.- If any sum has been deducted from the expenses of management account, and takeu credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

565

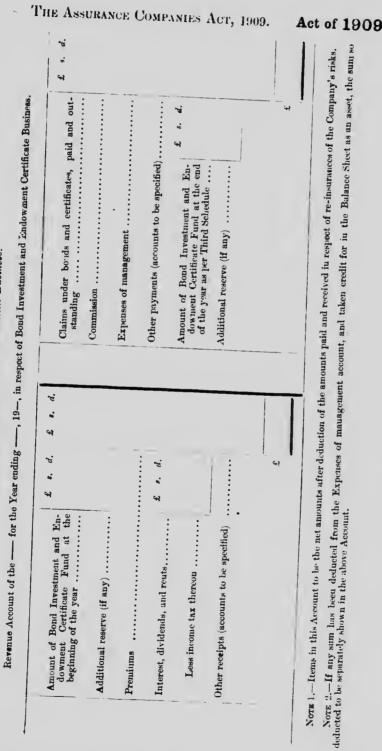
of 1909

£ s. d. Payments under policies, including medical and legal expenses in connection the ewith Comini sion ď. ः भ Amount of employers' liability insu-rance fund at the end of the year, as per cent. of premium income Total estimated liability in respect of outstanding claims, as per Fourth Schedule (D) Additional reserve (if any) Reserved for unexpired risks, baing for the year per Third Schedule :--£ s. d. Other receipts accounts to be specified) Ц. d. е ж બ Less income tax thereon Total estimated liability in respect Amount of employers' liability insu-rance fund at the begiuning of the of outstanding claims Additional reserve (if any)..... Interests, dividends, and rents Reserve for unexpired risks Premiums Vear :---

(D.)-Form applicable to Employers' Liability Insurance Business.

Revenue Account of the ---- for the Year ending ----, 19-, in respect of Employers' Liability Insurance Business transacted within the United Kingdom.

APPENDIX.



567

(E.)-Form applicable to Bond Investment Business.

d. 4 વ Balance as per Third Schedule Loss realized (accounts to be specified) Other payments (accounts to be specified) Expenses not charged to other accounts Dividends and bonuses to shareholders ¢ p FOR THE YEAR ENDING £ *. d. PROFIT AND LOSS ACCOUNT OF THE બ Other receipts (accounts to be specified) Profit realized (accounts to be specified) £ *. d. Balance of last year's account..... Interest and dividends not carried to other accounts Less income tax thereon Section 4.

APPENDIX.

SECOND SCHEDULE.

£ s. d. Life computes having separate annuity fund to show an unit the sof separately.
 Tubes items are or have hen included in the corresp uning terms in the First Schedule instance that an other events of the corresp uning terms in the First Schedule instance that an other schedule of the corresp uning terms in the First Schedule instance of an other corresp uning terms in the First Schedule instance of an other schedule decompary are specified in the other specified in the corresp uning terms in the First Schedule instance of an other local laws, in various places of an other schedule are not been applied to the corresp unit in the case of the racident, or employers' likelity. Nore 3 - The Blance Sheet into a fact that a part or the ascets has hen we dep site.
 Nore 3 - The Blance Sheet inner also that the fact that a part or the ascets has hen we dep site.
 Nore 3 - The Blance Sheet inner also the varee of the Stork Ex have ecutate fund for which separate investorements are made.
 Nore 3 - The Blance Sheet inner sheet in the appendent in respect of each class of busines, this certificate in the case of first accelent, or employers' likelity.
 Nore 3 - The Blance Sheet inner sheet in the appendent in the uggreente full of the value schedet herein here sheet in the approximation the second mession in the ease of a compary term are not the stork in the uggreente full of the value schedet size the second science of the stork is the stork is a statement here are a correlated in store that not be added in the ease of a compary term and the store in the Blanc Sheet are in the approximate the second science of the store of a compary term and the store of the Loans on parochial and other public rates municipal do. Uu seutoing premiue duridends, and rents + finterest acritical but not payable + provincial securities Io. municipul do. Railway and other debenture stocks – Home and Foreign Preference and guaranteed stocks Mortgages on property within the United Kingcion. Do. Do. out of the United Kingdom Freehol gound rents Leavehold do. ************** Arventarua Stocks and shares Compary's polices within their eurrender values Personal security Leposit with the High Conrt (securities to be specified) Britch lovermment securities. Municipal and county securities. Indum and Colonial Government securities Do. privincial securities **** ****************** -----Railway ordinary stocks House property Lite interests Reversions ********************** Foreign Government securities ASSETS. u hand and on current account. Other assets (to be specified)...... Life interests -, 19do. Arents' balances Outstanding triminms t Do. Do. Reversions. Rent charg- 8 Bills receivable BALANCE SHEET of the --- on the ()n deposit Investments ů. å UNR? £ 1. d. An unities due sud impaid τ . Other stated separately under each class of Other sums owing by the company \star (to be stated separately under each class of Fire insurance fund Avident insurance fund Empiyeeral its ality naurance fund. Boud i. "ectment and endowment certificate fund Sinktime fund and capital redemption fund Profit and loss account. Other funds in capetib. ----faduatial do. Bhareholders' cupital paid up (if any) Ordinary branch LIABILITIES. Lafe assumance Claims admitted or intimated but not paid + Bond investment Annity fund . Fire instance

37

THE ASSURANCE COMPANIES ACT, 1909.

4

Act of 1909

569

Section 4.

Ρ.

THIRD SCHEDULE.

FOURTH SCHEDULE.

Sections 5, 30, 32 and 33.

N.B.-Where sinking fund or eapital redemption insurance business is carried on, a separate statement signed by the actuary must be furnished, showing the total number of policies valued, the total sums assured, and the total office yearly premiums, and also showing the total net liability in respect of such business and the basis on which such liability is calculated.

(A.)-Form applicable to Life Assurance Business.

STATEMENT respecting the Valuation of the LIABILITIES nuder LIFE POLICIES and e the

(The answers should be numbered to accord with the numbers of the corresponding ANNUITIL

1. The date up to which the valuation is made. 2. The general principles adopted in the valuation, and the method followed in 2. The general principles adopted in the valuation, and the method followed in the valuation of particular classes of assurances, including a statement of the method by which the net premiums have been arrived ut, and whether these prin-ciples were determined by the in-trument constituting the company, or by no regulations or byelaws, or how otherwise; together with a statement of the manuer in which redicine a nuclear average lives are dealt with

in which policies on under average lives are dealt with. 3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values are to be given, at the rate of interest employed in the valuation, in respect of whole-life assurance

policies effected at the respective ages of 20, 30, 40, and 50, and having been poncies effected at the respective ages of 20, 30, 40, and 50, and having blen respectively in force for five years, ten years, and upwards at intervals of five years respectively; with similar specimen policy values in respect of endowment assumates radiates according to are to the original terms of the provident assurance policies, according to age at cutry, original term of policy, and duration, 4. The rate or rates of interest assumed in the calcula ions.

5. The actual proportion of the annual premium income, if any, reserved as a

provision for future expenses and profits, separately specified in respect of assurances with immediate profits, with deferred profits, and without profits. (If none, state

6. The consolidated revenue account since the last valuation, or, in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form an nexed. No return under this heading

will be required where a statement under this schedule is deposited annually.) 7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of policies, the amount assured, and the amount of possible annually made policies. of premiums payable annually under each class of policies, both with and without participation in profits; and also the net liabilities and assets of the company, with the amount of surplus or deficiency. (These returns to be made in the forms

8. The principles upon which the distribution of profits among the shareholders and policy holders is made, and whether these principles were determined by the annexed.) wise, and the number of years' premiums to be paid before a bonus (a) is allotted, and (b) vests. instrument constituting the company or by its regulations or byelaws or bow other-

9. The results of the valuation, showing-

number and amount of the policies whi h participated ; (b) Among policy holders with deterred participation, and the number and amount of the policies which participated ;

(c) Among the shareholders:
(d) To reserve funds, or other accounts;

 (2) Specimens of bonuses allotted to whole-life assurance policies for 100/.
 (2) effected at the respective ages of 20, 30, 40. and 50, and baying been energies at the respective ages of 20, 50, 40, ind op, and having are respectively in force for five years, ten years and upwards, at in errols of five years respectively, together with the amounts apportioned under the various m, des in which the bonus might be received with; similar specimen bonnses and particulars in respect of endowment assurance policies, according to age at entry, original term of policy, and duration.

Nors .- Separate statements to be furnished throughout in respect of Ordinary and Industrial business respectively, the basis of the division being stated.

Derrout.	Claims under policies paid and outstanding	 A.
Preniums Consideration for annuities and add	By death£ s. d. By maturity	
Interest, dividends, and rents \ldots	Surrenders.	
Less income tax thereon	Bonnees in cash	
Other receipts (accounts to be specified)	,, reduction of premiums	
	Expenses of munagement	
	Amount of life assurance fund at the end of the period as per Third Schedule	
£		1

THE ASSURANCE COMPANIES ACT, 1909. Act of 1909

Net liability. Value by the --- Table, Interest -- per cent. Net yearly premiums. Valuation. yea.ly premiums. Ottice assured and bunuses. Sums SUMMART and VAIVATION of the POLICIES of the ---- as at ----, 19--. Net yeariy premiums. Particulars of the Policies for Valuation. premiums. Office Sums assured and CODUSES. of policies. Number Deduct re-usurances (to be specified acourding to class in a separate statement) Adjustments, if any (to be separately specified) Total assurances with profits. For whole term of life Other clas es (v. he specified). Extra premiums payable I. With immediate participation is profits. II. With deferred participation a profits. III. Without participation in profits. Total of the results Description of Transactions. ANNUITIES ON LIVES. Total assurances without profits ASSURANCES. Net amount of assurances

572

(Forx referred to under heading No. 7 in Fourth Schedule (A).)

0

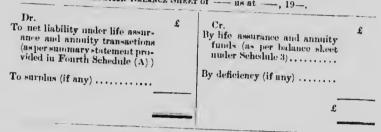
ø

APPENDIX.

Nore 1 - The form " extra premium " in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If pulicies are shown and the north at rates of premium deduced from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above much beformable. The above much beformables and valoution results much beform the European mortality tables adopted by the company, separate schedules similar in torm to also for invisions with the neutron results much beform in expect of classes of policies valued by different tables of mortality, or at different rates of interest, also for invisions of the thous with sime of any portion of the bu incess are routed under local laws in places outside the United Kingdom, a summary statement as a standard in equivalent in the total at the total sum essered and bourses, the total office with a formulation measure of the business. I used in each such place with a chick the total sum essered and bourses, the total office with a formable of no the boundary.

THE ASSURANCE COMPANIES ACT, 1909.

(Form referred to under heading No. 7, in Fourth Schedule (Λ) .) VALUATION BALANCE SHEET of ---- He at ----, 19--.



(C.)-Form applicable to Accident Insurance Business.

STATEMENT of the Estimated Lianuity in respect of Outstanding Claims arising in the year of Account, and in the preceding year or years : computed as at the end of the year in which the claums arose, and as at the end of the year of Account ; with particulars as to the number and amount of the claims actually paid in the intervening period.

I. Claims arising during the year of Account ending ----, 19--.

any perform of the bulness are required under local laws in places outside the United Kingdom, a summary had in each such place scowing the total number of policies the total sums assured and homoses, the total office to northly and inversel adopted in each such place, with a statement as to such bases respectively.

the above must be future and valuation results must be furnished in respect of classes of polycerval $N_{\rm ev}$ is 2.8 partle returns and valuation results must be furnished in respect of classes of polycerval of relations at other than European rates. The second of the business at other than European rates are required unergoing at the relation second of the business of the business. The future future and interest adopted in each such premiums, and the total to the business of the business of the business.

(a) Particulars as to Claima arising, and settled, during the year of Account :---

Class of Claim.	No. of Claims.	Total amount paid.			
(1)(1)	(2)	By Sums insured.	By Weekly Allowance.		
(i) Fatal claims (ii) Non-fatal claims					
Totals					

(b) Particulars as to Claims arising during and outstanding at the end of the year of Account :-

Class of Claim. (1)	No. of Claims.	Amount paid during Year of Account (3)	Estimated Liability, (4)
 (i) Fatal claims. (ii) Non-fatal claims, involving payment of sums insured. (iii) Non-fatal claims, involving payment of temporary weekly allowenees:			(1)

573

Act of 1909

II .-- OUTSTANDING CLAIMS which arose during the first year preceding the year of account, ending ----, 19---. a noid during the Pariod of 3.....

			APPENDIX.	
Totals of	(6)	Amount.		
Totals of Columns (3), (4), and (5).		No.		
Estimated Liability in respect of Claims	Tear of Account. (5)	Amount.		
E-d Lia respect	At the st	No.		
		Amount.		
ng the n the a Year of	n the at Not to With	Nu.	3	
One Year between the above Date and the End of Year of Account. Terminated Not terminated within such within such Period. (1)	Amount.			
Terr Perr Perr		No.		
Estimated Liability in respect of Claims	Outstanding as at the above Date. (2)	Amount.		
Est Lial respect	Outs above	No.		
	Particulars of Claims.		 (i) Fatal claims. (ii) Non-fatal claims, involving payment of sums insured. (iii) Non-fatal claims, involving payment of temporary weekly allowances:	Totals

Norm.--If temporary weekly allowances are granted by the company for periods exceeding 52 weeks, particulars are to be furnished, in a form or forms similar to II. above, showing, in respect of claims involving such extended allowances, the estimated liability as at the end of the year in which such claims arose, and as at the end of the year of account : and the number and amount of such actual claims paid during the intervening period of two (or more, years - distinguishing claims terminated, and not terminated, within such period.

THE ASSURANCE COMPANIES ACT, 1909.

III. SUMMARY OF ESTIMATED LIABILITY, IN "respect of CLAL. S OUTSTANDING BY AT the end of the Year of Account :--

A)	a per column (4) of Statement I. (b) $\dots \dots \dots$	
	in the cost of the second seco	
	ment II. (if required).	
In	respect of yearly allowances during permanent total disablement, outstanding at the end of the year of account, but not included in the above Statements	

Total estimated liability, in respect of outstanding claims as at the end of the year of account, as per First ξ Schedule (C.)

(D.) - Form applicable to Employers' Liability Insurance Business.

STATEMENT of the ESTIMATEN LIABILITY in respect of OUTSTANDING CLAIMS arising; during each of the Five Years preceding the Year of Account, and h such Year; computed as at the end of the Year in which the Claims arose, and es at the end of the Year of Account; with Particulars us to the Number and Amount of the Claims actually paid in the intervening Period.

I .-- Claims arising during the year of account, ending ----, 19-.

(a) Particulars as to claims arising and settled during the year of account :--

Class of Cleim. (1)	Number.	Amount paid.
Fatal claims		£
Total		

(b) Particulars as to claims arising during, and outstanding at end of, the year of account : --

Class of Claim. (1)	Number. (2)	Amount paid during year of aecount, (3)	Estimated Liability.
Fatal claims Non-fatal claims		£	(4) £
Total			

APPENDIX.

Particulars of Claims. (1)	Estimated Liability in respect of Claims outstanding as at the above date. (2)		Chains paid during the period of 1 year between the above date and the end of the year of Account. (3)		outstanding as at the end of the		Total of Columns (3) and (4). (5)	
(*)		Amount.	Number	Amount.	Rumber.	Amount	Number.	Amount
-		£		£		£		£
Fatal claims Non-fatal claims— Terminated [Not terminated Total						-		

II.-Outstanding claims which arose during the first year preceding the year of account.

ending ----, 19--.

III. - Outstanding claims which arose during the second year preceding the year of account,

ending the ____, 19-.

Particulars of Claims. (1)	of Claims Claims. outstanding as at the above date.		Claims paid during the period of 2 years between the above date and the end of the year of Account. (3)		respect of Claims outstanding as at the end of the		Total of Columns (3) and (4). (5)	
	Number.	Amount.	Number.	Amount.	Number.	Amount.	Number.	Amount
Fatal claims Non-fatal claims Terminated Not terminated		£		£		£ 		£
Total			1			1	1	

.

THE Assurance Companies Acr, 1909. Act of 1909

i V, —Outstanding dalms which arose during the third $_{\rm c}$ car ${\rm p}$ ting the year of account,

ending the ----, 19--.

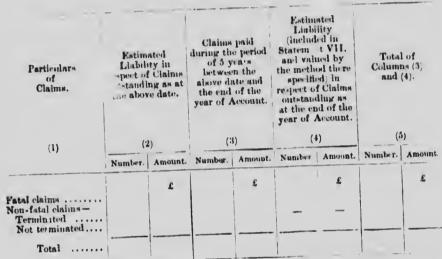
Particulara of Claima, (1)	of Claims aims, outstanding as at the above date.		Claims paid during the period of 3 years between the above date and the end of the year of Account. (3)		respect of Flains		Total of Columns (3) and (4).	
	Number.	Amount.	Number.	Atsount.	Number.	Amount,	(Number	5) Amount.
Fatal claims Non-fatal claims Terminated Not terminated		£		£		£		£
Total								

V .- Outstanding claims which arose during the fourth year preceding the year of account,

ending the ----, 19--,

Particulars of Claims, (1)	Estimated Liability in respect of Claims outstanding as at the above date. (2)		Claims paid during the period of 4 years between the above date and the end of the year of Account. (3)		respect of Claims outstanding as at		Total of Columns (3) and (4).	
	Number.	Amount	Number.	Amount.	Number.	Amount,	Number.	Amount.
Fatal claims Non-fatal claims – Terminated Not terminated Total		£		£		£ 		£

APPENDIX.



VI.-Outstanding claims which arow during the fifth year preceding the year of Account, ending

the ____, 19-.

Norm.—In cases where the late at which the estimated hability required under column (2) in Forms IV. V. and VI. above would fall in any year prior to 1908, such estimated liability is to be returned as ω' the end of the y ar of account terminated in 1908, and the claims paid, required under column. (3) of such forms, are to be in respect of the period between the end of the year of account terminated in 1908 and the end of the year of account rendered.

> VII.—Statement respecting Claims of five years' duration and upwards standing as i.t the end of the year of Account. (To be made and signed by an Actuary.)

> (1) The number of claims incumbent and having durations of five years and upwards as at the end of the year of account, izeluding those separately returned under Form VI. above; and the amount of the weekly payment, and of the annual payment, due in respect of such claims; separately strited in respect of each year of life of the workmen, from the youngest to the oldest. (These particulars to be returned under columns (1) to (4) of the tabular statement given below.)

(2) The estimated liability in respect of the claims specified above, computed, as at the end of the year of account, on the basis of the amount which would be required to purchase from the National Debt Commissioners, through the Post Office Savings Bank, an immediate life annuity for the workmen equal to 7 per cent. of the value of the weekly payment, according to the sex and true age of the workness. (These particulars to be returned under column (5) of the tabular statement given below, in respect of each year of life of the workmen, from the youngest to the oldest.)

(5) If the estimated liability, as reserved under the First Schedule in respect of the claims specified above, is computed on any basis other than that specified under Heading No. (2) above, the whole of the particulars required under Headings (1

È.

and (2) above are to be returned in columns (1) to (5) of the tabular statement given bolow, together with the following additional particulars:

(1) If the estimated liability is determined on the basis of the value of an immediate life amouity :-

(a) The table of mortality upon which such life annuity values are

based : (b) The rate of interest at which such life annuity values are com-

(c) Whether such life annuity values are discriminated according to

(d) The properties and the antimity values are discriminated according to estimated liability ;

(e) The modifications (if uny) made in the true ages of the workmen, In deducing the estimated liability

(f) The amount of the estimated liability. (To be returned, in respect of each year of life, in column (6) of the tabular statement given below)

(II) If the estimated liability is not determined on the basis of the value of an Immediate life annuity, full particulars are to be specified as to the precise method adopted in deducing such estimated hability, and the total amount of estimated hability is to be returned under column '6' of the tabular statement given below.

Number 73 Claa.	Agen of the Workmen as at the end of the Year of Account.	Amount of Weekly Payment.	Amount of Annual Payment.	Estimated Linbility computed on Basls of 75 per Cent, of Value of Life Annuity purchased through the Post Office.	Estimated Liability if computed on Basis other than the specified in Column 5.
(1)	(2)	(3)	(4)	(5)	(6)
			-		1

NOTE.-Separate particulars to be furnished in respect of male and female workers.

Summary of estimated liability in respect of outstanding claims as at the end of the year of account-£

,,	eolumn	(4)		II								
••	,,	(4)		III								
• •	,,	(4)	,,	IV	 	 						
	**	(4)	,,	V	 	 			,			
,,	,,(5)0	r(6)		VII	 					•		

First Schedule (D)

Act of 1909

APPENDIX.

(E.)-Form applicable to Bond Investment Business.

STATEMENT respecting the VALUATION of the LIABILITY under Bonds and Endow-, to be made and signed by the MENT CERTIFICATES of the ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.

2. The principles adopted in the valuation of the liabilities under bond investment policies and endowment certificates, and whether these principles were determined by the instrument constituting the company, or hy its regulations or byelaws, or how otherwise.

3. The rate or rates of interest assumed in the calculations.

4. The actual proportion of the annual income from contributions, if any, reserved as a provision for future expenses and profits. (If none, state how this provision is made.)

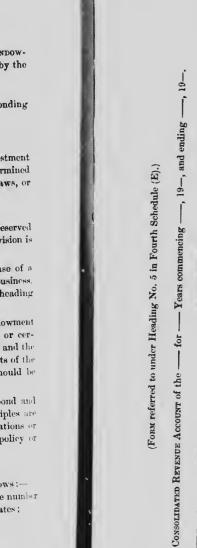
5. The consolidated revenue account since the last valuation, or, in the case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed. No return under this heading will be required where the valuation is made annually.)

6. The liabilities of the company under bond investment policies and endowment certificates at the date of the valuation, showing the number of policies or certificates, the amounts assured, the amount of contribution payable annually, and the provision for future expenses and profits ; also the net liabilities and assets of the company, with the amount of surplus or deficiency. (These returns should be made in the forms annexed.)

7. The principles upon which the distribution of profits among the bond and certificate holders and shareholders is made, and whether those principles are determined by the instrument constituting the company, or by its regulations or byelaws, or how otherwise, and the time during which a bond investment policy or endowment certificate must be in force to entitle it to share in the profits.

8. The results of the valuation, showing-

- (a) among participating bond or certificate holders, with the number so participating and the total amount of their bonds or certificates :
 - (b) among the shareholders;
 - (c) to reserve funds, or other accounts ;
 - (d) carried forward unappropriated.
- (2) Specimens of profit allotted to policies or certificates for 1007. effected for different periods, and having been in force for different durations.



feeted for ms.

Amount of Bond Investment and Endowment Certificate Fund at the beginning of the period	£ *. d. Claims under bonds and certificates
Additional reserve (if any ¹	Commission
Premiums	Expenses of management
Interest, dividends, and rents $\ldots $	Other payments (accounts to be specified)
Less income tax thereon	Amount of Bond Investment and Endowment Certificate
Other receipts (accounts to be speetified)	Fund at the end of the period, as per Third Schedule .
22	
Vom 14	

If any sum has been deducted for the Expenses of management account and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Statement.

581

THE ASSURANCE COMPANIES ACT, 1909.

Act of 1909

APPENDIX.

	Partic	Particulars of the Policies or Certificates for Valuation.	or Certificates 11.	Val	Valuation (Interest at - per cent.).	at - per cent.).	-
Description of Transactions.	No. of Policies	Sums Assured and Bonuses (if any).	Full Yearly Premiums.	Value of Sums Assured and Bonuses (if any).	Value of Full Yearly Premiums.	Provisions for future Expenses and Profits.	Net Liability.
With participation in profits					ę		
Without participation in profits							
Totals].						
Deduct re-assurances (to be specified according to class).	e •						
Net Totals							
Adjustments (if any)							
Total of the results							3

(Fonxs referred to under Heading No. 6 in Fourth Schedule $(\mathbf{E}).)$

ind VALUATION of the BOND INVESTMENT POLICIES OF ENDOWMENT CERTIFICATES of the ---- as at ----, 19--.

THE Assurance Companies Act, 1909.

£

£

Act of 1909

£

£

(FORM referred to under Heading No. 6 in Fourth Schedule (E).) VALUATION BALANCE SHEET of the ---- as at ----, 19--.

Dr. To uet liability under bond investment aud endowment eertificate transactions (as per summary statement provided in Fourth Schedule (\mathbf{E}_i)

F the — as at —, 19—. Cr. By Bond Investment and Endowment Certificate Find (as per balance sheet under Schedule 3) By deficiency (if any)

To surplus (if any)

FIFTH SCHEDULE.

-Where sinking fund or expital redemption business is carried on, a set atestatement, signed by the actuary, must be formished showing the total sums assured maturing in each calendar year and the corresponding office premiums.

(A.) - Form applicable to Life Assurance Business.

(The auswers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurances corresponding to the statements in respect of assurances are to be given throughout.) Separate statements are to be furnished in the replies to all the headings under this schedule for business at other than European rates. Separate statements are to be also furnished throughout in respect of ordinary and industrial business respectively.

1. The published table or tables of premiums for assurances for the whole term of life and for endowment assurances which are in use at the date above mentioned.

2. The total amount assured on lives for the whole term of life which are in existence at the date above mentioned, distinguishing the portions assured with immediate profits, with deforred profits, and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the young st to the oldest ages, the basis of division as to immediate and deferred profits being stated.

3. The amount of premiums receivable annually for each year of life, after deducting the shatements made by the application of bonuses, in respect of the respective assurances mentioned under heading No. 2, distinguishing ordinary from extra premiums. A separate statement is to be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made.

4. The total amount assured under endowment assurances, specifying sums assure, and office preminms separately in respect of each year in which such assurances will mature for payment. The reversionary bonuses must also be separately specified, and the sums assured with immediate profits, with deferred profits, and without profits, separately returned.

5. The total amount assured under classes of assurance husiness, other than assurances dealt with under Questions 2 and 4, distinguishing the sums assured under each class, and stating separately the amount assured with immediate profits, with deferred profits, and without profits, and the total amount of reversionary bounses.

6. The amount of premiums receivable annually in respect of each such special class of assurances mentioued under heading No. 5, distinguishing ordinary from extra premiums.

7. The total amount of premiums which has been received from the commencement upon pure endowment policies which are in force at the date above mentioned.

8. The total amount of immediate aunuities on lives, distinguishing the amounts for each year of life, and distinguishing male and female lives.

9. The amount of all annuities on lives other than those specified under heading No. 8, distinguishing the amount of annuities payable under each class, and the amount of premiums annually receivable.

Section 6.

10. The average rate of interest yielded by the assets, whether invested or uninvested, constituting the life ussurance fund of the company, calculated upon the mean fund of each year during the period since the last investigation, without deduction of income tax.

It must be stated whether or not the mean fund upon which the average rate of interest is calculated includes reversionary investments.

11. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a state ment of the method pursued in calculating such surrender values, with instances of the application of such method to policies of different standing and taken out a various interval ages from the youngest to the oldest. In the case of industria policies, where free or paid up policies are granted in lien of surrender values, the conditions under which such policies are granted must be stated, with specimens a prescribed for surrender values.

(E.)-Form applicable to Bond Investment Business.

-, 19—, (T STATEMENT of the BONN INVESTMENT BUSINESS of the -- on the bo sigued by the Actuary.)

(The auswers should be numbered to accord with the numbers of the correspondin questions. Statements of re-insurances, corresponding to the statements i

respect of insurances, are throughout to be given.)

1. The published table or tables of rates of contribution for boud investment policies and endowment certificates which are in use at the date above-mentioned with full particulars as to the terms and conditions ou which advances are mad under such policies or certificates, whether on security of house property or land, e

2. The total amounts assured under policies or certificates which are in existen at the date above-mentioned, distinguishing the portions insured with and without profits, stating separately the total additions by way of bonus, and specifying su sums insured and bonuses respectively according to the number of complete year

unexpired at such dato. 3. The amount of premiums receivable annually, in respect of the respecti insurances mentioned nuder Heading No. 2, separately specified according to t number of complete years unexpired at the date above mentioned.

4. The total amount of premiums which have been received from the commence ment upon all policies or certificates mentioned auder Headings Nos. 2 and separately specified according to the number of complete years unexpired at t

date above mentioned. 5. The average rate of interest realised by the assets, whether invested uninvested, constituting the bond investment and endowment certificate tund of t company, calculated upon the mean fund of each year during the period since t last investigation, without deduction of income tax.

C Full particulars as to the terms and conditions upon which surrenders policies and certificates are granted, with specimeus of the values allowed in resp of different durations, and different usexpired terms at the date of surrender.

7. Full particulars as to the terms and conditions upon which allowances made on the death of a policy or certificate holder, with specimen values as requi

under Heading No. 6. 8. Fuil particulars as to the terms and conditions upon which transfers of interest in a policy or certificate are granted, whether on the death of the policy

certificate holder, or during his lifetime. 9. Full particulars as to the terms and conditions upon which redemption advances is granted, with specimens of redemption values in respect of bonds certificates of different durations, and having uifferent unexpired terms, at the e of redemption.

10. A tabular statement in respect of policies or certificates lapsed during period since the last investigation, showing the number, the amount insured, yearly premiums, and the total premiums received from the commenceme classified according to the year in which such policies ... certificates were effec an thussed, respectively; with a similar tabular statement in respect of policie certificates surrendered during the period: Provided that policies or certific which have lapsed and been revived shall P ; be entered as lapses

1). A statement of the total number of advances made under policies or certific to the holders thereof, whether on the seenrity of honse property or land or of wise, and the total amount of such advances outstanding at the date above mentio disti- gatshing the advances on first mortgage and those on second or subseq mortgage.

THE ASSURANCE COMPANIES ACT, 1909.

SIXTH SCHEDULE.

Section 17.

585

Act of 1909

RULES FOR VALUING POLICIES AND LIABITITIES. (A.) - As respects Life Policies and Annuities.

Rule for Valuing an Annuity.

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and, where such tables cannot be accertained or adopted to the satisfaction of the Court, then according to such rate of interest and table of mortality as the Court may direct.

Rule for Valuing a Policy.

The value of the policy is to be the difference between the present value of the reversion in the sum ussured according to the contingency upon which it is payable, including any booms or addition thereto mado before the commencement of the winding-up, and the present value of the future anomal premicms.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables, as the Court may direct.

The premium to be calculated is to be such premium us according to the said rate f interest and rate of mortality is sufficient to provide for the risk incurred by the office in issning the policy, exclusive of any uddition thereto for office expenses and other charges.

(B.)-As respects Fire Policies.

Rule for Valuing a Policy.

The value of a enrrent policy shall be such portion of the last premium paid as is proportionato to the unexpired portion of the period in respect of which the

(C.)-As respects Accident Policies.

Rule for Valuing a Periodical Payment.

The present value of a periodical payment shall, in the case of total permanent incapacity, be such an amount as would, if invested in the par hase of a life aunaity from the National Deht Commissioners through the Post Office Savings Bank, purchase an aunnity equal to seventy-five per centum of the annual value of the periodical payment, and, in any other case, shall be such proportion of such amount us may, under the circumstances of the case, be proper.

Rule for Valueng a Policy. The value of a current policy shall be such portion of the last premium paid as is proportionate to the unexpired portion of the period in respect of which the

(D.) - As respects Employers' Liability Policies.

Rule for Valuang a Weekly Payment.

The present value of a weekly payment shall, if the incapacity of the workman in respect of which it is payable is total permanent incapacity, be such an amount as would, if invested in the purchase of an immediate life annuity from the National as would, it invested in the purchase of an initiative inclaiming to a the relational Debt Commissioners through the Post Office Savings Bank purchase an innoity for the worknan equal to seventy-five per cent, of the initial value of the weekly payment, and in any other case shall be such proportion of such amount as may, under the circumstauces of the case, be proper.

Rule for Valuing a Policy.

The value of a current policy shall be such portion of the last premium paid as is proportionate to the unexpired portion of the period in respect of which the premium was paid, together with, in the case of a policy under which any weekly payment is payable, the present value of that weekly payment.

(E.)-As respects Bonds or Certificatis.

Rule for Valuing a Policy or Certificate.

The value of a policy or certificate is to be the difference between the present value of the sum assured according to the date at whith it is payable, including any bonus or addition thereto m. fore the commence t = t of the winding up, and al premiuma. In calculating such pres-

Court may direct.

s, interest is to be assumed at such rate as the

The premium to be calculated at to be such premium as, according to the said rate of interest, is sufficient to provide for the sum assured hy the policy or eertificate, exclusive of uny addition thereto for office expenses and other charges.

38

nvested or lated upon n, without

age rate of

policies for or a statenstances of ken out at f industrial values, the pecimens as

19—. (To

rresponding atements iu

investment -mentioned; es are made y or laud, or

in existenco and without eifying such mpleto years

10 respective rding to the

e eommenceos. 2 nud 3, pired at the

invested or e fund of the iod since the

urrenders of ved in respect render.

Howances are es as required

insfers of the the policy or

redemption of t of bonds or us, at the date

ed during the it insured, the mmencement: were effected. t of policies or or certificates

s or certificates land or otherove mentioned. or sub-quant Section 17.

586

APPENDIX.

SEVENTH SCHEDULE.

Where an assurance company is being wound up by the Court or subject to the supervision of the Court, the liquidator in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, is to ascertain the value of the liability of the company to each such person, and give notice of such value to such persons in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless ho gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

EIGHTH SCHEDULE.

Sections 28 and 33. REQUIREMENTS TO BE COMPLIED WITH BY UNDERWRITERS BEING MEMBERS OF LLOYD'S OB OF ANY OTHER ASSOCIATION OF UNDERWRITERS APPROVED BY THE BOARD OF TRADE.

(A.)-As respects Life Assurance Business.

1. Every underwriter shall deposit und keep deposited in such manner as the Board of Trade may direct a sum of two thousand pounds. The Board of Trade may make rules as to the payment, repaynent, investment of, and dealing with, a deposit, the payment of interest and dividends from any such investment, and for any other matters in respect of which they may make rules under section 2 (6) of this Act in relation to deposits made by a surface companies. The sum so deposited shall, so long as any liability under any policy issued by the underwriter remain unsatisfied, be available solely to meet claims under such policies.

2. The underwriter shall furnish every year to the Board of Trade a statement in such form as may be prescribed by the Board showing the extent and character of the life assurance business effected by him.

(B.) and (C.) - As respects Fire and Accident Insurance Business.

1. Except as hereins ter provided, every underwriter shall comply with the following requirements:----

- (a) He shall deposit and keep deposited in such manner as the Board of Trade may direct a sum of two thousand pounds in respect of each class of basiness. The Board of Trade may make rules as to the payment, repayment, investment of, and dealing with, a deposit, the payment of interest and dividends from any make rules under section 2 (6) of this Act in relation to deposits made by asaurance companies. The sum so deposited shall, so long as any liability under any policy issued by the underwriter remain-unstatistic, be available solely to meet claims under such policies.
- (b) the shall furnish every year to the Board of Trade a statement, in such form as may be prescribed by the Board, showing the extent and character of the fire or needent insurance business effected by him

2. An underwriter who carries on fire insurance or accident insurance business, may, in lien of complying with the above requirements, elect to comply with the under-mentioned conditions:---

- (a) All premiums received by or on behalf of the underwriter in respect of fire and accident insurance or re-insurance business carried on by him, either alone or in conjunction with any other insurance business for which special requirements are not laid down in this schedule, shall without any apportionment be placed in a trust fund in accordance with the provisions of a trust deed approved by the Board of Trado:
- (b) He shall also furnish security to the satisfaction of the Board of Trade (or, if the Board so direct, to the satisfaction of the committee of the association), which shall be available solely to meet claims under policies issued by him in connection with fire and accident business and any other nonmarine business carried on by him for which special requirements are out laid down in this schedule.

The security may be furnished in the form of either a deposit or a guarantee, or partly in the one form and partly in the other.

The amount of the security to be furnished shall never be less than the aggregate of the premining received or receivable by the underwriter in the last preceding year in connection with such fire and accident and other non-matrine business:

(c) The accounts of every underwriter shall be audited annually by an accountant approved by the committee of the association, who shall furnish a certificate to the committee of the association and to the Board of Trade in a form prescribed by the Board of Trade : THE ASSURANCE COMPANIES ACT, 1909.

Vessels of any description, including barges and dredgers, cargoes, freights, and other interests which may be legally insured by, in, or in relation to vessels, eargoes, and freights, goods, wares, merchandise, and property of whatever description lusared for any transit by land or water, or both, and whether or not including warehouse risks or similar risks

(D)-As respects Employers' Liability Insurance Business.

1. Every underwriter shall deposit and keep deposited in such manner as the Board of Trade may direct a som of two thousand pounds. The Board of Trade may make rules as to the payment, repayment, investment of, and dealing with, a deposit, tho payment of interest and dividends from any such investment, and for appoint, the payment of interest and dividents from any such interest and the same any other matters in respect of which they may make rules under this Act in reha-tion to deposite made by assurance companies. The sum so deposited shall, so long as any liability under any policy issued by the underwriter remains musatisfied, be

available solely to meet claims under such policies. 2. Where the person insured by any policy issued by an underwriter is liable to

make a weekly payment to any workman during the incapacity of the workman, and the weekly payment has continued for more than six months, the liability therefor shall before the expiration of twelve months from the commencement of the incspacity be receimed by the payment of a lump sum in accordance with paragraph (17) of the First Schedule to the Workmen's Compensation Act, 1996, and the underweiter shall now the lump sum into the County Court and shall and the underwriter shall pay the tump sum into the County Court, and shall inform the Court that the redemption has been effected in pursuance of the provi-

3. The underwriter shall furnish every year to the Board of Trade a statement in such form us may be prescribed by the Board showing the extent and character

of the employers' liability business effected by him. 4. For the purposes of this schedule "policy" means a policy insuring any employer against liability to pay compensation or damages to workmen in his

(E)-As respects Bond Investment Business.

1. Every underwriter shall deposit and keep deposited in such manner as the Board of Trade may direct a sum of two thousand pounds. The Board of Trade may make rules as to the payment, repayment, investment of, and dealing with, a deposit, the payment of interest and dividends from any such investment, and for any other matters in respect of which they may make rules under section 2 (6) of this Act in relation to deposits made by assurance companies. The sum so deposited any other matters in respect of which they may make rules under section 2 (0) or this Act in relation to deposits made by assurance companies. The sum so deposited shall, so long as any liability under any policy issued by the underwriter remains unsatisfied, be available solely to meet claims under such policies.

2. The underwriter shall furnish every year to the Board of Trade a statement in such form as may be prescribed by the Board showing the extent and character of the bord investment limiter of the board showing the extent and character of

the bond investment business effected by him.

NINTH SCHEDULE. ENACTMENTS REPEALED.

Session and Chapter. Short Title. Extent of Repeal. 33 & 34 Vict. c. 61 The Life Assurance Companies Act, 1870.... The whole Act. 34 & 35 Viet. c. 58 The Life Assurance Companies Act, 1871.... The whole Act. 35 & 36 Vict. e. 41 The Life Assurance Companies Act, 1872.... The whole A.t. 39 & 40 Vict. e. 22 The Trade Union Act Amendment Act, 1876. Section seven. 7 Edw. 7, e. 46 .. The Employers' Liability Insurance Com- The whole Act.

38(2)

jeet to the ring by the ed by such each such a the Court ind by the ch value in t.

OF LLOYD'S OF TRADE.

iner as the d of Trade ing with, a nt, and for ion 2 (6) of o deposited ter remains

tatement in haracter of

y with the

d of Trade st of busirepayment, nterest and s in respect in relation ed shall, so ter remains d. such form

acter of the

e business. ly with the

pect of fire him, either for which without any provisions.

Trade (or, he associalicies issued other nonnts are not

cposit or a

ess than the riter in the t and other

accountant sh a certifi-Trade in a 587

Act of 1909

Section 37.

GENERAL ORDERS.

3 May, 1909.

REDUCTION OF CAPITAL.

PROCEDURE ON APPLICATIONS FOR CONFIRMATION BY THE COURT OF THE REDUCTION OF THE CAPITAL OF COMPANIES UNDER THE COMPANIES (CONSOLIDATION) ACT, 1908.

PRELIMINARY.

Commencement of order.

1. This order shall take effect and come into operation on the 1st duy of April, 1909, and shall apply to all proceedings in the High Court of Justice with relation to the confirmation by the Court of the reduction of the capit d of computies whether commenced before or after that day, but every such proceeding taken before that day shall have the same validity us it would have had if this order had not been made.

Revocation of former orders.

2. The general orders of the Court of Chancery of the 21st day of March, 186b, and the 2nd day of March, 1869, and the forms thereby prescribed are hereby revoked and annulled provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which this order comoiuto operation under any order or rule which is hereby revoked and annulled.

3. In this order-Interpretation.

"The Act" means 'l & Companies (Consolidation) Act, 1908, and sects. 46 to 56 thereof are particularly referred to.

- "The Court" includes any judge of the High Court of Justice having for the time being jurisdiction to confirm the reduction of the capital of
- companies. "Judge" means any judge of the High Court having for the time being jurisdiction to confirm the reduction of the capital of companies, and includes any registrar, master, or other officer exercising the powers of
- any such judge. "The petition " means the petition presented by the company for the con-firmation by the Court of the reduction of the capital of the company. "The company " means the company which presents the petition for reduction
- " The company of its capital.

4. The rules of the Supreme Court for the timo being in force, and the genera practice of that Court, including the course of procedure and practice in chambers shall apply as regards all proceedings in relation to the confirmation of any reduc tion of capital by the Court so far as may be practicable, except if and so far as by the Act or this order otherwise provided. In particular, if and when the Court is for the time being a judge of the Chancery Division, the provisions of Ord. V. rule 9 (A), shall apply to all such proceedings as being business assigned within the manying of the table. Supreme Court. meaning of that rule.

Title of petition.

Application

of rules of

5. The petition and all notices, affidavits and other proceedings under th petition shall be intituled in the matter of the company, and in the matter of the Companies (Consolidation) Act, 1908."

REDUCTION OF CAPITAL RULES.

6,-(1.) When the petition has been presented, an application shall, in every summons for ease, be made, *er parte*, by summons in chambers, to the judge, for directions as directions. to the proceedings to be taken preliminary to the hearing of the petition or other-

(2) Upon the hearing of the summons, or upon any adjourned hearing or hearings thereof, or any subsequent application, the judge may make such order or orders, and give such directions as he may think fit as to all the proceedings to be taken on and with reference to the petition, and more particularly with respect to the

(a) The publication of notice of the presentation of the petition;

(b) In cases within sect, 49 (1) of the Act, the proceedings to be taken for settling the list of creditors cattled to object to the proposed reflection; fixing the date with reference to which the list of such creditors is to be made out, pursuant to that section; and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter of the petition, whether expressly mentioned in any of the rules of this order

(3.) In cases within sect, 49(t) of the Act, the first insertion in a newspaper of the notice of presentation of the petition and fixing the date with reference to which the list of creditors is to be made ont, shall be sirected to be made at such time before the date so fixed as the judge shall think fit, not being, unless for special reasons shown to the satisfaction of the judge, less than one calend or month before the date so fixed, and in such cases the first order upon the snamons for directions may be in the Form No. 1 in the Schedule hereto, with such variations as the circum-

7. Notice of the presentation of the petition shall be published at such times. Advertisement and in such newspapers as the judge shall direct, and may be in the Form No. 2 of petition. in the Schedule hereto, with such variations as the eircumstances of the case may

8. In cases within sect 49 (1) of the Act the company shall, within such time Affdavitas as the judge shall direct, file in the central office of the High Court of Justice an to creditors. affidavit made by some officer or officers of the company competent to nocke the same, verifying a list containing so far us possible the names and addresses of the creditors of the company as defined by that section at the date fixed as mentioned in Ride 6 (2) (b) of this order, and the amounts due to them respectively, or ia the case of any d-bt payable on a contingency or not ascertained or any claim admissible to proof it a winding-up of the company the value, so far as can be justly estimated of such debr or claim, and leave the said list and an office copy of such affidavit at the chambers of the judge.

9. The person making such affidavit shall state therein his belief that such list Form of is correct, and that there was not at the date so tixel as aforesard may debt or claim affidavit. which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, except the debts and claims set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the Form No. 3 in the schedule hereto, with such variations as the circumstances of the case may require.

10. Copies of such list containing the names and addresses of the creditors, and Inspection of the total amount due to them (including the value of any debts or claims estimated list of creditors, as afore-aid), but onditing the amounts due to them respectively, or 'as the judge shall think fit) complete copies of such list, shall be kert at the regis) red office of the company and at the offices of their solicitors and London agents if any) and any person desirons of inspecting the same may at any time during the ordinary hours of busiless inspect and take extincts from the same on payment of the sum

11. The company shall, within seven days after the filing of such atlidavit, or Notice to such further or other time as the judge may allow, send to each creditor whose creditors. name is entered in the said list a notice stating the amount of the proposed reduction of capital, and the amount or estimated value of the debt or the contingent debt or chain or both for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he chains to be a

BY THE PANIES

of April, th relation companies ing takeu order had

rch, 1865, ire hereby H not prerder comelled.

sects, 46 to

having for capital of

time being panies, and powers of

or the connpany. or reduction

the general n chambers, nny reducso far as by the Court is of Ord. V., d within the

s under the e matter of, 589

Rules of 1909

creditor for a larger amount, be must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a prepaid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 4 set forth in the schedule hereto, with such variations as the circumstances of the case may require.

12. Notice of the list of craditors shall, after the filing of the affidavit mentioned in Rule 8 of this order, be published at such times, and in such newspapers, ac "he judge shall direct. Every such notice shall state the amount of the propose's reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company; and such notice may be in the Form No. 5 set forth in the schedule hereto, with such variations as the circumstances of the case may require.

Affidavit as to result of Rules 11 and 12.

Advertisement as to list of areditors.

13. The company shall, within such time as the judge shall direct, file in the Central Offlee of the Higb Conrt of Justice an affidivit made by the person to whom the particulars f debts or claims are, by such notices as are mentioned in Rules 11 and 12 of the order, required to be sent in, stating the result of such notices respectively, at the containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims, and some competent offleer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in the Form No. 6 in the schedule here to, with such variations as the circumstances of the case may require ; and and the such as the given base of the circumstances of the company is an office copy of such affidavit shall, within such time as the judge shall direct be left at the chambers of the judge.

Proceedings where claim not admitted. 14. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then and in every such case, unless the company are willing to appropriate in such manner as the judge shall direct the full amount of such debt or claim, the company shull, if the judge think fit so to direct, werd to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear days atter such notice, and being the time appointed by the judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in Role 11 of this order, and may be in the Form No. 7 in the schedule hereto, with such varietions as the circumstances of the case may require.

Costs of proof.

Certificate as to creditors. 15. Such creditors as come in to prove their debts or claims in parsuance of any such notice as is mentioned in Rule 14 of this order shall be allowed their costs of proof against the company, and be answerable for costs, in the same namer as in the case of persons coming in to prove debts under an administration judgment.

16. The result of the settlement of the list of creditors shall be stated in a certificate by the Master in the case of an application to the Chancery Division or by the Registrar in the case of an application to the jodge in companies winding-up, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which has been fixed by inquiry and adjudication in manner providel by sect. 49 (3) of the Act, and this order, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to appropriate and the amount of which has used the division of the full amount of which is not admitted by the company, nor such as the company are willing to appropriate and the amount of which has use been fixed hy inquiry and adjudication as aforesnid; and shall show which of the debts due to them, and the total amount of the bots due to the amount of the debt amount of the date to the proposed reduction, and the total amount of which has been secured in manner provided $\frac{1}{2}$ and $\frac{1}{2}$ of the Act and the several amount of the debts or claims the payment of which has been secured in manner provided $\frac{1}{2}$ and the shall show which of the necessary to show in such overfloate the several amounts of the debts or claims the payment of which has been secured in manner provided $\frac{1}{2}$ and the shall show the shall not be necessary to show in such overfloate the several amounts of the debts or claims of the debts or claims and the payment of which has been secured in manner provided $\frac{1}{2}$ and the debts or claims the payment of which has been secured in manner provided $\frac{1}{2}$ and the debts or claims the payment of which has been secured in manner provided $\frac{1}{2}$ and the debts or claims the payment of the debts or claims the payment of which has been secured in manner provided $\frac{1}{2}$ and the debts or claims the payment of the debts or claims the payment of the debts or cl

of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

17. The consent of any creditor, whether in respect of a debt due or presently Evidence of due or a dobt payable on a contingency or not accertained or a claim admissible to consent proof in a winding-up of the company, may be evidenced in any manner which the frieditor. judge shall think reasonably sufficient having regard both to the amount of his debt or chaim and all the elrenmatances of the case,

18. In any case within sect. 49 (1) of the Act, the petition shall not be heard Certificate until the expiration of at least eight clear days from the filing of such certificate as

19. Before the hearing of the petition, notices stating the day on which the same Advertisement is exponented to be heard shall be published at such times and in such newspapers z_n of average the j-dge shall direct. Such notices may be in the Form No. 8 in the schedule hereto, with such variations as the circumstances of the case may require.

20. Any creditor settled on the sold list whose debt or claim hus not, before the Who may hearing of the petition, been discharged or determined, or been secured in manner appear. hearing of the periton, over discharged or determinen, or neen secured to manner provided by sect. 49 (3) of the Act, and who has not before the hearing consented to the proposed reduction of capital, may, if he think fit, upon giving two clear days' notice to the solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

21. Where a creditor who appears at the hearing under the last preceding rule costs of is a creditor the full amount of whose debt or claim is not admitted by the company, appearance. and the validity of such debt or elaim has not issen inquired into and adjudicated

upon under sect. 49 (3) of the Act, the costs of und occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing under the last preceding rule shall be entitled to the costs of such appearance, unless the Court shall be of opinion that in the elecunscances of the particular case his costs ought not to be allowed.

22. When the petition comes on to be heard the Court may, if it shall so think Directions at fit, give such directions as may seem prop r with reference to the securing in the hearing, manner mentioned in sect. 49 (3) of the Act, the payment of the debts or chains of any creditors who do not consent to the proposed reduction : mid the further hearing of the petition may, if the Court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

23. Where the Court makes an order confirming a reduction, such order shall Order confirmgive directions in what manner, and in what newspapers, and at what times, notice ingreduction. of the registration of the order and of such minute as mentioned in sect, 51 of tho Act is to be published; and (mloss it shall have dispensed altogether with the addition of the words "and Reduced" or shall then dispense with any further use thereof) shall fix the date until which the words " and Reduced " are to be deemed part of the name of the company as mentioned in sect 48 of the Act.

FEES.

24. Solicitors shall be entitled to charge and be allowed for dutics performed Solicitors' fees, under the Act in relation to matters dealt with by this order the same fees as they have heretofore been entitled to charge and be allowed for the like dutics performed under the Companies Acts, 1862 to 1507, unless the Court or judge shall otherwise specially direct.

25. The same fees of Court shall be paid in relation to proceedings dealt with Court fees. by this order as have heretofore been paid in relation to like proceedings dealt with by the General Orders of the 21st day of March, 1868, and the 2nd day of March, 1869, and such fees shall be collected by stamps in the like macher as the same

beture hearing of petition.

consent of

Rules of 1909

APPENDIX.

THE SCHEDULE.

No. 1. FORM OF ORDER. [RULE 6 (3).]

Form 1.

In the High Court of Justice, Chancery Division. Mr. Justice

05

Companies Winding-Up,

Mr. Justice he Matter of the Company, Limited and Reduced ; and in the Matter of "The Companies (Consolidation) Act, 1908." In the Matter of the

Upon the application of the petitioners hy summons dated , and upon hearing the solicitor for the petitioners, and on reading the petition presented to the High Court of Justice, it is ord-red, that an inquiry be made what are the debts,

claims, and habilities of or affecting the said company on the day of 19, and that notice of the pre-ontation of the said petition be inserted in [the newspapers] on the day of , and [other times of insertion], and that a list of the persons who are creditors of the company on the said day of and an office copy of the affidavit verifying the same be left at the chambers of the judge [or in the case of a petition to the judge in companies winding up with the day of registrar] on or before the

Form 2.

No. 2. [See RULE 7.]

he Matter of the Company, Limited and Reduced; and in the Matter of "The Companies (Consolidation) Act, 1908." In the Matter of the

" Notice is hereby given that a petition for coniirming a resolution reducing the was on the to £ capital of the above company from £ presented to the High Court of Justice, and is now pending ; and that the list of 19 . creditors of the company is to be made out as for the day of

C. & D., of

[Agents for A. & B., of] Solicitors to the Company.

Form 3.

No. 3. AFFIDAVIT VERIFYING LIST OF CREDITORS. [RULK 9.]

(Title of Court as in Form 1.)

he Matter of the Company, Limited and Reduced; and in the Matter of "The Companies (Consolidation) Act, 1908." In the Matter of the

I, A. B., of The paper writing now produced and shown to me, and marked with the letter A. contains a list of the ereditors of and persons having claims upon the said company on the day of 19 (the date fixed by the order in this matter dated), together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, company on the information, and belief, a true and accurate list of such creditors and persons having chims on the day aforesaid.

2. To the best of my knowledge and helief there was not, at the date aferesaid, any debt, elaim, or hability which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company other than and except the debts and claims set forth in the said list. I am enabled to make this statement from facts within my knowledge as the the said company, and from information derived upon investigation of the affairs

and the books, documents, and papers of the said company.

Sworn, &c.

REDUCTION OF CAPITAL RULES.

Last of Creditors referred to an the last Form.

Λ.

In the Matter of the Company, Limited and Reduced; and in the Matter of "The Companies (Consolidation) Act, 1908."

This list of creditors marked A was produced and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this day of 19.

Names, Addresses, and Descriptions of the " Creditors.	Nature of Debt or Chaim,	Amount or estimated Vaine of Debt or China.
	an a construction of the second	

No. 4. [See RULE II.]

In the Matter of the Company, Limited and Reduced; and in the Matter of "The Companies (Consolidation) Act, 1908."

To Mr.

You are requested to take notice that a petition has been presented to the High Coart of Justice, to confirm a special resolution of the above company for reducing its capital to \mathcal{L}_{-} , and that in the list of persons admitted by the company to have been on the day of creditors of the company, your name is entered as a creditor [here state the amount of the delt or nature of the claim].

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above, you must on or before the day of seed the particulars of your claim and the name and address of your solicitor (if soy to the undersigned at . In default of your solicity the above entry in the list of creditors will in all the proceedings under the above application to reduce the copital of the company be treated as correct.

Dated this day of 19.

A. B., Solicitor for the said company.

No. 5. [See RULE 12.]

In the Matter of the Company, Limited and Reduced; and in the Matter of "The Companies (Consolidation) Act, 1903."

Notice is hereby given that a petition has been presented to the High Court of Justice for confirming a resolution of the above company for reducing its capital from \pounds to \pounds . A list of the persons admitted to have been creditors of the company on the day of 19, may be in-peeted at the office so the company at , or at the office of , at any time during usual business hours, ou payment of the charge of one shilling.

Any persea who claims to have been on the last mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so

Form 5.

Form t.

593

Rules of 1909

X. Y. Ac

entered, must ou or before the day of send in his name and address, and the particulars of his claim, and the name and address of his solicitor (if any) to the undersigned at , or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of 19 .

(Title of Court us in Form 1.)

A. B., Solicitor for the said company.

Form 6.

No. 6. [RULE 13.]

In the Matter of the Company, Limited and Reduced; and in the Matter of "The Companies (Consolidation) Act, 1908."

I, the said C. D., for myself say as follows:-

1. I did, on the duy of 19, in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked B, upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of cr ditors, marked A, referred to in the affidavit of filed on the day of 19.

2. I served the sold respective copies of the said notice hy putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the soid list (being the last known addresses or places of abode of such persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into the post office receiving house, No.

in Street, in the county of , between the hours of und the clock, in the noon of the said day of

And I, the said E. F., for myself say as follows :---

3. A true copy of the notice now produced and shown to me, and marked C, has appeared in the of the day of 19, the of the day of 19, &e.

4. I have, in the paper writing now produced und shown to me, and marked D. set forth a list of all claims, the particulars of which have been sentin to me pursuant to the said notice B, now produced and shown to me by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors, marked A, referred to in the affidavit of , filed on the day of 19.

5. I have, in the paper writing now produced and shown to me, marked E, set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company ou the day of 19, not appearing on the said list of creditors marked A, and who claimed to be entered thereon.

And we, C. D. and A. B., for ourselves say as follows :---

6. We have, in the first part of the said paper writing marked D (now produced and shown to us), and also in the first part of the said paper writing, marked E (ulso produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted.

7. We have, in the second part of each of the said paper writings, marked D. and E., set forth such of the said debts and elaims as are wholly disputed by the said company.

8. In the said exhibits D. and E. are distinguished such of the debts the full immounts whereof ure proposed to be appropriated in such manner as the Judge shall direct.

Sworn, &c.

[Rule 11.]

lf notice is issued under Rule 12.

[Rule 13.]

If notice is issued under Rule 12.

(Rule 13.)

(Rule 13.)

REDUCTION OF CAPITAL RULES.

d

ie to

ter

tor

aid

ed, oon in ivit pies tive or nps of

has day D, nant b be t of day

l, set nant ning ring

need

ed E Land

how laims

d D.

y the

e full ludge

Exhibit D., referred to in the low under a Addard

D.

In the Matter, No.

List of debts and claims of which the particidary have been set in to by persons claiming to be creditors of the said $\cos_{x}\sin_{y} f(x) = g(x)$ amounts than are stated in list of creditors made out by the company.

This paper writing, marked D., was produced and shown to C. D., E. F., and A. B. respectively, and is the same as is referred to in their affidavit sworn before me this day of 19.

X. Y. &c.

Rules of 1909

FIRST PART.

Debts and Claims wholly or partly admitted by the Company.

Names, Addresses, and Descriptions of Creditors.	Particulars of Debt or Claim.	Amount claimed. –	Amount admitted by the Company to be owing to Creditor.	Debts proposed to be appropriated in full, although disputed.

SECOND PART.

Debts and Claims wholly disputed by the Company.

Names, Addresses, and Descriptions of Claimants.	Particulars of Claim.	Amount claimed.	Debts proposed to be appropriated in full although disputed.
	1		

Exhibit E., referred to in the last Affidavit.

E.

In the Matter, &c.

List of debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the company, and to be entered on the list of the creditors made out by the company.

This paper writing marked E. was produced and shown to C. D., E. F., and A. B. respectively, and is the same as is referred to in their affidavit sworn before me this day of 19.

X. Y. &c.

596

Form 7.

APPENDIX.

FIRST PART. [Same as in Exhibit D.]

SECOND PART.

[Same as in Exhibit D.]

Note.-The names are to be inserted alphabetically.

No. 7. [See Rule 14.]

ho Matter of the Company, Limited and Reduced ; and in the Matter of "The Companies (Consolidation) Λ_0 t, 1908." In the Matter of the

To Mr.

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit and giving uotice thereof to Mr. the solicitor of the company, on or before the day of next; and you are to attend by your solicitor at the chambers of Mr. Justice , Room No. Royal Courts of Justice, Strand, in the County of London (or at the chambers of the Registrar at) on the day of , 19, at o'clock in the noon, being the time appointed for hearing and ndjudicating upon the claim, and produce any securities or documents relating to your claim.

produce any securities or documents relating to your claim. In default of your complying with the above directions, you will [be precinded from objecting to the proposed reduction of the capital of the company] or [in all proceedings relative to the proposed reduction of the capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors].

day of Dated this

A. B., Solicitor for the said Company.

No. 8. [See RULE 19.]

Company, Limited and Reduced ; and in the Matter In the Matter of the of "The Companies (Consolidation) Act, 1908."

Notice is hereby given, that a petition presented to the High Court of Justice on the day of , for confirming a resolution reducing the capital of the above company from \pounds to \pounds , is directed to be heard before Mr. Justice , 19 day of in the

, 19 .

C. & D., of [Agents for E. & F., of

Solicitors for the Company.

3rd May, 1909.

THE COMPANIES (WINDING-UP) RULES, 1909.

DATED 29TH MARCH, 1909, MADE PURSUANT TO THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 ED. VII. c. 69), AND THE JUDICATURE ACT, 1881 (44 & 45 VICT. C. 68).

PRELIMINARY,

1. Subject to the limitation hereinafter mentioned these Rules shall apply to the Application proceedings in every winding-up nuder the Act of a company, which shall com- of Ruler mence on and after the date on which these Rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date, in the winding-up of a company which commenced on or after the first day of January, 1891. Rules which from their nature and subject-matter are, or which hy the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding-up by the Court, shall not apply to the proceedings in a voluntary winding-np, or winding-np under the supervision of the Conrt.

2. In these Rules, unless the context or subject-matter otherwise requires :---"The Act" means the Companies (Consolidation) Act, 1908.

"The company" means a company which is being wound up, or against which proceedings to have it wound up have been commenced.

"Court" means the Court which has jurisdiction to wind up the company. "Creditor" includes a corporation, and a firm of creditors in partnership.

"Gazetted" means published in the London Gazette.

itter

t the

i are

rs of

aud

uded

n nlł ny be ist of

uy.

fatter

ice on

of the

ustice

auv.

- "Judge" means in the ligh Cont " , be who for the time being exercises the jurisdiction of the High a wind up companies, and in any Court the judge thereof, or the exercises the powers of the
- judge thereof. "Liquidator" includes an official receission acting as liquidator. "Official Receiver" includes any officer appointed by the Board of Trade to discharge the duties of official receiver under the Act.
- "Palatine Court " means one of the Chancery Courts of the counties Palatine of Lancaster and Dorham.
- "Proceedings" means the proceedings in the winding-up of a company under
- the Act. "Registrar" means in the High Court any of the registrars in bankrnptey of the High Court, and any person who shall be appointed to fill the office of registrar under these Rules, and where winding-np o. a company is in the district registry of Liverpool or Munchester means the district registrar; and in a County Court, where there are joint registrars means either of such registrars, or a deputy registrar, and in any Court other than the High Court, means the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a registrar or master.
- "The Rules" means these Rules, and includes the prescribed forms.
- "Sealed" means sealed with the seal of the Court. "Taxing Officer" means the officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.
- Words importing the masenline gender shall include females
- Words in the singular shall include the plural and words in the plural shall iuclude the singular. The expression "person" shall iuclude any body of persons corporate or
- unineorporate.
- Expressions referring to writing shall include printing, lithography, photography, and other methods of representing or reproducing words in a visible form.

Interpretation. of terms.

APPENDIX.

Use of forms in Appendix.

3.-(1.) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party

using the same, unless the Court shall otherwise direct. (2.) Provided that the Board of Trade may from time to time alter any forms (2.) Provided that the Board of Frade may from time to time after any forms which relate to matters of an administrative and not of a judicial character, or sub-stitute new forms it lieu thereof. Where the Board of Trado alters any form, or substitutes any new form it lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the London Gazette.

COURT AND CHAMBERS.

-(1.) All proceedings in the winding-up of companies in the High Court shall from time to time be attached to one or more of the registrars, who shall, together with the necessary clerks and officers, and subject to the Act and Rules, act under the general or special directions of the judge. registrar in High Court.

(2.) Every other registrar may act for and in place of such registrar as above mentioned in all proceedings under the Acts and Rules, including the holding of public examinations, and when so acting such other registrar shall be deemed to be

the registrar for the purposes of the Aot and Rules (3.) In every cause or matter within the jurisdiction of the judge, whether by virtue of the Act, or by transfer, or otherwise, the registrar shall, in addition to his powers and duties under the Rules, have all the powers and duties of a master,

registrar, or taxing master. 5.-(1.) The following matters and applications in the High Court shall be heard before the judge in open Court :---

Matters in High Court to be heard in Court and Chambers.

- (b) Appeals to the Higl: Court from the Board of Trade and from the official receiver when acting as off ial receiver and not as liquidator.

 - (c) Applications under section 223 of the Act. (d) Applications by the Board of Trade under section 224 of the Act.
 - Applications for the committal of any person to prison for contempt.
- (f) Such matters and applications as the judgo may from time to time by any general or special orders direct to be heard before him in open Court. (2.) Examinations of persons summoded before the High Court under section 174 of the Act, shall be held in Court or in Chambers as the Court shall direct.
- (3.) Every other matter or application in the High Court under the Act to which the Rules apply may be heard and determined in Chambers.

6.--(1.) In Courts other than the High Court the following matters and applica-tions to the Court shall be heard in open Court :---

Courts other than High (a)

Proceedings in

Court.

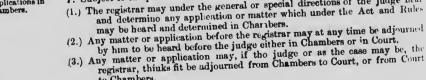
Petitions. Public examinations. (h)

to Chambers.

- Applications under sub-section 1 of section 217 of the Act.
- (e) (d) Applications to rectify the register.
- Appeals from the official receiver and Board of Trade.
- (f) Appeals from any decision or act of the liquidator.
- Applications relating to the admission or rejection of proofs.
- (h) Proceedings under section 215 of the Act.
- (i) Applications under section 223 of the Act.
- (j) (k)
- Applications during section 225 of the Act. Applications for the committal of any person to prison for contempt. Such matters and applications as the judge may from time to time by any general or special orders direct to be heard before him in open Court. (2.) Any other matter or application may be heard and determined in Chambers.

7. Subject to the provisions of the Act and Rules in every Court :-(1.) The registrar may under the general or special directions of the judge hear

Applications in Chambers.



Office of

8.—(1.) Every application in Court other than a petition, shall be made by Motions and motion, notice of which shall be served on every person against whom an order is summonses. sought, not less than two clear days before the day named in the notice for hearing Form 3. the motion, which day must be one of the days appointed for the sittings of the Court

(2.) Every application in Chambers shall be made by summons, which, indexs otherwise ordered, shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

9. Subject to the orders of the Lord Chancellor the place of sitting of each Place of sitting County Court having jurisdiction under the Act shall for the purposes of such of County Court jurisdiction, be the town and place in which the Court holds its sittings for the general business of the Court, under the County Courts Acts.

10. Subject to the provisions of the Act, the times of the sitting of each Court, Times for bolding Courts and the High Court in matters of the winding-up of companies shall be those which are appointed for the transaction of the general business of the Court, the Court, the Court, the Court is constrained to the transaction of the general business of the Court, the Court is constrained to t unless the judge of auy such Court shall otherwise order.

PROCEEDINOS.

11. -(1.) Every proceeding 'u a winding-up matter shall be dated, and shall Title on with any necessary additions, be intituled as follows:-proceedings. Forms 1 and 2

IN THE COURT

COMPANIES (WINTING-UP)

In the Matter of the Companies (Consolidation, Act, 1908.

with the name of the matter to which it relates. Numbers and dates may be denoted by figures.

(2.) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

12. All proceedings shall be written or printed, or partly written or partly Written or printed on paper of the size of 13 iu. in leugth and 8 in. in breadth, or thereabouts, printed and must have a stitching margin; hut no objectiou shall be allowed to any proof proceedings or affidavit on account only of its being written or printed on paper of other size.

13. All orders, summonses, petitions, warrants, process of any kind (including Process to be notices when issued hy the Court) and office copies in any winding-up matter shall sealed. be sealed.

14. Every summons in a winding-up matter in the High Court shall be prepared Issue of hy the applicant or his solicitor, and issued from the office of the registrar. A summon summons, when waled, shall be deemed to be issued. The person obtaining the summons shall leave in the registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.

15. Every order, whether made in Court or in Chambers in the winding-up of a Orders. company shall he drawn up hy the registrar, unless in any proceeding, or classes of proceedings, the judge or registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled hy the judge or the registrar making the order, shall be sufficient evidence of the order having been made.

16. All petitions, affidavits, summonses, orders. proofs, notices, depositions, bills File of pro-of costs, and other proceedings in the High Court in a winding-up matter shall be kept and remain of record in the office of the registrar and, subject to the directions (High Court). of the Court, shall be placed in one coutinuous file, and no proceeding in any windiug-up matter shall be filed in the Central Office.

17. In Courts other than the High Court a file of proceedings in every winding- File of proup matter shall be kept on which, subject to the directions of the Court, all courts other petitions, affidavits, summonses, orders, proofs, notices, depositions, and other thau Hich proceedings in the matter shall he placed and remain of record as far as possible in Court. continuous order.

18. In every Court all office copies of petitions, affidavits, depositions, papers and Office copies. writings, or any parts thereof, required hy the official receiver or any liquidator,

A summonses.

-

599

Rules of 1909

y any bers.

)t y

y

ÿ

18 3or

he

irt. H,

08, ve

of be

bv

to

er,

ard

cial

any

174

hich

lica -

e hear Rules urned e, the Court

APPENDIX.

contributory, ereditor, officer of a company, or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be fuirly written out at length, and be scaled and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken. 19. Every person who has been a director or officer of a company which is being

In-pection of file.

Use of file by Board of Trade and official

Defacement of

receiver.

stamps.

wound up, and every duly authorised officer of the Bourd of Trade, shall be entitled, free of charge, and every comributory and every creditor whose china or proof has been admitted, shall be entitled on payment of a fee of one shilling for each hour or part of an hour ocenpied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words.

20. Where, in the exercise of their functions under the Act or Rules, the Board of Trade or the official receiver requires to inspect or use the file of proceedings the registrar shall (unless the file is at the time required for use in Court or by him) on request, transmit the file of proceedings to the Board of Trade or official receiver, as the case may be.

21. Every officer of a Court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document define the stump thereon, in the High Court in such manner as the Commissioners of Inland Revenue may from time to time direct, and in any other Court by writing partly on the stamp and partly on the document the name of the matter, or in steh other manner as the Connissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made.

SERVICE AND EXECUTION OF PROCESS AND ENFORCEMENT OF ORDERS.

Duties of bailiff in County Court.

Service.

22.-(1.) It shull be the duty of the high bailiff of a County Court to serve such orders, summonses, petitions and notices as the Court muy require him to serve ; to execute warrants and other process ; to attend any sittings of the Court (but not sittings in Chambers); and to do and perform all such things as may be

(2.) But this rule shall not be construed to require any order, snumnous, petition, or notice to be served by a bailiff or officer of the Court which is not specially by required of him by the Court. the Act or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs.

23.- (1.) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith ; and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may la

(2.) No service shall be deemed invalid by reason that the name, or any of the returned by the post office. names other than the surname of the person to be served, hus been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

24.-(1.) Every order of a Court having inrisdiction to wind up a company. made in the exercise of the powers conferred by the Acts and Rules, may he enforced by such Court as if it were a judgment or order of the Court made in the

exercise of its ordinary jurisdiction. (2.) Every such order of a County Court, and every process issued therein may be enforced, executed and d-alt with not only by such Court, but by any County Court, whether such County Court has or has not jorisdiction to wind up a company, as if such order or process were made or issued for the eutorcement of a judgment or order made by such last-mentioned Court in the exercise of its ordinary inrisduction.

PETITION.

25. Every petition for the winding-up of a company by the Court, or subject to the supervision of the Court, shall be in the Forms Nos. 4 and 5 in the Appendix, with such variations as circumstances may require.

Enforcement ot urders.

Form of petition. Forms 4 and 5.

Companies (Winding-up) Rules.

26. A petition shall be presented at the office or chambers of the registrar, who Presentation shall appoint the time and place at which the petition is to be heard. Notice of the of petition, time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the registrar may at any time before the petition has been advertised, alter the time appointed, and fix another time.

27. Every petition shall be advertised seven clear days before the hearing, as Advertisement of petition. follows

- (1.) In the case of a company whose registered office, or if there shall be no such Form 6. office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice, once in the London Gazette, and once at least in one Londou daily moraing newspaper, or in such other newspaper as the Court directs.
- (2.) In the case of any other company, once in the London Gazette, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known principal place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the Court.
- (3.) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intentiou to the petitioner, or to his solicitors or London agent, within the time and manuer prescribed by Rulo 33, and an advertisement of a petition for the winding-up of a company by the Court which does not contain such a note shall be deemed irregular.

And if the petitioner or his solicitor does not within the time hereby prescribed or within such extended time as the registrar may allow duly advertise the petition or writin shere extended time as the registrate may any day that the problem of the time and place at which the petition is to be heard shall be cancelled by the registrar and the petition shall be removed from the tile in the Companies (Winding-up) Office unless the judge or the registrar shall otherwise direct.

28. Every petition shall, unless presented by the company, be served upon the Service of company at the registered office, if any, of the company, and if there is no regiss petition. tered office, then at the principal or last known principal place of business of the Forms 7 and 8, company, if may such can be found, by leaving a copy with any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found by heaving a copy with any member, officer, or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member or members of the company as the Court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company.

29. Every petition for the winding up of a company by the Court, or subject Veriflection of to the supervision of the Court, shall be verified by an affidavit referring thereto, petition. Such atildavit shall be made by the petitioner, or by one of the petitioners, if more Form 9, than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after mid filed within four days after the petition is presented, and such affidavit shall be sufficient primd facie evidence of the statements in the petition.

30. Every contributory or creditor of the company shall be entitled to be fur. Copy of petition aished, by the solicitor of the petitioner, with a copy of the petition, within 24 hours to be furnished by the solicitor of the petition of after requiring same, on paying the rate of 4d, per folio of 72 words for such contributor. eopy.

OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR.

31.--(1.) After the presentation of a petition, upon the application of a creditor, Appointment or of a contributory, or of the company, and upon proof by affidavit of sufficient biquidator. grounds for the appointment of the official receiver as provisional liquidator, the Court, if it thinks fit, and upon such terms as in the opinion of the Court shall

(2.) The order appointing the official receiver is ordered to take possible of the contrastal Form 10. bear the number of the petition, and shall state the nature and a short description of the property of which the official receiver is ordered to take possession, and the duties to be performed by the official receiver.

(3.) Subject to any order of the Court, if no order for the winding-up of the company is made upou the petition, or if an order for the winding-up of the

shall ritten , and

being titled. of hus anr or dings l with y-two

Board gs the im) ou ver, as

lhesive nce the ters of writing r, or in time to stamp duty of hereby

to serve him to ne Court may be

petition, cially by articular

those of st known Ioenment ed in the may be

ny of the from the ed that in

company. ade in the

ein may be y Consty wind up a ement of a ts ordinary

or subject Appendix,

Р.

601

Rules of 1909

company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the company subject to the supervision of the Court, the official receiver as provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by bim as provisional highlator, including the fees payable to the Board of Trude nuder the scale of fees in force for the time being, and may retain out of such property the amounts of such costs, charges, expenses, and fees.

HEARING OF PETITIONS AND ORDERS MADE THEREON.

Attendance before hearing to show compli ance with rules. 32. After a petition has been presented, the petitioner, or his solicitor, shall, on a day to be appointed by the registrar, attend before the registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein, and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions for winding-up companies have been duly complied with by the petitioner. No order for the winding-up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the registrar at the time appointed, and satisfied him in manner required by this rule.

Notice by persons who intend to appear.

Form 11.

List of names and addresses of persons who appear on the petition. Form t2.

Affidavits in opposition and reply.

Sabstitution of creditor or contributory for withdrawing petitioner.

Notice that winding-up order has been pronounced to be given to official receiver. Forms 13 and 14.

bocuments for drawing up order to be left with registrar.

33. Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his solicitor or London agent, at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person and shall be signed by him or by his solicitor or London agent, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in Form 11 with such variations us circumstances may require. A person who has failed to comply with this rule shall not, without the special heave of the Court, be allowed to appear on the hearing of the petition.

34. The petitioner, or his solicitor or London agent, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 12. On the day appointed for hearing the petition a fair copy of the list (or if uo notice of intention to appear has been given a statement in writing to that effect) shall be hunded by the petitioner, or his solicitor or London agent, to the Corr prior to the hearing of the petition.

35.—(1.) Affidavits in opposition to a petition that a company may be wound up under the order or subject to the supervision of the Court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or the solicitor or London agent of the petitioner, on the day on which the affidavit is filed.

the arbitrary formation in reply to an affidavit filed in opposition to a petition shall be $(2, -\Lambda n)$ affidavit in reply to an affidavit filed within three days of the date on which notice of such affidavit is received by the petitioner or the solicitor or London agent of the petitioner.

36. When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or, if appearing, does not apply for an order in the terms of the prayer of his petition, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition.

ORDER TO WIND UP A COMPANY.

37. When an order for the winding-up of a company, or for the appointment of the official receiver as provisional liquidator prior to the making of an order for the winding-up of the company, has been pronounced in Court, the registrar shall, on the same day, send to the official receiver a notice informing him that the order has been pronounced.

The notice may be in Forms 13 and 14 respectively, with such variations as eircomstances may require.

38. It shall he the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding-up of a company is

provounced in Court, to leave at the registrar's office all the documents required or as purpose of enabling the registrar to complete the order forthwith.

39. It shall not be necessary for the registrar to make an appointment to settle No appoint-the order, unless in any particular case the special circumstances make an appoint-setting order.

40. An order to which up a company shall contain at the foot thereof a notice Contents of sl ting that it will be the duty of the person who is at the time secretary or chief winding up offi er of the company, and of such of the persons who are hable to make out or order. concar in making out the company's statement of atfairs as the official receiver may. Form 15, require, to attend on the official receiver for thwofh or the service of the order at the place mentioned therein.

41, -(1,) When an order that a company be wound up, or for the appointment Transmission of the official receiver as provisional liquidator has been made :-

- (a) Three copies of the order scaled with the scal of the Court shall forthwith be ment of wind-scale by post or otherwise by the r gister to the other bind scale poster. sent by post or otherwise by the registrar to the official receiver.
- (b) The official receiver shall cause a scaled copy of the order to be served upon the secretary or other chief officer of the company at the registered office. of the company (if any), or upon such other person or persons, or in such other manner as the thourt may direct, and if the order is that the company be wound up by the Court, shall forward to the Registrar of Companies the copy of the order which by section 113 of the Act is directed to be su forwarded by the company.
- (c) The official receiver shall forthwith give notice of the order to the Board of Trade, who shall forthwith cause the notice to be gazetted.
- (d) The official receiver shall forthwith send notice of the order to such local Form 17. paper us the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

(2.) An order for the winding-up of a company, subject to the supervision of the Form 16. Court, shall before the expiration of twelve days from the date thereof he advertised by the petitioner, once in the London Gazette, and shall be served on such persons 'if any) and in such manner as the Court shall direct.

TRANSFERS OF ACTIONS AND PROCEEDINGS.

42.-(1.) Where an order has been made in the High Court for the winding-up Transfer of of a company the judge shall have power, without further consent, to order the actions transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against the company, and any action or proceeding by a mortgagee or debenture holder of the company against the company for the purpose of realising his security, or by any other person for the company for the a claim against the company's assets or property which is pending in the High Court or before any judge thereof, shall without further order be transferred to the judge of the High Court. In the case of applications in Chambers in actions so transferred where the practice in winding-up is different from the practice in the Chancery Division the practice in winding-up shall prevail.

(2.) Where any action brought by or against a company against which a winding-up order has been made is transferred to the judge of the High Court, winding-up order has been made is transferred to the judge of the judge, hear, the registrar may, under the general or special directions of the judge, hear, determine and deal with any application, matter, or proceeding which, if the ration had not hear transferred, would have been determined in Chambers. These provisions shall apply to the proceedings in any action in which by the Rules of the Supreme Court or otherwise the Chamber proceedings are directed to be dealt with by the registrar.

43. The judge of the High Court may at any time, for good canse shown, order Transfer of the proceedings in any Court other than the High Court to be transferred to the proceedings by High Court, or any proceedings in the High Court to be transferred from the High Court. Form 18. Form 18.

44. The judge of any Court, other than the High Court or a Palatine Court, Transfer of may at any time, for good cause shown, order any proceedings which have been proceedings by commenced or are pending in his Court to be transferred to any Court which has other than urisdiction to order the winding-up of a company, not being the High Court or a High Court Palatine Court.

Palatine Court. Form 18.

ion aro OMDBDV uidator e costs, reluding the time charges,

shall, on isfy him verifying filed, and ave been company mring of fied him

all serve t, at the on. The im or by be posted than six earing of mistances , without petition.

ist of the ention to hich shall opy of the writing to agent, to

wound up thin seven notice of en to the on which

a shall be eccived by

w it to be is petition thereof, or r, does not may, upon intributory n, and who

ointment of ider for the ar shall, on ne order has

ariations as

agent, and at latest on company is

39(2)

Rules of 1909

Notice of application to official receiver. 45. In a winding-up by the Court, notice of an application for a transfer of proceedings shall before the hearing thereof, be served by the applicant on the official receiver of the Court in which the proceedings are peuding and on the official receiver of the Court to which the proceedings are songht to be transferred.

Procedure where proceedings transferred. Form 19.

46. When an order for the transfer of proceedings has been made :-

- (1.) The person on whose application the transfer has been made shall lodge with the registrar of the Court to which the proceedings are transferred a scaled copy of the order of transfer.
- (2.) In a winding-up by the Court the official receiver of the Court te which the proceedings are transferred shall become the official receiver in the pro-
- (3.) The records of the proceedings shall be transmitted to the registrar of the Court to which the proceedings are transferred, and in a winding-up by the Conrt such registrar, as soon as he has received the records, shall give notice of the transfer to the official receiver of his Court, who shall give notice of the transfer to the Board of Trade.
- proceedings shall receive a new distinctive number. (4.)

47. Whenever the Lord Chancellor, by order under his hand, shall exclude any 47. Whenever the Lord Chancellor, by order inder his hand, shall exclude any County Court from having jurisdiction under the Act, or shall attach the district or any part of the district of a County Court to the High Court, or any other County Court, or shall detach the district or any part of the district of any Courty Court from the district and jurisdiction of the High Court, any winding-up matters pending in the Court or district to which the order relates shall become transferred to and Court or the High Court is the order to the order to the order to the theorem the transferred to such Court as shall be mentioned for any purpose in the order; and, thereupou, the rules as to transfer of proceedings will apply to the transfer of such pending proceedings in all respects as if the provenings had been transferred by order of a Court having power to transfer proceedings.

SPECIAL MANAGEB.

48.-(1.) Au application by the official receiver for the appointment of a special manage, shall be supported by a report of the official receiver, which shall be Appoints ent of placed on the file of proceedings, and in which shall be stated the amount of cetal manager. remuneration which, in the opinion of the official receiver, ought to be allowed to -scial manager. No affidavit by the official receiver in support of the applicatho.

all be required. (2.) The remuneration of the special manager shall, unless the Court otherwise in any special case directs, be stated in the order appointing him, but the Court may at any subsequent time for good cause shewn make an order for payment to the spec al manager of further remmeration.

(3.) A copy of the order appointing a special numager shull be transmitted to the Board of Trade by the efficial receiver.

49. Every special manager shall account to the official receiver, and the special manager's accounts shall be verified by affidavit, nud, when approved by the official Accounting by receiver, the tetals of the receipts and payments shall be added by the official pecial manager. receiver to his accounts.

STATEMENT OF AFFAIRS.

Preparation of statement of affnirs. Form 26.

Form 20.

50.-(1.) Every person whe under section 147 of the Act has been required by the efficial receiver to submit and verify a statement as te the affairs of the company, shall be furnished by the official receiver with forms and instructions for the preparation of the statement. The statement shall be made ent in duplicate, one copy of which shall be verified by affidavit. The efficial receiver shall cause to be filed with the registrar the verified statement of affairs.

(2.) The official receiver may from time to time held personal interviews with every such person for the purpose of investigating the company's affairs, and it shall be the daty of every such person to attend on the official receiver at such time and place as the official receiver may appoint and give the official receiver all information that he may require.

604

Transfer of iuristiction of County Court.

Companies (Winding-up) Rules,

61. When any person requires any extension of time for submitting the states. Extension of give a written certificate extending the time, which certificate shall be filed with muture for sub-the proceedings in the wirding-up and shall render an application to the Court

52. After the statement of affairs of a company has been submitted to the information official receiver it shall be the daty of each person who has made or consured in subsequent to making it, if and when required, to attend on the official receiver and asswer all statement of these such questions as may be put to him, and give all such further is formation as may be required of him by the official receiver in relation to the statement of affrirs.

53. Any default in complying with the requirements of section 147 of the Act Default. muy be reported by the official receiver to the Court.

64. A person who is required to make or concur in making any statement of Expenses of affairs of a company shall, before incurring any costs or expenses in and about the statement of preparation and making of the statement, apply to the official receiver for his ators. sanction, and submit a statement of the estimated costs and expenses chick it is Intended to mean; and except by order of the Court : o person shall be allowed out of the ussets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver.

APPOINTMENT OF LIQUIDATOR IN A WINDING-UP BY THE COURT.

 $\mathbf{55.}$ -(1.) As soon as possible after the first meetings of creditors and contributories. Appointment of have been held the official receiver, or the chairman of the meeting, as the case may benefator on be, shall report the result of each meeting to the Court.

(2.) Upon the result of the meetings of creditors and contributories being reported inclosuringto the Court, the Court may, if the meeting of creditors and the meeting of contri- tones. and contribubutories have each passed the same resolutions, or if the resolutions passed at the Form 27. two meetings are identical in effect, upon the application of the official receiver, forthwith make the appointments necessary for giving effect to such resolutions, any other case the Court shall, on the application of the officiel receiver, fix a time and place for considering the resolutions and determinations of any) of the meetings, deciding differences (if any), and neuking such order as shall be necessary.

(3.) When a time and place have been fixed for the consideration of the resolutions of the meetings, such time and place shall be advertised by in such manner as the Court shall direct, but so that the and determithe official . first or only a. comment shall be published not less than seven days before the time so fixed.

(4.) Upon the consideration of the resolutions and determinations of the meetings the Court shall hear the official receiver and any creditor or contributory.

(5.) If a liquidator is appointed a copy of the order appointing him shall be transmitted to the Board of Trade by the official receiver, and the Board of Trade shall, as soon as the liquidator has given security, cause notice of the appointment F arms 28 and to be gazetted. The expense of gazetting the notice of the appointment shall be paid 493 7). by the liquidator, but may be charged by him on the assets of the company.

(6.) Every appointment of a liquidator or committee of inspection shall be Form 30. advertised by the liquidator in such manner as the Court directs immediately after the appointment has been made, and the liquidator has given the required scenrity.

(7.) If a liquidator in a winding-up by the Court shall die, or resign, or he removed, unother liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver shall, on the request of not less than one-tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be tilled ; but none of the provisions of this rule shall apply where the liquidator is released under section 157 of the Act in which case the official receiver shall remain liquidator.

56. When the official receiver is liquidator of a company he shall be styled Style of official receiver and liquidator."

Security by Liquidator or Special Manager in a Winding-up by the Coust.

57. In the case of a special manager or a liquidator other than the official Standing

(1.) The security shall be given to such officers or a requirator other than the official scaling security to the Board of Trade may from time to time direct.

receiver when he is liquidator.

of and.

Rules of 1909

of the the d.

led the ro-

lth

the by rive rive

any rict ther nty ters rred pon, ling

of a

ecial 1 be it of 1 80 dica-

rwise Court o the o the

perial fficial fficial

uired if the ns for licate, enne

with m1 it er all

- (2.) It shall not be necessary that scentity shall be given in each separate winding-np; but scentity may be given either specially in a particular winding-np, or generally, to be available for any winding-up in which the person giving scentity may be appointed, either as liquidator or special manager
- (3) The Board of Trude shall fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general scently which any person has given. (4.) The certificate of the Board of Trade that a liquidator or special manager
- has given scenrity to their satisfaction shall be filed with the registrar.
- (5.) The cost of tamisbing the required security by a liquidator or special manager, including any prendums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding-up.

58.-(1.) If a liquidator or special manager fails to give the required scentity within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver shall report such failure to the Court, who may thereupon reseind the order appointing the liquidator or special manager.

(2.) If a liquidator or special unnanger fails to keep up his security, the official resciver shall report such failure to the Court, who may thereupon remove the liquidator or special manager, and make such order as to costs as the Court shall thick fit

(3.) Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the Court may direct that another liquidator is to be appointed, and therengon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator.

PUBLIC EXAMINATION, 59. A report made by the official receiver pursuant to section 148 of the Act

Report of official receiver to be filed.

Appointment of time for con-sideration of report. Consideration of report.

Procedure conacquent on order for public examination Form 31.

may require.

shall state, in a narrative form, the facts and matters which the official receiver desires to bring to the notice of the Court, and his opinion as required by the said section. 60. The official receiver may apply to the Court to fix a day for the consideration of the report, and on such application the Court shall appadint a day on which the

report shall be considered. 61. The consideration of the report shall be before the judge of the Court personally in Chambers and the official receiver shall personally, or by comset or solicitor, attend the consideration of the report, and give the Court my further information or explanation with reference to the matters stated in the report which the Court

62. Where the judge makes an order under section 175 of the Act, directing any

- High Court the judge may direct that the whole or any part of the examination of any such person or persons is held before the registrar, or before any of the persons mentioned in sub-section 9 of the said section.
- (b) The judge may, if he thinks fit, either in the order for examination, or by any subsequent order, give directions as to the special matters on which any such person is to be examined.
- (c) Where on an examination held before the registrar, or one of the persons mentioned in sub-section 9 of the suid section, he is of opinion that such examination is being undaty or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the judge.

Application for day for holding examination.

Appointment of time and place for public examination. Forms 32 and 33. made, the official receiver shall apply for the appointment of a day on which the public examination is to be held. 64. A day and place shall be appointed for holding the public examination, and

63. Upon an order directing a person to attend for public examination being

notice of the day and place so appointed shall be given by the official receiver to the person whe is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

Form 29

Failure to give or krep up security.

Companies (Winding-pp) Rules,

65.—(1.) The official receiver shall give notice of the time are place appointed for Notice of public holding a public examination to the resiliers and contributories by advertisement in excumulation to anch newspapers as the Board of Trade from time to time direct, or in default of any contributions and direction as the official receiver thinks fit, and shall also forward notice of the contributions.

2.) Where an adjoarnment of the public examination has been directed, notice of the adjournment shall not, nuless otherwise directed by the Court, he advertised In any newspaper, but it shall be sufficient to publish in the theatten notice of the time and place fixed for the adjourned examination.

66.-(1.) If any person who has been directed by the Court to attend for public Defoult in examination falls to attend at the time and place appointed for holding or pro-attending cool enuso is shown by him for such fallare, or if Form to before the day appointed for the examination the official receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to absend with the view of avoiding examination, it shall be lawful for the Court, upon its being proved to the sensitivity of the Court that notice of the order and of the time and place appointed for attendance at the public examined on was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shuh

(2.) A warrant of arrest issued by the High Court under this rule shall be issued. Warrants of In the Central Office of the Supreme Court pursuant to an order of the Court directing accest

67. The notes of every public examination shall, after being signed as required Notes of stand by section 175 (7) of the Act, be filed with the registrar.

intimi to be tilent. Fortas 36 and 37

PROCEEDINGS AGAINST DELINQUENT DIRECTORS, PROMOTERS, AND OFFICIERS.

68.—(1.) An upplication under section 215 of the Act shall in any Court Application other than the High Court be made by motion to the Court. In the High Court meanst dehote the application shall be made by a submous returnable in the first instance in $\frac{100}{100}$ and denot is, officers, and Chambers, in which summons shall be stated the nature of the declaration or order promoters for which application is made, and the grounds of the application, and which summons, unless atherwise ordered by the Court, shall be served in the narmer in which an originating summons is required by the Rules of the Supreme Court to be served on every person against whom an order is sought, not less than eight days before the day usual in the summons for hearing the application. Where the application is made by the official receiver or liquidator he may make a report to the Court stating any facts and information on which he proceeds which are verified by attidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person it shall be supported by athlavit to be

filed by Idm. (2.) On the return of the summons the Court may give such directions as it slead (2.) On the return of the summons before the judge in Court, the taking of evidence wholly or in part by atlidavit or orally, and the cross-examination either before the judge on the hearing in Court or in Chambers of any deponents to atlldavits in support of or in opposition to the application.

69. Where the application is made by motion, notice of the intended motion Notice of shall be served on every person against whom an order is sought, not less than application. eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

70. Where in the course of the proceedings in a winding-up by the Court an Use of deposiorder has been made for the public examination of persons named in the order pur-sum to section 175 of the Act, and it appears from the examination that the public exami-nersons examined, or some of them, have misamplied, or retained, or became listle. persons examined, or some of them, have anisapplied, or retained, or beer me lixble, persons examined, or some or mean, have insupport, or been guilty of misfensance or secountable for moneys or property of the company, or been guilty of misfensance or breach of trust in relation to the company, then in any proceedings subsequently instituted under section 215 of the Act, for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restoration to the company of any moneys or property, or contribution by way of compensation

eparate rticular wirk the special

ty, and ish the

nuager mr. special manter harged In the

security tension there-

official ove the rt shall

ppoint-tor is to te matte æ.

the Act receiver tho said

deration hleh the

reonally oliritor, runtion e Court

ing any

t in the t of the drar, or ction. a, or by n which

persons int such ay other , or any

m being hich the

ion, and er to the ddressed

607

Rules of 1909

to the assets of the company by such persons or any of them, the verified notes of the examination of each person who was examined nuder the order shall, subject as hereinafter mentioned, and to any order or directions of the Conrt as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 175 of the Act, and the order for the public examination. Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person or parts of the notes, or parts of notes, or any of them, specifying the notes or parts of the notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

WITNESSES AND DEPOSITIONS. 71. If the Court or the officer of the Court before whom any examination

under the Act and Rules is directed to be held shall in any ease, and at any stage of the proceedings, be of opinion that it would be desirable that a person

(other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment. The person at whose instance the examination is taken shall nominate a person for the purpose, and the person so nominated shall be appointed, nuless the Court or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding one guinea a day, and a sum not exceeding 8d, per folio of 90 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made.

Shorthand notes. Forms 34 and 35.

Committal of contumacious witness. Form 38,

72.—(1.) If a person examined before a registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the registrar or officer any question which he may allow to be put, the registrar or officer shall report such refusal to the judge, and non such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the judge.

or out of the assets of the company as may be directed by the Court.

(2.) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3.) The registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report the judge may take such action thereou as he shall think fit. If the judge is sitting at the time when the default in answering is made, such default may be reported immediately.

Depositions at private examinations. **73.**—(1.) The official receiver may attend in person, or by an assistant official receiver, any examination of a witness under section 174 of the Act, on whose server application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the Court may abov.

(2.) The notes of the depositions of a person examined nuder section 174 of the Act, or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 155 of the Act), shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the official receiver or liquidator, unless and until the Court shall so direct, and the Court may from time to time give such general or special directions as it shall think expedient as to the cutsdy and inspection of such notes and the furnishing of copies of or extracts therefrom.

đ

ARRATGEMENTS WITH CREDITORS AND CONTRIBUTORIES IN A WINDING-UP BY THE

74. In a winding-up by the Court if application is made to the Court to sanction Report by any compromise or arrangement the Court may, before giving its sanction thereto, official receiver hear a report by the official receiver as to the terms of the scheme, and as to the on arrange-conduct of the directors and other officers of the company and as to any other ments and hear a report by the omenal receiver as to the terms of the scheme, and as to the ments and eonduct of the directors and other officiers of the company, and as to any other compromises, matters which, in the opinion of the official receiver or the Board of Trade, ought to be brought to the attention of the Court. The report shall not be plated upon

Collection and Distribution of Assets in a Winding-up by the Court.

75.--(1.) The duties imposed on the Court by section 163 (1) of the Act, Collection and in a winding-np by the Court with regard to the collection of the assets of distribution of the company and the application of the assets in discharge of the company's company's assets in discharge of the company's company's asset liabilities shall be discharged by the liquidator as an officer of the Court subject to

(2.) For the purpose of the discharge by the liquidator of the duties imposed by section 163 (1) of the Act, and Sub-Rule 1 of this Rule, the liquidator in n windingup by the Court shall for the purpose of nequiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the pro-perty appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

76. The powers conferred on the Court by sec⁺ . 164 of the Act shall be Power of liqui-exercised by the liquidator. Any contributory for ' i ne being on the list of cou-tributories, trustee, receiver, banker or agent or officer of a company which is being being delivery of delivery of property. wound up under order of the Court shall, on notice from the Equidator and within property. such time as he shall by uotice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any sum of money or balance. books, papers, estate or effects which happen to be in his hands for the time being and to which the company is primd facie entitled.

LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

77. The liquidator shall with all convenient speed after his appointment settle Liquidator to 77. The liquidator shall with an ecovernent speed after his hypothetic settle is a list of contributories of the company, and shall appoint a time and place for that settle list of The list of contributories shall contain a statement of the subgroup on the contributories. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and Form 42. shall distinguish the several classes of contributories. As regards representative contributories the liquidator shall so far as practicable observe the requirements of

78. The liquidator shall give notice in writing of the time and place appointed Appointment of for the settlement of the list of contributories to every person whom he proposes to time and place include in the list, and shall state in the notice to each person in what character and for settlement for what number of shares or interest he proposes to include such person in the list. Forus 43 and 44.

79. On the day appointed for settlement of the list of contributories the liqui-dator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of the totories. Form 45.

80. The liquidator shall forthwith give notice to every person whom he has Notice to finally placed on the list of contributories stating in what character and for what contributories. number of shares or interest he has been placed on the list, and in the notice inform Form 46. such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within 21 days from the date of the service on the contributory or alleged contributory of uotice of the fact that his name is settled on the list of contributories.

81.-(1.) Subject to the power of the Court to extend the time or to allow an Application to application to be made notwithstanding the expiration of the time limited for that the Court to the lite purpose, no application to the Court by nny person who objects to the list of een- vary the list tributories as finally settled by the liquidator shall be entertained after the expiration Form 49.

sassets

609

Rules of 1909

of 21 days from the date of the service ou such person of notice of the settlement of the list.

(2.) The official receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set asido or vary his act or decision settling the name of a person on the list of contributories of a company.

Variation of or addition to list of contributories. Form 47.

82. The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

butories conferred by section 166 of the Act, shall and may be exercised, in a winding up by the Court, by the liquidator as an officer of the Court subject to the proviso to section 173 of the Act, and to the following regulations :--

Form 5.).

Calls by liquidator.

Form 51.

Form 52.

Application to the Court for leave to make a call. to 57. Form

Document making the call. Form 58.

Service of notice of a call. Forms 52, 53 and 59.

Enforcement of call. Forms 60, 61 and 62.

CALLS. 83. The powers and duties of the Court in relation to making calls upon contri-

- (1.) Where the liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Aet, if there is a committee of inspection he may summon' a meeting of such committee for the purpose of
- obtaining their sanction to the intended call. (2.) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notico of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a London newspaper, or, where the winding-up is not in the High Court, in a newspaper eirculating in the district of the Court in which the proceedings are pending. The advertisement shall state the time and place of the inpending. tended meeting of the committee of inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection to be laid before the meeting, in reference to the said intended eath.
- (3.) At the meeting of the committee of inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the i...ended call is sanctioned.
- (4.) The sanction of the committee shall be given by resolution, which shall be
- passed by a r.ajority of the members present. (5.) Where there is no committee of inspection, the liquidator shall not make a eall without obtaining the leave of the Court.

84. In a winding-up by the Court an application to the Court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed among to f such call, which summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call ; or if the Court so directs, notice of such intended call may be given by advertisement. without a separate notice to each contributory.

85. When the liquidator is anthorised by resolution or order to make a call on the contributories he shall file with the registrar a document in the Form 58 with such variations as circumstances may require making the call.

86. When a call has been made by the liquidator in a winding-up by the Court, a copy of the resolution of the committee of inspection or order of the Court (if any). as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such eall, together with a notico from the liquidator specifying the amount or balance due from such contributory in respect of such ealt, but such resolution or order need not be advertised unless for any special reason the Court so directs.

87. The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers on summons by the liquidator.

PROOFS.

88. Iu a winding-up by the Court every creditor shall prove his debt nuless the Proof of debt, judge in nuy particular winding-up shall give directions that any creditors or class of creditors shall be admitted without proof.

89. A debt may be proved in any winding-up by delivering or sending through Mode of proof. the post an affidavit verifying the debt. In a winding-up by the Court the affidavit shall be so sent to the official receiver or, if a liquidator has been appointed, to the liquidator; and in mny other winding-np the affidavit may be so sont to the liquidator.

90. An affidavit proving a debt may be made by the creditor himself or by Verification of some person authorised by or on behalf of the creditor. If made by a person so proof. authorised, it shall state his authority nud means of knowledge.

91. An affidavit proving a debt shall contain or refer to a statement of account Contents of showing the particulars of the debt, and shall specify the vonchers, if any, by proof. which the same can be substantiated. The official receiver or liquidator to whom Form 63. the proof is sent may at any time call for the production of the vonchers.

92. An affidavit proving a debt shall state whether the creditor is or is not a Statement of secured ereditor.

93. An affidavit proving a debt may in a winding-up by the Court be sworn Proof offore before an official receiver, or assistant official receiver, or any officer of the Board whom sworn. of Trade or any clerk of an official receiver duly nuthorised in writing by the Court or the Board of Trade in that behalf.

91. A creditor shall bear the cost of proving his debt unless the Conrt otherwise Costs of proof. orders.

95. A creditor proving his deht shall deduct therefrom all trade discounts, but Discount. he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment

96. When any rent or other payment falls due at stated periods, and the order Periodical payor resolution to wind up is made at any time other than one of those periods, the ments. persons cntitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the laudlord of such premises to claim payment hy the company, or the liquidator, of ren' " ng the period of the company's or the liquidator's occupatiou.

97. On any debt or sum certain, payable at a certain time or otherwise, whereon Interest interest is mut reserved or ugreed for, and which is overdue at the date of the winding-up order or resolution, the ereditor may prove for interest at a rate not exceeding four per centum per aunum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

93. A creditor may prove for a debt not payable at the date of the winding-up Proof for debt order or resolution, as if it were payable presently, and may receive dividends equally payable at a with the other creditors, deducting only thereout a rebite of interest at the rate of five future time. pounds per centum per aunum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

99. In any case in which it appears that there are numerous claims for wages by Workmen's workmen and others employed by the company, it shall be sufficient if one proof for wages. all such claims is made either by a foreman or by some other person on behalf of all Form 64. such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said wurkmen and others.

100. Where a creditor seeks to provo in respect of a bill of exchange, promissory Production of note, or other negotiable instrument or security on which the company is liable, such bills of exchange and provises or bill of exchange, note, instrument, or scentrity must, subject to any special order of and promissory the Court made to the contrary, be produced to the official receiver, chairman of a meeting or liquidator, as the case may be, and he marked by him before the proof can be admitted either for voting or for any purpose.

611

Rules of 1909

Transmission of proofs to liquidator. 101. Where a liquidator is appointed in a winding-up by the Court, all proofs of debts that have been received by the official receiver shall be hauded over to the liquidator, but the official receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

Admission and Rejection of Proops, and Appeal to the Court.

Notice to creditors to prove.

Examination of proof. Form 65.

Appeal by creditor.

Expunging at instance of liquidator.

Expanging at instance of creditor. Oaths.

Official receiver's powers.

Filing proofs by official receiver.

Proofs to be filed. Form 68.

Procedure where creditor appeals.

Time for dealing with proofs by official receiver.

102. Subject to the provisions of the Act, and unless otherwise ordered by the Court, the liquidator in any winding-up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts me proved, and the liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the Court to every person mentioned in the Statement of Affairs as a creditor, and who has not proved his debt, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor of the company and whose chain has not been admitted.

103. The liquidator shall examine every proof of debt lodged with him, and the grounds of $d \circ debt$, and in writing admit or reject it, iu whole or in part, or require furth α evidence in support of it. If he rejects a proof he shall state in writing to the ereditor the grounds of the rejection.

104. If n_i evidetor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the liquidator in a winding-up by the Court rejecting a proof sent to him by a ereditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of 21 days from the date of the service of the notice of rejection.

105. If the liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the liquidator, after notice to the ereditor who made the proof expunge the proof or reduce its amount.

106. The Court may also expande or reduce a proof upon the application of a ereditor or contributory if the liquidator declines to interfere in the matter.

107. For the purpose of any of his duties in relation to proofs, the liquidater, in a winding-up by the Court, may administer oaths and take affidavits.

108. In a winding-up by the could, hay administer outle and take and the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

109. In a winding-up by the Court the official receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendened in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

110. Every liquidator in a winding-up by the Court other than the official receiver shall on the first duy of every month, file with the registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, these rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the registrar.

111. The liquidator in a winding-up by the Court, including the official receiver when he is liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar, with a memorandum thereon of his disallowance thereof.

112. Subject to the power of the Court to extend the time in a winding-up ey the Court, the official receiver as liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

113. Subject to the power of the Court to extend the time, the liquidator in a Time for dealing 113. Subject to the power of the Court to extend the third twenty eight days with proof. winding-up by the Court, other than the official receiver, within twenty eight days liquidator. after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it " holly or in part, or require further evidence in support of it. Provided that where the liquidator has given notice of his intention to declare a dividend, ho shall within fourteen days after the date mentioned in the notice as the lutest date np to which proofs must be lodged, examine, nud in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notico of dividend shall be a sufficient notification of the admission.

114. The official receiver shall in no case be personally liable for costs in relation Cost of appeals from big decision rejecting any proof wholly or in part. from decisions to an appeal from his decision rejecting any proof wholly or in part.

GENERAL MEETINGS OF F REDITORS AND CONTRIBUTORIES IN BELATION TO A WANDING-UP BY THE COURT.

115. The meetings of creditors and contributories under section 152 of the Act First meetings (bereinafter referred to as the first meetings of creditors and contributories) shall be of creditors and beld within twenty-ono days, or if a special manager bas been uppointed then contributories, within one month after the date of the winding-up order or within such farther time as the Court may approvo. The dates of such meetings shall be fixed and they shall be summoned by the official receiver.

116. The official receiver shall forth with give notice of the days fixed by him for Notice of first 116. The official receiver shall forthwith give notice of the day, that a shall meetings to the first meetings of creditors and contributories to the Board of Trade, who shall meetings to Board of Trade.

117. The first meetings of creditors and contributories shall be summoned as Summoning of first meetings. hereinafter provided.

118. The notices of first meetings of creditors and contributories may be in Form of notices Forms 21 and 22 appended hereto, and the notices to creditors shall state a timo of first meetings, within which the creditors must lodge their proofs in order to entitle them to vote Forms 21 and 22. at the first meeting.

119. The official receiver shall also give to each of the directors and other officers Notice of first of the company who in his opinion ought to attend the first meetings of creditors meetings to and contributorics seven days' notice of the time and place appointed for each officers of meeting. The notice may either be delivered personally or sent by prepaid post company. letter, as may be convenient. It shall be the daty of every director or officer who Form 23. receives notice of such meeting to attend if so required by the official receiver.

120. The official receiver shall also, as soon as practicable, send to each creditor Summary of mentioned in the company's statement of affairs, and to each person appearing from statement of the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these Rules not having been sent or received before the meeting.

121. In addition to the first meetings of creditors and contributories and in Liquidator's addition also to meetings of creditors and contributories directed to be held by the meetings of Court nuder section 219 of the Act (hereinafter referred to as Court meetings of creditors and ereditors and econtributories), the liquidator may bimself from time to time subject to the provisions of the Act and the control of the Court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up.

122 Except where and so far as the nature of the subject-matter or the context Application of may otherwise require the succeeding Rules as to meetings hereinafter set out are international intended to apply to first meetings. Court meetings and liquidator's meetings of ereditors and contributories, but so nevertheless that the said Rales shall take effect as to first meetings subject and without prejudice to uny express provisions of the Act and as to Conrt meetings subject and without prejudice to any express directions of the Conrt.

123. The official receiver or liquidator shall summon all meetings of creditors Summoning of meetings, and contributories by giving not less than seven days' notice of the time and place

as to proofs.

with proofs by

Rules of 1909

thereof in the London Gazette and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories.

The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the pany's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Proof of notice. Forms 76 and 77.

Place of meetings.

Costs of calling meeting.

124. A certificate by the official receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the liquidator, or his solicitor, or the clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notico having been duly sent to the person to whom the same was addressed.

125. The meetings shall be held at such place as is in the opinion of the official receiver or liquidator most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

126. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the official receiver or liquidator, shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the official receiver or liquidator (as the case may be) such sum as may be required by the official receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage, and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first twenty creditors or contributories, sixpector per creditor or contributory for the next thirty creditors or contributories sixpector is fifty. The said costs shall be repaid out of the assets of the company if the Court shall by order, or if the creditors or contributories (as the ease may be) shall by resolution so direct.

127. Where a meeting is summened by the official receiver or the liquidator, he, or someone nominated by him, shall be chairman of the meeting. At every other meeting of ereditors and contributories the chairman shall be such person as the meeting by resolution shall appoint.

128. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present, personally or by provy, and voting on the resolution, have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present, personally or by provy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

129. The official receiver, or, as the ease may be, the liquidator, shall file with the registrar, a copy, certified by him, of every resolution of a meeting of creditors or contributories.

130. Where a meeting of ereditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them.

131. The chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

132.—(1) A meeting may not act for any purpose except the dection of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors emitted to vote or three contributories or all the ereditors entitled to vote or all the contributories if the number of the ereditors entitled to vote or the contributories as the case may be shall not exceed three.

Chairman of meeting. Form 79.

Ordinary resolution of creditors and contributories.

Copy of resolution to be filed.

Non-reception of notice by a creditor.

Adjournment. Form 78.

Quorum.

(2.) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day as the chairman may appoint not being less than seven or more than twenty-one days.

133. In the case of a first meeting of ereditors or of an adjournment thereof a Creditors en-person shall not be entitled to vote as a creditor unless he has duly lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or liquidator's meeting of ereditors a person shall not be entitled to vote as a creditor mless he has lodged with the official receiver or liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part befere the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of ereditors.

134. A creditor shall not vote in respect of any unliquidated or contingent debt. Cases in which or any debt the value of which is not ascertained, nor shall a creditor vote in respect creditors may of any debt on or secured by a current bill of exchange or promissory note held by not vote. him nuless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in baokruptcy has not been made, as a scenrity in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

135. For the purpose of voting, a secured creditor shall, unless he surrenders his Votes of secured security, state in his proof the particulars of his security, the date when it was creditors, given, and the value at which he assesses it, and shull be entitled to voto only in respect of the balance (if auy) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, nnless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

136. The official receiver or liquidator may within twenty-eight days after a Creditor proof estimating the value of a security as aforesaid has been used in voting at a required to meeting require the ereditor to give up the security for the benefit of the creditors security, generally on payment of the value so estimated with an addition thereto of twenty per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent, shall not be made if the security is required to be given up.

137. The chairman shall have power to admit or reject a proof for the purpose Admission and of voting, but his decision shall be subject to appeal to the Court. If he is in doubt rejection of whether a proof should be admitted or rejected he shall mark it as objected to and proofs for purpose of voting. allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

138. The chairman shall cause minutes of the proceedings at the meeting to be Minutes of drawn up and fairly entered in a book kept for that purpose and the minutes shall meeting. be signed by him or by the chairman of the next ensuing meeting.

PROXIES IN RELATION TO A WINDING-UP BY THE COURT.

139. A creditor or a coutributory may vote either in person or by proxy. The Proxies, succeeding rules as to proxies shall not (unless otherwise directed by the Conrt) apply to a Court meeting of creditors or contributories prior to the first meeting.

140 Every instrument of proxy shall be in accordance with the form in the Form of proxies. Appendix and every written part thereof shall be in the haudwriting of the person Forms 80 and 81. giving the proxy or of any manager or clerk or other person in his regular employment or of a commissioner to administer oaths in the Supreme Court.

141. General and special forms of proxy shall be sent to the creditors and con-Forms of proxy tributories with the notice summoning the meeting, and neither the name nor to be sent with description of the official receiver or liquidator or any other person shall be printed notices. or inserted in the body of any instrument of proxy before it is so sent.

615

Rules of 1909

General proxies to managers or clerks.

Special proxies.

Solicitation by liquidator to

obtain proxies.

Proxies to official receiver or liquidator. Holder of proxy not to vote on matter in which he is financially

interested.

Proxics.

Use of proxies by deputy.

Filling in where creditor blind or incapable.

Dividends to

creditors.

Form 67.

142. A creditor or a contributory may give a general proxy to his manager or clerk or any other person in his regular employment. In any such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

143. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof :--

(u) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and ;

(b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

144. Where it appears to the satisfaction of the Court that any solicitation has been used hy or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or con-tributories, the Court if it thinks fit may order that no renumeration be shlowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

145. A creditor or a contributory may appoint the official receiver or liquidator to act as his general or special proxy.

146. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as creditor rateably with the other creditors of the company. Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

147 .-- (1.) A proxy intended to be used at the first meeting of ereditors or con-Forms 80 and 81. tributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day

before the day appointed for such meeting, unless the Court otherwise directs. (2.) In every other case a proxy shall be lodged with the official receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3.) No person shall be appointed a general or special proxy who is a minor.
(4.) Where a limited company is a creditor, any person who is daly authorised under the seal of the creditor company to act generally on behalf of the creditor company at meetings of creditors and contributories and to appoint himself or any other person to be the creditor company's proxy, may fill in and sign the form of proxy on the creditor company's behalf and appoint himself to be the creditor com-pany's proxy, and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the creditor company.

148. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct.

149. The proxy of a creditor blind or incapablo of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence ; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertious have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

DIVIDENDS IN A WINDING-UP BY THE COURT.

150 .-- (1.) Not more than two months before declaring a dividend the liquidator in a winding-up by the Court, shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved Such notice shall specify the latest date up to which proofs must their debts. be lodged, which shall not be less than fourteen days from the date of such notice.

(2.) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof boing admitted Where no notice of appeal has been given within the time specified in this rule, the liquidator shall exclude all proofs which have been rejected from participation lu the dividend.

(3.) Immediately after the expiration of the time fixed by this rule for appealing Form 71. skalnst the decision of the liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4.) If it becomes necessary, in the opinion of the liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two moaths, the liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned In the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(6.) Upon the declaration of a dividend the liquidator shall forthwith transmit to Forms 68 and 69. the Board of Trade a list of the proofs filed with the registrar under R. 110, which list shall be in the Form 68 or 69 in the Appendix as the case may be. If the winding-up is in a Court other than the High Court the list shall, on payment of the prescribed fee, be examined by the registrur, with the proofs tendered for filing and if found correct shall be certified by the registrar. If the winding-up is in the High Court the liquidator shall, if so required by the Board of Trade, transmit to the Board of Trade, office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.

(6.) Dividends may at the request and risk of the person to whom they are (7.) If a person to whom dividends are payable desires that they shall be paid to Form 72.

some other person he may lodge with the liquidator a document in the Form 72 which shall be a sufficient authority for payment of the dividend to the person therein named.

151. Every order by which the liquidator in a winding-up by the Court is Retarn of authorised to make a return to contributories of the company, shall, unless the capital to Court shall otherwise direct, contain or have appended thereto a schedule or list contribut ries. (which the liquidator shall prepare) setting out in a tabular form the full names Forms 15 and 74. aud addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shures (if uny) which have been mude or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories. The The schedule or list shall be in the Form 74 with such variations as circulastances shall require.

ATTENDANCE AND APPEARANCE OF PARTIES.

162.—(1.) Every person for the time being on the list of contributories of the Attendance at company, and every person whose proof has been admitted shall be at liberty, at proceedings, his own expense, to attend proceedings, and shall be entitled, upon payment of the owner expense. the cests occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

(2.) The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the company, all or any class of the creditors or contributories, upou any question or in relation to any proceedings before the Court, and may remove the person so appointed. If

Ρ.

40

Rules of 1909

more than one person is appointed nucler this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3.) No creditor or contributory shall be entitled to attend any proceedings in Chambers unless and until he has entered in a book, to be kept by the registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

Attendance o liquidator's solicitor. 158. Where the attendance of the liquidator's solicitor is required on any proceeding in Court or Chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

LIQUIDATOR AND COMMITTEE OF INSPECTION IN A WINDING-UP BY THE COURT.

Remuneration of liquidator. 154.—(1.) The remuneration of a liquidator, unless the Court sinii otherwise order, shall be fixed by the committee of inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realized, after deducting the sums (if any) paid to secured oreditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2.) If the Board of Trade is of opinion that the romuneration of a liquidator as fixed by the committee of inspection is unnecessarily large, the Board of Trade may apply to the Court, and thereupon the Court shall fix the amount of the remuneration of the liquidator.

(3.) If there is no committee of inspection the remuneration of the liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realizations and distributions by the official receiver as liquidator.

Limit of remuneration.

165. Except as provided by the Act or the Rules, a liquidator shall not under any circumstances whatever, make any arrangement for, or accerd from any solicitor, auetioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding-np of the company, any gift, remnneration, or pecuniary or other consideration or isenfit whatever beyond the remnneration to which under the Act and the Rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person.

156. Neither the liquidator nor any member of the committee of inspection of a company shall, while acting as liquidator or member of such committee, except by ieave of the Court, either directly or indirectly, by himself or any partner, clerk. agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the Board of Trade or any contributory, and the Court may make such order as to costs as the Court shall think fit.

157. Where the liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator obtaining any pc lion of the profit (if any) arising out of the transaction.

158. No member of a committee of inspection shall, except under and with the sanction of the Court, directly or \cdot lirectly, by himself or any employer, partner, clerk, agent, or servant, be itted to derive any profit from any transaction arising ont of the winding-up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the iquidator's accounts.

159. In any case in which the sanction of the Court is obtained under the two iast preceding rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets.

Dealings with assets.

Restriction on purchase of goods by liquidator.

Committee of inspection not to make profit.

Costs of obtaining sanction of Court.

160. Where the sanction of the Court to a payment to a member of a committee sanction of of impection for services rendered by him in connection with the administration of payments to the company's assets is obtained, the order of the Court shall specify the nature of committee. the company s assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the Court no remanen-tion shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the daties attaching to his office as a

161.-(i.) Where a liquidator is appointed by the Court, and has notified his Desharge of appointment to the registrar of joint stock companies, and given security to the costs before assets banded possession of all property of the company of which the official receiver may have custody; provided that such liquidator shall have, before the assets are handed over to him by the official receiver, discharged any balance due to the official receiver on account of fees, costs and charges proverly incurred by him and on receiver on account of fees, costs, and charges properly incurred by him, and on recourt of any advances properly made by him in respect of the company, together with interest on such advances at the rate of four pounds per contain per annam; which interest on sheri advances at the rate of tour points, per termin per intration, and the liquidator shall pay all fees, costs, and charges of the official receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he

(2.) The official receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other imbilities shall have been dis-

(3.) It shall he the duty of the official receiver, if so requested by the liquidator, affairs of the company as may be necessary or conducive to the due discharge of the

162. A liquidator who desires to resign his office shall summon separate meetings Resignation of of the creditors and contributories of the company to decide whether or not the legislator. resolutions both agree to accept the resignation of the liquidator, he shall file with the registrar a memorandum of his resignation, and shall send notice thereof to the official receiver, and the resignation shall thereupon take effect. In any other case the liquidator shall report to the Court the result of the meetings and shall send a report to the official receiver and thereupon the Court may, upon the application of the liquidator or the official receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be accessary.

163. If a receiving order in bankruptey is made against the liquidator, he shall Office of thereby vacate his office, and for the purposes of the application of the Act and hquidator rules shall be d emed to have been removed.

PAYMENTS INTO AND OUT OF A BANK.

164. All payments out of the companies liquidation account shall be made in Payments out of the manner as the Bank of Trade may from time to time direct. Bank of Engsuch manner as the Board of Trade may from time to time direct.

165.—(1.) Where the liquidator it a winding-up by the Court is authorized to Special bank have a special bank account, he shall forthwith pay all moneys received by him account. Into that account to the credit of the liquidator of the company. All payments Forms 82 and 83. The shall be made by the company with the company of the transfer and more chosen whell be made by the company. out shall be made by cheque payable to order, and every cheque shall have marked or written ou the face of it the name of the company, and shall be signed by the inspection, and by such other person, if any, as the committee of inspection may

(2.) Where application is made to the Board of Trade to anthorize the liquidator in a winding-up hy the Court to make his payments into and out of a special bank account, the Board of Trade may grant such anthorization for such time and on such terms as they may think ft, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes

40(2)

Rules of 1909

"leated by his insolvency.

BOORS.

Record book.

166. The official receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the "Record Book" in which he shall record all toinutes, all proceedings had and resolutions passed at any needing of creditors or contributories, or of the c molities of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection, or the official receiver, or the Board of Trade.

Cash book.

167.—(1.) The official receiver, until a liquidator is approximately the Court, and thereafter the liquidator, shall keep a book to be called the "Chah Book" (which shall be in such form as the Board of Trade may from time to time direct), in which he shall (subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made hy him.

(2.) The liquidator shall submit the record book and cash book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months.

INVESTMENT OF FUNDS.

Investment of assets in securities, and realisation of securities. Forms 54 and 85. **168.**—(1.) Where the committee of inspection are of epinlen that any part of the cash balance starting to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Bourd of Trade.

(2.) Where the committee of inspection are of opinion that it is advisable to sell any of the scentrities in which the moneys of the company's assets are invested, they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the Board of Trade.

(3.) Where he a winding-up by the Court in which there is no committee of inspectice, or in a voluntary winding-up, or winding-up under the supervision of the Court, a case has in the ophion of the liquidator arisen under section 231 of the Act for an investment of funds of the company or a sale of scentrities in which the company's funds have been invested, the liquidator shall sign and transmit to the Board of Trade a certificate of the facts on which his ophilon is founded, and a request to the Board of Trade to make the investment mentioned in the certificate, and the Board of Trade nay therenpon, if it thinks fit, invest or sell the whole or any part of the said funds or securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Board of Trade for the said investment or sale.

ACCOUNTS AND AUDIT IN A WINDING-UP BY THE COURT.

Audit of cash book Form 80.

Form S7.

Board of Trade audit of liquidator's accounts. 169. The committee of inspection shall not less than once every three months and it the liquidator's cash book and certify therein under their hands the day on which the said book was and ited.

170.—(1.) The liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the cash book for such period in duplicate, together with the necessary vouchers and copies of the certificates of andit by the committee of inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, showing thereon in red ink the amounts realized, and explaining the cause of the non-realization of such assets as may be nurcalized. The liquidator shall also at the end of every six months forward to the Board of Trade, with his accounts, a report upon the position of the liquidation of the company in such form as the Board of Trade may direct.

(2.) When the assets of the company have been fully realized and distributed, the liquidator shall forthwith send in his accounts to the Board of Trade, although the six menths may not have expired.

(3.) The accounts sent in by the liquidator shall be verified by him by affidavit.

171.--(1.) Where the liquidator carries on the business of the company, he shall Liquidator keep a distinct account of the trading, and shall incorporate in the cash book the corring on total weekly amount of the receipts and payments on such trading account. (2.) The trading account shall from time to tone, and not less than once in every Formess and month, be verified by affidavit, and the liquidator shall thereupon submit such 856.

amount to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the

179. When the liquidator's account has been undited, the Board of Trade shall Copy of accounts certify the fact upon the account, and thereupon the slupitente copy, hearing a like to be first certificate, shall be filed with the registrar.

3.-(1.) The liquidator shall transmit to the Board of Trade with his accounts someway of a summary of such accounts in such torm as the Board of Trale may from time to accounts time direct, and, on the approval of such summary by the Board of Fride, shall forthwith obtain, prepare, and transmit to the Boord of Trade so many printed copies thereof, duly stranged for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each ereditor and contributory.

(2.) The cost of printing and posting such copies shall be a charge upon the assets of the company.

174. Where a liquidator has not since the date of his appointment or since the Anidovitor no last audit of his accounts, as the case muy be, received or paid any sum of money on receipts. account of the assets of the company, he shall, at the time when he is required to transmit his seconds to the Board of Trade, forward to the Board of Trade an

175.--(1) Upon a liquidator resigning, or being released or removed from his proceedings on allee, he shall deliver over to the official receiver, or, as the case may be, to the new resonant as \bullet liquidator, all books kept by him, and all other books, documents, papers, and othensistor, accounts in his possession relating to the offlie of liquidator. The release of a liquidator shall not take effect unless and mutil he has delivered over to the official receiver, or as the case may be to the new liquidator, all the books, papers, doenments, and accounts which he is by this rule required to deliver on his release.

(2) The Board of Trade may, at any time during the progress of the liquidation. Disposal of on the application of the liquidator or the official receiver, direct that such of the books, pripers, and documents of the company or of the liquid dor as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of.

176. Where property forming part of a company's assets is sold by the liquidator Expenses of through an anctioneer or other agent, the gross proceeds of the safe shall be prid sales, over by such auctioneer or agent, and the charges and expenses con acted with the sale shall afterwards be puid to such anctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator, by whom such anctioneer or agent is employed, shall, nuless the Court otherwise orders, be accountable for the proceeds of every such sale.

TAXATION OF COSTS.

177. Every solicitor, manager, accountant, auctioneer, broker or other person Taxation of costs employed by an official receiver or liquidator in a winding-up by the Court shall on people by or to request by the official receiver or liquidator (to be made a sufficient time before the official receiver or request by the official receiver or liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the official reserver by company. or liquidator for the purpose of taxation ; and if he fails to do so within the time stated in the request, or such extended time as the Court may allow, the liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the Court the claim shall be forfeited. The request by the official receiver or liquidator shall be in the Form No. 89.

178. Where a bill of costs or charges in any winding-up has been lodged with the Notice of aptaxing officer, he shall give notice of an appointment to tax the same, in a winding up pointment by the Court to the official receiver, and in every winding up to the liquidato. and to the person to or by whom the bill or charges is or are to be paid (as the

or liquidator or

Form 69.

Rules of 1909

179. The bill or charges, if incurred in a winding-up by the Court prior to the appointment of a liquidator, shall be lodged with the official receiver, and if incurred after the appointment of a liquidator, shall be lodged with the liquidator. The

official receiver or the liquidator, as the case may be, shall lodge the bill or charges

Lodgment of bill.

Copy of the bill to be furnished.

taxation.

with the proper taxing officer. **180.** Every person whose bill or charges in a winding-up by the Court is or are to be taxed shall, on application either of the official receiver or the liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 4*d*, per folio, which payment shall be charged on the assets of the company. The official receiver shall call the attention of the liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the

Applications for costs.

Certificate of

Certificate of employment.

taxation. Form 90. 181. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding :---

- (1.) Such party or person shall serve notice of his intended application on the official receiver in a winding-up by the Court and in every winding-up ou the lequidator.
- (2.) The official receiver (if any) and liquidator may appear on such application and object thereto.
- (3.) No costs of or incident to such application shall be allowed to the applicant, uulces the Court is satisfied that the application could not have been made at the time of the proceeding.

it 2. Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges, and expenses, together with the allowance or certificate, shall be filed with the registrar.

183. Where the bill or charges of any solicitor, manager, accountant, anetioneer, broker, or other person employed by an official receiver or liquidator, is or are payable out of the assets of the company, a certificate in writing, signed by the official receiver or liquidator, as the ease may be, shall on the taxation be produced to the taxation officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other anthority sanctioning the employment.

Scale of costs in a County Court, and taxation.

Review of taxation at instance of Board of Trade.

184. In a County Conrt all costs properly inenred in a winding-np by the Court shall be allowed on the lower scale in Appendix N. to the Rules of the Supreme Conrt, and costs shall be taxed by the registrar in person.

185. -(1.) Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a registrar of a Court other than the High Court, the Board of Trade may require the taxation to be reviewed by the taxing officer of the High Court.

by the taxing onicer of the high cont. (2.) In any case in which the Board of Trade require such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxid, and shall apply to the taxing officer of the High Contro appoint a time for the review of such taxation and thereupon such taxing officer shall appoint a time for the review of, and shall review, such taxation and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3.) Where my such review of taxation as is above mentioned is required to be made by the taxing officer of the High Court, the registrar whose taxation is to be reviewed shall forward to the said taxing officer the bill which is required to be reviewed.

(4.) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum thau the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the official receiver or the liquidator, or other person entitled thereto. The certificate of the taxing officer shall in every case of a review by him under this rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5.) The costs of and incidental to the review shall be paid ont of the assets of the company or otherwise as the taxing officer or the Court may direct; provided that the cost of the attendance of a principal shall not be allowed if in the apinion of the taxing officer ho could have been sufficiently represented by his London agent.

COSTS AND EXPENSES PAYABLE OUT OF THE ASSETS OF THE COMPANY.

186.-(1.) Where a liquidator or special manager in a winding-up by the Court Liquidator's receives remuneration for his services as such, no payment shall be allowed on his charges, accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2.) Where a liquidator is a solicitor he may contract that the remnneration for his services as liquidator shall include all professional services.

187.-(1.) The assets of a company in a winding -np by the Court, remaining after Costs payable payment of the fees and actual expenses incurred in realizing or getting in the out of the assets, shall, subject to any order of the Court, and as regards a winding up to which the providence of the Starward Act, 1987, and as related to that the Act as which the provisions of the Staunaries Act, 1887, * apply, subject to that Act as modified by the Act, be liable to the following payments, which shall be made in

appearing on the petition whose costs are allowed by the Court. Next. The remnneration of the special manager (if any).

The costs and expenses of any person who makes, or concurs in making, the company's statement of a f irs. The taxed charges of any shorth, id writer appointed to take an examina-11

- tion. Provided that where the shorthand writer is appointed at the instance of the official receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the official receiver in getting in and realising the assets of the company.
- The liquidator's necessary disbursements, other than actual expenses of ,, realisation heretofore provided for. The costs of any person preperly employed by the liquidator.
- The remnneration of the liquidator. .,
- ,,
- The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

(2.) No payments in respect of bills or charges of solicitors, managers, accountants, Costs, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 54, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed ont of the assets of the company without proof that the same have been considered and allowed by the registrar. The taxing officer shall satisfy himself before passing allowed by the registrar. The taxing officer shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sunctioned. Provided that the official receiver when acting as liquidator may without taxation pay and allow the costs and charges of any person other than a solicitor employed by hom where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of 27. : provided always that the Board of Trade may require such costs or charges to be taxed by the taxing officer.

(3.) Nothing cootained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a judge thereof to be paid by the company or the liquidator, or the rights of the person to whom such costs aro payable.

STATEMENTS BY LIQUIDATOR TO THE REGISTRAR OF JOINT STOCK COMPANIES.

188. The winding up of a company shall, for the purposes of section 224 of the Conclusion of Act, be deemed to be concluded :-

winding-up.

(a) In the case of a company wound up by order of the Court, at the date on which the order dissolving the company has been reported by the liquidator to the Registrar of Companies, or at the date of the order of the Board of Trade releasing the liquidator pursuant to section 157 of the

• 50 & 51 Vict. c. 43.

623

Rules of 1909

(b) In the case of a company wound up voluntarily, or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the companies liquidation account at the Bank of England.

189. The statements with respect to the proceedings in and position of a liqui-dation of a company, the winding-up of which is not concluded within n year after its commencement, shall be sent to the Registrar of Companies twice in every year statements, and regulations as follows:

- (1.) The first statement, commencing at the date when a liquidator was first appointed and branght down to the end of twelve months from the commencement of the winding-up, shall be sent within thirty days from the expiration of such twelve months, or within such extended period us the Board of Trade may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent.
- (2.) Subject to the noxt succeeding rule, Form No. 92, with such variations as eircumstances may require, shall be used, and the directions specified in the Form shall (unless the Board of Trade otherwise direct) be observed in
- (3.) Every statement.
 (3.) Every statement shall be sent in duplicate, and shall be verified by an sfiidavit in the Form No. 93, with such variations as circumstances may require.

190. Where a liquidator has not during any period for which a statement has to be sent received or puid any money on account of the company, he shall at the period when he is required to transmit his statement, send to the registrar of period when he is required to transmit his statement, send to the registrar of companies the prescribed statement in the Form No. 92, in duplicate containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93.

UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN THE HANDS OF A LIQUIDATOR.

Payment of nndistributed and uoclaimed money into companies liquidation account.

191.-(1) All money in the hands or under the control of a liquidator of a company representing unclaim d dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the six months, be paid into the companies liquidation account.

(2) All other money in the hands or under the control of a liquidator of (2) All other money in the hunds or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under sub-section 4 of setion 221 of the Act, the liquidator is to pay into the companies liquidation account, shall be ascertained as on the date to which the state-ment of receipts and payments sent in to the Registrar of Companies is brought down, a d the amount to be paid to the companies liquidation account shall be the minimum belaure of such mount which he liquidation has hed in his down, as a the amount to be plut to the compared infinite indicator has had in his be the minimum balance of such money which the liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorize him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the companies liquidation account within fourteen days from the date to which the statement of account is brought down.

(3.) Notwithstanding anything in this rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date of the dissolution of the company shall forthwith be paid by him into the companies liquidation account.

(4.) A liquidator whose duty it is to pny into the companies liquidation account at the Bank of England, money representing unclaimed or undistributed assets of the company shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

(5) Money at the credit of the account of the official liquidator of a company with the Bank of England shall be deemed to be money under the control of

624

applicable thereto.

Times for sending liquidator

Form 9%.

Form 93.

Affidavit of no receipts or payments.

Forms 92 and 93.

such official liquidator, and when such money has remained unclaimed or undistrisuch official liquidator, and when such money has remained inclumed or undistri-buted for six months after the date of receipt it shall be transferred to the companies liquidation account, and the official liquidator and master of the Chancery Division of the High Court attached to the judge in whose chambers the winding-up is proceeding shall draw and sign such cheques or orders as may be necessary for the transfer of the money. An application to the Board of Trade for payment out of moneys so transferred shall be signed by the official liquidator and countersigned by the said master.

(6.) Money invested or deposited at interest by a liquidator shall be deemed to be mouey under his control, and when such money forms part of the minimum balance payable into the companies liquidation account pursuant to clause 2 of this role, the liquidator shall realize the investment or withdraw the deposit, and shall pay the infinite sinil remine the investment of which we depend that since pay the proceeds into the companies liquidation account, provided that where the money is invested in Government securities, such securities may, with the per-mission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realized and the proceeds thereof paid into the companies liquidation account. In the latter case, if and when the money reprecompanies inquiation account. In the inter case, it and when the money repre-sented by the securities is required wholly or in part for the purposes of the liquidation, the Board of Trade may realize the securities wholly or in part and pay the proceeds of realization into the companies liquidation account and deal with the same in the same way as other moueys paid into the said account may be dealt with.

192. Every person who has acted as liquidator of any company, whether the Liquidator to liquidation has been concluded or not, shall furnish to the Board of Trade particulars furnish meters any moment in his bands or under his meters. of any money in his hands or under his control representing unclaimed or undis- Board of Trate. tributed assets of the company and such other particulars us the Board of Trade Form 97. may require for the purpose of ascertaining or getting in any money payable into the companies liquidation account at the Bank of England. The Board of Trado may require such particulars to be verified by affidavit.

193 .- (1.) The Board of Trade may at any time order any such person to submit Board of Trade to them an account ver field by affidavit of the sums received and paid by him as liquidator of the company, and may direct and enforce an audit of the account.

(2.) For the purposes of section 224 of the Act and the rules, the Court shall Forms 92 and 93. have, and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptey Act, 1883, • with respect to the discovery and realization of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 224 of the Act.

194. An application by the Board of Trade for the purpose of ascertaining and Application to getting in money payable into the Bauk of England pursuant to section 224 of the Court for the Act, shall be made by motion, and where the winding up is by or under the account, and supervision of the Court shall be made to and dealt with by the judge, and in a voluntary winding-up shall be made to and dealt with by the judge, and in a getting in Court.

195. An application by a person claiming to be entitled to any money paid into Application for the Bank of England in pursuance of section 224 of the Act, shall be made in person entitled, such form and manner as the Board of Trade may from time to tune direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled, and such further evidence as the Board of Trade may direct.

196. A liquidator who requires to make payments out of money paid into the Application by Bank of England in pursuance of section 224 of the Act, either by way of dis-payment out. tribution or in respect of the cost and expenses of the proceedings, shall apply iu such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make au order for payment to the liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the liquidater for transmission to the persons to whom the payments are to be arade.

* 46 & 47 Viet. c. 52.

625

may call for verified

payment out.

RELEASE OF LIQUIDATOR IN A WINDING-UP BY THE COURT.

Proceedings for release of liquidator. Forms 98, 99, and 100.

197.—(1.) A liquidator in a winding-up by the Court before making application to the Board of Trado for his release, shall give notice of his intention so to do to all the ereditors who have proved their debts and to all the contributories, and shall send with the notice a summary of his receipts and payments as liquidator.

(2.) When the Bourd of Trade have granted to a liquidator his release, a uotice of the order granting the release shall be gazetted. The liquidator shall provide the requisite stamp fee for the *Gazette*, which he may charge against the company's амнети.

OFFICIAL RECEIVERS AND BOARD OF TRADE.

Appointment.

198.-(1.) Judicial notico shall be taken of the appointment of the official re-

(2) When the Board of Trade appoints any officer to act as deputy for or in the place of an official receiver, notice thereof shall be given by letter to the Court to which such official receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3.) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an official receiver.

199. Where an official receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the Court to which the official receiver was attached.

200. The Board of Trade may, by general or special directions, determine what acts or duties of the official receiver in relation to the winding-up of companies are to be performed by him in person, and in what cases he may discharge his functious through the agency of his clerks or other persons in his regular employ, or under hia official control.

201. An assistant official receiver, appointed by the Board of Trade, shall be an officer of the Court, like the official receiver to whom he is assistant, and, subject to the directions of the Board of Trade, be may represent the official receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant official receiver, and ho may be removed in the same manner as is provided in the ease of un official receiver.

Power of officers of Board of Trade and Official receivers clerks in certain official receiver, and take part for bim in any public or other examination official receiver.

203. Where a company against which a winding-up order has been made has no uvailable usets, the official receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trad-

204.-(1.) Where a liquidator is uppointed by the Court in a winding-up by the Court, the official receiver shull account to the liquidator.

(2.) If the liquidutor is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take auch action (if any) thereon as it may deem expedient.

(3.) The provisions of these rules as to liquidators and their accounts shall not apply to the official receiver when he is liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

205. Where there is no committee of inspection any functions of the committee of inspection which devolve on the Board of Trade muy, subject to the directions of the Board, be exercised by the official receiver.

20 1. An appeal in the High Court against a decision of the Board of Trade, or an appeal to the Court from au act or decision of the official receiver, acting otherwise than as liquidator of a courpany, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made.

Assistant official

receivers.

Personal per-

formance of duties.

Removal.

Duties where no assets.

Accounting by official receiver.

Ufficial receiver to act for Board of Trade where no committee of inspection. Appeals from Board of Trade and official

207.-(1.) An application by the Board of Trade to the Court to examine on oath Applications the liquidator or any other person pursuant to section 159 of the Act, shall be under sect. 159 mado ex parte, and shall be supported by a report to the Court filed with the

registrar, stating the circumstances in which the application is made. (2.) The report may be signed by any person duly authorized to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be prima facie evidence of the statements therein contained.

BOOKS TO BE KEPT, AND RETURNS MADE, BY OFFICERS OF COURTS.

208.-(1.) In the High Court the registrar and in the district registries of the High Books to be kept Court, and in a Court other than the High Court, the registrars of the High by officers of Court, and in a Court other than the High Court, the registrar solal keep books according to the forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

(2.) The officers of the Courts whose duty it is to keep the books prescribed by these rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

GAZETTINO IN A WINNING-UP BY THE COURT.

209.-(1.) All notices subsequent to the making by the Court of a winding-up Gazetting order in pursuance of the Act or the Rules requiring publication in the London notices. Gazette shall be gazetted by the Board of Trade.

(2.) Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct.

210.-(1.) Whenover the London Gazette contains any advertisement relating to Filing memoany winding-up proceedings the official receiver or liquidator as the case may be random of shall file with the proceedings a memorandum referring to and giving the date of Gazette notices. the advertisement. Form 104.

(2.) In the case of an advertisement in a local paper, the official receiver or liqui-

(2.) In the case of an arcentsenant in a total paper, the other receiver of input-dator as the case may be shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file. (3.) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted, shall be left with the official receiver or liquidator as the case may be by the person who inserts the advertisement.

.4.) A memorandum under this rule shall be prima face evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette or newspaper mentioned in it.

ARRESTS AND COMMITMENTS.

211. A warrant of arrest, or any other warrant issued under the provisions of To whom the Act and Rules, may be addressed to such officer of the Conrt, or to such high warmans may bailiff or officer of any County Court, whether such County Court has jurisdiction be addressed, to wind up a company or not, as the Court may in each case direct.

212. Where the Court issues a warrant for the arrest of a person under any of Prison to which the provisions of the Act or Rules, the prison (to be named in the warrant of person arrest) arrest) to which the person shall be connuitted shall, unless the Court shall other- on warrant is wise order, be the prison used by the Court in cases of orders of commitment made in the exercise by the Court of its ordinary jurisdiction.

213. Where a warrant for the arrest of a person has been issued by a Court Execution of other than the High Court under any of the provisions of the Act and Rules, the warrants of high bailiff of the Court, or other officer of the Court to whom the warrant is ordinary juri-addressed, may send the warrant of arrest to the registrar of any other Court (other diction of Court. than the High Court) within the ordinary jurisdiction or district of which such Forms 105 person shall then be or be believed to be, with a warrant annexed thereto under the and 106.

1

Form 103.

hand of the high bailiff or officer and seal of the Court from which the warrant originally issued, requiring execution of the warrant by the Court to which it is so sent; and the registrar of the lust-mentioned Court shall seal or stamp the warrant with the seal of his Court, and issue the same to the high bailiff or other proper officer of his Court, with an end-resement thereon in the Form 106; and thereupon such last-mentioned high bailiff or officer may, and shall in all respects execute the said warrant according to the requirements thereof, and ull constables and pan-e officers shall nid and assist within their respective districts in the execution of such warrant.

Prison to which a personartested is to be conveyed, and production and custody of persons arrested. 214.-(1.) Where a person is arrested under a warrant of commitment issued under any of the provisious of the Act und Rules, other than sections 174 and 176 ef the Act, and Rule 66 of the Rules, he shall be forthwich conveyed in custody of persons arrested. 214.-(1.) Where a person is arrested under a warrant of commitment issued and 176 ef the Act, and Rule 66 of the Rules, he shall be forthwich conveyed in custody of the bailiff or officer apprehending hum to the prison of the Conrt within the ordunary jurisdiction of which he is apprehended, and kept therein for the timo mentioned in the warrant of commitment, unless sooner discharged by the order of the Court which originally issued the warrant of commitment, or otherwise by law.

(2.) Where a person is arrested under u warrant issued under section 174 or section 176 of the Act, or under Rule 66 of the Rules, ho shall be forthwith conveyed in enstady of the bailiff or officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended; and the governor or keeper of such prison shall produce such person before the Court as it may from time to time direct, and shall sufely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law. Provided that where any such person is conveyed to u prison other than the prison used by the Court which originally issued the warrant in cases of orders of commitment made by such Court in the exercise of its ordinary jurisdiction, the Court may be order direct such person to be transferred to such last-mentioned prison; and on receipt of such order the governor or keeper of such prison to which such person has been conveyed, shall cause such person to be conveyed in proper custody to the prison mentioned in such order, and the governor or keeper of such arrest, receive such person, and shall produce him before the Court, as it may from time to time direct, and shall produce him before the Court, as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law.

MISCELLANFOUS MATTERS.

Board of Trade orders. 215. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or the Rules which are of an administrativo and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the King's printers, and purport to be issued under the authority of the Board of Trade.

216 The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

217.-(1) No proceedings under the Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice caunot he remedied by uny order of that Court.

(2.) No defect or irregularity in the appointment or election of a receiver, liquidator, or member of a committee of inspection shall vitiate any act done by him in good faith.

218. In all proceedings in or before the Court, or any judge registrar or officer thereof, or over which the Court has jurisdiction under the Act and Rules, where no other provision is made hy the Act or Rules, the practice, procedure, sud regulations shall, unless the Court otherwise in any special case directs, in the High Court be in accordance with the Rules of the Supreme Court and practice of the High Court, and in a l'alatine Court and County Court in accordance, as far as practicable, with the existing Rules and practice of the Court in proceedings for the administration of assets by the Court.

Enlargement or abridgment of time.

Formal defect not to invalidate proceedings.

Application of exi-ting procedure.

219. The provisions of Rule 2 of the Rules of the Supreme Court, 1887, * relating Petitions in the district registries of Liverpool and Manchester, shall apply to District Di Dastrict

220. The Companies (Winding-up) Rules, 1903, and the forms thereby pre-Registries. scribed are hereby revoked and annulled, provided that such revocation and anonl- Annulment. ment shall not prejudice or affect anything done or suffered before the date on which these rules como into operation under any rule or order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the siid rules and orders shall be revived by reason of the revocation and annulment hereby effected.

221. These rules may be cited as the Companies (Winding-up) Rules, 1909. Short title and commencement they shall come into operation on the 1st day of April, 1909.

LOREBURN, C.

Rules of 1909

I concur.

WINSTON S. CHURCHILL, President of the Board of Trade.

The 29th day of March, 1909.

• Rules of the Supremo Court, May, 1887, printed in Statutory Rules aud Orders, Revised (1st Edition), Vol. 7, p. 333.

commencement

FORMS (LIST OF).

No. 1.-General title (High Court).

No. 2.-Genoral titio (County Court).

No. 3 .-- Form of summons (general).

No. 4.-Petition.

No. 5 .- Petition by unpaid creditor on simple contract.

No 6.-Advertisement of petition.

No. 7.- Affidavit of service of petition on members, officers, or servants.

No. 8 .- Affidavit of service of petition on liquidator.

No. 9. - Affidavit verifying petition.

No. 10.-Order appointing the official receiver as provisional liquidator after presentation of petition and before order to wind up.

No. 11.- Notice of intention to appear on petition.

No. 12 .- List of parties attending the hearing of a petition.

No. 13.-Notification to official receiver of ordors pronounced on petitions for winding-up.

No 14.-Notification to official receiver of orders pronounced for appointment of official receiver as provisional liquidator prior to winding-up order being made.

No. 15 -Order for winding-up hy the Court.

No. 16 .- Order for winding-up subject to supervision.

No. 17.-Notice of order to wind up (for newspaper).

No. 18.-Order of transfer.

No. 19.-Notice of transfer of proceedings to the Board of Trade and official receiver.

No. 20.-Affidavit by special manager verifying account.

No. 21.-Notice to creditors of first meeting.

No. 22.-Notice to contributories of first meeting.

No. 23.-Notice to directors and officers of company to attend first meeting of creditors or contributories.

No. 24.- Memorandum of proceedings at adjourned first meeting.

No. 25.-List of creditors or contributories assembled to be used at every meeting.

No. 26 .- Statement of affairs.

No. 27.-Report of result of meeting of creditors or contributories.

No. 28.-Order appointing liquidator.

No. 29 .-- Certificate that liquidator or special manager has given security.

No. 30 .- Advertisement of appointment of liquidator.

No. 31 .- Order directing a public exemination.

No. 32 .- Order appointing a time for public examination.

No. 33 .- Notice to attend public examination.

No. 34.-Application for appointment of shorthand writer to take down notes of public examination and order thereon.

No. 85.-Declaration by shorthand writer.

LAST OF FORMS.

No. 36 .- Notes of public examination where a shorthand writer is appointed.

No. 37.-Notes of public examination where a shorthand writer is not appointed.

No. 38.-Report to the Court where person examined refuses to answer to satisfaction of registrar or officer.

No. 39. - Order on persons to attend at Chambers to be examined.

No. 40 .- Warrant against person who falls to attend examination.

No. 41.-Notice by liquidator requiring payment of money or delivery of books, &e. to liquidator.

No. 42. - Provisional list of contributories to be made out by liquidator.

No. 43 .- Notice to contributories of appointment to settle list of contributories.

No. 44.--Affidavlt of postage of notices of appointment to settle list of contributories.

No. 45.—Certificate of liquidator of final settlement of the list of contributories. No. 46.—Notice to contributory of final settlement of list of coutributories, and that his name is included.

No. 47.-Supplemental list of contributorles.

No. 48 .- Affidavit of service of notice to contributory.

No. 49 .- Order on application to vary list of contributories.

No. 50. -- Notice to each member of committee of inspection of meeting for sanction to proposed call.

No. 51.-Advertisement of meeting of committee of inspection to sanction proposed call.

No. 52 .- Resolution of committee of inspection sanctioning call.

No. 53.-Notice of call sanctioned by committee of inspection to be sent to contributory.

No. 54.-Summons for leave to make a call.

No. 55 .- Affidavit of liquidator in support of proposal to call.

No. 56.-Advertisement of intended cail.

No. 57 .- Order giving leave to make a call.

No. 58 .- Document making a call.

No. 59 .- Notice to be served with the order sanctioning a call.

No. 60 .- Affidavit in support of application for order for payment of call

No. 61 .- Order fur payment of call due from a contributory.

No. 62 .- Affidavit of service of order for payment of call.

No. 63.-Proof of debt (general form).

No. 64 .- Proof of debt of workmen.

No. 65 .- Notice of rejection of proof of debt.

No. 66 .- List of proofs to be filed under Rr. 110 and 111.

No. 67 .- Notice to creditor of intentica to declare dividend.

No. 68.—Certified list of proofs under R. 150 (5) Companies (Winding-up) Rules, and application for issue of cheques for dividend on companies liquidation account.

No. 69.—Certified list of proofs filed under R. 150 (5) Companies (Winding-up) Rules, special bank case.

No. 70.-Notice to persons claiming to be creditors of intention to declare final dividend.

No. 71.-Notice of dividend.

No. 72 .- Authority to liquidator to pay dividends to another person.

No. 78. - Notice of return to contributories.

No. 74 .- Schedule or list of contributories holding paid-up shares to whom . dividend or return is to be paid.

No. 75.-Notice of meeting (general form).

No. 76 .- Affidavit of postage of notices of meeting.

No. 77 .- Certificate of postage of notices (general).

No. 78.-Memorandum of adjournment of meeting.

No. 79 .- Authority to deputy to set as chairman of meeting and use proxies.

No. 80.-General proxy.

No. 81.-Special proxy.

No. 82 .- Application to Board of Trade to authorise special bank account.

No. 83 .- Order of Board of Trade for special bank account.

No. 84 .- Certificate and request by committee of inspection as to investment of fuode.

No. 85 .- Request by committee of inspection to Board of Trade to sell securities. No. 86.-Certificate by committee of inspection as to audit of liquidator's

accounts.

No 87 .- Affidavit verifying liquidator's account under sect. 155.

No. 88 .- Liquidator's trading account under sect. 155. No. 88a .- Affidavit verifyin a liquidator's trading account under sect. 155.

No. 89 .- Request to deliver bill for taxation.

No. 90 .- Certificate of taxation.

No. 91.-Register to be kept by taxing officer.

No. 92 .-- Statement of receipts and payments, and general directions as to statements.

No. 93.-Affidavit verifying statement of liquidator s account under sect. 224.

No. 94 .- Liquidator's trading account under sect. 224.

No. 95 .- List of dividends or composition.

No. 96 .- List of amounts paid or payable to contributories.

No. 97.-Affidavit verifying account of unclaimed and undistributed funds.

No. 98 .- Notice to creditors and cootributorics of intentiou to apply for release.

No. 99 .- Application by liquidator to Board of Trade for release.

No. 100.-Statement to accompany notice of application for release.

No. 101 .- Register of winding-up orders to be kept in the Courts.

No. 102 .- Register of petitions to be kept in the Courts.

No. 103 .- Notices for London Gazette.

No. 104 .- Memorandum of advertisement or gazetting.

No. 105 .-- Warrant to registrar of Court in whose district a person against whom a warrant of arrest has beeu issued is believed to be.

No. 106. - Indorsement of warrant of arrest issued by a Court to which the same has been sent for execution by the Court which originally issued it.

SPECIAL PROVISIONS RELATING TO COMPANIA DURING THE WAR,

(New generally Pulliny's Manual of Emergency Legislation, with Supplements, where all these provisions are fully dealt with.)

TRADING WITH THE ENEMY.

The Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, c. 87), declares, sect. 1 (2), that any person shall be deemed to have traded with the enemy if he has entered into any transaction or done may act which was, at the time of such transaction or act, prohibited by or under any proclamation issued by His Majesty dealing with trading with the enemy for the time being in force, or which at common law or by statute constitutes an offence of trading with the enemy:

Provided that any transaction or net permitted by or nuder any such pruclamation shall not be deemed to be trading with the enemy.

Sect. 1 (3). Where a company has entered into a transaction or has done any act which is an offence under this section, every director, manager, secretary, or other officer of the company who is knowingly a party to the transaction or act shull also be deemed guilty of the offence.

By sect. 2 (2) of the same Act, where it appears to the Board of Trade-

- (b) in the case of a company, that one-third or more of the issued share capital or of the directorate of the company immediately before or at any time since the commencement of the present war was held by or on behalf of or consisted of persons who were subjects of, or resident or carrying on business in, a State for the time being at war with His Majesty; or
 (c) in the case of a person, firm or company, that the person was or is,
- (c) in the case of a person, firm or company, that the person was or is, or the firm or company were or are, acting as agent for any person, firm, or company trading or carrying on business in a State for the time being at war with His Majesty; the Board of Trade may, if they think it expedient for the purpose of satisfying

the Board of Trade may, if they think it expedient for the purpose of sutisfying themselves that the person, firm or company are not trading with the energy, by written order, give to a person appointed by them, without any warrantfrom a justice, authority to inspect nll books and documents belonging to or under the control of the person, firm or company, and to require my person able to give information with respect to the business or trade of that person, firm or company, to give that information.

For the purposes of this sub-section, any person authorised in that heldf by the Board of Trado may inspect the register of members of n company at any time, and any shares in a company for which share warrants to hearer have been issued shall not be reckoned as part of the issued share capital of the company.

(3) If any person having the euc ody of any book or document which a person is authorised to inspect under this section refuses or wilfully neglects to produce it for inspection, or if any person who is able to give any information which may be required to be given under this section refuses or wilfally neglects when required to give that information, that person shall on conviction under the Summary Jurisdiction Acts be liable to imprisonment with or without hard labour for a term not exceeding six months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

See also, as to the extension of the restrictions under these Acts, the Trading with the Enemy (Extension of Powers) Act, 1915 (5 & 6 Geo. 5, c. 98).

By the Trading with the Enemy Amendment Act, 1916, s. 1/5 & 6 Geo. 5, c. 105, the Bonrd of Trade may prohibit a company from earrying on business or require its business to be wound up where the business is, by reason of the energy nationality

P.

41

or enemy association of the company or of its members or otherwise, carried on wholly or mainly for the benefit of or under the control of enemy subjects. (2) The Board may appoint a controller to conduct the winding-up and exercise the powers of a liquidator.

(3) Assets due to enemies are to be paid to the Oustodian.
(7) Where such an order has been made, no steps can be taken to wind up the company without the consent of the Board of Trado. The Board may

present a winding-up petition. Sect. 10.--(1) The Registrar may refuse to register a company where any subscriber of the memorandum or any director is an enemy subject.

(2) No allotment or transfer of any share, stock, debenture, &c. made after the 27th January, 1916, to or for the benefit of an enemy subject shall, unless made with the consent of the Board of Trade, confer any rights, and the com-

pany shall not act on any such transfer, &c. (subject to penalties). (3) A power to noninate directors is not to be exercised by an enemy subject. Sect. 11. The Board of 'Irade may present a petition for winding up any company which through its agents or hranches has traded with the enemy abroad.

Sect. 15. Enemy subject heludes a company incorporated in an enemy State.

PAYMENT OF DIVIDENDS.

By the Trading with the Enemy Amendment Act, 1914, s. 1 (1), the Board of Trade shall appoint a person to act as Custodian of enemy property (herein-after referred to as "the Custodian") for England and Wales, for Scotland, and for Ireland respectively, for the purpose of receiving, holding, preserving, and dealing with such property as may be paid to or vested in him in pressure of this Act, and if any question arises as to which Custodian any money is to be paid to under this Act, the question shall be determined by the Board of Trade.

Trade. (2) The Fublic Trustee shall be appointed to be the Custodian for England and Wales, and shall, in relation to all property held by him in his capacity of Custodian, have the like status, and his accounts shall be subject to the like audit, as if the same were held by him in his capacity of Public Trustee, and the Fublic Trustee Act, 1906, shall apply accordingly. By sect. 2 (1), any sum which, had a state of war not existed, would have been payable and paid to or for the benefit of an onemy, by way of dividends, interest or share of profix, shall be paid by the person, firm or company by

been payable and paid to or for the benefit of an enemy, by way of dividends, interest or share of profits, shall be paid by the person, firm or company hy whom it would have been payable to the Custodian to hold subject to the provisions of this Act and any Order in Council made thereunder, and the payment shall be accompanied by such particulars as the Board of Trade may prescribe, or as the Custodian, if so authorised by the Board of Trade, may provide the custodian of the such particular of the board of the trade of trade of the trade of the trade of trade of the trade of the trade of trade of trade of the trade of trade of the trade of tr require.

Any payment required to be made undor this sub-section to the Custodian shall be made-

(a) within fonrteen days after the passing of this Act, if the sum, had a state of war not existed, would have been paid before the passing of

of this Act; and (b) in any other case within fourteen days after it would have been paid.

(3) If any person fails to make or require the making of any payment or to furnish the prescribed particulars within the time mentioned in this section, he shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding one handred pounds or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both such fine and hard labour, for a term not exceeding six months, or to both such fine and imprisonment, and in addition to a further fine not exceeding fifty pounds for every day during which the default continues, and every director, manager, secretary or officer of a company, or any other person who is knowingly a purty to the default shall, on the like conviction, be liable to the like peualty. (5) For the purposes of this Act the expression "dividends, interest or share of profits" means any dividends, bonus or interest in respect of any shares, stock, debentures, debenture stock or other obligations of any company, any interest in respect of any lean to a firm or mercul correspondent for the

interest in respect of any loan to a firm or person carrying on business for the

Payment of dividends, &c. payable to enemy.

APPENDIX,

purposes of that business, and any profits or share of profits of such a business, and, where a person is carrying on any business on behalf of an enemy, any sum which, had a state of war not existed, would have been transmissible by a person to the enemy by way of profits from that business shall be deemed to be a sum which would have been payable and paid to that enemy.

Duty to Notify the Custodian.

By sect. 3 (2) of the same Act, every company incorporated in the United Kingdom and every company which, though not incorporated in the United Kingdom, has a share transfer or share registration office in the United by dem shall, within one month after the passing 0, this Act, by notice in writing communicate to the Custodian full particulars of all shares, sto k, dehentures, and debenture stock and other obligations of the company which are held by or for the benefit of an enemy; and every partnor of every firm, one or uncepartners of which on the commencement of the war became enemies or to which maney had been lent for the purpose of the business of the firm be a persenwho so became an enemy, shall, within one month after the commencement of this Act, by notice in writing communicate to the Custodian full particulars are company or partner fails to comply with the provisions of the sector the company or partner fails to comply with the provisions of the sector the a first sector of profits and interest que to such enemies or the sector the company or partner fails to every day during which the default section of a stand every director, manager, secretary or officer or the flue not exceeding fifty pninds for every day during which the default section on is knowingly a party to the default shall no the like convision to be also be such as the original part to the default shall no the like envision he liable to the like fine, or to imprisonment, with or without hard labour, for a term not exceeding six mouths, or to both such imprisonment and fine.

Power of Custodian to Vote.

The Custodian may vote and do other acts in the character of a shareholder. Re R. Pharaon et Fils, (1916) 1 Ch. 1.

REGISTRATION OF NEW COMPANIES.

By the Trading with the Eneny Amendment Act, 1914, s. 9 (1), during the continuance of the present war a certificate of incorporation of a company shall not be given by the Registrar of Joint Stock Companies antil there has been filed with him either—

- (a) a statutory declaration by a solicitor of the Supreme Court, or, in Sootland, by an encolled law agent, engaged in the formation of the company, that the company is not formed for the purpose or with the intention of acquiring the whole or any part of the undertaking of a person, firm or company the books and documents of which are limble to inspection under sub-section (2) of section two (see p. 633, oute) of the principal Act; or
- (b) a licence from the Board of Trade nuthorising the acquisition by the company of such an undertaking.

(2) Where such a statutory declaration has been filed it shall not be lawful for the company, during the entinuance of the present war, without the licence of the Board nf Trade, to acquire the whole or nny part of any such undertaking, and lf it does so the company shall, without prejudice to any other liability, be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall ou the like conviction be liable to the like fine or to imprisonment, with or without hard labour, for a term not exceeding six months.

41 (2)

6.35

NEW ISSUES OF CAPITAL.

TREASURY ANNOUNCEMENT APPEARING IN THE PRESS, FRIDAY, JANUARY 19711. 1915.

In connection with the re-opening of the Stock Exchanges the Treasury have had under consideration the goneral conditions under which new issues of capital ia the United Kingdom caa be permitted during the continuance of the war.

It appears to the Treasury that in the prosent crisis all other considerations must be subordinated to the paramount necessity of husbanding the financial resources of the country with a view to the successful prosecution of the war. Accordingly they wish it to be understood that until further notice they feel it imperative in the national interest that fresh issues of capital shall be approved by the Treasury before they are made. Treasury approval will be governed by the following general conditions:-

- (1) Issues for undertakings carried on or to be carried on in the United Kingdom shall only be allowed where it is shown to the satisfaction
- (2) Issues or participations in inverse in the satisfaction of the Treasury that they are advisable in the national interest.
 (2) Issues or participatious in issues for undertakings carried on or to be carried on in the British Empire Over-Seas shall only be allowed where it is shown to the satisfaction of the Treasury that urgent necessity and special circumstances exist.
- (3) Issues or participations in issues for undertakings carried on or to be earried on outsido the British Empire shall not be allowed.
- (4) The Treasury will not in ordinary eases insist upon the above restrictions where issues are required tor the renewal of Treasury bills or other short instruments held here and falling due of foreign or colonial Governments or musicipal corporations or railways or other undertakings.

All applications should be made in the first instance to the Treasury. The Treasury will not be prepared to approve under paragraph 4 ⁽²⁾ of the Temporary Regulations for the Re-opening of the Stock Exchange and dings in new issues which have not been approved by the Treasury befor. ...ey are made.

NOTICE ISSUED BY THE TREASURY.

(1) The restriction must be taken, for the prosent at any rate, as applying (1) The restriction must be taken, for the private companies and that of the nature of reconstruction of existing capital.
 (2) The approval of the Treasury should be obtained for all frosh issues of equital of whatever nature, whether made on behalf of a Government, municipation of the state of the stat

pality, or other public hody, or any company, whether public or private. Treasury approval is not required for ealls or instalments on shares, stock, debentures or boads already issued.

(3) All applications for approval of fresh issues should be addressed to the Treasury, the cavelope being marked "Capital Issues." In order to save delay and reduce correspondence to a minimum, it is desirable that the fullest particulars should he given in each case.

particulars should be given in each case. These regulations have apparently no direct legal force, see Sol. J. Vol. 59, p. 556 : but in conjunction with the Stock Exchange Rules and the reluctance of Government officials to permit any evasion of them, they do place serious practical difficulties in the way of fresh issues of capital.

RESTRICTIONS ON ENFORCEMENT OF JUDGMENTS AND SECURITIES.

COURTS (EMERGENCY POWERS) ACT, 1914.

4 & 5 GEO. 5, c. 78.

1.-(1) From and after the passing of this Act no person shatt-

(a) proceed to execution on, or otherwise to the onforcement of, any judgment or order of any Court (whether entered or made before or after the passing of this Act) for the payment or recovery of a sum of money to which this sub-section applies, except after such application to such Court and such notice as may be provided for by rules or directions under this Act; or

rules or directions under this Act; or
(b) levy any distress, take, resume, or enter into possession of may property, excreise any right of re-ontry, forcelose, realise any security (except by way of sale by a mortgagee in possession), forfeit any deposit, or enforce the lapse of any policy of insurance to which this sub-section applies, for the purpose of enforcing the payment or recovery of any such such as the payment or recovery of any such such and such notice as may be provided for by rules or directions under this Act.

This sub-section shall not apply to any sum of money (other than rent not being rent at or exceeding fifty pounds per annun) due and payable in pursuance of a contract made after the beginning of the fourth day of August nineteen hundred and fourteen.

This sub-section applies to life or endowment policies for an amount not exceeding twenty-fivo pounds, or payments equivalent thereto, the premiums in respect of which are payable at not longer than monthly intervals, and b.ivo been paid for at least the two years preceding the fourth day of August nineteen hundred and fourteen.

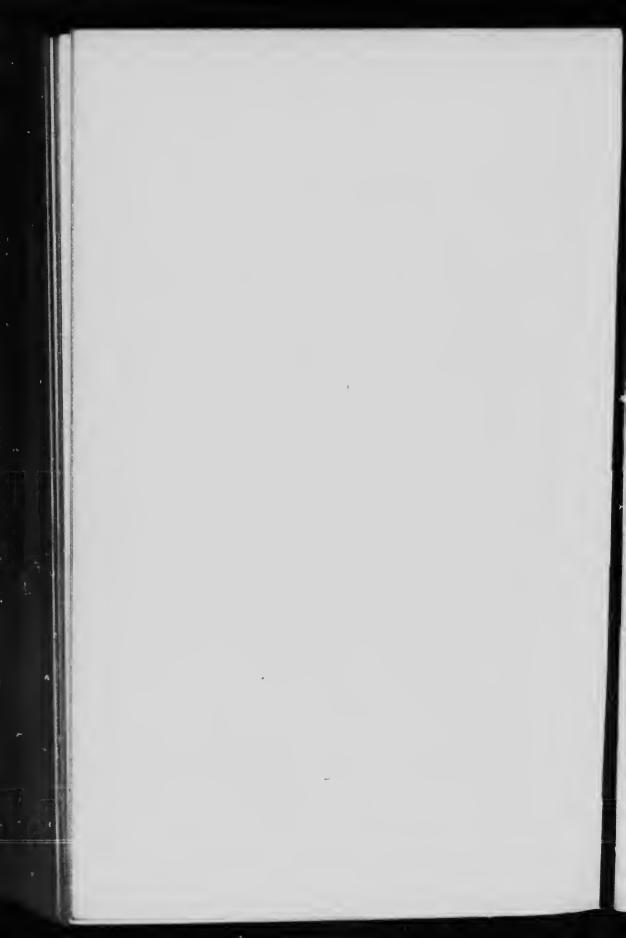
(2) If, on any such application, the Court to which the application is made is of opinion that time should be given to the person liable to make the payment on the ground that he is unable immediately to make the payment by reason of circumstances attributable, directly or indirectly, to the present war, the Court may, in its absolute discretion, after considering all the circumstances of the ense and the position of all the parties, by order, stay excention or defer the operation of any such remedies as aforesaid, for such time and subject to such the conditions as the Court thinks fit.

It has been held that no application need be made under this Act before commencing proceedings for foreclosure or the appointment of a receiver by the Court. Re Farnel, Eades & Co., (1915) I Ch. 22. There is some doubt whether the appointment of a receiver by a debenture bolder under a power in the debenture technical concerning within the left

holder under a power in the debentures is a taking of posse sion within the Act, where the debenture provides that the receiver is to be the agent of the company. In such a case it has always been considered that the debenture holder is not technically in possession; but it is understood that more than one learned judge has decided in Chambers that the Act applies.

As to the effect of the Act on a winding-up petition, see supra, pp. 393 and 396.

As to the position under the Act of a mortgagee in possession of debentures, see Ziman v. Komata Reefs Gold Mining Co., Ltd., (1915) 2 K. B. 163. Power of courts to defer execution, &c.



[Numbers in Black Type refer to the Act and Rules in the Appendix.] ABRIDGED PROSPECTUS, 316, 360. ABROAD, arrest of absconding contributory, 497. directors, notice to, of board meeting, 195. property situate, company charging, 274. seal for use, 259, 469. shareholders resident, notices to, 232. ACCEPTANCE, application for shares, of, 109, bill of exchange, 264. directors, by, of office, 181. ACCIDENTAL OR DUE TO INADVERTENCE, meaning in Act, 123. ACCOUNTS, audit of, 225, 492 (liquidators). copies of, and balance sheet to be sent to members, 222, 223. directors' duty to keep, 222. falsification, 505. fraudulent, 224. inspection of, by members, 222. directors, right of, 223. by preference shareholders and debenture holders, statutory right of, 223. inspectors, Board of Trade, by, 224. liquidator's, **492**. provisions of articles, 222. Table A as to, **533**. where kept, 223. ACCUMULATED PROFITS, application in reduction of capital, 93, 460. ACQUIESCENCE, allottee, of, 110. company may be bound by, 75. ACQUIRING OTHER BUSINESSES, power in memorandum, 64. ACT OF PARLIAMENT, codifying, construction, 17. companies incorporated by, 4. consolidating, 17. power iu memorandum to apply for, 66. ACTIONS. calls, for, 149. company, against, service of writ in, 234. debenture-holder, by, 324 et seq. costs in, 329. leave to commence or coutinue, 528.

ACTIONS-continued. in name of company, 242. In name or company, 242. limited company, by, security for costs, 520. minority of members, by, 242. reacission of contract, 352. specific performance, for, 115. stay of, in winding-up (s. 142), 413, 489. transfer 487 transfer, 487.

ACTS RELATING TO COMPANIES, LIST OF, 10-12.

ADJOURNMENT OF GENERAL MEETINGS, how to be effected, 176. discretion of chairman as to, 176.

improper, remedy of members for, 176. meeting, of, no fresh notice necessary, 176.

ADJOURNMENT OF PETITION TO WIND UP, 488

ADJUSTING.

rights of contributories, 404, 416.

ADVERTISEMENT OF PETITION, winding-up, injunction to restrain, 397.

ADVERTISEMENTS, creditors' meeting in winding-up, 420. notice to shareholders by, 233. of prospectus, what may be omitted in, 349. winding-up petition, of, 396.

AFFAIRS OF COMPANY, inspectors appointed by Board of Trade, 481. by special resolution, 481.

internal, 45.

AFFIDAVITS,

wiuding-up, in, 397, 398. winding-up petition, in oppositiou to, time for filing, 397.

AGENT.

application for shares by, 103. appointment and dismissal, 262. director an, 177. liability of company for acts of, 73, 74.

AGREEMENT,

charge, to give on property situate abroad, 273 debontures, for, specific performance of, 321. oral, how made, 256. promoters, by, 332. shares, to take, 113 et seq. allotment, 104. delay in, 112. notice of, 109. application, 103. agent, by, 103, 113. before incorporation, 109. conditional, 112. fictitious name, in, 104. infant, in name of, 104. infant, in name di, 103. oral, may be, 103. withdrawal of, 103. constituents of a valid, 103. director's share qualification, 182, 183. filing, as to paid-up shares, 113 *et seq.* misrepresentation, voidable for, 352.

paid-up shares, as to, 118 et seq.

AGREEMENT-continued. shares, to take—continued. rescission of, 352. specific performance, 115. voidable, valid till rescinded, 352. withdrawal of application before allotment, 103. under hand, form of, 255. under seal, form of, 255.

ALIEN ENEMY. [See ENEMY.]

ALLOTMENT, conditional, no contract, 112. delay in, 112. duty of directors as to, 105, 473. filing of contract for, when, 118, 119, 474. first publio, when it may he made, 105, 473. irregular, right to repudiate, 107, 473. letter of, stamp on, 110. nature of, 104. necessity for notice of, 109. none facewary, in case of subscribers of memorandum, 102. notice of, 109; by post, 109. on application before incorporation, 109. oral, 109. paid-up shares, returns as to, 118. posting notice, completes contract, 109. renunciation, stamp on, 110. restrictions on, 105, **473**. return of money on breach of conditions, 473. returns as to, 118, 474. unstamped, whether effective, 110. waiver of notice of, 109.

ALTERATION, articles of association, of, 46 et seq., 454. limits of, 50. capital, 86, 91, 460. memorandum of association, of, 77, 78, 453. preferential rights, 90. Table A, 524. substitution of memorandum and articles for deed of settlement, 516.

AMALGAMATION, 425.

AMBIGUITY,

memorandum of association, in, 39.

AMBIGUOUS STATEMENTS IN PROSPECTUS, 355.

AMENDMENTS, 175.

"AND REDUCED." use of, 99.

ANNUAL MEETING OF COMPANY, 163, 465.

ANNUAL RETURNS, list of members, 123, 456. to registrar, 123, 456, 457. statement in summary in form of balance sheet, 457. private company exempt from making, 457. summary, 123.

APPEAL, judge, from, in winding-up, 497. liquidator, from, in winding-up by Court, 493.

APPEALS AND RE-HEARINGS, in winding-up, 493, 497.

APPLICATION FOR SHARES, 103.

APPLICATION OF NEW ACT to companies registered under former Companies Acts, 513

APPOINTMENT, director, of, defect in, 191. first directors, of, 180. receiver, of, by debenture-holders, 295. receiver, of, by the Court, 324. secretary, of, 260. solicitor in articles, of, effect of, 42.

APPORTIONMENT ACT, 1870, dividends, as applicable to, 220.

ARBITRATION,

power of companies to refer to, 483. provisions of "Railway Companies Arbitration Act, 1859," to apply to, 483. valuation of interest of dissentient shareholders on sale of assets.

valuation of interest of dissentient shareholders on sale of assets, 424, 500.

ARRANGEMENT,

oreditors and contributories, with, 430, 484, 500.

ARREST,

warrant of, winding-up, in, 497.

ART,

association formed to promote, 250, 455.

ARTICLES OF ASSO DIATION, 37 et seq. accounts, provisions as to, 222 adoption of agreement, provision in, for, 46. alteration o., 46 al acq., 454. by special resolution, 454. exemption from, invalid, 47. limit of, 50. provisions of Act, 46, 454. retrospective, 48, 49. special or preferential rights in, 90. to give preference, 47. appointment of solicitor in, effect of, 42. attestation of signatures to, 37. audit, provisions as to, 225. binding force of, 39-41, 454. board meetings, provisions as to, 194. borrowing powers, as to exercise of, 269 et sey. calls, liability defined as to, 146. company, how far binding on, 40, 41. constructive notice of, 44. contract implied from acting on, 43. contract with outsider, how far, 41, 42. copies of, 37, 455. directors, powers of, under, 189.

dividend, provisions as to declaration of, 213. exclusion of Table A, 37.

ARTICLES OF ASSOCIATION-continued. first directors, appointment of, 190. form of, 37, 454. form and contents of, 37, 454. going beyond memorandum, 38 majority altering, oppressively to minority, 50, meaning of term "articles," 38. meetings, 161. members, how far binding on, 39. suing on, 41. notices to members, provisions as to, 232. operation of, 454. paragraphs to be numbered, 37. persons dealing with company bound to read, 44. poll, as to, 171. power for company to buy its own shares in, 38, printed, must be, 37. provision for payment of promotion moneys in, effect of, 41 quorum for general meeting, fixing, 168, registration of, 22, 453, 454. effect of, 454. relation of, to memorandum, 38. removal of directors, 198. remuneration of directors, fixing, 185. requirements of Act, 454. rotation of directors, 198. signature of, by subscribers, 37, 454. special articles, desirability of, 22. stamping and signature of, 37. 454. subject-matter of, 46. subscription, form of, 37. trusts, non-recognition, 155. Table A, regulations of, when to apply, 22, 454. ultra vires provisions in, 38. when required, 37, 454.

ASSAULT,

company may be guilty of, 74.

ASSETS,

collection and distribution of, in winding-up by Court, 401, 491, 494, dispositions pending winding-up, 207. uuclaimed aud undistributed, 412, 421, 506.

ASSIGNMENTS, form of, 267. to trustee for creditors, void (s. 210), 503.

ASSOCIATION CLAUSE, 34.

ASSOCIATIONS,

principal kinds of, 1 et seq.

ASSOCIATIONS NOT FOR PROFIT, 250, 455.

ASSURANCE COMPANIES ACT, 1909...382, 552.

"AT OR BEFORE THE ISSUE," 121.

ATTENDANCE,

board meetings, at, duty of directors, 205.

ATTORNEY,

deeds, to execute, abroad, power of companies to appoint, 75, 469, transfer of shares under power of, 134.

AUDIT.

accounts, of, provided for by articles, 225 banking companies' accounts, of, 229, 482. liquidator's accounts, by Board of Trade, 492. provisions of Consolidation Act of 1908...227, 482. Table A, 534.

AUDITORS.

action lies against, for breach of duty, 227. agents of company, how far, 227. duty of, 225. how far bound by the books, 230. Insurers, are not, 226. Insurers, are not, 220. misfeasance by, 227. new Act as to, 227, 482. officers of company, when, 227. provisions for appointment, 527. reasonable skill only required of, 226. secret reserves, how to be dealt with, 231. Statute of Limitations, may set up, 227.

AUTHENTICATION, notices by company, of, 233, 483. documents issued by Board of Trade, 521.

BALANCE SHEET, 482 (Act).

auditor's duty as to, 228, 229, 230. copies of, to be sent to members, 223. false, liability, 227. statement in annual summary in form of, 457. except where private company, 457. statement of commissions and discounts, 475 submitted at ordinary meeting, to be, 223, 228.

BANK OF ENGLAND.

payment of money into, in winding-up, 492.

BANK OF ISSUE,

provisions of sect. 251 of new Act as to unlimited liability as to notes, 514.

not entitled to register as limited under Part VII. in respect of notes, 514.

BANKING ACCOUNT, power of company to keep, 64.

BANKING COMPANY,

audit of accounts of, 229. prohibition as to number of members unless registered, 451. statement, to publish, annually, 450, 481.

BANKRUPTCY,

computery transfer of shares on, 140, disclaimer of shares by trustee, 140, member's, his liability for calls, 149. rules apply in winding-up, 405. trustee in, his rights as to shares, 139, 140.

BEARER,

debenture to, 297. legality in Scotland of, 480. negotiability, 302. share warrants to, 140. power to issue, 459.

BENEFIT SOCIETY to file statement, 480.

BILL IN PARLIAMENT. promotion, 66. BILL OF EXCHANGE, NOTE, &c., 469. acceptance by director in name of company, 204. acceptance under seal, 265. company may seal instead of signing, 265, company's power to issue, 264. director signing for company without "limited" to name, 265, how accepted, 264, 266. making of, by company, 264, **489**. name of company with "limited " must appear on, 265. personal liability of director, when, 265. power to draw and accept, inserted in memorandum, 65. signed "for or on account of " the company, 266. trading company has implied power to issue, 261, when binding, 469. BILLS OF EXCHANGE ACT, 1882...265. BILLS OF SALE, 281. registration, 277. BILLS OF SALE ACTS, dobentures and dobenture stock need not be registered under, 315. BLANK. debentures, in deposit of, effect of, 317. instrument of proxy, 174. transfers, 316. of debentures, 316. of shares, 133, 134. BOARD MEETINGS, attendance at. 194. inspection of minute book not allowed to members, 222. irreguiarities at, 195, 205. liability for not attending, 205. minutes of, 244. form of, 245 et seq. negligence by non-attendance at, 205. notice of, 194 directors abroad, 195. need not specify nature of business, 195. proceedings at, 194. quorum at, 195. resolutions of, 196. vacancies in board, Table A, 531, 532. BOARD OF TRADE, annual report in winding-up, 521. appointment by, of inspectors to investigate affairs of company, 481. audit by, of liquidator's accounts, 492. authentication of documents, 521. companies liquidation account, duties in relation to, 492, 507. control of, over liquidator, 493. licence to, of appointment of iquidator, 490. notice to, of appointment of liquidator, 490. official receivers and, 489, 490. orders and certificates of, to be received in evidence, 506. BONUS SHARES, 68. **BONUSES**, tenant for life, right of, to, 22. to workmen, when allowable, 67.

BOOK DEBTS.

mortgage of, and registration, 277.

BOOKS, 322, 505, 506.

charge on, 322. debentures, when covering, 322. entries in, prind facer evidence, where, 244. evidence, to be, in winding-up, 506. faisificatiou of, penalty, 506. inspection of, by members, 223. inspection of, in winding-up, 505. liquidator to keep, 492. penalties for not producing, to inspector, 481. required to be kept at office of company, 223. winding-up, inspection in, 223, 506, 506.

BORROWING,

before company cutitled to commence business, 58. company, power of. 65, 269. constructive notice of limit, 276. debentures, 283. exercise of. by directors, 190, 270, 275. implied, when, 269. instance of, 269. Internal regulations, where not complied with, 276. limit of, 270, 478. memorandum, when must be given by, 65. mode of borrowing, 274. objects clause, 65. overdrawing banking account is a borrowing, 275. property situate abroad, 273. registering mortgages and charges, 277. reserve capital charged, 271. restrictions on, 270, 478. security, power of company to give, 270. subrogation of iender where moneys borrowed sitrs vires, 275. ultra rires, 275. notice of, 276. uncailed capitai, charging, 270. [See UNCALLED CAPITAL.] warranty of anthority by directors, 276. what companies have, 269. receiver in debenture action, by, 327. restricted by Act of 1908., 58.

BREACH OF TRUST.

directors, by, 205. directors' iiability for, 206. relief of directors, **520**, **521**.

BRIBE,

directors, to, 185, 192, 193, 206.

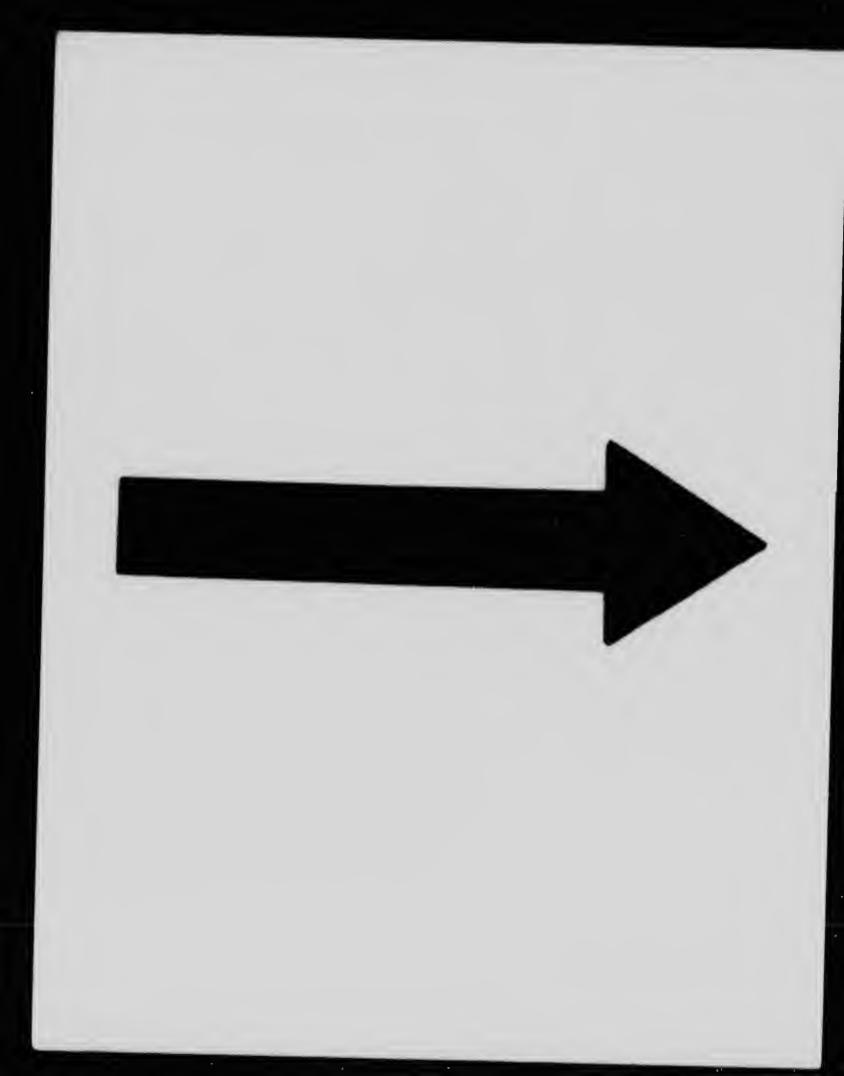
BROKERAGE,

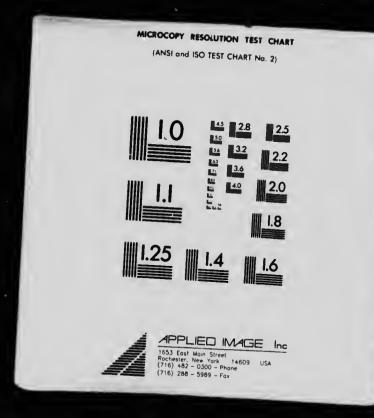
underwriting shares, for payment by company, 67, 342, 475.

BUILDING SOCIETIES ACTS, 1994 AND 1896..8.

BUILDING SOCIETY, 8. a company within Companies (Winding-up) Act, 1890...390. winding-up of, 390.

BUSINESS. carrying on, with less than seven (or two) members, 483. commencement of, restrictions on, 58, 473. [See COMMENSEMENT OF BUSINESS.] enlarging area of, under Companies (Consolidation, Act, 1908...77. 453. power in memorandum to sell, 66, 425 et seq. Table A, 594. "CALENDAR YEAR," "year " in Act means, 123. CALLS, action for, 149, allotment moneys not a call, 146. amount of, articles may fix, 147. arrear, la, right of transfer where, 132. bankrupt member, 149. conditions necessary to make a good call, 147. deceased member, 148. directors' discretion not interfered with, 147. enforcing payment of, 149. injunction to restrain, 149. instalments, 148. interest on, 148. irregularity, 147, 191. liability to, 146. liability to pay, a specialty debt, 146. limit on amount when fixed by articles, 147. making, 147. notice of call, time for, 147. pari passa, should be, 147 past, liability after forfeiture for, 148. payment in advance of, 149. power of Court to make, in winding-up, 495. power of making, a trust, 146. resolution for, 147, 196. saleable assets, to increase, 148. Table A, 525. time and place for payment of, 147. transferee's liability for arrears of, 132. transferor, while transfer unregistered, liable for, 132. winding-up, in, 148, 495. CANCELLATION OF SHARES. not agreed to be taken, 93, 95, 461. CAPITAL, accretions to, 217. alteration of, 80 et seg., 91 et seg., 460. under Table A, 528. amount of, to be stated in memorandum, when necessary, 32. annual summary, as to filing, 123. callable only in case of winding-up, company's power to make, 464. cancellation of, 93, 95. circulating, what is, 217. classes of shares, 33, 81. on increase of, 88. clause in memorandum, 32. consolidation of shares, 89. conversion of shares into stock, S9. deferred shares, 85. depreciation of, 95, 217. division of, 33, 81.





CAPITAL-continued. duty on, 89, **534**. "fixed," loss of, whether it affects profits for dividend, 217. founders' shares, 85. increase of, 86. by special resolution, 86. notice to be given to registrar, 461. what classes of new shares may be created, 88. interest on, payment of, during construction of works, 475. issue of, with preferential rights, 81. loss of, 95. dividends notwithstanding, 217. new issues during war, 636. new shares on increase of, 86. where subject to conditions of memorandum, 88. nominal, how fixed, 32, 81. ordinary shares, 81. preference shares, 81. [See PREFERENCE SHARES.] when preferential as to, 85. provisions of Act as to, 81. reduction of, 91, 92. [See REDUCTION OF CAPITAL.] jurisdiction of Court, 96. re-organization of, 461. reserve, mortgaging, 271 statement of, in memorandum, 32, 81. subdivision of shares, 90. uncalled, mortgaging, 270. working, allowance for, 33. CARRYING ON BUSINESS with less than seven (or two) members, prohibition against, 58. CASH, meaning of term in Act, 122. payment for shares in, 116. subscriber of memorandum, when, must pay for shares in, 117. what was payment in, under sect. 25 of Companies Act, 1867..119. CEASE TO HOLD QUALIFICATION, meaning, 189. CERTIFICATE, debenture stock, of, 323. form of, 323. delivery, time limit, 476. false, liability, 139, 143. incorporation, of, 51, 454. conclusiveness of, 51, 454. form of, 23. operation of, 51. restrictions on, dnring war, 632. registration of mortgage, conclusiveness of, 279, 280. shares, of, 456, 476. accidental return of certificate, 139. deposit of, by way of equitable mortgage, 145. estoppel by, 143. lost, renewing, 145. nature and form of, 142. note at foot, 145. object of, 142. primd facie evidence, to be, 142, 456. stamp not required for, 145. scrip, 145. stock, 456.

CERTIFICATION,

effect of, on transfer of shares, 138. estoppel by, 139. practice, as to shares, 138, 139.

CESSER OF MEMBERSHIP, 116.

CHAIRMAN.

adjournment of meeting, discretion as to, 176.
declaration as to resolution being earried, when conclusive, 1 2, 239.
general meetings, of, 169.
choice of, at, 169.
duties of, 169, 170.
minutes signed by, prim4 facie evidence, 244.
signature of, to minutes, 245.

CHAMBERS,

matters to be heard in, iu winding-up, 390.

CHANGE, name, of, by company, 250. registered office, of, 243.

CHARGE,

books, on, validity of, 322. ereditor holding, is "secured" in winding-up, 411. floating, nature of, 308. registered debenture, in, 288. registration under new Act, 277. specifie, may be created notwithstanding floating charge, 309, 310. when created for purposes of registration, 280.

CHARGES (REGISTRATION OF), 277.

CHARGING ORDERS, operation, 150.

CHARITY,

association formed to promote, 455. registration without the word "limited," 250, 455. subscription to, 433.

CHARTER,

eompany incorporated by royal, 2. distinguished from registered company, 3. form of, 2. powers of, 2, 3.

CHEQUE,

Р.

when "payment" for shares, 107.

CIRCULAR, a prospectus 522.

"CIRCULATING " CAPITAL, 216.

CLASS MEETINGS, 90, 91.

CLASSES OF NEW SHARES, 87, 88.

CLOSING REGISTER of debentures, 292. of members, 125.

CO-DIRECTOR, fraud of. directors not liable for, 200.

COLONIAL REGISTER OF MEMBERS, 458.

11

COMMENCEMENT OF BUSINESS,

companies inviting subscriptions for shares, 23, 478, 474. companies not no inviting, 24, 474. contracts before, are provisional only, 59, 474. minimum subscription before, when requisite, 58, 473. private companies, 23, 474. requirements of Act, 58, 473.

COMMERCE.

association formed to promote, 250, 455.

COMMISSION

for subscribing or underwriting or placing debentures, 477. for subscribing or underwriting or placing shares, 117, 340, 475. statement in balance sheet, 475. to directors, 193. accountability, 193. underwriter, to, 340. usual brokerage, 475.

COMMITTEE, delegation by directors to, 197. resolution for appointment of, 197.

COMMITTEE OF INSPECTION, appointment of, in winding-up by Court, 401, 493, 494.

COMMON SEAL,

affixing does not necessarily make instrument a deed, 259. affixing to deed, in excrow, 258. when equivalent to delivery, 258. company's power to have, 454. documents which must be under, 257, 258. Foreign Seals Act, 259. presumption that same regularly affixed, 257. when requisite, 257. who may use, 257.

COMPANIES.

different kinds, 1 et seq. incorporated by Act of Parliament, 4. by charter, 3. under Act of 1844...7.

COMPANIES ACTS, 1862-1908 (particulars of), 11.

COMPANIES ESTABLISHED OUTSIDE UNITED KINGDOM, 519.

COMPANY,

certificate of incorporation of, conclusive, 51, 52, 53, 454. contracts of, 253. corporate existence and powers of, 55. definition of, in new Act, 14. defunct, removed from register, 511. distinct -- tity, not to be confused with the shareholders, is a, 55. extensi bjects, 77. sketch of proceedings, 21 et seq. format legal persona, a, 55. liability for acts of agents, 73, 74. objects of, 29 et seq.; 60 et seq. (powers). [See OBJECTS OF COMPANY.] office of, 243. [See REGISTEREN OFFICE.] one man company, 56, 367. partnership and, contrasted, 55, 56. person is a, 55. preliminary expenses, power to pay, 64. ratification by, 253.

COMPANY-continued. registration of, 22. preliminaries, 21, 22. regulations, how far binding on, 39-13. representative at meeting, 467. special Act of Parliament, incorporated by, 4. statutory powers, 75. unincorporated, 5. unlimitsd, 381. unregistered, 5.

COMPANY LIMITED BY GUARANTEE articles, must have, 453. requirements of Act, 378. restriction as to capital, 455.

COMPROMISE, company's power to, 430, 484. contributory, with sanction of judge to, 504. winding-up, in, 504.

COMPULSORY ORDER, petition for, 391.

COMPULSORY POWERS, parliamentary companies, 4.

COMPULSORY RETIREMENT OF MEMBER, private companies, 376.

CONCLUSIVENESS, certificate of incorporation of, 51, 454. chairman's declaration of, as to resolution carried, 169, 171, 239. registrar's certificate of charge, 279.

CONDITION. application for shares on, 112, 113.

CONDITIONS, debenture to bearer, indorsed on, 298-300. indorsed on registered debenture, 288 ct seq. provision as to floating charge, 289.

CONDITIONS PRECEDENT, underwriting agreements, in, 338.

CONSIDERATION, statement of, in debenture, 285.

CONSIDERATION OFHER THAN CASH, filed contract, 117, 119, 474. future services, 117. issue of sharee for, as fully paid, 117. illusory or fraudulent, 117.

CONSOLIDATION OF SHARES, 89, 460, 461. notice to be given, 461.

CONSTRUCTION, general words, of, 72. memorandum of association, of, 69 et seq.

13

42(2)

CONSTRUCTION OR INTERPRETATION OF OBJECTS, 69.

CONSTRUCTIVE NOTICE, 44 et seq., 234.

documents, of, canuot be used to cure misrepresentations, 356. limit of borrowing power, of, 276. of memorandum and articles, 44 et seq. to company, 234.

CONTRACT,

admission of, 256. before commencement of business, when provisional only, 59, 254. company, by, capacity of company, 253, 254. form of, 254-256, **468**, **469**. how made, 468, 469. oral, 256, 469. Statute of Frauds as affecting oral contracts, 256. directors, by, contract of company, is, 177. power to make, 254, 255. share qualification, to acquire, 183-185. with knowledge of company of their profit, 193. directors', with company, 192. directors' liability as to, 199. disclosure in prospectus, 347 et seq. filing urder Companies Act, 1567, s. 25 (repealed), 119. consideration, statement of, 119. omission to register, 121. signature of, 255. writing, mnst be in, 121. filing under new Act, 119, 474. form of, 254, 468. implied from acting on articles, 43. non-disclosure of, liability of director for, 192, 193, 205, 351. obligation to disclose in prospectus, 348, 359. oral, how made, 256. tiling particulars, 474. paid-up shares, filing with registrar, 119. power of company to, without seal, 255. pre-incorporation, 253. ratification of, by companies, 253. seal, under, a deed, 255. shares to take, 113 et seq. rescission of, 352 et seq. specific performance, 115. signature of, on behalf of company, 255. ultra vires company, 2/3. ultra vires directors, 253. under hand, form of, 255. under seal, form of, 255. variation of, mentioned in prospectus or statement in lieu of prospectus, 364, 471. voidable, valic il rescinded, 352. want of writing, effect of, under Statute of Frauds, 256.

CONTRACT TO TAKE DEBENTURES OR DEBENTURE STOCK, apprile performance 321 480

specific performance, 321, 480.

CONTRIBUTION,

directors, between, 211. member, by, of company limited by guarantee, 378.

4 ft - 1

CONTRIBUTORIES, adjusting rights of, 404, 416. ndministration of deceased's estate, 491. arrest, power to, where absconding, 497. balance order against, 405. first meetings of, 40., 491. liability, 118, 434. list, settling, 404. nst, setting, 404. meetings of, in winding-up, 401, 491. order against, conclusive, 495. payment of debts by, power of Court to order, 405, 495. petition by, to wind up, 304, 488. set-off against, 405. who are, 404, 484. wishes of, 398, 489. CONVERSION, business, of, into private company, 368; objects of, 370. shares, of, into stock, 89, 460. notice to registrar, 461. Table A, 527. CONVEYANCES, company, to, 267. form of, by company, 267. saving in sect. 288..523. seal, to, by company, when necessary, 257. COPIES, accounts and balance-sheets to be sent to members, 223. articles of association, of, 37. memorandum and articles, of, to be supplied to members, 37, 455. register of members, 124. special resolution, of, company must supply, 240, 467. of, to be annexed to copy of articles, 437. CORPORATION, nature of, 55. representative of, at meeting, 467. CORRESPONDING SECTIONS OF ACTS, 447. COSTS. debenture-holders, of, 329. payable out of assets on winding-up, 399, 495, 623. COUNTY COURT,

assignment to, of Stannaries jurisdiction, 389. jurisdiction in winding-up, 389, **486**. transfer to, of winding-up proceedings, **487**.

COUPON,

debenture to bearer, on, 298, 299. registered debenture attached to, 301.

COURT,

power to convene meeting of company, 165, 166. winding-up, having jurisdiction in, 389.

COURTS (EMERGENCY POWERS) ACT, 1914..325, 393, 396, 634. as regards appointment of receiver, 325. winding-up, 393. before petition, 396. COVENANTS BY COMPANY, form of, 267.

CREDITORS,

application by, under snpervision order, 422. arrangements with, 430, **484**, **504**. assignment to trustee for, s. 210..**503**. first meetings of, in winding-up, 401, **491**. frauduleut preference, 415. meetings of, in winding-up, 401, **491**. of company are not creditors of members, 56. preferential, 327, 410, **502**. proof by, in winding-up, 409, 412, **495**, **502**. secured, 411. voluntary winding-up, right to apply to Court in, 422, **500**. who entitled to prove, 409. winding-up petition by, 382. wishes of, in winding-up, 398, **489**.

CRIMINAL LIABILITY, directors, of, for fraud, 209. fictitious dividend, 215.

CROWN DEBTS, priority in winding-up, 410.

CUMULATIVE DIVIDENDS, 84.

CUMULATIVE PREFERENCE SHARES, as to, 84.

DAMAGES, dc'inquent directors, against, 200 et seq.

DEADLOCK, power of Court to appoint receiver, 165.

DEATH OF MEMBER, cali after, 148. cesser of membership by, 116.

DEBENTURE HOLDERS, accounts, inspection of, by, 223, 483. action, costs in, 329. modification of rights, 321. proof in winding-up, 328, 329. remedies of, 323.

DEBENTURES,

abroad, property situate, 273. agreement to issue, 318. bearcr, to, 297 et seq. [See DEDENTURE TO BEAREE.] capable of being registered, 301. ...dls of Sale Acts, whether applicable to, 315. blank, effect of deposit of, 316. books, charge on, 322. borrowing powers of company, 269 et seq. charge in, 287. charge, not containing, 283. classes of, 284. commissions for underwriting, &c., 477. conditions indorsed on, 288. consideration not expressed in, 285. contract to take, specific performance, 321

DEBENTURES -continued. dato for payment, 286. default, provision for accelerating payment, 294. deposit of, to raise loan, 316. discount, issue at, 317. distinct from debenture stock, 284. equities, clause excluding, 292. power to assign, free from, 292. floating charge as to, 308 et seq. [See FLOATING CHARGE.] foreclosure, as to, 328. foreign property secured on, 273. forms of, 285 et seq. joint holders, 292. judgment on, effect of, 286. merger of interest in, whether, 286. limit to amounts, 270. majority clauses, 321. meaning of, 283. notice to holder, 297. how to be given, 297. pari passu clause, object of, 289. payment, events accelerating, '94. perpetual, 313, 479. place of payment, 297. power of company (on notice) to pay off, 293. power to issue, in memorandum, 65. priorities of, 319, **480**. prospectus, as to, 362. receiver, appointment of, by Court, 324. leave to borrow, 327 provision for appointment by bolders or the trustees, 295. receiver elause in conditions, 295. redemption of, 293 register of, clause in debenture, 290. register of, chause in determine, a closing, 292. registered, 285 et seq. [See REGISTERED DEBENTURE.] but with coupons to bearer, 301. conditions usually indorsed on, 288. registered holder alone to be recognized, 290. registered holder, to, form of, 285 et seq. object of payment to, 286, '90. registration of, under Bills of Sale Acts, 315. under Cos. Act, 1908, sq. 93, 100..277 et seq. re-issue, 288, 319, 479. remedy of debenture holders, 323 et seq. security, 270. series, not uccessarily one of a, 283. set-off, 289. sperific performance of agreement for, 321, 480. stamp on surrender, discharge, or transfer of, 317. time for payment, 286. transfer of, 315. conditions for, 288. forged, 316. free from equities, 292. trust deed, secured by, 313. reference to, in debentures, 296. uucalled capital, charging, 270 et seq, 287. what is a debenture, 283. winding-up accelerates payment, 294. remedy in, 328, 329.

DEBENTURE PROSPECTUS, particular features, 362.

DEBENTURE STOCK, constituted, how, 323. deposit of certificate by way of mortgage 316, 317. form of certificate, 325. meaning of term, 284. nature of, 284. remedy of hoiders, 323 et seq.

DEBENTURE TO BEARER, ospable of being registered, 301. characteristics, 207. eonditions indorsed on, 209 et seq. constitution, 296. coupons, 298. form of, 298. negotiability of, 302. negotiable, condition as to treating as, 300. perpetual, 313. receiver appointed, by Court, 324. by holders or trustees, 296. re-issue, 479. remedies of hoiders, 323. Scotland, validity in, 480. transfer of, 315. trust deed securing, 313.

DEBENTURE TO REGISTERED HOLDER, with coupons to bearer attached, 301.

DEBTS,

proof of, in winding-up, 409, 411, 412.

DECEIT.

action for, 353.

DECLARATION,

chairman's, as to resolution being carried, 169, 239. special resolution, 229. statutory, on formation of company, 53.

DECLARATION OF DIVIDENDS, 220.

DEED.

company's, delivery of, 258. delivery essential, 258. escrow, executed by company as, 258. execution abroad, **469**. sealed by company, when delivered, 258. transfer of shares, 138. trust, to secure debentures, 313.

DEEDS OF SETTLEMENT, common law companies, 5. companies under Act of 1844...7, 8. persons dealing with registered company b .nd to read, 44. substitution of memorandum and articles 1 r, power of Court, 516. unincorporated company, 5.

DEFAMATION,

speeches in, at general meetings, privilege, 174.

18

INDEX.

DEFERRED SHARES, 85.

disclosure in prospectus, 347.

DE' INITIONS IN NEW ACT. 'articles," 14.

- 'articles,'' 14,
 'books and papers,'' 15,
 " circular '' includes in '' prospectus,'' 15,
 '' delenture '' includes debenture stock, 15,
 '' director,'' 15,
 '' memorandum,'' 15,
 '' memorandum,'' 15,
 '' prospectus,'' 15,
 '' share,'' 15,

DEFUNCT COMPANIES,

restoration to register, 54

striking off register, 54, 511

DELAY,

- allotment, in, 112.
 - proceedings after discovery of misrepresentation in prospectus, 352 et seq. removal of name from register of members, in obtaining, 127, 352.

DELEGATION,

directors, by, 197, presumed, when, 45,

DELIVERY,

deed, of, by company, 258.

DEPOSIT,

certificates of shares, of, by way of equitable mortgage, 145. debentures, of, to raise loan, 316, 317.

DEPOSIT COMPANY.

to file statement, 480.

DEPOSITIONS,

private examinations, taken at, 507. pullic examination, of, 496

DIRECTORS, abroad, notice to, 195. accepting incompatible office, 189. accountability of, for present of using attention, 193, accounts, duty to keep, 222. acting after disqualification, 191. actube, in account of such action. acts by, in excess of authority, 15 agents of company, to what extension appointment, 181. defect in, knowledge of, 192. defective, 191. of first, 181. restrictions on, 181. appointment and qualification, provision * Act. 468. attendance at board meetings, 195, 205 authority, acts by, in excess of, 190, 205 *et seq* right of persons dealing with, to assum warranty of, 189, 190, 276. bankrupt, meaning of term, 189.

20 bills of exchange, acceptance of, on behalf of borrowing powers of company, exercise of, 19

DIRECTORS-continued. breach of trust by, 205, 209. ennes of, 206 cases of, 200. relief for, 207. bribe to, 185, 192, 193. calls-making power, a trust, 146. calls, duty to enforce payment of 147. calls, power as to, 146. [See Ca.LS.] committees of, 197. compensation against, 357. contracts by, if *ultra* vires them, may be ratified if intra vires ta company, 253. in their own name, 199. with company, 192. with personal liability, 178, 199. contribution between, 211. Court will not force, on company, 198. criminal liability, 209. de facto director, company when bound by acts of, 45, 192. definition of, in new Act, 15. delegation by, powers of and limits to, 197. described as "conneil," 177. disclosure of benefits to be obtained, 19. ' '3. discretion, have a large, 189. as to call not interfered with, 1+7. of, as to transfers of shares, 131. dispositions while winding-up pending, 207. disqualification, 188. acting after, 183, 191. Table A, 531. divideod ont of capital, liability, 206. duty, breach of, 200 et seq error of judgment by, not liable for, 201. excluding co-directors from acting, 195. fees, 185. [See DIRECTORS, Remuneration.] first directors, 181. appointment of, 181. appointment of, by subscribers of memorandum, 181. naming in articles, restriction as to, 181. force to act, Court will not, 198. frands by, 199, 209. governing or permanent director, private company, in, 376. imprudence of, 202. interninty, 211. irregular proceedings, 190, 194, 195, 205. irregularity in their proceedings, ratification by them, 195. Liability Act, 1890, as re-enacted by new Act, 357, 471. liability of, 199 et arg. contracts, us to, 199. criminal, 209. indemnlty, 211. frands, for, 199, 209. frandulent accounts, 224 joint and several, 212. joint, contribution between, 211. misfeasance and breach of trust, 205. negligence, for, 200, 205. non-disclosure, 358. personal, where till, note or cheque signed without using " limited," 265. tort, 199, 209. ultra vires application of funds, 208. list of, to be sent to registrar, 468. managing, delegation of authority to, 45. maximum and minimum number of, 182. meetings, notice of, 194.

INDEX.

DIRECTORS-continued. inlustes, presumption of regularity 196, 244, 467 misavolleation of company's finds, 208, misfeasance by, 205–209. [See MISFEASANCE. misfeasance pro ugs against, .06, '14, 505. examples of. no set-off for, 206. negligence of, 200, 205, 209. notice to single director, effect of, 234, 235. when abroad, 195. number of, 182. penalties, 208. "permanent directors," 376. personal liability on contracts, 178, 199, 265. powers of (general , 189 et seq. single one of several has none, except by delegation, 194. Table A, 530. private company, of, 376. proceedings of, 194. notice of hoard meeting, 194. Table A, 532 profit by, without knowledge of company, 193. promention of, 209, 415. public examination, 408, 496. qualification of, 182, 468 common form of clause, 182, 182 condition precedent, 184. construction of "eligible," 184. "in his own right," 184. penalcy for acting without, 183. present of from promoter, &c... vacating office for want of, 18: when bound to take from compa. -83. when must be obtained on registratio ., 181. quorum of, 195. to make call, 147. reliance of, on subordinates, when not negligence, 201, relief in case of negligence or breach of trust, 207, 520, 521. removal of, 198. remuneration, 185. [See REMUNERATION OF DIRECTORS.] apportionment of, 186. articles fixing, effect of, 43. prepaying shares to provide, 149. where, not entitled to, 185, resignation, 188. resolutions of, 196. forms of, 196, 197. right of persons dealing with, to assume *de jurc*, 44-46. rotation, 198; Table A, **532**. sale by director to company, 192. seal, affixing, formalities for, 257, 258. power to use, vested in, 257. secret benefit regarded as a bribe, 192, 193, 206. sanction of company, 193. subdelegation, power of, 197 subscribers, appointment by, 181. torts by, 200, 205, 209. trustees, in what sense, 178, 179. of their powers, 190. ultra vires acts, 208. unlimited liability of, when, 464. unqualified, director acting after becoming, penalty, 183. remuneration of, 185.

INDEX.

DIRECTORS-continued. vacancies, power to act, notwitbstanding, 195. validity of acts, 468. warranty of authority, borrowing, on, 190, 275, 276.

DIRECTORS' LIABILITY ACT, 1890...357.

DISCLAIMER IN BANKRUPTCY, cesser of membership, by, 116, 140. shares, of, by trustee of bankrupt member, 140.

DISCLOSURE, directors, by, 192, 193. promoter, by, 333. prospectuses, iu, 344 et seq., 347 et seq.

DISCOUNT

company, limited, cannot issue its shares at, 29, 68, 475. debentures or dobenture stock, issuo at, 317. registration of debentures or debenture stock, 279.

DISPOSITIONS BY DIRECTORS PENDING WINDING-UP, 207

DISTUTED DEBT,

winding-up, not a ground for, 391.

DISQUALIFICATION OF DIRECTORS, 188. construction of elauses, 189.

director acting after, 191. of, by not obtaining qualification, 188, 191, 192. Table A, 531.

DISSOLUTION,

company, of, 417.

DISTRESS,

as against debenture holders, 310. winding-up, effect on, 411, 413.

DIVIDENDS,

Apportionment Act, 1870..220. ascertainment of profits, for, 216 et seq. bonuses, tenant for life right to, 220. eapitalization of, 221. cash, company must primd facie pay in, 220, 221. "circulating" capital, 216. making good before payment, 218. construction of works, payment when allowable during, 221. cumulative, 84. debt, a, when declared, 219. deelaration of, 220. power as to, 213. enemy shareholders, 213, 634. fietitious, 215. "fixed" capital, 216. founders' shares, on, 85. guarantee of, 219. in proportion to amount paid, 214, 460. interest, not to carry, 533. limitation, bar, 220. neglect to sue for, 220. pari passu, 214. payment of, implied power, 213. out of capital, 215, 217 et seq.

DIVIDENDS - continued. payment out of profits, 215 et seq. preference shares, on, 215. proportion in which payable, 214, **460**. specific assets, paid in, 221. Table A, **533**. tenant for life and remainderman, as between, 220. transfer of shares, effect on, 220. unclaimed, 220. wasting property, power to pay out of income of, 216, 219, winding-up, 412, 495.

DOCUMENTS, how to be authenticated, 483. how to be served, 483. referring to old Acts to be treated as referring to new Act, 523.

DOMESTIC IRREGULARITIES, 45, 242.

DURHAM PALATINE COURT, jurisdiction in winding-up, 389.

DUTIES OF COMPANIES, statutory, 76.

DUTY,

capital of companies, on, 89, 534. guarantee, on company limited by, 535.

EJUSDEM GENERIS RULE,

in construing memorandum, 70.

EMPLOYERS' LIABILITY INSURANCE, deposit of 20,0007. before commencing business, 382, 383. separation of funds, 382, 383.

ENEMY

shareholders. dividends, 213, 634. notice to Public Trustee, 213, 634. votes of, 171. when a company is, 243.

ENFORCEMENT OF SECURITY, debenture holders, by, 323 et seq.

ENFORCING PAYMENT OF CALLS, 149.

ENTRIES.

books of company, in, primâ facie evidence, in winding-up, 505.

EQUITABLE MORTGAGE, certificates of shares, of, 145.

EQUITIES, notice as regards shares, 154. notice of, to company where debenture holder registered, 291. transfer of debenture free from, 292.

ERROR OF JUDGMENT BY DIRECTORS, 204.

ESCROW,

company can execute deed in, 258.

ESTOPPEL

against company by act of agent, 74, 143. certificate, by, 143.

EVIDENCE, books to be, in winding-np, **505**. certificate of incorporation, 51. declaration of chairman as to resolution being carried, 171, 172, 239. prima facie and conclusive, contrasted, 52. register of members prima facie, 125. verification of winding-up petition, 397.

EXAMINATION officers and other persons, of, in winding-np, 407, 408, 496. public, winding-np, in, 408, 496.

EXCHANGE OF SHARES, invalid, when, as a reduction of capital, 94.

EXECUTION, stay of, in compulsory winding-up, 413. transfer of shares, of, 133.

EXECUTORS AND ADMINISTRATORS, deceased member, of, notice to, 233. title to shares, 139. transfer testator's shares, may, 139.

EXISTING COMPANY, application of new Act to, 512. defined in new Act, 14. registration of, under Part VII. of Act, 379, 513.

EXTENSION OF OBJECTS, power of company as to, 77.

EXTRAORDINARY GENERAL MEETING, adjournment, 176. amendments, 175. chairman, 169. convene, who may, 164, 165. nature of, 164. poll, as to taking, 171. proxies, 173. quorum, 168. requisition for, **466**. show of hands, 171, 172. special business, 166. votes at, 170. what is, 163.

EXTRAORDINARY RESOLUTION, 236, 467. copy to registrar, 467. definition of, 467.

FALSE STATEMENTS, criminal liability, 224, 521. in prospectus, liability, 346, 352, 357.

FALSIFICATION OF ACCOUNTS, 224. 24

FEES,

directors', 185. registration, on, 22. table of registration, **534**, **535**.

FICTITIOUS DIVIDEND, 215. [See DIVIDENDS.]

FICTITIOUS NAME, application for shares in, 104.

FIDUCIARY RELATION, directors', 178. promoter, of, 332.

FILING,

contract for issue of shares not paid up in cash, 118, 119, prospectns with registrar, 343.

2

FINAL JUDGMENT,

order for payment of damages for misfeasance, a, 407.

FINES,

application of, towards costs, &c., 520.

FIRM,

registration as a member, 124.

FIRST ALLOTMENT, when made, 105.

FIRST DIRECTORS, 181. naming in articles, and qualification, 181 et seq.

FIRST MEETINGS, creditors and contributories, of, 401, 491.

"FIXED" CAPITAL, 217.

FLOATING CHARGE, company's power to deal with its assets notwithstanding, 311. debenture, in, 289. definition of, 308. effect of, 309. execution creditor and, 309. general creditors, ranks before, 310. legal mortgage, when it takes priority, 311. postponement in winding-up to certain claims, 490. prohibition against creating charges in priority, 312. purchaser for value without notice of, 312. receiver, effect of appointment of, on, 310. registration, 277. specific mortgage, and, 311. validity of, 308. when it crystallizes, 310, 312. whole or part of assets may comprise, 281. winding-up, within three months of, 310.

FORECLOSURE,

debenture holders, by, 328.

FOREIGN COMPANIES, requirements of sect. 274 of Act, 437, 519. winding-up of, 390.

FOREIGN LAW, how regarded, where English company agrees to charge land in foreign country, 273. mortgage here of land abroad, registration of, 273, 274, 278.

FOREIGN PROPERTY, mortgaging, 273.

FOREIGN SEALS, 259, 469.

FOREIGNER,

shares, may take, 113.

FORFEITURE,

cesser of membership by, 116, 118. directors' discretion as to, 152. lien clause in articles, under, 154, 160 et seq. shares, of, action to set aside, 152. annul, power to, 152. bankrupt holder, 151. call made irregularly, 151. collusion, by, 151. interest wrongly demanded, 151. irregularity in, 151. liability after, 153. liquidator no power to annul, 153. provision in articles as to, 151. relief against, 152. strictissimi juris, 151. Table A. 526. threatening action against company, 152. winding-up, after, 152. to enforce charge, whether valid, 160.

FORGED TRANSFER ACTS, 316, 317.

FORGED TRANSFERS OF SHARES, 136. compensation, 136. estoppel by certificate, 136, 139.

FORGERY.

coupons, share warrants, and other documents, 459

FORMATION,

expenses of, power of company to pay, 64. fees on registration, 22. [See REDISTRATION.] general sketch of proceedings, 21 et seq. mode of, 21, 451 et seq. preliminaries to, where company is to be limited by shares, 21. private company, of, 374.

FORMS.

acceptance of bill of exchange, 264, 265. advertisement, winding-up petition, of, 396. alteration of, by Board of Trade, in schedules to Act, **483**. certificate of incorporation, of, 23. certification of transfers of shares, of, 138. contract signed by company, 255. conveyances by company, 267. coupon to debenture to bearer, 299. debenture stock, certificate, 323. debenture to bearer, 297. delegation of powers by directors, 197. minutes, 245.

FORMS-continued. prospectus, 344. proxy, 173. qualification clause for directors, 182. registered del mare, 285. resolutions at board meetings, 196, 197. transfer of shares, 133. underwriging agreement, 338. writ, by company, 268.

FOSS r. HARBOTTLE, rule in, 176, 242.

FOUNDERS' SHARES, deferred shares, 85. promoters taking their remuneration in, 335. prospectus, statement of, in, 347. redemption of, by issue of ordinary shares not allowed, 97.

FRAUD,

ł

company liable for, 73. criminal liability of directors, 199. directors, by, 179, 199. co-directors not liable for, when, 200, majority of members, by, against minority, 191, 242.

FRAUDS, STATUTE OF, contracts by company, as affecting, 256, signature of chairman to minutes satisfies, 245.

FRAUDULENT ACCOUNTS, 224.

FRAUDULENT PREFERENCE, 415, 503.

"FREE FROM EQUITIES," transfer of debentures, 292.

FRIENDLY SOCIETIES ACT, 1896..8.

GASWORKS CLAUSES ACT, THE, 4.

GENERAL MEETINGS. [See MEETINGS.]

GENERAL WORDS, construction of, 72.

GIFT.

director, to, of qualification, or as bribe, &c., 185, 192, 193, 206.

RATUITY.

when company can grant, 67, 433.

GROSS NEGLIGENCE, what is, 202.

GUARANTEE, COMPANY LIMITED BY, 378. articles of (Forms B. and C.), 538, 541. memorandum of, 452. profits only to members, 455. share capital, 455. stamp duty, 350. what kinds of companies register as, 379. 27

Р.

HANDS, SHOW OF, vote by, 171.

HEARING OF PETITION (winding-up), 398

HOLDING-OUT DOCTRINE, de facto directors, 45, 191. register of members, as applicable to, 126.

ILLEGAL ASSOCIATIONS, 386, 387, 451. for gain, 386. mutual assurance, 387.

IMPLIED CONTRACT, articles, from acting on, 43.

IMPRUDENCE, directors, of, 202.

INABILITY TO PAY DEBTS,² evidence of, 486. ground for winding-up, 391.

INCIDENTAL OBJECTS, within power of company, are, 64.

" INCIDENTAL OR CONDUCIVE," construction of, 72.

INCORPORATED COMPANY, a person in law, δ5.

INCORPORATION, certificate of, 51 et seq., 454. conclusiveness of, 51-53, 454. form of certificate of, 23. statutory declaration of compliance with Act before issue of, 455. impeaching by sci. fa., 53. mode of, 451. without word "limited," advantages of, 250.

INCREASE OF CAPITAL. 86-89, 460. notice to registrar, 89, 461. penalty for default, 89. preference shares, 81-85. classes of shares created on, 88.

INDEMNITY by transferee of shares, 137. director, to, taking qualification by promoter, 186. directors' right of, 211.

"INDOOR. MANAGEMENT," irregularitics in, 45.

INDORSED CONDITIONS, registered debenture, on, 288 et seq.

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893..8. 28

INDUSTRIAL SOCIETY, company, and, 1, 8.

INFANT,

allotment of shares to, misfeasance, 205. application for shares in his name, 113. shares, may take, 113, 115. transfer of shares, 134. voidable contract to take shares, 115.

"IN HIS OWN RIGHT," meaning of, 184.

INJUNCTION,

director, against excluding, 198. name, against use of misleading, by company, 249. restraining advertisement of winding-up petition, 397. calls, 146, 149. forfeiture, 152. proceedings on winding-up, 413.

INDEX

INSOLVENCY,

company, of, a ground for winding-up, 391, 486.

INSPECTION,

accounts, of, by members, 223. books, of, 223. committee of, 403, 491, 493. company's affairs, of, by Board of Trade, 224. 481. depositions, of, taken on examination, 482, 493. register of members, of, 124, 456. register of mortgages, 280 (company's). registered office, at, 243. right of, carries with it right to make extracts, 222, 223.

INSPECTORS,

examination of affairs by, **481**. power of company to appoint, **481**. report of, to be evidence, **481**.

INSURANCE COMPANY,

copy of balance sheet to be exhibited at registered office of, 223. definition of, 552. enlarging business under Companies Act, s. 9...77. statement, to file, annually, 480.

INTENTION,

representation of, a statement of fact, 355.

INTEREST,

ealls, on, 148. default in payment of, on debentures, 294. during construction, 221, 475. monoys, on, paid in advance of ealls, 150. payment of, on debenture, 286.

- IN FERPRETATION, section of the Act, sect. 285..521.
- IN THE MEANTIME, meaning of such words in debenture, 286.

29

43 (2)

IRREGULARITY, board meeting, of, 194, 195, 205. borrowing, in, witra vires, 275. call, in, 147, 192. chairman, by, at general meeting, 169. in adjourning meeting, 175. directors' appointment, in, 190, 191. forfeiture of shares, in, 4', 151. '' indoor management,'' in, 45, 176. meeting, in summoning, 164, 165. mortgage, in execution of, by company, 45. notice of, 45. protection of bond fide outsider, 73. seal, in affixing, 45, 258. subscription of memorandum, in, 51. transfer of shares, waiver, 133.

ISSUE OF SHARES, registered contract, under, 119 et seq. restrictions on, during the War, 636.

JOINT ADVENTURE, clause in memorandum as to, 65.

OINT AND SEVERAL LIABILITY, cails, for. 525. definquent directors, of, 212.

JOINT GOVERNING DIRECTORS, private company, in, 376.

JOINT HOLDERS of registered debentures, 292. of shares, 524. transfer of shares by, 134.

JOINT STOCK COMPANIES ACTS, applicatiou of Act to companies registered under, 512. definition in Act of 1908 (sect. 250), 513.

JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870, s. 120 of new Act substituted for it, 484. arrangements under new Act, 484.

JURISDICTION, Court, of, in winding-up, 389. register of members, to rectify, 127, 128.

"JUST AND EQUITABLE" CLAUSE, 391, 486.

"KNOWINGLY ISSUING," 360.

LACHES, company may be guilty of, 75.

LANCASTER PALATINE COURT, jurisdiction in winding-up, 389. 30

LAND,

power of company to hold, 75, prohibition against company for art science, charity, &c., holding more than two acres, 485.

LANDS CLAUSES CONSOLIDATION ACT, 18,6, 4.

LEADING CASES.

summary of, 139 et seq.

LEASES,

form of, 267.

LEAVE,

action, to proceed with, after winding-up, 413, borrow, to, for receiver and manager (deb. action), 327.

LEE r. NEUCHATEL CO., "ule laid down in, 216, 218.

LEGAL PERSONAL REPRESENTATIVES, transfer by, of deceased members, 457.

LEGALITY OF OBJECTS, 29.

LENDING MONEY, power in memorandum, 65.

.....

LIABILITY,

carrying on business with less than seven members, 58.
company, of, for acts of agent, 73, 74.
contributories, of, 118, 484, 485.
directors, of, 192, 199 et seq., 211, 212. [See DIRECTORS' LIABILITY.]
joint and several, of del quent directors, 212.
members, of, 116. [See MEMBERS.]
mode of limiting, 452.
secretary, of, 251.
shares, on, 118 et seq.
statement of limited, in memorandum, 21. [See LIMITED LIABILITY.]

LIBELLOUS STATEMENTS

at general meetings, 174.

LIEN,

shares, on,
charge, operates as, 154, 159.
charging orders, 160.
clause exempting company from noticing trusts, 157, 158.
Conveyancing Act, 1881, application of, to, 159.
dividends, extends to, 159.
exemption clause, force of, 158.
forfeiture, 160.
how created, 154.
indebtedness of members for, 154, '59.
notice of mortgage, operations after, 159.
operation where trusts not to be noticed, 15...
salc, 159.
subsequent mortgagee, 155 et seq.
subsequent purchasers, 155 et seq.
third persons, validity against, 154 et seq.
transfer of, 130.
where exemption clause, 155.
where no exemption clause, 157.
solicitor, of, on books. 223, 290.

LIFE ASSURANCE COMPANY, Act. [See Assurance Companies Act.] amalgama ion of, 384. deposit by, 382. separate account of life funds, 383. transfer of business, 384. valuation of policies, 585. winding-up of, 381.

LIMITATIONS, STATUTE OF,

nuditor may set up, 227. directors, 179, 358. dividends, as affecting, 220. promotors, action against, harred by, 336, secretary may set up, 262.

" LIMITED."

adding the word, ou registration under Part VI1., s. 258., 515. part of limited company's name, is, 248. prohibition of use of, 252. use of, as part of n me in all bills, notes, cheques, &c., 248. when use of, dispensed with, 250, 465. wrongful use of word, s. 282., 521.

LIMITED COMPANY, security for costs, s. 278..520.

LIMITED LIABILITY, attempt to obtain, under deed of settlement, 6. lost if less than seven members, or two if a private company, 21, 58, 483. policy of legislature us to, 248.

statement of, in memoraudum, 32.

LIMITED PARTNERSHIP, 10.

LIQUIDATOR.

accounts, verifying, and audit, 492. appointment of, 400, 401, 419, 490, 498. by the Court, 499. banking account, 492. books, to keep, 492. earrying on business, 492. control of Board of Trade over, 493. creditors over, and committee of inspection, 493, 494 creditors, duty as to, 401. delegation to creditors of power to appoint, **499**. directions of Court, may apply for, **493**, **500**. dissolving prematurely, remedy of creditors, **418**. duties of, 401 *et seq.*, **491** *et seq.* examination by, **498**. meetings, may summon, 500. official receiver as provisional, 400, **490**. payments by, 402, **492**. payments by, 402, 492. powers of, in compulsory winding-up, 401, 491. in voluntary winding-up, 419 et seg., 498 et seq. provisional, appointment of, 400, 490. release of, 417, 492. removal of, 403, 490, 501. remuneration of, 490, 498. security by, 490. solicitor of agent, employment of by 402, 401. solicitor or agent, employment of, by, 402, 491. special bank account, directions of Board of Trade, 507, 508. style of, 490.

vacancy by death, resignatiou, &c., 499.

LIST,

contributories, of, 404, 404. directors of, to registrar, 181, 468. of members, annual, to be sent to registrar ±36.

LOST CERTIFICATES, shares, renewal of, 145.

LUNATIC,

transfer of shares by, 134. voidable contract to take shares, 115.

MAJORITY,

clauses in debentures, 321. or pression by, or fraud on minority of members, 50, 171 or fraud by, restrained, 171, 176, 242. powers of, 241. resolution requiring, 240. rights of, of members, 90, 241. *ultra cires*, cannot sanction act which is, 242.

or inconsistent with arts 167. MALICIOUS PROSECUTION. Y

company liable for, 74.

MANAGEMENT, 194, 200-205. [See BOARD MEETINGS.] private company, 376.

MANAGER,

MANAGING DIRECTOR, right of persons dealing with, to assume authority. 45.

MARRIED WOMAN, memorandum of association, may subscribe, 34. shares, may take, 113.

MATERIAL CONTRACTS, under (repealed) sect. 38 of Act of 1867, meaning of, 359.

MAXIMUM NUMBER, directors, of, 192. members of partnership or association, 451.

MEETING, STATUTORY, THE, 161, 465.

MEETINGS, adjournment of, 176. amual, 465. board, 194. chairman of general, 169. his declaration, when conclusive, 169, 239. his duties and powers, 169, 170. convening, 164, 466. Court, when it may convene, 165, 166, 465. creditors and contributories, 401, 491, 500.

MEETINGS-continued. debenture holders, of, 321. directors, of, 194, 205. [See BOARD MEETINGS.] extraordinary, 163. business transacted at, provided to be special, 166, convention c., requisition, 164, 165, minutes, forms of, 245-247. extraordinary resolution, 236. first general meeting (statutory), duty of company to hold, within what period, 161. eneral, to be held once a year, 163, 465. irregularity in convening, 164. ratification by board, 164. minutes of general, to be made and kept, 244, 467. notice of, 164, 165. construction, 166, 168. contingent, not a good notice unless regulations allow, 168. directors interested, 167. frome of, 166. members abroad, 232 misleading form of, 167 not construed strictly, 166. omission to give, 166. should specify date, place and time, 166. special business, 166. Sunday, whether dies non, 166. one member may constitute, 168, 169. ordinary general, 163. minutes, form of, 245-247. predit and ioss account to be submitted, 223. poll, 171. power of liquidators to call general, in voluntary winding-up, 500. privileged, proceedings at, are, 174. proceeding at, Table A, 529. proxies, 173. quorum at, 168 reporters at, 174. requisition, convening, on, 164, 466. resolutions at, 170, 236. [See RESOLUTION.] examples of, 196. show of hands, 171. special business at, 166. special resolution, 237. speeches at, defamatory, 174. statutory, 161, 465. votes at, 169 et seq. [See Vorr.] in defauit of regulations, 466. multiplying by transfer, 171. who may convene, 164. winding-up, in, of creditors and contributories, 401, 491, 500. direction of judge for. 491. first meetings of creditors and contributories, 401, 491. MEETINGS, GENERAL, 161 .t seq. [See MEETINGS.]

MEMBERS.

۲

١.,

acquisition of status by non-subscribers, 103. actions in name of company by, 242. agreement to become member, 101 et seq. [See AGREEMENT TO TAKE SHARES.] allotment, delay in, 112. allottees, 103 et seq. annual list, 123, 456. applicant mistaking compeny, 113. articles, how far binding on or between, 41-43. 34

MEMBERS-contanned. bankruptcy of, rights of trustee, 140. lankrupt member, registration in succession to him, 140 na to calls, 149, carrying on business where less than seven, 58, case r of membership, 116, conditional application for shares, 112, 113. company must keep number of, up to seven, 58, death of, call after, 148. registration in succession to, 102. definition of, 101, 456. entry of, in register, 110. estopped by, 143, on application of unauthorized agent, 114. examples of agreements to become, 113, 114. foreigner may be, 113. general meetings of, 161 ct seq. [See MERTINGS.] infant may be, 113. liablity of, 118. to pay for shares, 116, 484. majorlty, frand or oppression by, on minority, 50, 171, 242, powers of, 241, [See MAJORITY.] rights of, 91, 241. married woman may be, 113, minority of, action by, 50, 176, 242, modes of becoming member, 101, 102. name on register, effect of, 110. number seven, or for private company two, the minimum, 58, 451. past member, holder of forfelted shares, 153. liability of transferor as, 132. persons who have agreed to become, 101, 103. private company, in, compulsory retirement of, 376. register of, 124, 456, 458. [See REGISTER OF MEMBERS.] elosing, 125. colonial, 129, **458**. company must keep at office, 124. contents, 110. Inspection, 124. primà facie evidence, 125. publicity, effect, 125, 126. rectification, 127. regulations, how far binding on or between, 39, 40, resident abroad, notices to, 232. return of, company must make annually, 76, 456. subscribers of memorandum, 102. obligation to take and pay for shares, 116. repudiation for misrepresentation not allowable, 102. transfer, by, 130 et seq. trustee liable, 118. who are, 118. MEMBERSHIP, 101 et sey. [See MEMBERS.] cesser of, 116. ereation of, 101 et seq. MEMORANDUM OF ASSOCIATION, additional provisions inserted, 34. unalterable, when, 34. adoption of, by company formed with deed of settlement, 79. alteration of, 77, 86, 89, 91, 100, **452**, **453**, **460**, **461**. objects by special resolution, 77.

restriction on. 452.

MEMORANDUM OF ASSOCIATION - continued. ambiguity in, explainable by articles, 39. articles, relation of, to, 38. association clause, 34. bankrupt subscriber, 34. bills of exchange, power iu, to issue, 264. capital clause, 32, 33. company limited by shares, **452**. construction of, 69 et seq. contents of, 21, 26, 452. copies, company must supply, 455. deferred shares, provisions for, 85. dominant instrument, the, 38. forms of, 538, 641, 542. guarantee, of company limited by, 452. implied condition as to equality of shares, none, 82. "limitation of liability" clause, 32, 453. name of company, statement of, in, 26, 27. [See NAME OF COM-PANY.] notice of, people presumed to have, 44. objectsclause, operation of, 29. clauses commonly inserted, 64, 65, 66. extension of, 77. implied, 64, 72. incidental, 64, 72. indefinite, 72. specimen clauses, 64. whether articles can be used to interpret, 31. operation of, **454**. partly printed, partly written, may be, 21. persons dealing with company bound to read, 44. preference shareholders, rights of, when defined in, 81. preferential rights, silence as to, implied condition, 82. preparation of, 21, 26-36. protection of ontsiders dealing with company, 73. registered office, statement of, in, 28. [See REDISTERED OFFICE.] registration cf, 22, 454. requisites of, 26. sale of company's undertaking, provision for, in, 66. signature, 35, 452. witnessing, 35. stamp ou, 22, 452. subscriber of, liability to pay for the shares, 116. subscription of, 34, 452. by aliens, infants, &c., 34, 35. by less than seven, or as to private company two, persons, 35, 58. repudiation for misrepresentation, 102. who may join in, 34, 35. witnesses as to. 35. substituted for deed of settlement, 516. unlimited company, of, 381, 452. written or printed, may be, 21. MERCANTILE CUSTOM, negotiability of debentures to bearer, 302 et seq.

MINIMUM, members to preserve linued liability, 58, 483. number of directors, 182. number of members, 21, 451. 36

MINIMUM SUBSCRIPTION (public prospectus), 105. before commencement of business, 58, 473. irregular allotmeut, 107. waiver as to, 105, 473.

MINORITY,

members, of, action by, 50, 176, 242.

MINUTE BOOK.

elarge on, validity of, 322. directors', not liable to be inspected by members, 222. general meetings, 244, 457, 468.

MINUTES,

altered after signature, must not be, 247. board meetings, of, 196, 244, 467. contradicted by other evidence, may be, 214. directors to keep, 215. entry of resolution for call on, 147. evidence, when, **467**, **468**. forms of, 245-247. board meeting, 247. extraordinary general meeting, 246. ordinary general meeting, 245. general meetings, of, 244, 467. 468. mode of taking, 245, 256. presumption of regularity, 244, 468. reading and confirming, 244. signature of chairman to, satisfies Statute of Frauds, 245. signed by chairman prima facie evidence, 245.

MISAPPLICATION, company's funds, of, by directors, 205, 206.

MISFEASANCE AND BREACH OF TRUST, 205, 505 allotment of shares to infant, 205. anditor, by, 227. bribe taken by director, 185, 192, 193, 206. directors, by, 185, 192, 193, 206, 406 *ct seq.* liebility for, 205. payment of dividends out of eapital, 215. proceedings for, 406. qualification received from vendor or promoter, 206. rigging market, sums paid for, 206. sale by director to company without disclosure, 206. secret profits, 193, 206, 332. set-off for, none, 206.

MISREPRESENTATION,

debentures, delay in repudiating, 362. prospectus, in, 344 et seq., 352 et seq. [See PROSPECTUS.] instances of, 353 et seq. rescission, 352.

MORTGAGES AND CHARGES,

bill of sale, in nature of, required registration, 277, 281. borrowing, company's power to seeure loan by, 65, 269. company to keep copies, **479**. constructive notice of, 276. ereated for purposes of registration, 280. debentures or debenture stock, to seeure, registration required, 277. entry of satisfaction, 478. floating charge requires registration, 277. 37

 MORTGAGES AND CHARGES—continued. foreign property, registration, 273, 278. irregularly executed, 45. register of, duty of company to keep, 479. registration at Somerset House, 277, 476. open to inspection, 280. reserve capital, 271. shares, of, hy blank transfer, 133, 134. specific, may be created notwitbstanding floating charge, 311. ultra virze. cases of, 275. uncalled capital, registration required, 270.
 MORTMAIN. company power to hold notwithstanding, 454, 455.
 MUNITION WORK, power to carry on, 64.
 MUTUAL INSURANCE COMPANIES,

mUTUAL INSURANCE CONFAMILS, registering as unlimited, 381. unregistered, held to be illegal associations, 387.

NAME OF COMPANY, 21, 26, 248, 452. ehange of, 250, 452, 453. special resolution for, 250. eontracts in name of, 199. dispensing with word "limited," 250. examples of names, 27, 28. injunction against company using misleading, 249. "limited" must be last word (if company limited), 452. painted or affixed outside office, must be, 248, 465. policy of legislature in requiring, 248. principles of Court in restraining use of deceptive, 249. publication of, 248, 465. restraining use of deceptive, 27, 249. "royal" or "imperial" not to be used witbout the conset t of Home Office, 26.
similarity in companies', 27, 249.
statement of, in memorandum of association, 26, 27.

NEGLIGENCE,

company liable for, 200. directors, of, 200 et seq., **520**. liquidator, of, 421. secretary, of, 262. what is, 202-204.

NEGOTIABILITY, debentures to bearer, of, 302 et seq. proof of, 306.

NEGOTIABLE INSTRUMENTS, name of company with "limited" on, 248. objects clause should empower company to issue, 65. power of company to issue, 264.

NEW ISSUES, restrictions on, during war, 636.

NOMINAL CAPITAL, 32, 33, 81.

NON-CUMULATIVE PREFERENCE SHARES, St.

NON-DISCLOSURE, 192, 206, 344, 351, 359-361.

NOTICE, allotment, of, 109. authentication of, 233, 483. board meeting, of, 194. call, of, time for, 147. company, by, 232, 268, **483**. form of, 166, 268. how to be signed and given, 268. company, to, 234, **483**. verbal, to, 234. condition for service of, on registered debenture holder, 297. conditional, 168. construction of, 166, 168. constructive notice, 165, 234. articles, of, 44 et seq. directors' meeting, 194. equities, of, when company is bound by, 157 et seq. as affecting registered holder of debentures, 291. executors of deceased members, to. 233. continuent of accord infinitely, in 2007, and 2007, a omission to give to member, 166. imperfect or misleading, 167, 168. meeting, of. [See MEETING.] of memorandum and articles, people presumed to have, 44. of situation of office, 465. on members, 232. one, for two successive meetings, 168. preventing estoppel, 145. registrar, to, of situation of registered office, 243. requisition, meeting on, 165. resolution for voluntary winding-up, of, 498. service of, on members, &c., 232, service of, on company, 234, 483, shareholders resident abroad, 232. special resolution, of, 467. Table A, 534. two successive meetings, of, by one, 168. verbal, 234.

NUISANCE, company, by, 74.

NUMBER OF MEMBERS, minimum to preserve limited liability, 58. partnership, of, limited to twenty, 451.

NUMBERING SHARES, provisions of Act, 456.

OBJECTS OF COMPANY, advantages of considerable detail, 60, 61, 64. alteration, 77-79, 453. petition to Court, 79. clause, framing, 64-66.

OBJECTS OF COMPANY-continued. construction of objects elause, 69. extension of, 77-79, 453. general words, effect of, 72. legality of, 60-72. memorandum of association, statement of, in, 29, 60. [See MEMO-BANDUM OF ASSOCIATION.] powers, implied by, 64, 72. principal and ancillary, 71. whether articles oan be used to interpret, 31.

OFFICE OF COMPANY, 243, 464, 465. [See REDISTERED OFFICE.]

OFFICERS OF COMPANY,

appointment and dismissal, 262. auditor, 225. [See DIBECTORS.] directors, 177. manager, 255. proceedings against, for misfeasance, 205, 406-408. [See DIREC-TORS.] secretary, 260.

OFFICIAL RECEIVER, 489.

accounting by, 492, 494. appointment of, 489. liquidator to give information to, 492. petition to wind up, may present, 395, 488. report of, in winding-up, 400, 489, 490.

OMNIA RITE ACTA, presumption as to, 45, 245. right of persons dealing with a company to assume, *Ibid*. seal presumed properly affixed, 257, 258.

ONE MAN COMPANY, validity of, 56, 367.

OPTION,

to promoter, subscribe for shares, 335. underwriters, to, 342.

ORAL CONTRACTS,

company, by, 256. for issue of paid-up or partly paid-up shares, as to filing, 119.

ORDER AND DISPOSITION, inapplicable to shares, 140.

ORDERS,

appeals from and re-hearing in winding-up, 497, 498. enforcement of, 497. in Scotland or Ireland, 497. wind up, to, 399.

ORDINARY MEETINGS OF SHAREHOLDERS, 163. [See MEET-INGS.]

ORDINARY SF

33. [See SHARES.] 40

OUTSIDER, protection of, dealing bond fide, 45, 73, 245.

OVERDRAFTS, on bank, a borrowing, 275.

PAID-UP SHARES, consideration, whether Conrt will inquire into, 117 contract as to filing, 119 et seq., 474. relief mder Act of 1898 as to non-filing contract, 121. repeal of sect, 25 of Act of 1867..120. return as to allotment of, 118, 474.

PALATINE COURTS, winding-np jurisdiction, 389.

PARI PASSU clause, debenture, in, 259. ereditors, payment of, in winding-up, 410.

PARLIAMENT, power to apply to, for Act, 66.

PART PERFORMANCE, Statute of Frands, 256.

PARTNERSHIP, company contrasted with, 1, 35, 56. exceeding twenty members, prohibition of, **451**. ordinary, distinguished from trading company, 1, 2. person in law, not a, 1.

PAST MEMBER, 404, 484. forfeited shares, ex-holder of, 153. [See MEMDER.] liability of transferor as, 138.

PAUPER,

transfer to, 130.

PAYMENT,

ealls, in advance of, 149. for shares, estoppel by certificate, 143. otherwise than in eash, 118, 119. in and out of bank by liquidator, **492**, **507**, **508**.

PENALTIES,

allotment, irregular, 107, 473. not filing returns, 473. not returning allotment money, 473. annual returns, default in making, 119, 457. application of penaltics, 520. books, for not producing, to inspectors, 481. carrying on business with less than seven members, 58, 483. contract and return as to fully and partly paid shares, for not filing, 119, 474. directors, 208. dissolution of company, neglecting to report, 495. enforcement of, 520. falsification of books, 505. finsl meeting, neglecting to report holding of, 501. increase of capital, for not giving notice of, 461.

PENALTIES-continued.

Life Assurance Acts, for non-compliance with requirements, 557.

memorandum, alterations in, for neglecting to notify to registrar, 453, 481

memorandum and articles, refusing to supply, 455. mortgages and charges, neglect to comply with the requirements of Act, 473, 479.

name.

neglect ln having it engraved on seal, 465. not publishing it, 465. omitting it from documents, 465.

perjury, 505.

prospectus not filed, 470. qualification, director acting without, 468.

reduction of capital, not embodying a copy of the registered minute in memoraudum, 463.

register of directors or managers, neglect in keeping and cending copy to registrar, 468. register of members,

not keeping, 457.

refusing inspection or copies of register, 457.

registered office, for earrying on business without, 465. share warrants, falsely personating owner, 459. forgery or alteration of, 459. special resolution, ueglect to register, 467.

neglect in embodying copy or annexing to articles, 467. statement of assets and liabilities, neglect to publish (banking, insurance, &c. companies), 481.

statutory meeting, neglect to hold, 466. neglecting to file report for, 466.

neglecting to the report for, **300**. neglecting to make statement of company's affairs to, **466**. subdivision of shares, neglect to embody or annex to memorandum, particulars of, **461**. use word "limited" as last word of name, neglecting to, 248, **465**.

PENSIONS AND GRATUITIES, 67, 433.

PERPETUAL DEBENTURES AND DEBENTURE STOCK, 313.

PERSON, 55.

PERSONATING

falsely, as owner of share, &c., 459.

PETITION,

company, by, form of, 268. reduction of capital, sanction of Court to, for, 98, 462.

PETITION FOR WINDING-UP, 391 et seq., 488.

advertisement of, 396. contents of, 395. contributory, by, 394. creditor, by, 392. debenture holders, by, 328. discretion of Court at hearing, 398, **168**. disputed debt, 391. evidence in support, 397. form of, 395. hearing of, 398. Official Receiver may present, in voluntary winding-up, 395, 488. presentation of, 396. service of, 397. substratum gone, 394.

PETITION FOR WINDING-UP-continued title of, 395. verification of, 397. wishes of oreditors, 398, 489.

PLACE OF PAYMENT, debenture, of, in alternative, 297.

POLICIES,

life assurance company, of, proof for, 384. valuation of, 585.

POLL,

common law right, a, 172. demand for, 172. general meetings, 172. how taken, 171, 172, 173. nullifies show of hands, 172. right to vote determined by register, 1' special resolution, at, 237. time of taking, "then and there." 17. vote by, 172.

POST.

notice of allotment by, 109. of notices by, 234.

POWERS OF ATTORNEY, 435.

POWERS OF COMPANY, 60. [See Objects.] action, to bring, 64. amalgamation, 68. articles, to alter, 75. attorney, to execute deeds abroad, to appoint, 75. bills of exchange, 264. borrowing powers, 269 et seq. [See BORROWING POWERS.] call, making, 147 et seq. capital, to reduce, 75. colonial register, to keep, 75, 458. consolidate shares, to, 75, 460, 461. contract, 253. without seal, 75. extension of 77 et seq. "incidental or conducive," construction of, 72. increase capital, to, 86. intra virus acts and expenditure, examples of, 66 et seq. lands, to hold, 75. lend money, to, 65. munition work, 64. name, to change, 75. pension, to pay to employé, 64. promotion of other companies, 65. protection of bond fide outsider, 73. reduce capital, to, 92 et seq. [See REDUCTION OF CAPITAL.] reprinter of members, to keep, 75. sale of undertaking, 66. seal for foreign purposes, 75. shares in other company, taking, 65, 67. specimen clauses for insertion in memorandum, 64-66. statutory powers independent of memorandum, 75. anddivide shares, to, 75, 90. uncalled capital, to mortgage, 270.

POWERS OF DIRECTORS, 189. [See Directors.] Table A, 530. P. 43

PREFERENCE, FRAUDULENT, 415.

PREFERENCE SHARES, 81, 82. aiteration of articica to create, 46 et seq. alteration of rights, 90, 91, 594. capitai, preference as to, 85. cumulative and non-cumulative dividends, 84. definition of rights in memorandum, 34, 88. dlvidends on, 215. increase of capital on, 87, 88. lssue, though memorandum slient, 87. power in articles to issue, 82, 83. power to take away preference by alteration of articles, 91. rights in winding-up, 85. rights of holders to receive and inspect balance sheets and reports, 483. when shares in original capital cau be issued as, 83.

PREFERENTIAL CREDITORS, receiver must pay, 327. 480. winding-up, in, 410, 502.

PREFERENTIAL RIGHTS, aiteration of, 90, 91.

PRE-INCORPORATION CONTRACTS, 255.

PRELIMINARIES, formation of company, to, 21.

PRELIMINARY EXPENSES, articles providing for payment of, 335. power of company to pay, 64. statement of, in prospectus, 348.

PREPAYMENT OF SHARES, 149. interest on moncys paid for, 149, 150.

PRESENT

to directors from promoter, 206.

PRESUMPTION OF REGULARITY in internal matters, 44, 45.

PRIORITIES,

claims ranking before floating charge in windiug-up, 327, 480. dolenture holders, of, 319. preference shares, of, 33. [See PREFERENCE SHARES.] preferential creditors. of, 410, 502. transfer of shares unregistered, where, 131.

PRIVATE COMPANY, 366 et seq., 484. advantages of, 367, 368. balance sheet, not to file, 368. certificate to be sent with annual summary, 369. compulsory retirement of objectionable shareholder, 376. conversion into, objects of, 372, 373. directors of, 376.

employees uot counted in maximum number, 366. exemptions, 368. formation and constitution, 374.

governing or permanent director, 376.

instauces of conversion into, 370. judicial references, 367.

misapplication of funds, 377.

number of members allowable, 300.

PRIVATE COMPANY—continued, one man company, validity of, 367. public not appealed to for subscriptions, 386. shares, transfer of, 375. statutory meeting and report, 368, 465. subject to general law, 377. subscription of memorandum, two sufficient, 35. underwriting by, 341, 342, 368. what is, 366, 484.

PRIVATE EXAMINATION in winding-up, 407, 496.

PRIVILEGE,

proceedings at meetings, for, 174. speeches at general meetings, for, 174.

PROBATE.

production on transmission of shares, 139.

PROCEEDINGS

in Court and Chambers (winding-np). See Appendix, Rules.

PROCEEDINGS OF DIRECTORS, 194.

PROFITS,

account of, and loss, keeping, 223. accumulated, payment off of eapital out of, 93, 460. agreement for remuneration by, 221. ascertainment of, for dividend, 215. circulating eapital, making good, 216. dividends payable only out of, 215. interest ou moneys prepaid on shares not limited to, 150. laxity in ascertainment, eases poluting to, 217. secret, by director, 193.

PROMISSORY NOTES,

company's power to accept, 264. [See BILL OF EXCHANGE.] form of, 265. "limited" must be inserted, 265. power to make, in memorandum of association, 264. when binding, **469**.

PROMOTERS,

acts constituting promotion, 331. articles providing for payment to, effect of, 41. bankruptcy, 335. disclosure by, to a nominee board, ineffective, 333. fiduciary relation of, 332. misfeasance, 505. preliminary expenses, 335. proceedings against, in winding-up, 414, 505. prospectus, liability in respect of, 336. payments to be specified, 548, 350. public examination, in winding-up, 408, 496. remuneration of, 334. shares, option to subscribe, 335. sale by, to company, 332-334. secret profit by, 328, 332. statute of limitations, 335.

44 (2)

PROOF, admission of, 412. affidavit in verification of, 412. conts of, 412. creditors, by, in winding-up, 409, 412. debenture hoiders, by, 329.

PROPERTY,

disposition of, pending winding-up, 207. floating charge on, 308 et seq. power in memorandum to acquire, 65.

PROPOSAL,

in writing, accepted orally may be a sufficient contract, 256.

PROSECUTION

in winding-up, 415, 505. of legal offences, 520.

PROSPECTUS,

abridged prospectus, disclosure required in, 346, 360. advertisement in newspaper of, 346, 349. ambiguous statements in, 355. belief, statements as to, in, 355. candour, duty of directors and promoters, 350. constructive notice of documents offered for inspection, 356. contracts (material) to be specified, 348, 359, 470. variation, 471. debentures or debenture stock, requirements, 362, 471. deceit, action for, on, 358. definition in Act of 1908...347, **522**. directors' interests to be disclosed, 348. Directors' Liability Act, 1867...357. directors' liability for non-disclosure in, 357, 471, 472. contribution, 358, 472. disciosure in, 347, 470. expectation, statements as to, in, 385. filing, 343. form of, 344. "golden rule," Kindersley, V.-C., 345. "knowingly issuing," 360. "lessor" included in term "vendor," 471. liability on non-compliance, 349, 471. memorandum of association to be stated, 347. minimum subscription, particulars of, 347. misrepresentations, giving right to rescind or damages, 352 et seq intention, 355. must be of fact, 353. not cured by reference to documents, 356. statement as to future, 355. naming directors, and qualification, 347. non-diselosure in, 345. opinion, statements as to, 355. original subscriber primd facie to be only addressed, 356. payments for property or to promoter to be stated, 348. preliminary expenses to be stated, 348. qualification of directors to be stated, 347. reference to documents, 356. remedies for breach, 349. remuneration of directors to be stated, 347. reports referred to in, 355. repudiation when wing up a bar, 353. rejudiation when wight by up a bar, 353. whether n-compliance with s. 51 gives a right to, 356. rescission of contract, 352. statement in lieu of, 363 536.

PROSPECTI'S-continued.

to whom to be deemed addressed, 356. vendors, definition of, 471. particulars to be stated, 317. voting rights to be stated where classes of shares, 348. waiver clause In, 349, 361,

PROTECTION OF OUTSIDERS, dealing with company, 73.

PROVIDENT SOCIETY not a company, 8. special statement annually, 480.

PROVISIONAL CONTRACTS, how far offective, 254.

PROVISIONAL LIQUIDATOR, appointment of, 400, 490. official receiver becomes, on winding-up, 400, 490.

PROXIES, 172.

blank, In, 174. form of, 172, 173. lodging, before meeting, 174. no common law right to vote by, 173. show of hands, not usable on, 172. stamp on, 173.

PUBLIC, 341.

PUBLIC EXAMINATION, holding of, in winding-up, 408.

QUALIFICATION. "cease to hold," meaning, 184. directors, of, 182-185, 468. apportionment of, 186. fine for acting without, 182. first, 180. obligation to take shares, 184. present from promoter, 185. "in his own right," meaning, 184. subscribing memorandum for, 181. when possession a condition precedent to valid election, 184.

QUORUM,

articles authorizing directors to fix, presumption, 45. board meeting, 195. directors, of, 195. general meeting, at, 168.

RAILWAYS CLAUSES ACT, 1845. .4.

RATES, priority in payment, 410, 502.

RATIFICATION, company, by, 75. contract on behalf of company, 253. directors, by, of irregular proceedings, 195. shareholder, by, of voidable contract, 352, 353.

RECEIVER. appointed by debenture holder, 296. clause in debenture as to, 295. online in depending as to, 200. appointed by the Court, 324. borrowing by, 327. Courts (Emergency Powers) Act, 325, 637. duties, 326. fixtures, right to remove, 326, 327. jeopardy, 324, 325. leave required for proceedings after, 320. Hability of 326. liability of, 320. officer of the Court, 326. power to disregard contracts, 326. preferential creditors, must pay, 327. proceedings by, 326. rent, iiability for, 326. right to indemnity, 326. discharge of servants, 327. filing accounts, 478. manager, and, appointment, 325. property abroad, 325. registration of appointment, 327, 478. security, 325. where no board of company, Court may appoint, 163. RECONSTRUCTION, 423 et seq. arrangement, 430. dissentients must be provided for, 14. object of, 423. sale to new company, under power in memoraudum, 426 et seq. to a foreign company, 424. under sect. 192 (substituted for sect. 161 of Act of 1862), 494, 500. underwriting on, 341. RECONVERSION, stock into shares, 460. RECTIFICATION OF REGISTER, 127, 281, 457, 459, 478. [See REGISTER, rectification.] REDEMPTION, debenture, of, 293, 294.

- an

REDUCTION OF CAPITAL, 91 et seq., 461 et seq. all-round reduction, 95. "and reduced," use of, 99, 462. as between classes, 95-97. certificate of registrar, 99. oreditors not entitled to object, when, 462. rights of, on, 98, 462. minute as to reduction, 90, 462. modes of reduction, 92 et seq., 461, 463. accumulated profits, out of, 96, 460. any mode may be sanctioned, 90, 98. oancelling unissued or surrendered shares, 93, 95, 461. ospital not represented by available assets, 95, 462. forfeiture of shares, 93, 94. iost capitai, 95, 462. payment off, on condition of return, 93, 460. reduction of linbility on shares, 94, 461. surrender of shares, by, 93.

 REDFCTION OF CAPITAL continued order confirming, 99, 462.
 pair passe the primary rule, 95.
 petition for sametion of Court to, 98, 462
 preference shares, position of, 95, 96.
 resolution t ~, 92.
 rules, 568 et eq.
 sanction of Court, proceedings to obtain, 98.
 where not required, 93, 91.
 special resolution for, 98.
 REGISTER
 of debentines and debentine stock, 200.
 right to inspect, 479.

right to inspect, **479**. of nembers, 124, **456**. closing, 125, **457**. colouial, 129, **466**. contents, 124. copies of, **467**. entry of member in, 110 *et seq.* entry of member in, 110 *et seq.* entry of name on, on application of unauthorized agent. 115 without agreement or assent, 115 inspection, 124, **467**. remedy where right refused, **467**. name on, effect of, 110, 115. penalty for not keeping, **456**. *primd focus* evidence, to be, 125, **458**. rectification of, 127, **457**. secretary no power of, 261. where contract not registered under sect 25 of A+t of 1867 (repealed), 120. trusts not to be centered, 157, **457**. of mortgages and charges, 276 *et seq.*

REGISTERED CONTRACT. [See FILKE CONTRACT.]

REGISTERED DEBENTURE,

acceleration of payment in certain events, 294. charge in, 287 et seq. condition as to service of notlees on holder, 290. conditions indorsed on, 248 et seq. consideration, statement of, 285. date of payment, 285. equitles, exclusion of, 292, 293. equities, notice of, 290. form of, 285 et seq. interest on, 286. joint holders, 292. notice by company to pay off, 293. pari passu clause, 258. reference to indorsed conditions, 287. registered holder of, alone recognized, 291. register to be kept, 290. sealing, 288. transfer of, 291, 292. "free from equities," 292. to be in writing, 291. uncalled capital, charge on, 287.

REGISTERED OFFICE, 243. carrying on business withou', involves penalty, 243. change of, 243. inspection of register of members at, 243.

INDEX. REGISTERED OFFICE—continued. name of company to be kept paint d or affixed at, 243. notice of situation of, to be given registrar, 465. practice as to, 243. register of mortgages to be kept at 24. service of notices at, 243. situation of, 243. statement as to, in memorandum, 21. specified in memorandum, to be, 28. **REGISTER OF MEMBERS**, 124. book of, required to be kept at office of company, 124, 456. closing of, 125, 457. colonial, power of company to keep, 129. contents of, 124. copies frem, **457**. delay in obtaining removal of name, 127. effect of name remaining ou, 126. evidence of right to vote, 170. evidence, to what extent, 125. holding out doctrine applicable to, 126. inspection of, 124. mere entry does not constitute membership, 125, 127. not conclusive, 125, 127. notice of trust not to be entered on, 157, 457. penalty for not keeping, 456. primd facie evidence, 125, 458. qualified entry, 112. rectification of, 128, 457. transfer, entry necessary to complete, 131. wrongful removal of name, 112. REGISTER OF MORIGAGES AND CHARGES, 276, 476, 479. book of, required to be kept at office of company, 243. certificate by registrar, 279, 280. duty of company to keep, 276, 476, 479. iuspection of copies of, 280, 479. loans guaranteed by Government, exemption of, 281. penalties for default, 478. rectification, 478. satisfaction, entry of, 478. **REGISTRAR OF COMPANIES, 522.** duty as to registration of companies, 22. name of new company, jurisdiction as to, 249, 250. notice of imprease of capital to be given to, 88. REGISTRATION, bills of sale, 281. commission, allowance or discount-particulars, 279. companies, of, first Registration Act, 7, 8. conclusiveness of certificate of registrar, 279. debentures and debenture stock, of, 277 et seq. alternative mode, 278, 279. existing companies, of, under Parts VI. and VII. of Act, **512**, **513**, **514**. fees on, 22, 534. foreign property, provisions as to, 278. mortgages and charges, of. [See REGISTER OF MORTGAGES.] office, 511. proceedings for, 21 et seq. rectification of register, 281. similarity in names, 27, 249. substituted security, 281.

REGISTRATION-continued.

transfer «f shares, of, 130, 457. unlimited company as limited, 463. vendor of shares not bound to procure, 135.

REGISTRATION OF MEMORANDUM AND ARTICLES, effect of, 39, 454.

REGULARITY,

presumption of, from minutes, 244. Statute of Frauds, 245.

REGULATIONS OF COMPANY, 21, 37 et seq. [See Articles or Association.]

RE-ISSUE, debentures or debenture stock, of, 288, 479.

RELEASE OF LIQUIDATOR, 417, 492.

RELEASES, form of, 267.

RELIEF AGAINST FORFEITURE, 152.

REMEDIES,

debenture holders, of, 323. debenture stock-holder, of, 323.

REMOVAL, directors, of, 198. liquidator, of, 403, 490, 501.

REMUNERATION.

directors, of, 185. action for, when it lies, 185. apportionment, 186, 187. not only payable out of profits, 185. taking in excess of what authorized, misfeasance, 186 promoter, 334. renouncing future, 186. secretary, 260.

RENT,

assignment of, as against debenture holders, 311. distress for, in winding-up, 411, 413. agaiust debenture holders, 310.

RE-ORGANISATION,

share capital, of, 100, 461.

REPEALS BY NEW ACT, 522. how far old provisions kept alive, 16, 523. list of Acts repealed, 547, 548.

REPORT.

proceedings at meeting, of, privileged where sent to shareholder, 174. prospectus, referred to in, 355. statutory meeting before, **465**.

REPRESENTATIVE

of company at meeting of another company, 487.

REPUDIATION, delay in, for misrepresentation, 352. sbares, of, prompt, must be, 127.

REQUISITION, convening meeting on, 164, 165, 466.

RE-REGISTRATION OF COMPANIES, 385, 513.

RESCISSION, cesser of membership by, 116. contract for shares, 352. losing right, by delay, 127, 352. voting, 352. winding-up, 353. misrepresentation in prospectus, 352. non-disclosure, 345 et seq. prompt repudiation necessary, 353. contract for debentures, 352.

RESERVE CAPITAL, mortgaging, 270, 271. what is, 464.

RESERVE DIVIDENDS, capitalizing, 221.

RESERVE FUND, TABLE A, 533.

RESIGNATION, directors, of, 188.

RESOLUTION, amendments, 175. declaration of chairman, 239. directors, of, 196. forms of, 196. extraordinary, 236, 467. general meetings, at, 171. how passed, 171. inconsistent with articles, 242. requiring special majority, 240. special, 237. [See SPECIAL RESOLUTION.]

RETIREMENT,

compulsory, of objectionable shareholder, in private company, 376.

RETROSPECTIVE OPERATION OF NEW ACT, control, 15, 16.

RETURN OF ALLOTMENTS, 118, 474.

RETURN OF MEMBERS (ANNUAL). company must make, annually, 123, 456, 457.

RETURNS,

false, liability for, 521. officers of Courts, by, to Board of Trade, 509. to registrar, annual, of members, 123, 456. Treasury, by, of receipts and expenditure under Companies Act, 508.

RIGGING MARKET, sums paid for, 206.

ROTATION, directors, of, 198.

Ő

ROYAL CHARTERED COMPANIES, 2, 3. powers of, 3.

RULE IN FOSS v. HARBOTTLE, 242.

RULE IN HOPKINSON r. ROLT. operation as regards lien on shares, 157.

RULE IN ROYAL BRITISH BANK v. TURQUAND, 45.

RULE MAKING POWER, Companies (Consolidation) Act, 1908, under, 509.

RULES, REDUCTION OF CAPITAL, 588.

RULES, WINDING-UP, 597.

SALE,

company, to, by member, 57. director, by, to company, 192. without disclosure, 206. liquidator, by, 402, 419, 420. new company, to, of undertaking, 425. of shares to enforce lien, 159. promoter, by, to company, 332, 334. undertaking, of, 425.

SANCTION OF COURT, reduction of capital, to proceedings to obtain, 94-96, 461-463.

SATISFACTION,

entry on register of mortgages, 478.

SCIENCE,

association formed to promote, 250.

SCOTLAND, bearer debentures, law of, 480. examination of persons in, 507. winding-up, jurisdiction, 487.

SEAL, affixing, formalities for, 257. not necessarily contract, 257, 469. certificate not a deed, 259. common, the, 257. conveyances, demises, surrenders by company, when necessary to, 257. directors authorized to affix, 257. foreign countries, for, 259, 469. name to be engraved on, 465. power of company to contract without, 75, 257. to have common, 75, 454. presumption that, duly affixed, 257. sealing deed by corporation imports delivery, 258. Table A, 531. transfer of shares, when under, 134. use of, 257. what transactious required for, 257. who may use, 257.

SEALING registered debenture, 288. SECLET PROFIT. director, by, 193. promoter, by, 332. SECRET RESERVES, raditors, how to deal with, 231. SECRETARY, appointment of, 260. "certify" transfer, may, 261. commission improperly received by, 261. dismissal, 262. duties of, 260. estoppel against company, may create, 261 false declarations, 261. falsification of books, liability, 251. forgery of certificate, 261 fraudulent conspiracy, 262. letters by, primá facie written uuder authority, 245. liability of, 261. misfeasance, liability for, 261. negligence of, 261. no authority to make representations as to company's affairs, 260. powers and remuneration, 260. sbare certificate, improperly issuing, 261. Statute of Limitations, may set up, 262. strike name off register, no power to, 261. winding-up, whether equivalent to dismissal, 263.

SECURITY,

costs of limited oompany, **520**. debenture holder's right to realize, 323 et seq. floating charge by way of, 289 et seq. implied power of company to give, 270. liquidator, by, **490**. special manager, by, 494.

SERVICE,

and authentication of do :uments, 483. notices on registered debenture bolder, 297. notices, &c. of, on companies, 234, 483. petition to wind up, of, 397. substituted, of notice on company where peregistered office, 243, 597.

SET-OFF.

contributory, against, 406. by, 405. debenture holder, by, 289, 329. director no right of, in case of misfeasance, 185, 206. in winding-up. 405. in winding-up, 405. shareholder whilst company a going concern, 149.

SHARE CAPITAL. [See CAPITAL.]

SHARE CERTIFICATES, 142, 456. [See CERTIFICATES.]

SHARE QUALIFICATION, directors, of, 182-185. [See DIRECTORS.]

SHARE WARRANTS TO BEARER, 140, 459. power of company to issue, 459. Table A, 527.

INDEX.

SHAREHOLDERS, 101-103, 110, 113-116. [See MEMBERS.] SHARES. acceptance of application, how notified, 103, 113 et seq. agent applying for, 103, 104. agreement to take, how constituted, 103, 115. [See AGREEMENT 10 TAKE SHARES.] allotment, delay in, 112. irregular board, by, 104. nature of, 104. restrictions on, 105, 473. allotments, returns of, 118. application for, 103. conditional, 112. by agent, 103, 109. blank transfers of, 133. calls on, 146. [See CALLS.] cancellation of, not agreed to be taken, 93, 95, 461. [See CANCEL-LATION OF SHARES. certificates of, nature and form of, 142, 456. [See CERTIFICATE OF SHARES. mortgage by deposit of, 145. charging orders, 160. olasses of, 33, 81 et seq. consolidation of, 89. conversion of, into stock, 89. Table A, 527. deferred, 33, 85. disclaimer of, by trustee of bankrupt member, 140. discount, canuot be issued at, 29, 117, 416. dividends on. [Seo DIVIDETUS.] equities, notice, 154 et seq. exchange of, when invalid as reduction of capital, 94. forfeiture of, 151. [See FORFEITURE.] Table A, 526. founders', 33, 85. increase of capital created ou, 86. issue of, at discount by limited company, ultra vires, 29, 117. under registered contract, 118 et seq. liability on, 116, 117. lien on, 154. [See LIEN.] minimum subscription, 105. new shares, creation of, 87. numbers of, registered contract need not give, 121. paid-up, contracts as to filing, 118 et seq. payment for, 116, 146, 490. estoppel, as to, 144. in cash, 117, 122. personal estate, 456. preference, 81 et seq. [See PREFERENCE SHARES.] prepayment of, 149. pro-preferenco shares, 88. private company, transfer usually fettered, 375. purchase by company of its own, *ultra vires*, 68. qualification of directors, 182. sale of, 130, 132. subdivision of, 90, 460. subdivision of, 90, 460. surrender of, when a reduction of capital, 93, 94. title to, estoppel by certificate, 143. transfer and transmission of, 130, 457. [See TRANSFER OF SHARKS aud TRANSMISSION OF SHARES.] private company, in. 375, 376. Table A, 525.

SHARES-continued. voidable contract, 107, 108, 110, 112 et ser., 352. warrants to bearor, 140. Table A, 527. who liable to pay, 118. who may take, 113.

SHARING PROFITS. power in memorandum, 65.

SHOW OF HANDS, general meetings, 171. nullified by demand of poll, 172. special resolution, at. 237, 239. vote by, 171.

SIGNATURES

of officers, judicial notice to be taken of, in winding-up, 506. of subscribers of memorandum, 34-36. of articles, 37.

SIMILARITY, names of company, in, 26, 249.

SITUATION OF REGISTERED OFFICE, statement as to, in memorandum, 21, 28, 243.

SOLICITOR,

employment of, by liquidator, 402, 491. named in articles, no right of actiou against company, 42. statutory declaration by, to obtain certificate of incorporation, 53.

"SPECIAL BUSINESS," 166. notice convening extraordinary meeting must specify, 166. what is, 166.

SPECIAL MANAGER,

account by, 494. appointment of, in winding-up, 494. security by, 494.

SPECIAL RESOLUTION, 237, 467.

copy of, to be sent to members and registrar, 467. declaration of chairman, 239. definition of, 237, 467. interval between meetings, 237, 238. moetings for, 237. notice of, 237. one notice for two meetings, 168. proceedings by, 238. registration, 467. requirements for passing of, 238. what may be done by, 238.

SPECIFIC PERFORMANCE, agreement to take shares, of, 115. debentures or debenture stock, of agreement for, 321, **480**.

STAMP, articles of association, on, 22, 454. certificate of shares or stock, not required for, 145. duty on company's capital, 22, 534. guarautee, company limited by, 380, 535.

STAMP-continued.

memorandum of association, ou, 22, 452. proxy, on, 173. surrender or discharge of debenture, 317. transfer of debenture, ou, 317. transfer of shares, 135.

STAMP ACT, 1891, AND FINANCE ACT, 1899..22.

STANNARIES

jurisdiction, s. 250., 389, 521.

STATEMENT to be filed by Insurance, Peposit, Provident and Benefit Society, 480

STATEMENT IN LIEU OF PROSPECTUS, 363. contracts, variation, 364. form of, 536. requirements of Act, 363, 471.

STATEMENT IN PRESCRIBED FORM, by private company, ou underwriting, 368.

STATEMENT OF AFFAIRS, winding-up, in, 400, 489.

STATUS, membership, of, 101 et seq., 110, 111.

STATUTE OF FRAUDS, 256. minutes, whether a memorandum within, 256. part performance, 256.

STATUTE OF LIMITATIONS, auditor may set up, 227. directors, 179. dividends, as affecting, 220.

STATUTORY COMPANIES, 4, 62.

STATUTORY DECLARATION, Act complied with, 24.

SFATUTORY DUTIES, 75, 76.

STATUTORY MEETING, THE, 161, 465. as to private company, 162, 368.

STATUTORY REPORT, 465. to be forwarded to members seven days before statutory meeting, 465.

STAY,

voluntary winding-up, in, 421. winding-up by Court, in, 413, 488, 516. winding-up, of, 417, 421.

STOCK.

certificates of, **456**. conversion of shares into, 89, **460**, **461**. notice on, **461**. Table A, **527**. reconversion, 89, **460**.

STOCK EXCHANGE, certificated transfer, good delivery by rules of, 138. SUBDIVISION OF SHARES, 89, 460, 461. power of company, 75. SUBROGATION, doctrine of, in case of ultra vires borrowed moneys, 275. "SUBSCRIBED," statement in prospectus that share capital, 354. SUBSCRIBERS OF MEMORANDUM, 34, 102, 113, agent, by haud of, 35. allen, 34. bankrupt, 34. cash, must pay for shares in, 117. first directors, may appoint, when, 181. less than seven, or two (private companies), effect on company, 58. liability of, to pay for shares, 116, 122. married woman, 34. members of company are, 101, 102, 454, 456. misrepresentation, repudiation, 36, 102. notice of meeting, 166. who may be, 34, 35, 101. SUBSCRIBING SHARES, 101 et seq., 113 et seq. commissions, 337 et seq. SUBSCRIPTION OF MEMORANDUM AND ARTICLES, 34, 36, 37, 454. [And see MEMORANDUM OF ASSOCIATION.] requirements of Act, 35. witnesses to signatures of subscribers, 35, 37. SUBSIDIARY COMPANIES, winding-up of, with life assurance company, 555. "SUCCESSORS," use of, unnecessary, 267. SUMMARY AND LIST OF MEMBERS, 123, 456, 457. SUNDAY, whether a dies non, 166.

SUPERVISION ORDER, 422, 501. [See VOLUNTARY WINDING-UP UNDER SUPERVISION.]

SURPLUS ASSETS, 416.

ţ

SURRENDER OF SHARES, cesser of membership, by, 116. reduction of capital, when a, 94. when allowable, 93.

TABLE A, 524.
accounts, 533.
applicable, wheu, 22, 37, 454.
audit, 534.
calls ou shares, 526.
clause vesting general powers of company in directors, 530, 531.
conversion of shares into stock, 527.
directors, 530.

58

INDEX.

TABLE A—continued.
disqualification of directors, 531.
dividends, 53'.
forfeiture of .hares, 528.
general meetings, 528.
increase of capital, 528.
notices, 534.
powers of directors, 530.
proceedings of directors, 532.
remin ration of directors, 532.
rotation of directors, 532.
share warrants, 527.
transfers of shares, 526.
votes of mubers, 530.

TENANT FOR LIFE AND REMAINDERMAN, dividends, as between, 220.

TESTIMONIUM CLAUSE, form of, 255. in debenture, 288.

TITLE, shares, to, estopped by certificate (title', 143, 144.

TORTS, company's liability for, 74, 200. directors, by, 205, 209 et seq.

TRADE SECRETS, 263.

TRADE UNIONS, 9. Acts to remain in force, 8. 294...523 no liability to be sued, 9.

TRADING COMPANY, implied power of borrowing, 269.

TRADING WITH THE ENEMY, penalties for, 633. what is, 633. winding-up in case of, 634.

TRANSFER OF DEBENTURES AND DEBENTURE STOCK, 315. blank, 316. forged, 316. free from equities, 291, 316.

TRANSFER OF PROCEEDINGS, winding-up, in, 487.

TRANSFER OF SHARES, 130, 442. approval of, by directors, 130, 131. attorney, by, 134. bankruptcy of member, on, by trustee, 140. blank transfers, 133, 134. calls in arrear, where, 132. Hability of transferee, 132. Inability of transferre, 132. certification of transferr, 138. cesser of membership, by, 116. deed when reguisite, 133. delay in registration, 132, 135. P. 59

TRANSFER OF SHARES-continued. delivery of certificates, 135. discretion of directors as to, 131, 132. dlvidend on, 220. execution of, 134, 135. forged transfers, 136. form of, 133. free unless restricted by regulations, 130. hand, under, 134. incomplete till registered, 131. indebtedness of member, company no prime facie right to refuse registration, 132. indemnity, 137. infants, 134. lrregnlar, walver by directors, 133. joint holders, 134. liability of transferor as past member, 137. till registration, 132. lien, where company has, 130, lunatic, 134. married woman, 134. misdescription of consideration, 133. pauper to, 130. personal representatives, by, 139, 457. priorlities where unregistered, 131. private company, in, 375. usually fettered, 375. refusal of, by directors when mali fide, 131. registration necessary to complete, 131. registration on application of transferor, transferor's right to require, 132, 457. ndor not bound to procure, 135. ons on, by articles, 130. stamp on, 135. Table A, 525. transferor becomes a past member, 137. transmission of shares, 139. vendor does not guarantee registration, 135. winding-up, during, 137. TRANSMISSION OF SHARES, 139. executors all to concur in transfer, 139. law as to, 139, 140. probate to be produced, 139. refusal to register, 140. Scotch sequestrator's rights, 140. Table A, 526. trustee in backruptcy, his rights, 139. TRESPASS, liability of company, 74. TRUST DEED. constituting debenture stock, 313. debentures, often used to secure, 313. majority clauses in, 321. provisions of, 313. reference to, in debenture, 296. TRUSTEE IN BANKRUPTCY, disclaimer by, of shares, 140. transfer by or to. 140. transmission of shares, 140. 60

TRUSTEES,

directors are, in what sense, 178, 179. for debenture holders, remuneration, 314.

TRUSTS,

article exempting company from obligation to notice, 155, 156 lien on shares, effect, 154 et seq. notice of, not to be entered on register, 157, 158.

ULTRA VIRES, 66 et wq. [See POWERS OF COMPANY.] acts of directors, 199, 205, 208.
application of funds, 60 et seq., 208.
articles containing provisions which are, 38.
borrowing, 275, 276.
remedy of lender, 275, 276.
subrogation of lender, 275.
contracts of company, 253.
majority of members not all-powerful, 242.
outsiders presumed to know constitution, 44.
protected dealing bond fide, 73.
payment of dividends ont of capital, 215 et seq.
proceedings, 66, 68.
what acts are, and what not, 66-69.

ULTRA VIRES PROVISIONS AND REGULATIONS, 38,

UNCALLED CAPITAL.

charge on, in debenture, 270. "property," not, 271. charging, what words will authorize, 271. mortgaging, 271, 277. what power sufficient to justify, 271. reserve, 271.

UNCLAIMED DIVIDENDS, winding-up, 417.

UNDERTAKING.

charge on, meaning of, in debentures, 287. power of companies to sell, 66, 425. power to sell, in memorandum, 66. sale of, under s. 192., 425 et seq. taking over, of another company, power of, 65, 68.

UNDERWRITING, 337 et seq.

acceptance of agreement or letter after list closed, 338. commissions for. 340 et seq. must not exceed what allowed by articles, 340, 341. formerly only payable where public offers, 341. promoters' power to pay, 340, 341. when permitted, 340. conditions precedent in agreement or letter of, 338, 339. diaclosure, 342, 348. form of agreement or letter, 338. object of, 337. private company, by, 341, 342, 368. prospectus, statement in, 348. repudiation for misstatements in prospectus, 342. reconstruction. on, 341. when contract complete, 340 et seq.

61

45 (2)

UNDUE PREFERENCE, in winding-up, 415, 508.

UNINCORPORATED COMPANY, 5. nature of, 5. origin of, 5, 6.

where constituted by contract, 6. deed of settlement of, 6. winding-up of, 389, 390.

UNLIMITED COMPANY, 381. forms of memorandum and articles, 542. re-registration as limited, 463. may by resolution for re-registration provide for reserve capital, 464.

UNLIMITED LIABILITY OF DIRECTORS, 464.

UNREGISTERED ASSOCIATIONS, illegality, 386. land companies, 387. mutual insurance, 387. registration under Part VII..., 385. what are, 386. winding-up of, sect. 267...517.

UNTRUE STATEMENT IN PROSPECTUS, liability, 357, 471.

VACANCY, committee of Inspection, in, 494. directors, in number of, power to act, 195, 532.

VALUATION, life assurance policies, of, 585.

VARIATION OF CONTRACTS, referred to in prospectus or statement in lieu of, 364, 471.

VENDOR,

present of qualification to director by, 185. promoter, 334. prospectus, for purposes of, who is, 348, 349.

VERBAL CONTRACTS, how made, 256.

VERBAL NOTICE, to company, 234.

VOIDABLE CONTRACT, to take shares, 107, 108, 110, 112 et seq., 352.

VOLUNTARY WINDING-UP, 418 ct seq., 498 ct seq. applicatious to Court in, 420, 500. circumstances for, 418, 498. commencement, 419, 498. consequences of, 419, 498. consequences of, 419, 498. costs, charges, and expenses payable out of assets, 421. creditor may apply to Court in, 420, 500.

VOLUNTARY WINDENG-UP constanced dissolution may be declared vold, 422.
final meeting in, 422, 501 forfeiture of shares in, 152.
leguidator's appointment, 419, 496.
leguidator's duties, 420, 499 501 meetings, power of liquidators to call, 420, 422, 500 not a bar to compulsory order, 421, 501.
resolutions for, 418.
stay of actions and executions, 421
supervision, under, 422. [See Wrypino-UP UNDER SUPERVISION

VOTES,

company by its representative, 467.
contract as to, 170.
general meeting, at, 170.
multiplying by transfer, 171
meralers, of,
fraud on minority, 50, 171
rules as to, 169.
Table A, 630.
transfer to increase, 171.
no regulations, where, 466, 467.
poll, by, 172. [See Posts.]
property, a right of, 170.
proxies, 173. [See Proxues.]
register evidence of right to, 169.
show of hands, by, 172.
proxies not admissible on, 172.
special resolutions, 237.
use of, against interest of company, 170

WAGES,

priority in winding-up, 410, 502, 503.

WAIVER,

clause in prospectus, invalidity, 349, 351. minimum subscription, as to, 106, 473 notice of allotment, of, 109.

- WARRANTS, share, to bearer, 140, 459.
- WARRANTY OF AUTHORITY, of directors, 145, 190, 275, 276.

WASTING PROPERTY,

power to pay net income of, in dividends, 216, 219.

WATERWORKS CLAUSES ACT, the, 4.

WINDING-UP,

accelerates payment of debenture, 294. amalgamation, 425. arrangements with creditors and contributories, 430, 484, 500. bankruptcy rules in, 405, 502. companies, what kinds may be wound up, 389. compulsory. [See WINDING-UP (COMPULSORY).] different kinds of, 385. dissolution of company, 417, 422. floating charge, effect of, 310, 480, 503. foreign company, 390.

INDEX.

WIN.DING-UP-continued. fraudulent preference, 415, 503. jurisdiction, 389, 486. liability in, 404, 416. life assurance company, 384. misfeasance, 406. preferential creditors, 401, 502. rates, priority of, 410, 502. reconstruction, 423 et seq. sale and transfer of assets under sect. 192..425. scheme of arrangement, 430, 484, 500. set-off, 405. surplus assets, 410. transfers of shares during, 137. under supervision, 422. [See WINDING-UP UNDER SUPERVISION.] unregistered companies, 389, 517. voluntary, 418. [See VOLUNTARY WINDING-UP.] wages, priority of, 410, 502. WINDING-UP (COMPULSORY). accounts in, and audit of, 492, 507, 508. accounts to Parliament, annual, sect. 234..508. actions, transfer, 414, 487. liberty to proceed with, 413. advertisements in, 396, 397. affidavits in, 397, 507. applications to Court in. 488. arrangements with creditors and contribut. . , 430, 484, 500. assets, collection and distribution of, 401, 491, 494, compulsory delivery, 494. attachment of debt due to contributory in Stannaries, sect. 239..510. audit, liquidator's account, sect. 155..492. avoidance of attachments, executions and distresses, 413, 489, 503. Bank of England, Court may order payment into, by contributory, &c., sect. 167. 495. banking account regulated by Court, 492, 495. Board of Trade, powers in, 508. books and accounts, 492. disposal of, sect. 222..506. falsification of, sect. 216..505. inspection of, sect. 221..505. books to be evidence, sect. 220..505. liquidator to keep record and cash, sect. 156..492. calls, 148, 495. meeting to sanction, 402. power of Court to make, sect. 166. . 495. carrying on business in, 491. charge, effect on floating, s. 212..310, 480, 503. circumstances in which company may be wound up, 390, 391, 486. commencement of, 392, 399, 488. commencement of, 392, 399, 498. commission for receiving evidence, s. 226..507. committee of inspection, 401, 493, 494. company's liquidation account defined, s. 229..507. compromise, 430, 484, 500. conclusion of, statement of liquidator, 417, 418, 495. contributories contributories, 404, 484 486. absconding, s. 176..497. adjusting rights of, 416, 495. bankruptey, 485. definition of, 485. liability of, 485. list of, power of Court to settle, s. 163..494. married women, 486. mcmber's death, in case of, 485.

WINDING-UP (COMPULSORY)-continued. contributories-continued. order for call on, in Scotland, s. 179.. 497. order on, conclusiveness of, s. 168. 495. petition by, 394. control of Board of Trade, 493. costs of, proof, 412. power of Court over, s. 171..495. County Court's jurisdiction in, 389. Court, by, 391 et seq power of, to adjourn, 398, 488. to dismiss petition, 488. Courts having jurisdiction in, 389, 486. creditors and contributories, Courts to regard wishes of, 414, 489. creditors. petition by, 392, preferential, 410, 502. proof by, 409, 412. undisputed debt a primd facie right to order, 391. eustody of company's property, s. 150., 490. Crown debts, 410. debenture holders, petition by, 328. proof by, 329. debtor of company, bankruptcy and insolvency of, s. 151. .491. debts, priority of certain, over debenture holders, 410, 480. proof of, 409, 412, 502. defunct companies, striking off register, s. 242..54, 511. delivery of property, power of Court to order, s. 164..494. dispositions by directors or liquidators pending, or after, 207. dissolution of company, 417, 495, 506. notice to registrar, 495. penalty for not reporting, 495. power of Court to declare void, 506. dividends in, 412, 495. unclaimed, 417, 506. ejusdem generis rule, 391. estates, separate accounts of particular, s. 231..508. examination of officers and other persons, 407, 408, 496, 507 (Scotland). fees in, scale of, 509. application of, s. 232..508. first meetings, creditors and contributories, of, 401. foreign company, of, 390. "further" report, 489, 490. fraudulent preference, 415, 503. general meetings, 491. general scheme of liquidation, s. 214..504. grounds for, 390, 391. substratum gone, 391. guarantee, company limited by, 380, 485. hearing of petition, 398. High Court, matters to be heard in, 389. inability to pay debts, 391, 486. information to be furnished, s. 224..506. injunction to restrain proceedings. [See INJUNCTION.] injunction to restrain proceedings. [See INJUNCTION.] insolvent company, provisions as to proof, s. 207..502. interest on debts, 329, 412. investment of funds on general account, s. 230..507. jnrisdiction, 389, 486. Ireland, in, 487. Scotland, iu, 487. " just and equitable," 391, 486. leave to proceed with actions, &c., notwithstanding, 413, 488. life assurance company, of, 384.

WINDING-UP (COMPULSORY) - continued. liquidator, 400 et seq., 490 et seq. [See LIQUIDATOR.] meetings of creditors and contributories, 401, 491, 492, 505. ance and breach of trust, 406, 505 misfeas order for payment of damages for, a final judgment, 407. notice of signatures, judicial, s. 225..506. official receiver, 489. [And see OFFICIAL RECEIVER.] order, 399. appeals from, 497. copy of, to be forwarded to registrar, 489. effect of, 488. enforcement of, ss. 178, 180..497. in Ireland and Scotland, 497. ex debito justitua, when, 391 may be made notwithstanding deficient or no assets, 393, 488. relates back, 399, 488, 502. wishes of creditors and contributories, 414. pari passes payment, 410. payment of debts by contributories, 404, 495. power to order, s. 165. 494. payments into and out of bank, 492. perjury, penalty for, s. 218.505. petition, 391 et seq. [See PETITION TO WIND UP.] preferential creditors, 410, 502. private examination, in, 407, 496. proceedings in, subsequent, 400. proofs in, 409, 412, 502. [See Proof.] fixing time for, s. 169..495. prosecution of delinquent directors and promoters, 415, 505. provisional liquidator, appointment of, 400. public examination in, 408, 496. public examination in, 408, 496. purchaser may be ordered to pay money into the bank, 495. rates, priority of, 410, 502. receiver, s. 160. 493, 494. release of liquidator, 417, 492. restraining proceedings, 413, 488. returns by officers, s. 235..509. returns by Treasury of receipts and expenditure, 508. rules and fees. power of Court to make, s. 238..509. rules and fees, power of Court to make, s. 238..509. sale of property in, 402, 491. Scotland, examination of persons in, s. 227...507. provisions as to, s. 213...504. ranking in, s. 208. . 502. secured creditors, 411. special manager, appointment of, 493, 494. Stannaries jurisdiction, transfer of, 389, 486, 487. preferential payments in, s. 240..510. statement of affairs, 400, 489. stay of actions, executions, &c., 413, 488. stay of winding-up proceedings, 417 (s. 144), 489. surplus assets, 4.16. termination of, 417, 422, 495. statements by liquidator to registrar, 495. title of proceedings in High Court, 395. transfer of pending actions to judge in winding-up, 487. transfers of shares during, 137, 502. unclaimed funds and undistributed assets, 417, 508. unregistered companies, 389, 517. wages, priority of, 410, 502, 503. wishes of creditors and contributories, 414, 489. 491. year, not finished within, 566.

WINDING-UP (VOLUNTARY), 418 et seq., 498. [See VOLUNTARY WINDING-UP.]

12.24

WINDING-UP (UNDER SUPERVISION, 422, 501 et seq. adoption by Court of proceedings in the voluntary winding-ap. 501. disposition of property, s. 205., 502.
operation of order, 422, 501, 502.
petition for, as to stay of actions, s. 200., 501.
prover to support or remove liquidates at 202. 501. power to appoint or remove liquidator, s. 202..501. restrictions contained in order, 423. Scotland and Ireland, in, 502. transfer of shares, s. 205., 502. wishes of creditors and contributories, s. 201..501.

WITHDRAWAL OF APPLICATION FOR SHARES, 103, 108, after allotment, 108, 352 et seq. before allotment, 103.

WITNESSES,

signatures of subscribers of memorandum and articles, to, 34-36.

WORKING CAPITAL, 33. [See Capital.]

WORKMEN'S COMPENSATION ACT, preferential payments under, 410.

WRIT,

company, by, form of, 268. service on company, 234.

WRITING,

transfer of shares, when only in, 133, 134.

LONDON: PRINTED BY C. F. ROWORTH, 55, FEITLE LANE, E.C. 67 ٠ 46 P.

